**

**APPENDIX 10.A**

**2018 RPS Sales Model PPA**

**WSPP AGREEMENT   
CONFIRMATION  
BETWEEN  
SAN DIEGO GAS & ELECTRIC COMPANY   
AND****[INSERT NAME]**

This confirmation letter ("Confirmation") confirms the transaction (“Transaction”) between **San Diego Gas & Electric Company** ("Seller” or “SDG&E” “Party B”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Buyer” or “Party A”), each individually a "Party" and together the "Parties", effective as of \_\_\_\_\_\_\_\_\_\_\_\_, 2014(the "Confirmation Effective Date"). This Transaction is governed by the WSPP Agreement effective as of May 9, 2013, along with any amendments and annexes executed between the Parties thereto (the "Master Agreement”). The Master Agreement and this Confirmation shall be collectively referred to herein as the “Agreement.” Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or in the RPS (as defined below). If any term in this Confirmation conflicts with the Master Agreement, the definitions set forth in this Confirmation shall supersede.

|  |  |  |
| --- | --- | --- |
| **Buyer:** | | **Seller:** San Diego Gas & Electric Company |
| **Contact Information:** | **Name:**   (“Buyer”) | **Name:** San Diego Gas & Electric Company (“Seller”) |
|  | **All Notices:**    Attn:  Phone:  Facsimile:  Duns:  Federal Tax ID Number: | **All Notices:**  San Diego Gas & Electric Company  Street: 8315 Century Park Court City: San Diego, CA Zip: 92123  Attn: Electric & Fuel Procurement Contract Administration  Phone: (858) 650-5536  Facsimile: (858) 650-6190  Duns: 006911457  Federal Tax ID Number: 95-1184800 |
|  | **Invoices:** | **Invoices:**  San Diego Gas & Electric Company  8315 Century Park Ct.  San Diego, California 92123-1593  Attn: Energy Accounting Manager  Phone: (858) 650-6177  Facsimile: (858) 650-6190 |
|  | **Scheduling Agent:** | **Scheduling:**  San Diego Gas & Electric Company  8315 Century Park Ct.  San Diego, California 92123-1593  Attn: Transaction Scheduler  Phone: (858) 650-6160  Facsimile: (858) 650-6191 |
|  |  |  |
|  | **Wire Transfer:** | **Wire Transfer:**  BNK: Union Bank of California  for: San Diego Gas & Electric Company  ABA: Routing # 122000496  ACCT: #4430000352  Confirmation: SDG&E, Major Markets  FAX:(213) 244-8316 |
|  | **Credit and Collections:** | **Credit and Collections:**  San Diego Gas & Electric Company, Major Markets  555 W. Fifth Street, ML 10E3  Los Angeles, CA 90013-1011  Attn.: Major Markets, Credit and Collections Manager  Fax No.: (213) 244-8316  Phone: (213) 244-4343 |
|  | **Defaults:**  With additional Notices of an Event of Default or Potential Event of Default to: | **Defaults:**  With additional Notices of an Event of Default or Potential Event of Default to:  San Diego Gas & Electric Company  8330 Century Park Ct.  San Diego, California 92123  Attn: General Counsel  Phone: (858) 650-6141  Facsimile: (858) 650-6106 |

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

COMMERCIAL TERMS

Firm Delivery Obligation

|  |  |  |
| --- | --- | --- |
| **Seller: SAN DIEGO GAS & ELECTRIC COMPANY** | | **Buyer:** |
| **Scheduling:** | Seller Buyer  Day Ahead: 858-650-6178 Day Ahead:  SCID: SCID:  Contact information is for convenience and is subject to change by notice. | |
| **Product:** | The Product is a Firm Delivery Obligation of all California Energy Commission-certified RPS Bundled Electric Energy and associated Green Attributes which meets the definition of a Category 1 Transaction in the Contract Quantity.  During the Delivery Period, Seller shall deliver and sell, and Buyer shall purchase and receive, this Product, subject to the terms and conditions of this Confirmation. Seller shall not substitute or purchase any Green Attributesfrom any generating resource other than the Project for delivery hereunder. | |
| **Project:** | All Product sold hereunder shall be from one or more of the facilities, each meeting the requirement of 6.1(a) and as listed in Exhibit A, as may be updated from time to time by written notice from Seller to Buyer (collectively, the “Project”).  The Parties acknowledge and agree that the Project consists of a pool of facilities physically located in California and that Seller is permitted to utilize one or more of these pooled facilities in order to satisfy its obligations hereunder.  The Parties further acknowledge and agree that, with respect to Section 3.3(a) of this Confirmation, Product shall solely be limited to the actual Product generated and delivered by the pooled facilities used to satisfy the Contract Quantity, and that Buyer is not entitled to any additional Product produced by the pooled facilities in the Project above and beyond the Contract Quantity. | |
| **Contract Capacity** | In any hour, as determined by Seller in accordance with the Scheduling Obligations section of this Confirmation | |
| **Contract Quantity:** | “Contract Quantity” shall be equal to [\_\_\_\_] MWhs per calendar month for a total of [\_\_\_] MWhs in 20[XX] and [\_\_\_] MWHs in 20[XX]. In the event Seller does not deliver any of the above specified quantities in a particular calendar month for any reason, except as excused by Uncontrollable Force, the Parties shall agree upon the make-up schedules for any undelivered quantities. If the Parties are unable to come to agreement on such make-up schedule, Buyer shall deliver the quantities to Seller in a reasonable manner and within a reasonable time. | |
| **Contract Price:** | Index plus $[XX.XX ]MWh | |
| **Term:** | The Term of this Transaction shall commence upon the Confirmation Effective Date and shall continue until delivery by Seller to Buyer of the Contract Quantity of the Product has been completed and all other obligations of the Parties under this Agreement have been satisfied, unless terminated earlier due to failure to satisfy the Condition Precedent or as otherwise provided in the Agreement*.* | |
| **Delivery Period:** | The Delivery Period of this Transaction shall commence on [the later of (a) three business days after the Condition Precedent Satisfaction Date or (b) [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] and shall end at midnight on [\_\_\_\_\_\_\_\_\_\_], unless extended for make-up deliveries as specified in the Contract Quantity Section or terminated in accordance with the terms herein. | |
| **Delivery Point:** | TH\_SP15\_GEN-APND TH\_NP15\_GEN-APND | |
| **Firm Delivery Obligation:** | “Firm Delivery Obligation” shall have the following meaning:  The obligation to provide the Contract Quantity is a firm obligation in that Seller shall deliver the quantity of the Product from the Project consistent with the terms of this Confirmation without excuse other than Uncontrollable Force. If a failure by Seller to deliver the quantity from the Project is not excused by Uncontrollable Force, Seller shall make up such failure in accordance with the “Contract Quantity” Section. | |
| **Scheduling Obligations:** | Seller shall notify Purchaser of the quantity of energy to be delivered for each hour, prior to the beginning of each month and such quantity may be adjusted by Seller with notice to Purchaser at least twenty-four (24) hours prior to the Tariff’s deadline to submit ISTs on a day-ahead basis in the IST-APN Integrated Forward Market, which amount shall be the “Designated Contract Capacity”. For each hour of each day in the Delivery Period, Seller shall schedule to the Purchaser the Designated Contract Capacity, if any, as an IST-APN in the Integrated Forward Market at the Delivery Point on a day-ahead basis in accordance with the Tariff.  In the event all of the scheduled quantity of the Product is not delivered after the IST has been scheduled between the Buyer and Seller, Buyer shall pay Seller the price paid to Buyer from the CAISO applicable to each hour times the IST quantity in that hour that exceeds the Product quantity actually delivered in that hour. | |
| **Scheduling Period:** | In accordance with this Confirmation, Seller shall schedule and deliver to Purchaser the CAISO Energy in the Designated Contract Capacity amount, if any, for each hour during the Delivery Period. | |
| **Condition Precedent:** | The commencement of delivery of the Green Attributes in accordance with Section 3.3 below shall be contingent upon the Seller obtaining or waiving approval by the CPUC of this Confirmation. Either Party has the right to terminate this Confirmation upon notice in accordance with Section 12 of the WSPP Agreement, which will be effective five (5) Business Days after such notice is given, if: (i) the CPUC does not issue a final and non-appealable order approving this Agreement or the requested relief contained in the related advice letter filing, both in their entirety, (ii) the CPUC issues a final and non-appealable order which contains conditions or modifications unacceptable to either Party, or (iii) the final and non-appealable approval by the CPUC has not been obtained by Seller, on or before [INSERT DEADLINE DATE].  The date on which approval of the CPUC of this Confirmation has been obtained or waived, by Seller, in its sole discretion, shall hereinafter be the “Condition Precedent Satisfaction Date.”  Any termination made by a Party under this section shall be without liability or obligation to the other Party.  Notwithstanding any other provision in this Confirmation, Seller will have no obligation to transfer Green Attributes to Purchaser unless the Condition Precedent Satisfaction Date has occurred. | |

DEFINITIONS

“Buyer” means “Purchaser”.

“CAISO” means the California Independent System Operator.

“CAISO Energy” means “Energy” as defined in the Tariff.

“California Energy Commission-certified RPS Bundled Electric Energy” means electric energy from an Eligible Renewable Energy Resource, as such term is defined in Public Utilities Code Section 399.12 and 399.16.

“Category 1 Transaction” means procurement of product that meets the product content requirements under Public Utilities Code Section 399.16(b)(1) as adopted in Senate Bill 2 (1x), enacted on April 12, 2011 in the First Extraordinary Session of the Legislature in a manner consistent with Section 3203 (a) of the Enforcement Procedure for the Renewable Portfolio Standard for Local Publicly Owned Electric Utilities, as adopted by the California Energy Commission on June 12, 2013, as may be further amended.

“Condition Precedent Satisfaction Date” means the date on which CPUC approval, as fully described in the “Condition Precedent” provision, has been obtained or waived, by Seller, in its sole discretion.

"CPUC" means the California Public Utilities Commission or its regulatory successor.

"CPUC Approval" means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which contains the following terms:

(a) Approves this Agreement in its entirety, including payments to be made by the Buyer, subject to CPUC review of the Buyer's administration of the Agreement; and

(b) Finds that any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining Buyer's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 *et seq.*), Decision 03‑06‑071, or other applicable law.

CPUC Approval will be deemed to have occurred on the date that a CPUC decision containing such findings becomes final and non-appealable.

Notwithstanding the foregoing, if a Tier 2 or Tier 3 advice letter process is used to obtain CPUC Approval of this Agreement, CPUC Approval will also be deemed to have occurred on the date that a CPUC Energy Division disposition which contains such findings or deems approved an advice letter requesting such findings becomes final and non-appealable.

“Day-Ahead” has the meaning set forth in the Tariff.

“Delivery Period” means “Delivery Term”.

“Designated Contract Capacity” means the amount determined by Seller in accordance with the Scheduling Obligations section of this Confirmation.

"Green Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. GreenAttributes include but are not limited to Renewable Energy Credits, as well as:

(1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants;

(2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluorideand other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law**,** to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere;[[1]](#footnote-1)

(3) the reporting rights to these avoided emissions, such asGreen Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the GreenAttributes associated with one (1) MWh of Energy.

GreenAttributes do not include;

(i) any energy, capacity, reliability or other power attributes from the Project,

(ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the Project that are applicable to a state or federal income taxation obligation,

(iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or

(iv) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits.

If the Project is a biomass or biogas facility and Seller receives any tradable GreenAttributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient GreenAttributes to ensure that there are zero net emissions associated with the production of electricity from the Project.

“Index” means the CAISO Integrated Forward Market Day-Ahead price (as such term is defined in the Tariff) for the Delivery Point for each applicable hour as published by the CAISO on the CAISO website; or any successor thereto, unless a substitute publication and/or index is mutually agreed to by the Parties, averaged for the quantity of energy that is delivered under this Confirmation for each Scheduling Period.

“Integrated Forward Market” has the meaning set forth in the Tariff.

“Monthly Contract Capacity” has the meaning set forth in the “Contract Capacity” section of this Confirmation.

“Off-Peak Period” means any hour that is not an On-Peak Period.

“On-Peak Period” has the meaning established by the North American Energy Standards Board, as may be updated from time to time.

"RPS" means the California Renewable Portfolio Standard Program as codified at California Public Utilities Code Section 399.11 *et seq.*, the Enforcement Procedures for the Renewable Portfolio Standard for Local Publicly Owned Electric Utilities, as adopted by the California Energy Commission on June 12, 2013, as may be further amended.

“Tariff” means the tariff and protocol provisions, including any current CAISO-published “Operating Procedures” and “Business Practice Manuals,” as amended or supplemented from time to time, of the CAISO.

“Vintage” means the calendar year and month during the Delivery Period in which the WREGIS Certificate is created through the generation of the Product.

"WREGIS" means the Western Renewable Energy Generation Information System or other process recognized under applicable laws for the registration, transfer or ownership of Green Attributes.

"WREGIS Certificate" means **"**Certificate**"** as defined by WREGIS in the WREGIS Operating Rules.

"WREGIS Operating Rules" means the operating rules and requirements adopted by WREGIS.

conveyance of renewable energy

## Seller’s Conveyance Of Electric Energy

Except as stated in this Section 3.1 and beginning on the first day of the Delivery Period and throughout all applicable months of the Delivery Period, Seller shall deliver and sell, and Buyer shall purchase and receive, the Product, subject to the terms and conditions of this Confirmation. Seller will not be obligated to sell or replace any Product that is not or cannot be delivered as a result of Uncontrollable Force.

Should any electric energy provided by Seller under this Confirmation be determined to have originated from a resource other than the Project, Seller shall remedy such failure in a manner reasonably acceptable to Buyer within a reasonable period of time after written notice of such failure is given to the Seller by the Buyer.

**3.2** **Reserved**

## 3.3 Seller’s Conveyance Of Green Attributes

### (a) Green Attributes. Seller hereby provides and conveys all Green Attributes associated with all electricity generation from the Project to Buyer as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Project, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Project.

#### The Green Attributes are delivered and conveyed upon completion of all actions described in Section 3.3(b) below.

#### (b) Green Attributes Initially Credited to Seller’s WREGIS Account

(A) During the Delivery Period, Seller, at its own cost and expense, shall maintain its registration with WREGIS. All Green Attributes transferred by Seller hereunder shall be designated California RPS-compliant with WREGIS. Seller shall, at its sole expense, use WREGIS as required pursuant to the WREGIS Operating Rules to effectuate the transfer of Green Attributes to Buyer in accordance with WREGIS reporting protocols and WREGIS Operating Rules.

#### (B) For each applicable month of the Delivery Period, Seller shall deliver and convey the Green Attributes associated with the electric energy delivered in Section 3.1 within five (5) Business Days after the end of the month in which the WREGIS Certificates for the Green Attributes are created by properly transferring such WREGIS Certificates, in accordance with the rules and regulations of WREGIS, equivalent to the quantity of Green Attributes to Purchaser into Purchaser’s WREGIS account such that all right, title and interest in and to the WREGIS Certificates shall transfer from Seller to Purchaser.

#### (C) In addition to its other obligations under this Section 3.3, Seller shall convey to Buyer WREGIS Certificates from the Project that are of the same Vintage as the Product that was provided under Section 3.1 of this Confirmation.

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CPUC filing and APproval

Within [INSERT] days after the Confirmation Effective Date, Seller shall file with the CPUC the appropriate request for CPUC approval of this Agreement and possibly other agreements. Seller shall seek CPUC approval of the filing, including promptly responding to any requests for information related to the request for CPUC approval. Buyer shall use commercially reasonable efforts to support Seller in obtaining CPUC approval. Seller and Buyer have no obligation to seek rehearing or to appeal a CPUC decision which fails to approve this Agreement, or which fails to meet the requirements contained in the Condition Precedent section.

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COMPENSATION

Purchaser will pay Seller as follows:

Calculation Period: Each calendar month during the Delivery Period.

Monthly Cash Settlement Amount: The Monthly Cash Settlement Amount::

Purchaser shall pay Seller the Monthly Cash Settlement Amount, in arrears, for each Calculation Period in the amount equal to the sum of the following: (a) the sum, over all hours of the Calculation Period, of the product for each such hour of the applicable Index price for each hour, multiplied by the quantity of CAISO Energy scheduled, delivered and received by Purchaser pursuant to Section 3.1 during that hour; plus (b) the product of $[XX.XX] multiplied by the quantity of Green Attributes (in MWhs) delivered or credited to Purchaser’s WREGIS account pursuant to Section 3.3 during the applicable Calculation Period.

Payment Date:Notwithstanding any provision to the contrary in Section 9.2 of the Master Agreement, payments of each Monthly Cash Settlement Amount by Purchaser to Seller under this Confirmation shall be due and payable on or before the later of the twentieth (20th) day of the month in which the Purchaser receives from Seller an invoice for the Calculation Period to which the Monthly Cash Settlement Amount pertains, or within ten (10) Business Days, or, if such day is not a Business Day, then on the next Business Day, following receipt of an invoice issued by Seller for the applicable Calculation Period. The invoice shall include a statement detailing the portion of Product transferred to Purchaser during the applicable Calculation Period.

Invoices to Buyer will be sent by Excel/PDF format via email to: **[TO BE INSERTED]**

Attn:

Email:

Phone:

Facsimile:

For purposes of this Confirmation, Buyer shall be deemed to have received an invoice upon the receipt of the Excel/PDF format of the invoice.

Payment to Seller shall be made by electronic funds transfer pursuant to the following:

BNK: Union Bank of California

For: San Diego Gas & Electric Company

ABA: Routing # 122000496

ACCT: #4430000352

Confirmation: SDG&E, Major Markets

FAX :( 213) 244-8316

With a copy to:

San Diego Gas & Electric Company

8315 Century Park Ct.

San Diego, California 92123-1593

Attn: Energy Accounting Manager

Phone: (858) 650-6177

Facsimile: (858) 650-6190

REPRESENTATIONS, WARRANTIES AND COVENANTS

## Seller’s Representation, Warranties, and Covenants Related to Green Attributes

(a) Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that:

* + - 1. the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and
      2. the Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.
    1. Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation.

To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [NOTE to bidders: to be discussed for long term deals.]

The term “commercially reasonable efforts” as set forth in Sections 6.1 (a) and (b) above shall not require Seller to incur out-of-pocket expenses in excess of $[\_\_\_\_\_\_\_\_\_\_\_] in the aggregate in any one calendar year between the Confirmation Effective Date and the last day of the Term.

(c) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract.

For the avoidance of doubt, the term “contract” as used in the immediately preceding paragraph means this Agreement.

1. In addition to the foregoing, Seller warrants, represents and covenants, as of the Confirmation Effective Date and throughout the Delivery Period, that:

(i) Seller has the contractual rights to sell all right, title, and interest in the Product agreed to be delivered hereunder;

(ii) Seller has not sold the Product to be delivered under this Confirmation to any other person or entity; and

(iii) at the time of delivery, all rights, title, and interest in the Product to be delivered under this Confirmation are free and clear of all liens, taxes, claims, security interests, or other encumbrances of any kind whatsoever.

## 

GENERAL PROVISIONS

## Facility Identification

Upon Buyer’s reasonable request, within ten (10) Business Days after the end of each month during the Delivery Period, Seller shall provide indicative identification, based on preliminary meter data, of the facility(s) from the pooled facility that the Product was delivered from for that month.

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**Governing Law**

**Section 8.2 Governing Law/Venue**

THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. TO THE EXTENT ENFORCEABLE AT SUCH TIME, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT. The Parties hereby irrevocably and unconditionally agrees that any legal action or proceeding with respect to this Agreement shall be brought in the courts of the State of California in the County of San Diego or the courts of the United States in the County of San Diego, and by executing and delivering this Agreement, both Parties hereby submit to and accept irrevocably and unconditionally, the jurisdiction of the above mentioned courts. The foregoing, however, shall not limit the right of either Party as it may elect to bring any legal action or proceeding or to obtain execution of judgment in any other appropriate jurisdiction. [SDG&E will consider binding arbitration for longer term deals.]

SOVEREIGN IMMUNITY

[NOTE TO BIDDERS: insert only if applicable to governmental agencies, etc.] For purposes of this Confirmation only, the WSPP Agreement is amended by adding the following new provision: “Purchaser hereby waives sovereign immunity with regard to disputes relating to this Confirmation.”

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confidentiality

**10.1 Amendment to WSPP Agreement. Changes to the WSPP shall apply to this Confirmation only.**  For purposes of this Confirmation, Section 30 (Confidentiality) of the WSPP Agreement is deleted in its entirety and replaced with the following:

## “30.1(a) Neither Party shall disclose the non-public terms or conditions of this Agreement or any transaction hereunder to a third party, other than (i) the Party’s Affiliates and its and their officers, directors, employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential, (ii) for disclosure to the Buyer’s Procurement Review Group, as defined in CPUC Decision (D) 02-08-071, subject to a confidentiality agreement, (iii) to the CPUC under seal for purposes of review, (iv) disclosure of terms specified in and pursuant to Section 30.1(b) of this Agreement; (v) in order to comply with any applicable law, regulation, including, but not limited to, the California Public Records Act and/or the California Ralph M Brown Act, or any exchange, control area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party (“Disclosing Party”), other than to those entities set forth in subsection (vi); or (vi) in order to comply with any applicable regulation, rule, or order of the CPUC, CEC, or the Federal Energy Regulatory Commission. In connection with requests made pursuant to clause (v) of this Section 30.1(a) (“Disclosure Order”) each Party shall, to the extent practicable, use reasonable efforts within its sole and absolute discretion to pursue rights under such applicable laws, regulations, rules or orders which allow for the prevention or limitation of such disclosure. The Disclosure Party’s determination of what efforts might be reasonable shall not be subject to challenge by the other Party. After using such reasonable efforts, the Disclosing Party shall not be: (i) prohibited from complying with a Disclosure Order or (ii) liable to the other Party for monetary or other damages incurred in connection with the disclosure of the confidential information. Except as provided in the preceding sentence, the Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

### (b) RPS Confidentiality. Notwithstanding Section 30.1(a) of this Agreement, at any time on or after the date on which the Seller makes its filing seeking CPUC approval for this Agreement, either Party shall be permitted to disclose the following terms with respect to this Agreement: Party names, resource type, Delivery Term, project location, Contract Capacity, Contract Quantity, and Delivery Point.

### (c) Publicity. Except as otherwise agreed to in this Section 30.1 above, no announcement, publicity, advertising, press release, promotional or marketing materials regarding the arrangement contemplated under this Agreement, including the existence hereof, shall be made by either Party without the prior written approval of the other Party which approval shall not be unreasonably withheld or delayed.” Notwithstanding the foregoing, the Parties understand acknowledge and agree that Buyer is a California Public Agency and that certain actions and documents of Buyer are subject to public notice and/or disclosure under applicable laws and regulations, including, but not limited to, the California Public Records Act and/or the California Ralph M. Brown Act, and that Buyer is not obligated to seek prior approval of Seller when Buyer is complying, in its sole and absolute discretion, with such laws and regulations.

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE:

SAN DIEGO GAS & ELECTRIC company [insert name of purchaser]

By: By:   
  
Name: Name:   
  
Title: Vice President- Title:

Electric & Fuel Procurement

\_\_\_\_\_\_ APPROVED as to legal form

Exhibit A

To the confirmation BETWEEN \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_and san diego gas & electric company dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[NOTE: Exhibits to be added before execution]

1. Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Green Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program. [↑](#footnote-ref-1)