**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” or “Party B”) and **[INSERT NAME]** (“Buyer” or “Party A”), each individually a "Party" and together the "Parties", effective as of [INSERT DATE] (the "Confirmation Effective Date"). This Transaction is governed by the WSPP Agreementeffective as of July 28, 2020, 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, Tariff or RPS (as defined below). If any term in this Confirmation conflicts with the Master Agreement, the definitions set forth in this Confirmation shall supersede.

# **CONTACT INFORMATION**

|  |  |  |
| --- | --- | --- |
| **Contact Information:** | **Name:**  **[INSERT NAME]** (“Buyer”) | **Name:** **San Diego Gas & Electric Company** (“Seller”) |
|  | **All Notices:**Counterparty:Attn: Phone: Email: Duns: Federal Tax ID Number:  | **All Notices:**San Diego Gas & Electric Company8315 Century Park Court San Diego, CA Zip: 92123Attn: Electric & Fuel Procurement Contract AdministrationPhone: (858) 650-5536Facsimile: (858) 650-6190Duns: 006911457Federal Tax ID Number: 95-1184800 |
|  | **Invoices:** Attn: Phone: Email:  | **Invoices:**San Diego Gas & Electric Company8315 Century Park Ct.San Diego, California 92123-1593Attn: Energy Accounting ManagerPhone: (858) 650-6177Facsimile: (858) 650-6190 |
|  | **Wire Transfer:**Bank Name: Bank ABA: Account Number:  | **Wire Transfer:**BNK: Union Bank of Californiafor: San Diego Gas & Electric CompanyABA: Routing # 122000496ACCT: #4430000352Confirmation: SDG&E, Major MarketsFAX: (213) 244-8316  |
|  | **Credit and Collections:**Attn: Phone: Email:  | **Credit and Collections:**San Diego Gas & Electric Company, Major Markets8326 Century Park Court, CP 21 San Diego, CA 92123 Attn.: Credit and Collections ManagerFax No.: (858) 650-6190Phone: Email:  |
|  | **Defaults:**With additional Notices of an Event of Default or Potential Event of Default to:Attn: Phone: Email:   | **Defaults:** With additional Notices of an Event of Default or Potential Event of Default to:San Diego Gas & Electric Company8330 Century Park Ct.San Diego, California 92123Attn: General CounselPhone: (858) 650-6141Facsimile: (858) 650-6106 |

# **COMMERCIAL TERMS**

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:

|  |  |
| --- | --- |
| **Product:** | The “Product” is Unit Contingent Obligation electric energy and associated Green Attributes in the Contract Quantity**.** During 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 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 the facility listed in Exhibit A (the “Project” or the “Facility”). The Project from which Product is sold by Seller to Buyer shall: (a) have a first point of interconnection with a California balancing authority, (b) have a first point of interconnection with distribution facilities used to serve end users within a California balancing authority area, or (c) are scheduled from the eligible renewable energy resource into a California balancing authority without substituting electricity from another source. |
| **Contract Capacity:**  | In any hour throughout the Delivery Term, the “Contract Capacity” shall be in MW, as determined by Seller in accordance with the Contract Quantity section of this Confirmation.  |
| **Contract Quantity:** | “Contract Quantity” shall be, for the Delivery Term, all output from the Facility, unless excused pursuant to the definition of Unit Contingent Delivery Obligation below, up to [INSERT] MWh. Seller shall determine the hourly Contract Quantity during the Delivery Period. |
| **Contract Price:** | Index Price plus Green Attributes Price  |
| **Index Price:\_\_** | “Index Price” means the CAISO Integrated Forward Market Day-Ahead price (as such term is defined in the Tariff) for NP15 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. |
| **Green Attributes Price:** | $[INSERT] **/** 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 (i) the first day of the calendar month following the calendar month in which CPUC approval occurs and (ii) **[INSERT DATE]** \_\_\_\_\_\_\_\_\_\_\_\_ (the “Start Date”), and continue until midnight on \_\_\_\_\_\_\_\_\_\_; provided that if CPUC approval is not received by the Start Date above, then the Start Date shall be the first day of the month following the month in which CPUC approval is received and shall continue until midnight on the last day of the month in which the first anniversary of the Start Date, unless extended for make-up deliveries as specified in the Contract Quantity Section or terminated in accordance with the terms herein. |
| **Delivery Point:** | The ”Delivery Point” is NP-15.  |
| **Unit Contingent Delivery Obligation:** | “Unit Contingent Obligation” shall have the following meaning: The obligation to provide the Contract Quantity is a unit contingent obligation in that Seller shall deliver the quantity of the Product from the Project to Buyer, instantaneously upon Seller’s receipt of such Product, consistent with the terms of this Confirmation on an as as-available basis. Seller’s failure to deliver shall be excused, and Seller shall have no obligation to make up or replace any failure of the Facility to generate and deliver the quantity from the Project: if (i) the Project is unavailable as a result of a Scheduled Maintenance or Forced Outage, (ii) by an event or circumstance that affects the Project so as to prevent Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, and which is not within the reasonable control of, or the result of the negligence of, the Seller, (iii) by Buyer’s failure to perform, or (iv) by a reduction or insufficiency of biomass that causes a reduction or cessation of generation of electric energy by the Project. Buyer shall have no obligation to pay for any Product that Seller is unable to deliver. |
| **Scheduling Obligations:** | Seller, or a qualified third party designated by Seller, shall act as Scheduling Coordinator. Buyer hereby authorizes Seller, or its third-party Scheduling Coordinator designee, to deliver the Product, or cause the Product to be delivered, to the CAISO at the Delivery Point. |
| **Condition Precedent:** | The commencement of the Delivery Period in accordance with Section 3 below shall be contingent upon the Seller obtaining or waiving CPUC approval as described in 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 CPUC approval has not been obtained by Seller, on or before [**INSERT DATE]** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The date on which CPUC approval 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.

“Renewables Portfolio Standard” or “RPS” means the renewable energy program and policies established by California State Senate Bills 1078, X1 - 2 and 350, codified in California Public Utilities Code Sections 399.11 through 399.32 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

“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”.

“Forced Outage” means the removal from service availability of a generating unit, transmission line, or other facility for emergency reasons, or the condition in which the equipment is unavailable due to unanticipated failure.

“Governmental Authority” means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, having jurisdiction as to the matter in question.

"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:

(i) 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;

(ii) 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-2)

(iii) 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. **[STC 2, Green Attributes, Modifiable.]**

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

“Scheduled Maintenance” means an outage or partial outage scheduled to perform the necessary normal maintenance on a generating unit, transmission line, or other facility to preserve the reliability of the unit or overall system reliability, including scheduled outages for such maintenance.

“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.

## Seller’s Conveyance Of Green Attributes

* + 1. 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 3.2(b) below. **[STC 2 - Green Attributes, Modifiable.]**
		2. Green Attributes Initially Credited to Seller’s WREGIS Account
			1. 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.
			2. 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.
			3. In addition to its other obligations under this Section 3.2, 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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# **PERFORMANCE ASSURANCE;** **CPUC filing and APproval**

## Performance Assurance

Notwithstanding any provision in the WSPP Agreement to the contrary, including Section 27, neither Party shall be required to post performance assurance, collateral or other security for this Transaction.

## CPUC Filing and Approval

Within thirty (30)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. Notwithstanding anything to the contrary in the Confirmation, Seller shall not have any obligation or liability to Buyer or any third party for any action or inaction of the CPUC or other Governmental Authority affecting the approval or status of this Confirmation as a transaction eligible for portfolio content category, as defined in California Public Utilities Code Section 399.16(b)(1).

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# **COMPENSATION**

## Calculation Period

The “Calculation Period” shall be each calendar month, or portion thereof, during the Delivery Period.

## 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 (a) plus (b) minus (c), where:

### equals the sum, over all hours of the Calculation Period, 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; and

### equals the product of the Green Attributes Price multiplied by the quantity of Green Attributes (in MWhs) delivered, or to be delivered, or credited to Purchaser’s WREGIS account pursuant to Section 3.2 during the applicable Calculation Period; and

### equals the sum, over all hours of the Calculation Period, 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.

Such Monthly Cash Settlement Amount constitutes payment for the Product, including the Green Attributes, for such applicable Calculation Period. Buyer shall be obligated to make such payments with respect to each applicable Calculation Period notwithstanding the fact that the Green Attributes associated with a particular Calculation Period may be delivered or credited to Buyer’s WREGIS account subsequent to the conclusion of the applicable Calculation Period in accordance with Section 3.2(b) of this Confirmation, provided that if Seller fails to comply with the provisions of Section 3.2(b), Buyer shall be entitled to exercise all rights and remedies available to Buyer under this Agreement for Seller’s failure to deliver the Product.

## Invoicing; Payment Date

* + 1. Invoices for each Monthly Cash Settlement Amount shall be sent by Seller to Buyer within ten (10) Business Days after the last day of the Calculation Period, in Excel/PDF format via email to Buyer’s Invoice Contact set forth above in Contact Information. 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 Wire Transfer instructions set forth above in Contract Information.
		2. 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.

# **seller’s REPRESENTATIONS, WARRANTIES AND COVENANTS**

* + 1. 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. **[STC 6, Non-Modifiable.]**
			3. 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. **[STC REC-1, Non-modifiable.]**
		2. 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 $10,000in 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. **[STC REC-2, Non-modifiable.]**

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:
	* + 1. Seller has the contractual rights to sell all right, title, and interest in the Product agreed to be delivered hereunder;
			2. Seller has not sold the Product to be delivered under this Confirmation to any other person or entity; and
			3. 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.
			4. The original upstream third party contract(s), under which Buyer is re-selling, meets the criteria of California Public Utilities Code Section 399.16(b)(1)(A);
			5. This Agreement transfers only Energy and Green Attributes that have not yet been generated prior to the commencement of the Delivery Period; and
			6. The Energy transferred hereunder is transferred to Buyer in real time.

# **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.

## 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. [STC 17, Applicable Law, Non-Modifiable.]

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.

## SOVEREIGN IMMUNITY

Purchaser warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds from (a) suit, (b) jurisdiction of court (provided that such court is located within a venue permitted under the Agreement), or (c) execution or enforcement of any judgment; provided, however, that nothing in this Agreement shall waive the obligations and/or rights set forth in the California Government Claims Act (Government Code Section 810 et seq.).

## Confidentiality 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) Each Party recognizes that this Confirmation is subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). 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.”

1. **No Recourse to Members of Buyer**

Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and is a public entity separate from its constituent members. Buyer will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Seller will have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer’s constituent members, or the officers, directors, advisors, contractors, consultants or employees of Buyer or Buyer’s constituent members, in connection with this Confirmation.

1. **Counterparts**

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. The Parties may rely on electronic or scanned signatures as originals under this Confirmation. Delivery of an executed signature page of this Confirmation by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

1. **Entire Agreement; No Oral Agreements or Modifications**

This Confirmation sets forth the terms of the Transaction into which the Parties have entered and shall constitute the entire agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Transaction may be confirmed only through a Documentary Writing executed by both Parties, and no amendment or modification to this Transaction shall be enforceable except through a Documentary Writing executed by both Parties.

[*Signatures appear on the following page*.]

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE:

SAN DIEGO GAS & ELECTRIC company [INSERT COUNTERPARTY]

By: By:

Name: Name:

Title: Title:

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

Exhibit A

To the confirmation BETWEEN [INSERT NAME] and san diego gas & electric company

dated: [INSERT]

project facility

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Facility** | **Resource ID** | **Capacity (MW)** | **CEC RPS ID**  | **WREGIS GU ID** | **Balancing Authority** |
| HL Power Company, LP | LASSEN\_6\_UNITS | 24 | 60077A | W604 | CAISO |

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-2)