**

**Market Offer Sales Model PPA**

**(Unbundled Product)**

**MARKET OFFER SALES MODEL PPA (UNBUNDLED PRODUCT) CONFIRMATION  
BETWEEN  
SAN DIEGO GAS & ELECTRIC COMPANY   
AND****[INSERT NAME]**

This confirmation letter ("Confirmation") confirms the Market Offer transaction pursuant to Decision (D.)21-05-030 (“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 \_\_\_\_\_\_\_\_\_\_\_\_, 2018(the "Confirmation Effective Date"). This Transaction is governed by the ***[SELECT:* WSPP Agreement** effective as of June 21, 2018 (the “WSPP Agreement”)***;*** Master Power Purchase and Sale Agreement published by the Edison Electric Institute and the National Energy Marketers Association (version 2.1 dated 4/25/00) (the “EEI Agreement”)***]***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 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.

|  |  |  |
| --- | --- | --- |
| **Contact Information:** | **Name: [INSERT]**  (“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  8315 Century Park Court  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 |
|  | **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, Energy Risk Management  8315 Century Park Court, CP21C  San Diego, CA 92123-1593  Attn: Energy Risk Manager  Telephone: (858) 654-6484  Facsimile: (858) 650-6190 |
|  | **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 |

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 ***[for Firm deliveries:*** Firm Delivery***; for As-Available deliveries:*** As-Available Delivery***]*** Obligation of Green Attributes in the Contract Quantity.  During the Delivery Term, 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 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 3.2(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.  Seller may add a facility to, or remove a facility from, the list of facilities in Exhibit A from time to time by giving Buyer fifteen (15) Business Days prior written notice of any change. Seller may remove a facility from Exhibit A for the following reasons: (i) if Seller’s power purchase agreement corresponding to the facility has been modified, terminated, or assigned to a third party, (ii) if the facility is no longer in Seller’s PCIA-eligible portfolio due to an order or direction from a Governmental Authority, or (iii) if the facility is owned by Seller but ceases operation for Seller. Seller shall retain the sole and absolute discretion to modify, enforce, or terminate its power purchase agreements with the facilities listed in Exhibit A during the Delivery Period. Buyer shall not have any right to or discretion to request changes to the list of facilities in Exhibit A during the Delivery Period. |
| **Contract Quantity:** | ***[for Firm deliveries:*** “Contract Quantity” shall be **[INSERT]**. In the event Seller does not deliver any of the above specified quantity(ies) 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.***]***  ***[for As-Available deliveries:*** “Contract Quantity” shall be **[**a quantity up to **INSERT]**, unless excused pursuant to the definition of As-Available Delivery Obligation below. Seller in its sole discretion shall determine the hourly Contract Quantity during the Delivery Period.***]*** |
| **Contract Price:** | The Green Attributes Price. |
| **Green Attributes Price:** | $[XXXX] per MWh of Green Attributes (RECs). |
| **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 Term:** | The “Delivery Term” of this Transaction shall commence on ***[MM/DD/YYYY]*** (the “Start Date”), and continue until midnight on ***[MM/DD/YYYY]***; 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 the Condition Precedent Satisfaction Date occurs. |
| ***[*Firm*;* As-Available*]* Delivery Obligation:** | “Firm Delivery Obligation” means 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.  ***[for As-available deliveries:*** “As-Available Delivery Obligation” shall mean the obligation to provide the Contract Quantity is an as-available obligation in that Seller shall deliver the quantity of the Product from the Project, instantaneously with its receipt of such Product, consistent with the terms of this Confirmation. 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 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 ***[SELECT APPLICABLE FUEL:*** [the unavailability of landfill gas which was not anticipated as of the Execution Date, which is not within the reasonable control of, or the result of negligence of, Seller or the party supplying such landfill gas to the Project, and which by the exercise of reasonable due diligence, Seller is unable to overcome or avoid or causes to be avoided.] OR [insufficient wind power for the Project to generate energy as determined by the best wind speed and direction standards utilized by other wind producers or purchasers in the vicinity of the Project or if wind speeds exceed the Project’s technical specifications.] OR [the unavailability of water or the unavailability of sufficient pressure required for operation of the hydroelectric turbine-generator as reasonably determined by Seller within its operating procedures, neither of which was anticipated as of the Execution Date, which is not within the reasonable control of, or the result of negligence of, Seller or the party supplying such water to the Project, and which by the exercise of due diligence, such Seller or the party supplying the water is unable to overcome or avoid or causes to be avoided.] OR [insufficient solar power for the Project to generate energy as determined by the best solar standards utilized by other solar producers or purchasers in the vicinity of the Project] OR [a reduction or insufficiency of biomass that causes a reduction or cessation of generation of electric energy by the Project].***]*** |
| **Delivery** | Buyer hereby authorizes Seller, or its third party designee, to deliver the Product, or cause the Product to be delivered into Buyer’s WREGIS account in the quantity(ies) and timeline(s) set forth in the “Contract Quantity” Section. |
| **Condition Precedent:** | Seller’s obligation to sell and deliver the Product shall be contingent upon the Seller obtaining or waiving CPUC Approval of this Confirmation. Either Party has the right to terminate this Confirmation upon notice in accordance with Section ***[SELECT: EEI:*** Section10.7 of the EEI***; WSPP:*** 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.

“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 approves this Agreement in its entirety, including payments to be made by the Buyer, subject to CPUC review of the Seller's administration of the Agreement. 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.

"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-2)

(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. **[STC 2 – GREEN ATTRIBUTES, NON-MODIFIABLE]**

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

“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 in which the underlying energy for the Product isgenerated.

"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 Green Attributes

Except as stated in this Section 3.1, 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 Green Attributes 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. The Green Attributes are delivered and conveyed upon completion of all actions described in Section 3.2(b) below.

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

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.

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Performance assurance; CPUC filing and APproval

## Performance Assurance [SDG&E CREDIT DEPARTMENT TO EVALUATE BASED ON COUNTERPARTY]

* + 1. To secure its obligations under this Agreement, Buyer agrees to deliver to Seller and maintain in full force and effect Performance Assurance in the amount of ***$[insert amount]*** in the form of cash or a Letter of Credit from the Execution Date and for the Delivery Term of this Agreement.
    2. Buyer hereby grants to Seller a present and continuing first priority security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Seller, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Seller’s first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence and during the continuation of an Event of Default by Seller or an Early Termination Date as a result thereof, Seller may do any one or more of the following: (i) exercise any of the rights and remedies of a secured party with respect to all Performance Assurance, including any such rights and remedies under Law then in effect; (ii) exercise its rights of setoff against such collateral and any and all proceeds resulting therefrom or from the liquidation thereof; (iii) draw on any outstanding Letter of Credit issued for its benefit; and (iv) liquidate all or any portion of any Performance Assurance then held by or for the benefit of Seller free from any claim or right of any nature whatsoever of Buyer, including any equity or right of purchase or redemption by Buyer. Seller shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Buyer’s obligations under the Agreement (Buyer remaining liable for any amounts owing to Seller after such application), subject to Seller’s obligation to return any surplus proceeds remaining after such obligations are satisfied in full.
    3. Upon an Event of Default of Buyer prior to CPUC Approval, Seller may terminate this Agreement in which case Buyer shall owe Seller liquidated damages in the amount of the Performance Assurance and Seller may retain such Performance Assurances to pay such liquidated damages. Each Party agrees and acknowledges that (a) the actual damages that Buyer would incur due to an Event of Default of Buyer prior to CPUC Approval would be difficult or impossible to predict with certainty, (b) the liquidated damages set forth in this section are a reasonable and appropriate approximation of such damages, and (c) the liquidated damages set forth in this section are the exclusive remedy for an Event of Default of Seller prior to CPUC Approval.

*[INSERT additional credit terms depending on term, etc.]*

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

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COMPENSATION

## Monthly Cash Settlement Amount

Purchaser shall pay Seller in the amount equal to (the product of $[INSERT PRICE] multiplied by the quantity of Green Attributes (in MWhs) delivered or credited to Purchaser’s WREGIS account pursuant to Section 3.2 during the applicable Calculation Period.

## Payment Date

Seller shall issue an invoice to Buyer promptly after delivery of the Product into Buyer’s WREGIS account, as set forth in the Contract Quantity Section and the Condition Precedent Section. Such invoice shall set forth in reasonable detail the quantity of Green Attributes transferred, the price, and the total payment owed to Buyer. Notwithstanding any provision to the contrary inSection 9.2 of the Master Agreement, payment shall be due and payable shall be made to Seller 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. The invoice shall include a statement detailing the quantityof Product transferred to Purchaser.

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

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Seller’s REPRESENTATIONS, WARRANTIES AND COVENANTS related to green attributes

## 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. To the extent the Product includes the Project’s output, 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]**
    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. **[STC REC-1, NON-MODIFIABLE]**

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.

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 $[**INSERT**] 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. **[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:

(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.

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GENERAL PROVISIONS

## Governing Law

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]

## Dispute Resolution

(a) Intent of the Parties. Except as provided in the next sentence, the sole procedure to resolve any claim arising out of or relating to this Agreement or any related agreement is the dispute resolution procedure set forth in this Section 7.2. Either Party may seek a preliminary injunction or other provisional judicial remedy if such action is necessary to prevent irreparable harm or preserve the status quo, in which case both Parties nonetheless will continue to pursue resolution of the dispute by means of the dispute resolution procedure set forth in this Section 7.2.

(b) Management Negotiations.

1. The Parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement or any related agreements by prompt negotiations between each Party’s authorized representative designated in writing as a representative of the Party (each a “Manager”). Either Manager may, by Notice to the other Party, request a meeting to initiate negotiations to be held within ten (10) Business Days of the other Party’s receipt of such request, at a mutually agreed time and place (either in person or telephonically). If the matter is not resolved within fifteen (15) Business Days of their first meeting (“Initial Negotiation End Date”), the Managers shall refer the matter to the designated senior officers of their respective companies that have authority to settle the dispute (“Executive(s)”). Within five (5) Business Days of the Initial Negotiation End Date (“Referral Date”), each Party shall provide one another Notice confirming the referral and identifying the name and title of the Executive who will represent the Party.
2. Within five (5) Business Days of the Referral Date, the Executives shall establish a mutually acceptable location and date, which date shall not be greater than thirty (30) days from the Referral Date, to meet. After the initial meeting date, the Executives shall meet, as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute.
3. All communication and writing exchanged between the Parties in connection with these negotiations shall be confidential and shall not be used or referred to in any subsequent binding adjudicatory process between the Parties.
4. If the matter is not resolved within forty-five (45) days of the Referral Date, or if the Party receiving the Notice to meet, pursuant to Section 7.2(a) above, refuses or does not meet within the ten (10) Business Day period specified in Section 7.2(a) above, either Party may initiate arbitration of the controversy or claim by providing Notice of a demand for binding arbitration at any time thereafter.

(c) Arbitration. Any dispute that cannot be resolved by management negotiations as set forth in Section 7.2(b) above shall be resolved through binding arbitration by a retired judge or justice from the AAA panel conducted in San Diego, California, administered by and in accordance with AAA’s Commercial Arbitration Rules (“Arbitration”).

1. Any arbitrator shall have no affiliation with, financial or other interest in, or prior employment with either Party and shall be knowledgeable in the field of the dispute. The Parties shall cooperate with one another in selecting the arbitrator within sixty (60) days after Notice of the demand for arbitration. If, notwithstanding their good faith efforts, the Parties are unable to agree upon a mutually-acceptable arbitrator, the arbitrator shall be appointed as provided for in AAA’s Commercial Arbitration Rules.
2. At the request of a Party, the arbitrator shall have the discretion to order depositions of witnesses to the extent the arbitrator deems such discovery relevant and appropriate. Depositions shall be limited to a maximum of three (3) per Party and shall be held within thirty (30) days of the making of a request. Additional depositions may be scheduled only with the permission of the arbitrator, and for good cause shown. Each deposition shall be limited to a maximum of six (6) hours duration unless otherwise permitted by the arbitrator for good cause shown. All objections are reserved for the Arbitration hearing except for objections based on privilege and proprietary and confidential information. The arbitrator shall also have discretion to order the Parties to exchange relevant documents. The arbitrator shall also have discretion to order the Parties to answer interrogatories, upon good cause shown.
3. The arbitrator shall have no authority to award punitive or exemplary damages or any other damages other than direct and actual damages and the other remedies contemplated by this Agreement.
4. The arbitrator shall prepare in writing and provide to the Parties an award including factual findings and the reasons on which their decision is based.
5. The arbitrator’s award shall be made within nine (9) months of the filing of the Notice of intention to arbitrate (demand) and the arbitrator shall agree to comply with this schedule before accepting appointment. However, this time limit may be extended by agreement of the Parties or by the arbitrator, if necessary.
6. Judgment on the award may be entered in any court having jurisdiction.
7. The prevailing Party in this dispute resolution process is entitled to recover its costs. Until such award is made, however, the Parties shall share equally in paying the costs of the Arbitration.
8. The arbitrator shall have the authority to grant dispositive motions prior to the commencement of or following the completion of discovery if the arbitrator concludes that there is no material issue of fact pending before the arbitrator.
9. The arbitrator shall not have the power to commit errors of law or legal reasoning, and the award may be vacated or corrected on appeal to a court of competent jurisdiction for any such error.
10. The existence, content, and results of any Arbitration hereunder is Confidential Information that is subject to the provisions of Section 7.4, below.

## Sovereign Immunity

[NOTE TO BIDDERS: insert only if applicable to governmental agencies, etc.] For purposes of this Confirmation only, the Master 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 Amendment to the *[SELECT:* EEI */* WSPP*]* Agreement.

## Changes to the *[SELECT:* EEI */* WSPP*]* Agreement shall apply to this Confirmation only. For purposes of this Confirmation, [SELECT: EEI: 10.11; WSPP: Section 30*]* (Confidentiality) of the *[SELECT:* EEI /WSPP*]* Agreement is deleted in its entirety and replaced with the following:

## “*[SELECT: EEI:* 10.11(a)*; WSPP:* 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 *[SELECT: EEI:* 10.11(b)*; WSPP:* 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 *[SELECT: EEI:* 10.11(a)*; WSPP:* 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 ***[SELECT: EEI:*** 10.11(a)***; WSPP:*** 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 ***[SELECT: EEI:*** 10.11***; WSPP:***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 - Energy Supply Title:

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

Exhibit A

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

**project facility(ies)**

|  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Name of Facility** | Tech-nology | Start  Date | Term (yrs) | Capacity (MW) | Resource ID | CEC RPS ID | WREGIS GU ID | EIA ID | Location | Balancing Authority |
|  |  |  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |  |  |
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**EXHIBIT B**

**FORM OF LETTER OF CREDIT**

**[**DATE]

To: San Diego Gas & Electric Company

555 W. Fifth Street

Mail Code: ML 18A3

Los Angeles, CA 90013

Re: Our Irrevocable Standby Letter of Credit No.\_\_\_\_\_

In the Amount of US\_\_\_\_\_\_\_\_\_\_\_\_\_

Ladies and Gentlemen:

We hereby open our irrevocable standby Letter of Credit Number \_\_\_\_\_\_ in favor of [name of Beneficiary] (“Beneficiary”), by order and for account of [name of Applicant] (“Applicant”), [address of Applicant], available at sight upon demand at our counters, at [location] for an amount of US$ \_\_\_\_\_\_\_\_\_\_\_\_\_ [amount spelled out and xx/100 U.S. Dollars] against presentation one of the following documents:

1. Statement signed by a person purported to be an authorized representative of Beneficiary stating that: “[name of Applicant] (“Applicant”) is in default under the WSPP Agreement and Confirmation between Beneficiary and Applicant dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ or under any transaction contemplated thereby (whether by failure to perform or pay any obligation thereunder or by occurrence of a “default”, “event of default” or similar term as defined in such agreement, any other agreement between Beneficiary and Applicant, or otherwise). The amount due to Beneficiary is U.S. $\_\_\_\_\_\_\_\_\_\_.”

2. Statement signed by a person purported to be an authorized representative of Beneficiary stating that: “as of the close of business on [insert date, which is less than 60 days prior to the expiration date of the Letter of Credit] you have provided written notice to us indicating your election not to permit extension of this Letter of Credit beyond its current expiry date. The amount due to Beneficiary, whether or not a default has occurred, is U.S. $\_\_\_\_\_\_\_\_\_\_.”

Special Conditions:

- All costs and banking charges pertaining to this Letter of Credit are for the account of Applicant.

- Partial and multiple drawings are permitted.

- Fax of Document 1 or 2 or 3 above is acceptable. Notwithstanding anything to the contrary herein, any drawing hereunder may be requested by transmitting the requisite documents as described above to us by facsimile at \_\_\_\_\_\_\_\_\_\_\_\_\_\_ or such other number as specified from time to time by us. The facsimile transmittal shall be deemed delivered when received. It is understood that drawings made by facsimile transmittal are deemed to be the operative instrument without the need of originally signed documents.

This Letter of Credit expires on \_\_\_\_\_\_\_\_\_\_\_\_\_ at our counters.

We hereby engage with Beneficiary that upon presentation of a document as specified under and in compliance with the terms of this Letter of Credit, this Letter of Credit will be duly honored in the amount stated in Document 1, 2, or 3 above. If a document is so presented by 1:00 pm on any New York banking day, we will honor the same in full in immediately available New York funds on that day and, if so presented after 1:00 pm on a New York banking day, we will honor the same in full in immediately available New York funds by noon on the following New York banking day.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one-year period beginning on the present expiry date hereof and upon each anniversary of such date, unless at least ninety (90) days prior to any such expiry date we have sent you written notice by regular and registered mail or courier service that we elect not to permit this Letter of Credit to be so extended beyond, and will expire on its then current expiry date. No presentation made under this Letter of Credit after such expiry date will be honored.

We agree that if this Letter of Credit would otherwise expire during, or within 30 days after, an interruption of our business caused by an act of god, riot, civil commotion, insurrection, act of terrorism, war or any other cause beyond our control or by any strike or lockout, then this Letter of Credit shall expire on the 30th day following the day on which we resume our business after the cause of such interruption has been removed or eliminated and any drawing on this Letter of Credit which could properly have been made but for such interruption shall be permitted during such extended period.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce, Publication No. 600 (“UCP”), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. Matters not covered by the UCP shall be governed and construed in accordance with the laws of the State of California.

[Name of Bank]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorized Signature(s)

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)