

Master Energy Services Agreement**COVER SHEET**

This Master Energy Services Agreement is entered into by and between Supplier and Customer and consists of this Cover Sheet and the Appendices attached hereto (collectively, this "Master Agreement"). This Master Agreement shall govern and be deemed to be incorporated into one or more Premises Schedules entered into by the parties hereto from time-to-time, subject to Customer's City Council approval in each instance, substantially in the form attached as Appendix A (each, a "Schedule" or "Premises Schedule"). Each Schedule shall specify the property to which Services will be provided pursuant to such Schedule and this Master Agreement (the "Premises"), the type of Services to be provided and any other specific terms applicable with respect to the provision of Services to such Premises. Any conflict between the terms in the form of Appendix A set forth below and a Premises Schedule entered into by the parties hereto shall be governed by such Premises Schedule.

Supplier: Energy Center San Diego LLC

Customer (legal name): The City of San Diego, a California municipal corporation

Customer warrants and represents that the information set forth in each Schedule regarding the Premises is true and correct to the best of the actual knowledge of the Real Estate Assets Department of Customer. Each of the following individuals warrants and represents that he or she is duly authorized to enter this Master Agreement as of the date set forth below.

Executed by Supplier and Customer as of _____, ____.

SUPPLIER

By: [Signature]
Its: Vice President

CUSTOMER

By: [Signature]
Its: Deputy City Attorney

Approved As To Form

Mara W. Elliott

BY: [Signature] Date: 4-5-19

NAME: Wanda Mendoza

TITLE: Deputy City Attorney

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APPENDICES

Appendix A: Sample Form of Premises Schedule

Appendix B: [Intentionally Omitted]

Appendix C: General Terms and Conditions

Appendix D: [Intentionally Omitted]

Appendix E: [Intentionally Omitted]

Appendix F: Sample Form of Memorandum of Agreement

Appendix G: Sample Form of Lender's Consent

Appendix H: Sample Form of Landlord's Consent

Appendix I: City of San Diego General Contract Terms and Provisions

Appendix J: Required Supplier Submittals

APPENDIX A
FORM OF
PREMISES SCHEDULE #

This Premises Schedule #___ including the various exhibits attached hereto (collectively, this "Schedule") and sets forth the terms and conditions pursuant to which Supplier shall provide certain Services to the Premises described below. Capitalized terms not defined herein shall have the meanings given to them in the Master Energy Services Agreement dated as of ___ (the "Master Agreement") entered into by and between Supplier and Customer, which is incorporated herein by this reference.

Premises (Services address): _____

Is the Premises subject to a mortgage or monetary lien? ☐ yes ☐ no
If yes, please refer to Appendix G to the Master Agreement.

Does Customer own the Premises? ☐ yes ☐ no
If yes, please refer to Appendix H to the Master Agreement.

Customer warrants and represents that the information set forth above is true and correct. Each of the following individuals warrants and represents that he or she is duly authorized to enter this Schedule as of the date set forth below.

Executed by Supplier and Customer as of _____

SUPPLIER

By: _____
Its: _____

CUSTOMER

By: _____
Its: _____

This Schedule contains the following Exhibits:

Exhibit 1: Business Terms and Conditions

Exhibit 2: Notices

Exhibit 3: Interconnect Drawings and Assumptions

EXHIBIT 1 TO SCHEDULE
BUSINESS TERMS AND CONDITIONS

SAN DIEGO

Services:

chilled water ☒
other ☐ (specify): _____

Contract Capacity:

_____ tons (chilled water). For the avoidance of doubt, the maximum 15-minute demand for Services is the Contract Capacity of _____ tons in any given 15-minute period of any given day of the Term.

Charges:

Capacity Charge: \$ _____ per ton per month. (Contract Capacity) x (\$ ___/ton) = monthly Capacity Charge.

Consumption Charge: is a pass-through of Supplier's actual costs on a \$ per ton-hour, as further described in Section C below.

In addition, Customer will pay to Supplier any franchise fees and taxes levied upon or with respect to the Services under this Master Agreement, including without limitation any use or license fees levied upon or with respect to the Services.

Services Commencement Date: _____, subject to the satisfaction of the conditions precedent set forth in Section 19 of Appendix C to the Master Agreement. If Supplier is unable to provide Services to Customer due to Supplier's fault then a new Services Commencement Date shall be established based on Supplier's ability to provide Services to Customer. Customer shall not incur any Capacity Charges or Consumption Charges during such delay.

Final Proposal Pricing Date: _____, which is the date on which Supplier and Customer agreed upon the initial Capacity Charge and Consumption Charge for the Services.

Term: Twenty years following the Services Commencement Date, but in no event beyond the term of the current franchise, pursuant to San Diego Ordinance No. 10639 ("Current Franchise"), any extension of the Current Franchise, or any new franchise granted by the City of San Diego, in its sole discretion, to allow Supplier to provide the Services (the "Initial Term"). Customer may, in its sole discretion, extend the Initial Term for two additional five-year periods, but in no event beyond the term of the current franchise, pursuant to San Diego Ordinance No. 10639 ("Current Franchise"), any extension of the Current Franchise, or any new franchise granted by the City of San Diego, in its sole discretion, to allow Supplier to provide the Services (each an "Extended Term" and, collectively with the Initial Term, the "Term") by notifying Supplier in writing, not more than six months or less than three months prior to the expiration of the Initial Term or Extended Term. When signed by Customer's duly authorized representative and approved by the San Diego City Attorney, Customer warrants and represents to Supplier that Customer's City Council has duly approved this Schedule and the Term.

Additional Terms:

- A. **Invoicing.** The Capacity Charge will be prorated for partial first and last months within the Term based on the number of Service days during the month within the Term. The Consumption Charge will be invoiced each calendar month in arrears as further described in Section C below. Payment will be due as set forth in Section 5(a) of Appendix C to the Master Agreement.

B. Capacity Charge Adjustment. The Capacity Charge will be adjusted annually on the first day of January after the Final Proposal Pricing Date and each January 1st thereafter as follows:

- i. The product of (a) the most recent monthly Capacity Charge, multiplied by (b) the percentage increase, if any, in the monthly average CPI for the 12 months immediately preceding July 1 of the previous calendar year. The percentage increase in the monthly average CPI is calculated by dividing (1) the monthly average CPI for the 12 months immediately preceding July 1 of the previous calendar year by (2) the monthly average CPI for the previous 12 months. For example, the adjustment as of January 1, 2018, will be the monthly average of the CPI for the period July 2016 through June 2017 divided by the monthly average of the CPI for the period July 2015 through June 2016.
- ii. In no event shall the foregoing adjustments based on changes in the CPI result in a decrease from the prior year's Capacity Charges.
- iii. For purposes hereof, the "Consumer Price Index" or "CPI" means the Western Region, Size A City Average Consumer Price Index as published by the Bureau of Labor Statistics, all items other than food and energy, not seasonally adjusted, Series ID: CUURA400SA0L1E, as it appears in the "News" as published monthly by the United States Department of Labor, Bureau of Labor Statistics); *provided, however*, that if said Consumer Price Index shall cease to exist, is changed, or no longer provides a reliable cost trending indicator, then the term "Consumer Price Index" shall mean such other or similar index or formula as Supplier reasonably selects to measure changes in material, maintenance, repair, and/or labor costs.

C. Consumption Charge. The Consumption Charge shall be equal to the product of (i) Customer's metered usage (in tons per hour) of the Services during a month of the Term, multiplied by (ii) Supplier's actual per ton-hour cost of energy (including natural gas, electricity and related transmission and distribution charges), chemicals and water, together with any associated taxes incurred by Supplier to provide Services to all of its customers (including Customer) during such month. The Consumption Charge will be subject to a monthly true-up based upon any difference (whether positive or negative) between Supplier's estimated and actual costs incurred in the calendar month.

D. Customer's Exceedances of Contract Capacity. If Customer's 15-minute demand for Services exceeds the Contract Capacity on any three different days during the Term, then Customer shall be required to select one of the options listed below.

- i. If Supplier has the available capacity, and upon Supplier's consent, which may be withheld in its sole discretion, Customer may elect to increase the Contract Capacity to the maximum demand realized during the three days that the 15-minute demand exceeded Customer's Contract Capacity for the remainder of the Term and the Capacity Charge shall be increased by a *pro rata* amount and Customer shall be responsible for the incremental Consumption Charge in connection with such additional usage; or
- ii. Customer may, within 30 days following the notification from Supplier, implement demand reduction techniques to lower Customer's demand so as to not exceed the Contract Capacity. Should Customer exceed the Contract Capacity on any three different days for a second time, then Supplier may elect to increase the Contract Capacity in accordance with and subject to the restrictions set forth in subsection (i) above or physically limit Customer's maximum demand to the Contract Capacity.

For the avoidance of doubt, Customer will be responsible for the incremental Consumption Charges in connection with such additional usage and will be billed accordingly.

- E. Minimum Capacity Charge. Notwithstanding any contrary provision in the Master Agreement, beginning on the earlier of (i) the Services Commencement Date and (ii) the Service Availability Date (defined below), Customer will pay the Capacity Charge for chilled water Services each month at each metered location at the Premises. For purposes of the Master Agreement, the "Service Availability Date" means the date on which Supplier has completed installation and commissioning of all Equipment in accordance with Exhibit 3 to this Schedule, but Supplier is not able to supply Services because Customer has failed to install and commission its equipment on its side of the Interconnection Point.
- F. Annual Appropriation of Funds. Supplier acknowledges that the Term may extend over multiple fiscal years of Customer, and Supplier understands and agrees that work and compensation under this Agreement is contingent on the Customer's City Council appropriating funding for and authorizing such work and compensation for those fiscal years. No legal liability on the part of the Customer shall arise for any such payment unless funds are duly appropriated and authorized by Customer's City Council. Customer may terminate this Schedule if sufficient funds are not duly appropriated and authorized for any given fiscal year, or if funds appropriated and authorized for this Schedule are exhausted before the fiscal year concludes. Customer represents that funds have been adequately appropriated for the full fiscal year during which the Service Commencement Date will occur. Customer shall provide to Supplier reasonable advance notice of any such non-appropriation event, and in the case of such event, Supplier shall have the right to terminate this Schedule.
- G. Wage Requirements. This Agreement is subject to the wage requirements as set forth in Exhibit 1 of Appendix I to the Master Agreement.
- H. Submittals Required with this Agreement. Supplier is required to submit all forms and information listed in Appendix J to the Master Agreement before the Master Agreement and this Schedule is executed by Customer.

EXHIBIT 2 TO SCHEDULE
NOTICES

Notices under the Master Agreement are to be sent to the parties as follows:

A. Generally:

To Supplier:

To Customer:

Attention: _____
Title: _____
Telephone: _____
Mobile: _____
E-Mail: _____
Fax: _____

Attention: _____
Title: _____
Telephone: _____
Mobile: _____
E-Mail: _____
Fax: _____

B. For operational purposes:

To Supplier:

To Customer:

Primary Operating Representative:

Attention: _____
Title: _____
Telephone: _____
Mobile: _____
E-Mail: _____
Fax: _____

Primary Operating Representative:

Attention: _____
Title: _____
Telephone: _____
Mobile: _____
E-Mail: _____
Fax: _____

Secondary Operating Representative:

Attention: _____
Title: _____
Telephone: _____
Mobile: _____
E-Mail: _____
Fax: _____

Secondary Operating Representative:

Attention: _____
Title: _____
Telephone: _____
Mobile: _____
E-Mail: _____
Fax: _____

EXHIBIT 3 TO SCHEDULE
INTERCONNECT DRAWINGS AND ASSUMPTIONS

[ATTACH PREMISES SPECIFIC RIDER]

APPENDIX B
[INTENTIONALLY OMITTED]

APPENDIX C
GENERAL TERMS AND CONDITIONS

1) Scope of Services

- a) For purposes hereof, the "Services" shall mean, as indicated herein, the metered circulation of chilled water, the metered circulation of steam and return of condensate, through the Premises, and such other services described in a Schedule for such Premises. From and after the Services Commencement Date, Supplier shall serve and deliver Services to Customer at the point of entry into the Premises to and including the first shut-off valve(s) for Services systems at Customer's connection point(s) (the "Interconnection Point") and Customer shall take delivery of Services after the Interconnection Point. Services' temperatures, pressures and additional technical specifications are stated in Exhibit 3, Interconnect Drawings and Assumptions, to each Schedule.
- b) Supplier may install its Services-related equipment (the "Equipment") in or at the Premises in accordance with the Interconnect Drawing and Assumptions set forth in Exhibit 3, Interconnect Drawings and Assumptions, to each Schedule. Supplier's Equipment shall remain its personal property and will not be deemed a fixture of the Premises. Supplier may, at its sole option, record a notice in substantially the form attached hereto as Appendix F or otherwise affix placards or other signage to its Equipment to identify its ownership of the Equipment. Customer agrees to cooperate with Supplier for the purposes of this Section 1(b).
- c) Customer shall not subcontract for the sale of, or otherwise resell or deliver, Services to any location other than the Premises or skyways connected to the Premises, if any.

2) Customer's Responsibilities

- a) Customer shall provide, install and maintain the Premises' supply and return piping that will connect to Supplier's Equipment at the Interconnection Point for Supplier's provision of the Services.
- b) During the Term, Supplier, on a non-exclusive basis, shall have the rights of ingress, egress and access to and from the Premises for the purpose of installing, operating, maintaining, repairing, replacing, or removing its Equipment used to provide the Services to Customer in such locations and at such times as requested by Supplier and approved by Customer, such approval to not be unreasonably withheld, as required by Supplier to provide the Services.
- c) Customer shall provide Supplier with (i) a dedicated 120-volt, 20-Amp electric service, (ii) access to a dedicated telephone line and/or direct internet connection to be used exclusively for data transmissions, and (iii) to the extent available, access to Customer's emergency power supply to facilitate the Services.
- d) Customer shall take all reasonably necessary action to prevent its employees, agents, tenants, invitees, and other parties present in the Premises from using, maintaining, altering or otherwise accessing the Equipment.
- e) Supplier shall have the right, but not the duty, to inspect Customer's equipment for the purpose of determining that Supplier's Equipment will not be damaged or otherwise rendered ineffective because of the operation of Customer's equipment. Supplier's right of inspection shall in no way impose a duty or a liability on Supplier in conjunction with the lawful, safe or proper operation of Customer's equipment and Customer represents and warrants to Supplier that it is not relying and will not rely upon Supplier's expertise or knowledge in the supply of Services in connection with the design or operation of Customer's equipment or the use of the Services within the Premises after the Interconnection Point.

3) Outages and Services Interruptions

- a) Supplier shall, subject to the terms of the Master Agreement and the limitations set forth in Section 10(c), use commercially reasonable efforts to provide regular and uninterrupted Services on a 24 hours a day, 7 days a week basis, provided, however, that Supplier does not guarantee uninterrupted Services to Customer and, notwithstanding anything to the contrary of this Master Agreement, Customer is not charged Consumption Charges and Capacity Charges for any period of interruption to Services; provided, further, that there shall be no reduction in Capacity Charges with respect to any interruption in Services of 24 hours or less, and any reduction in Capacity Charges with respect to any interruption in Services greater than 24 hours shall be equal to the Capacity Charges for the month in question multiplied by a fraction the numerator of which shall be the number of days of interruption and the denominator of which shall be the number of days in the month in question. For avoidance of the doubt providing cooling by the use of temporary equipment does not constitute an interruption in service. Notwithstanding anything in the Master Agreement to the contrary, Supplier will have the right at any time and from time to time to interrupt the delivery of the Services to the Premises (i) for a reasonable duration, upon providing such notice to Customer as is reasonably practicable, for the purpose of performing maintenance, repairs, replacement connections or changes or for the purpose of complying with any order or request of any governmental authority, or (ii) for a duration determined by Supplier in its sole discretion, without notice to Customer, if, in Supplier's judgment, the delivery of the Services to the Premises has become dangerous or defective, or if Supplier has received notice from any governmental authority that such delivery of Services is or may become dangerous or defective to the Premises or any person or equipment thereon.
- b) The parties will use commercially reasonable efforts to mutually agree in advance to a schedule of planned outages and identify, plan for and address the potential effects and consequences of unplanned interruptions in Services. In any event, to the extent commercially practicable, Supplier will schedule Services interruptions in advance with Customer in order to reasonably limit inconvenience to Customer's operations at the Premises. For the avoidance of doubt, so long as Supplier is providing Customer with Services in accordance with the Master Agreement from its plant or from alternative sources available to Supplier, Supplier shall not be considered to be in default under Section 10(a)(1) or required to pay any amount to Customer under Section 10(c).

4) Operating Representatives

- a) To facilitate effective communication between Supplier and Customer, each party hereby designates a primary and a secondary operating representative (each, an "Operating Representative"), each as set forth in Exhibit 2 to each Schedule who is responsible to coordinate with his/her counterpart in the performance of the parties' respective obligations under the Master Agreement. Each party's primary Operating Representative will be deemed to be its Operating Representative for purposes hereof; *provided* that such party's secondary Operating Representative shall be deemed to be its Operating Representative when the primary Operating Representative is not available. The Operating Representatives will meet from time to time and establish operating procedures and guidelines that will further the intentions and objectives of the parties under the Master Agreement; but the Operating Representatives will not have the power or authority to amend or modify the terms and conditions of the Master Agreement. In the event circumstances arise which suggest that an amendment or modification to the Master Agreement is necessary or desirable, the Operating Representatives will jointly prepare a recommended amendment or modification for Supplier and Customer review and consideration. From time to time, Supplier or Customer may each designate a successor Operating Representative upon written notice to the other party, providing the information set forth on Exhibit 2 to each Schedule for the successor.

- b) For purposes of illustration only, the Operating Representatives will address at least the following matters, as well as such other matters assigned to them by the parties from time to time during the Term:

1. Development and updating of the Interconnect Drawings and Assumptions, as set forth in Exhibit 3 to each Schedule; and
2. Scheduling of outages under Section 3.

5) Payment Terms

- a) Supplier will invoice Customer all charges for the Services at a Premises as set forth in the Schedule for such Premises, plus any sales, use, excise, franchise, value-added or other similar taxes or fees on or applicable to the Services (collectively, "Charges"). All Charges are due and payable on or before the tenth day following the date of each invoice. Except to the extent withholding is permitted by the Master Agreement pending resolution of disputed invoices under Section 5(b), Customer will not be permitted to withhold or setoff any amounts owed by Customer to Supplier against any amounts owed by or claimed to be owed by Supplier to Customer, or otherwise reduce any amounts owed by Customer to Supplier.
- b) Customer shall pay the entire amount of any disputed invoice, and any invoice disputes shall be resolved in the manner provided for in Section 17. Adjustments in either party's favor resulting from such resolution shall appear in the next scheduled invoice from Supplier following the date resolution is agreed upon, or if no such invoice is to be rendered, then within 10 days after receipt of invoice from the party to whom the moneys are owed.
- c) Any amounts owing by one party to the other under the Master Agreement which are not paid when due date will bear interest at a floating annual rate equal to three percentage points, and such interest will be due and payable upon receipt of the invoice of the party to whom the amount is owed.

6) Effects of Changes of Law.

In addition to any other adjustments provided for in the Master Agreement (including any Premises Schedule), Supplier may adjust the Charges to reflect any increases in Supplier's costs of providing the Services to the Premises that result from the adoption or modification of any applicable laws, rules, ordinances, regulations or orders of any governmental authority, or from any change in the interpretation by any court, tribunal or regulatory agency of any such applicable laws, rules, ordinances, regulations or orders, after the date of the applicable Premises Schedule, or uncontrollable events under Section 9, and such adjustment will become effective immediately upon notice of the adjustment to Customer. Supplier shall give Customer at least sixty days' written notice prior to the implementation of such adjustment unless such prior written notice is not commercially practicable under the circumstances, in which event Supplier shall give such prior written notice as is commercially practicable.

7) Permits, Access, Liens, Etc.

- a) Supplier shall secure and maintain all necessary permits, easements and licenses over private and public property, and Customer agrees to cooperate and assist Supplier with the foregoing, in Customer's capacity as tenant of the Premises.
- b) Customer grants Supplier a non-exclusive license to use and occupy the Premises to install, operate, maintain and repair its Equipment and agrees to allow the running of service lines within

Customer's leasehold property to the Interconnection Point and in the public right-of-way adjacent to Customer's leasehold property. In addition, Customer also grants the non-exclusive rights of ingress and egress to, from and within the Premises at all times necessary for Supplier to perform any one or more of the activities, rights and obligations contemplated by or in connection with the Master Agreement. All rights of access will be in the location mutually agreed to by Supplier and by Customer.

8) Assumption of Risk.

Supplier shall be responsible for any activities that occur up to and including the Interconnection Point and Customer shall be responsible for the activities that occur after the Interconnection Point. Subject to the limitations of liability provided in Section 10, each party agrees to indemnify and hold the other party (including its officers, directors, employees and agents) harmless from and against all claims, losses, damages, liabilities, losses, demands, liens, encumbrances, causes of action, fines, penalties, and awards, including court costs and reasonable attorneys' fees) arising out of or in connection with or in any manner related to any personal injuries (including loss of life) or tangible property damage or loss occurring on its side of the Interconnection Point, **EVEN IF CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE (WHETHER SOLE, JOINT OR CONCURRENT), STRICT LIABILITY OR OTHER LEGAL FAULT OF ANY MEMBER OF THE OTHER PARTY EXCEPT TO THE EXTENT ARISING FROM, OR RELATING TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE OTHER PARTY (OR ANY OF ITS OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS).**

9) Uncontrollable Events.

- a) Neither party will be liable to the other for its failure to perform any of its obligations under the Master Agreement to the extent that such failure is caused by an event over which it has no control ("Uncontrollable Event"), including acts of God, war, acts of terrorism, civil commotion, embargoes, strikes, epidemic, fires, cyclones or tornadoes, droughts, floods, emergencies, accidents to or involving machinery, equipment or lines of pipe, shortages of materials, supplies, power, fuel, equipment, transportation or labor (or the inability to obtain the same without litigation or paying penalties, premiums or unusual prices or otherwise agreeing to unreasonable terms or conditions), or any governmental law, regulation, order, request, instruction or injunction or interpretation thereof, or failure to obtain or cancellation of rights-of-way, permits, licenses or other authorization, whether valid or invalid, or any other cause whether or not similar to the foregoing, beyond the reasonable control of the party affected thereby. An Uncontrollable Event does not include events caused by the negligence or willful misconduct or omission of the party claiming the event, nor does it include inability to pay.
- b) If either party is prevented from or delayed in performing any of its obligations under the Master Agreement by reason of an Uncontrollable Event, such party will notify the other party in writing as soon as practicable after the start of the Uncontrollable Event. If the Uncontrollable Event prevents Supplier from putting in place backup cooling, or initiating substitute cooling within five calendar days after the Uncontrollable Event begins, Customer may attempt through self-help to restore interrupted or reduced Services at Customer's expense, so long as such attempt does not otherwise unreasonably interfere with Supplier's efforts to restore the Services under the Master Agreement.
- c) The party whose performance under the Master Agreement is prevented or delayed as the result of the Uncontrollable Event will use reasonable efforts to remedy its inability to perform.

- d) No payment obligation under the Master Agreement may be excused or delayed as the result of the event, except as expressly permitted in the Master Agreement.

10) Breaches and Remedies; Limitation of Liability.

- a) If any of the following events occur during the Term, then the defaulting party will be in breach, and the other party will be entitled to pursue the remedies provided for in this Section 10 if the default continues unremedied beyond the applicable cure period provided for in this Section 10.
 - 1. Supplier's unexcused failure to provide Services as required by the Master Agreement for a period of 15 days after receipt of written notice from Customer of such failure, unless the nature of such failure is such that Supplier cannot remedy it within said 15 day period, in which case Supplier will have a reasonable additional amount of time to cure, giving consideration to the surrounding circumstances, and in such event Supplier will not be considered to be in breach of the Master Agreement for such failure to provide Services so long as Supplier is diligently and in good faith taking material and substantial steps to remedy such failure.
 - 2. Subject to Customer's rights pursuant to Section 5, above, Customer's failure to pay any amounts owing to Supplier as provided for under the terms of the Master Agreement for a period of thirty (30) calendar days after receipt of a written notice from Supplier of such failure.
 - 3. Except as otherwise provided in subsections (1) and (2) above, the failure of either party to perform or cause to be performed any material obligation required to be performed by it under the Master Agreement for a period of 30 days after receipt of written notice from the other party of such failure, unless the nature of such failure is such that the defaulting party cannot remedy it within said 30 day period, in which case the defaulting party will have a reasonable additional amount of time to cure, giving consideration to the surrounding circumstances, and in such event the defaulting party will not be considered to be in breach of the Master Agreement so long as it is diligently and in good faith taking material and substantial steps to remedy the default.
- b) No breach of the Master Agreement will have occurred until the defaulting party has failed to cure as provided in Section 10(a). If the defaulting party fails to cure, then the non-defaulting party will have the following remedies.
 - 1. If Customer fails to cure, then, except as otherwise expressly provided in the Master Agreement, Supplier may, upon ten calendar days' prior written notice to Customer, discontinue Services at the Premises where such default occurred without terminating the Master Agreement.
 - 2. If either party fails to cure, then, except as otherwise expressly provided in the Master Agreement, the non-defaulting party may, upon ten calendar days' prior written notice to the defaulting party, terminate the Master Agreement with respect to the Premises where such default occurred.
 - 3. If Supplier elects to discontinue Services without terminating the Master Agreement, or if Supplier elects to terminate the Master Agreement with respect to a Premises, as set forth above, Supplier may immediately discontinue the Services at such Premises to Customer and disconnect all related piping and connections and remove Supplier's Equipment from the Premises. Any subsequent reconnection and related costs incurred by Supplier to effect

reconnection shall be borne by Customer. Customer shall also remain responsible for all Charges and any other amounts accrued prior to the date of suspension or termination.

4. In addition and without limitation of the foregoing, if Supplier elects to terminate the Master Agreement with respect to a particular Premises, as set forth above, then Supplier shall invoice Customer for any amounts set forth in the applicable Schedule that are due and owing, and Customer shall pay such invoice in accordance with Section 5(a).
 5. The foregoing remedies are cumulative and in addition to all other remedies available under applicable law, in equity or otherwise, subject, however, to the provisions and limitations set forth in Section 10(c).
 6. For the avoidance of doubt, the suspension of Services or termination of the Master Agreement with respect to a particular Premises in accordance with this Section 10(b) shall not otherwise affect the validity of the Master Agreement with respect to any other Premises that are the subject of Schedules not otherwise affected by a particular default.
- c) If Services (including any substituted services) are interrupted or materially reduced for a period exceeding five consecutive calendar days, other than as authorized in Section 3(a) or otherwise in the Master Agreement, Customer may, upon written notice to Supplier, attempt to restore such interrupted or reduced Services, so long as such attempt does not otherwise unreasonably interfere with Supplier's actions to restore such interrupted or reduced Services. Subject to Sections 9 and 10(d), Supplier will be liable for the payment of third party, out-of-pocket costs actually incurred by Customer in connection with Customer's attempt after such period to restore interrupted or reduced Services and for temporary substitute Services, up to the tons or pounds of Services (as applicable) actually required by Customer (but not more than the Contract Capacity NOTWITHSTANDING ANYTHING IN THE MASTER AGREEMENT TO THE CONTRARY, EXCEPT AS SPECIFICALLY PROVIDED IN THIS SECTION 10(c), SUPPLIER WILL NOT BE LIABLE TO CUSTOMER OR ANY OTHER PARTY UNDER ANY CIRCUMSTANCES FOR ANY INTERRUPTIONS OF THE SUPPLY OF, OR FAILURE TO PROVIDE, THE SERVICES UNDER THE AGREEMENT. Any liability of Supplier under this Section 10(c) shall be reduced by the amount of any insurance recovery of Customer.
- d) **NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE MASTER AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY, ANY SUCCESSORS IN INTEREST OR ANY BENEFICIARY OR ASSIGNEE OF THE MASTER AGREEMENT FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, LOST PROFITS OR OTHER BUSINESS INTERRUPTION, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF THE MASTER AGREEMENT OR ANY BREACH HEREOF EXCEPT TO THE EXTENT THAT AMOUNTS CALCULATED UNDER SECTIONS 5(C), 10(B)(4) OR 11 WOULD CONSTITUTE SUCH DAMAGES. THIS SECTION 10(D) SHALL APPLY NOTWITHSTANDING THE SOLE, JOINT OR CONCURRENT NEGLIGENCE, FAULT OR RESPONSIBILITY OF THE PARTY WHOSE LIABILITY IS WAIVED BY THIS PROVISION, OR ANY OTHER EVENT OR CONDITION, WHETHER ANTICIPATED OR UNANTICIPATED, AND REGARDLESS OF WHETHER EXISTING PRIOR TO THE DATE OF THE MASTER AGREEMENT. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID UNDER THE MASTER AGREEMENT ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.**

- e) **NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE MASTER AGREEMENT, SUPPLIER'S AGGREGATE LIABILITY WITH RESPECT TO ANY CLAIM ARISING UNDER THE MASTER AGREEMENT DURING ANY CALENDAR YEAR SHALL NOT EXCEED THE TOTAL CHARGES PAYABLE BY CUSTOMER TO SUPPLIER FOR SERVICES PROVIDED DURING SUCH CALENDAR YEAR FOR EACH OF THE SCHEDULES.**

11) **Casualty and Condemnation**

Either party may terminate the Master Agreement by written notice to the other party if the Premises or a substantial portion thereof is damaged by fire or other casualty or is condemned or taken in any manner for a public or quasipublic use, in each case such that Services cannot be furnished by Supplier as required under the Master Agreement, and such termination shall be effective as of the date that Services could not be so provided.

12) **Disclaimer of Warranties**

EXCEPT AS EXPRESSLY STATED IN THE AGREEMENT, SUPPLIER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE REGARDING THE SERVICES PROVIDED PURSUANT TO THE MASTER AGREEMENT.

13) **Insurance Requirements**

The respective insurance requirements for both parties are set forth in Appendix I attached to the Master Agreement (Customer General Terms), and the insurance described therein will be maintained throughout the Term. The liability of each party under the Agreement will not be diminished or limited by the insurance limitations set forth in Appendix I, except with respect to the waivers of subrogation under each party's property insurance policy, as outlined in Appendix I. Notwithstanding anything to the contrary in this Agreement, either Party shall have the right to self-insure with respect to any of the insurance required to be carried by such Party under this Agreement. In such event, such party shall supply to the other party a letter of self-insurance indicating such party's self-insurance status.

14) **Assignment**

Customer may assign Customer's rights and obligations under any specific Premises Schedule to any other person or entity if (a) Customer is concurrently assigning or otherwise conveying Customer's entire interest in the Premises to such person, (b) such other person concurrently acknowledges and accepts such assignment and assumes Customer's obligations in a writing reasonably acceptable to Supplier, and (c) such person establishes a satisfactory creditworthiness with Supplier. Such assignment and delegation will not relieve Customer from liability for any of Customer's payment obligations then existing for Services prior to the effective date of the assignment. Except as provided in this Section 14, Customer may not assign or delegate Customer's rights and obligations without Supplier's prior written consent. Unconsented assignments or delegations will not be legally binding upon Supplier. For avoidance of doubt, no assignment by Customer of any specific Premises Schedule shall relieve or alter Customer's obligations and liability with respect to any other Premises Schedules.

15) Entire Agreement; Modifications of the Agreement; Construction

The Agreement represents the entire agreement between Customer and Supplier with respect to the subject matter of the Agreement and supersedes all prior and contemporaneous oral and prior written agreements. The Agreement may not be amended, modified or supplemented without the written agreement of the parties, executed by their authorized representatives or their expressly authorized designees, at the time of such amendment, modification or supplement. No oral agreements, course of conduct or course of dealing shall have the effect of modifying the Agreement. Each party has cooperated in the drafting, negotiation and preparation of the Agreement and nothing herein shall be construed against either party on the basis of that party being the drafter of such language.

16) Incorporation of Documents; Order of Precedence; Customer General Terms

All documents or items attached to, or referred to in, the Agreement are incorporated into the Agreement as fully as if stated within the body of the Agreement. Any conflict or inconsistency in the Agreement shall be governed by the following order of precedence: (a) Cover Sheet, (b) Appendices (in the order of priority listed from top to bottom), and (c) the remainder of the Agreement. For avoidance of doubt, the parties hereto shall be bound by such of the Customer General Contract Terms and Provisions attached as Appendix I, including the prevailing wage provisions set forth in attached Exhibit I thereto, (the "Customer General Terms") to the extent such terms are applicable to the parties' respective performance of this Agreement; provided, however, that any conflict or inconsistency between the Customer General Terms and any other terms in this Master Agreement (including the Premises Schedule and Appendix C) shall be governed by such other terms in this Agreement. For purposes of applying the applicable Customer General Terms to the parties' respective performance of this Agreement, the term "Contractor" as used in the Customer General Terms shall mean "Supplier;" the term "City" as used in the Customer General Terms shall mean "Customer;" and the terms "Contract" and "Contract Documents" as used in the Customer General Terms shall mean "Agreement."

17) Governing Law and Resolution of Disputes

- a) The Master Agreement will be governed by and construed in accordance with the laws of the State of California, without giving effect to its conflict of laws rules or procedures. The parties acknowledge and agree that the Master Agreement is to provide services and not a contract for the sale of goods, and accordingly Article 2 of the Uniform Commercial Code will have no applicability to the provision of Services as described in the Master Agreement.
- b) Prior to submitting any dispute for resolution by a court, a party shall provide written notice to the other party of the occurrence of such dispute and the parties shall seek to resolve the dispute by negotiation between senior management personnel of each party. If the parties are unable to resolve the dispute for any reason within 30 days after notice of dispute was given, then either party shall be entitled to pursue any remedies available at law or in equity (including specific performance); *provided, however*, this Section 17(b) shall not limit a party's right to initiate litigation prior to the expiration of the 30 day period if application of such limitations would prevent a party from filing a lawsuit or claim within the applicable period for filing lawsuits (e.g. statutes of limitation, prescription), or for injunctive relief.

18) Notices

- a) All notices under the Master Agreement will be in writing and will be (i) delivered in person, or (ii) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (iii) sent by facsimile, or (iv) sent by overnight express courier, addressed in each case as set forth in

Exhibit 2 of each Premises Schedule, or to any other address as such party will designate in a written notice to the other party to the Master Agreement from time to time during the Term.

- b) All notices sent pursuant to the terms of this Section 18 will be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express courier, then on the next business day immediately following the day sent, or (iii) if sent by facsimile when confirmed electronically by the sender's facsimile, or (iv) if sent by registered or certified mail, then on the earlier of the third business day following the day sent or when actually received.

19) Conditions Precedent to Supplier's Obligations

Supplier's obligation to provide the Services under the Master Agreement is expressly conditioned upon completion of each of the following conditions to the satisfaction of Supplier:

- a) Each of the parties securing and maintaining all necessary permits, easements, and licenses over private and public property;
- b) Customer obtaining from the lien holder(s) possessing a security interest in the Premises or the owner of the Premises a consent to the Master Agreement in a form substantially similar to the respective form attached as Appendix G and Appendix H, respectively; and
- c) Each of the parties completing the installation of its equipment in accordance with the Interconnect Drawing and Assumptions set forth in Exhibit 3 to each Schedule.

20) Partial Invalidity

If any provision of the Master Agreement is deemed to be invalid by reason of the operation of law, or by reason of the interpretation of such provision by any administrative agency or any court, the parties agree to negotiate in good faith an equitable adjustment in the provisions of the Master Agreement in order to effect, to the maximum extent permitted by law, the purpose of the Master Agreement and the validity and enforceability of the remaining provisions, or portions or applications thereof, will not be affected and will remain in full force and effect unless otherwise mutually agreed by the parties in the manner provided in Section 15.

21) No Third Party Rights

The Master Agreement is only for the benefit of the parties to the Master Agreement, their successors and permitted assigns and persons expressly benefited by the indemnity provisions of the Master Agreement. No other person will be entitled to rely on any matter set forth in, or will have any rights on account of the performance or non-performance by any party of its obligations under the Master Agreement.

22) Waivers

A party's failure or delay in enforcing the terms and conditions of the Master Agreement or in insisting upon strict performance of any of the other party's obligations shall not be interpreted as a waiver thereof. Waiver of any provision of the Master Agreement by either party shall only be effective if in writing signed by an authorized representative of the waiving party and shall not be interpreted as a waiver of any subsequent breach or failure under the same or any other provision of the Master Agreement. No conduct, statement, course of conduct, course of dealing, oral expression, or other action shall be construed as a waiver.

23) Title Transfer and Disconnection

Upon termination or expiration of the Master Agreement, Supplier shall physically disconnect Customer's equipment and system in the Premises from Supplier's Equipment. Except as provided in Section 10(b), within 30 calendar days after such termination or expiration, Supplier shall give Customer written notice of Supplier's intent to (a) remove from the Premises any or all of its Equipment installed or located on the Premises, in which case Supplier shall have the right to do so, and Customer shall provide Supplier with access to the Premises as reasonably requested by Supplier to allow Supplier to complete such removal, or (b) abandon any or all of such Equipment in place to Customer without liability to Supplier. If Supplier elects to remove the Equipment from the Premises, Supplier shall restore such Premises to the condition that existed prior to the installation of the Equipment, ordinary wear and tear excepted, provided that, Supplier shall in no event be required to remove any piping from the inside of any walls of the Premises. If Supplier elects to abandon the Equipment in place, then Supplier shall transfer title to the Equipment on an "AS IS, WITH ALL FAULTS" basis, without further obligation to Supplier.

24) Execution in Counterparts

The Master Agreement may be executed in one or more counterparts, each of which will be considered an original instrument, but all of which will be considered one and the same agreement, and will become binding when one or more counterparts have been signed and delivered by each of the parties.

25) Survival

All provisions of the Master Agreement intended to survive termination or expiration of the Master Agreement shall survive any such termination or expiration, including Sections 8, 10, 11, 12, 17, 21 and 23.

26) Representations

Each party represents to the other that, as of the date of this Master Agreement and as of the date the parties enter into any Schedule hereunder: (a) it has all necessary power and authority to execute, deliver, and perform its obligations under the Master Agreement; (b) the execution, delivery, and performance of the Master Agreement have been duly authorized by all necessary action and do not violate any of the terms or conditions of its governing documents, any contract to which it is a party, or any law, regulation, order, or other legal determination applicable to it; (c) there is no pending or, to its knowledge, threatened litigation or proceeding that may adversely affect its ability to perform the Master Agreement; (d) it is duly organized and validly existing under the laws of the jurisdiction of its organization; (e) the Master Agreement constitutes a legal, valid and binding obligation of such party, except as enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting creditors' rights and by general principles of equity; and (f) at all times during the Term, it will comply with all federal, state, and local laws, rules, regulations (including all zoning ordinances and building codes) in performing its obligations under the Master Agreement.

27) Rules of Interpretation

- a) Whenever the context may require, the definitions and any other pronouns used in the Master Agreement includes the corresponding masculine, feminine, or neuter forms, and the singular form of nouns, pronouns, and verbs include the plural and vice versa.

- b) The words “hereof,” “herein,” “hereunder,” and words of similar import, when used in the Master Agreement, shall refer to the Master Agreement as a whole and not to any particular provision of the Master Agreement. A reference to a Section, an Article, an Appendix, an Exhibit or a Schedule means a Section in, an Article of, or an Appendix, an Exhibit or a Schedule to the Master Agreement; *provided*, that, Section references in an Appendix, an Exhibit or a Schedule refer to the section in that Appendix, Exhibit or Schedule unless indicated otherwise by express statement or context.
- c) The terms “include,” “includes” and “including” shall be construed as following by the words “without limitation”.
- d) Any agreement, instrument or applicable law defined or referred to in the Master Agreement means such agreement, instrument or applicable law as from time to time amended, supplemented or otherwise modified and includes references to all attachments thereto and provisions incorporated therein.
- e) The descriptive headings of all Articles and Sections of the Master Agreement are formulated and used for convenience only and are not be deemed to affect the meaning or construction of any such Article or Section.

28) Definitions

All undefined capitalized terms in this Appendix C shall have the meanings specified in the Cover Sheet or elsewhere in the Master Agreement, as applicable.

APPENDIX D
[INTENTIONALLY OMITTED]

APPENDIX E
[INTENTIONALLY OMITTED]

APPENDIX F
FORM OF MEMORANDUM OF AGREEMENT

THIS MEMORANDUM is made by NRG ENERGY CENTER _____ LLC, a Delaware limited liability company (the "Supplier"), and _____, a(n) _____ (the "Customer"). Reference is hereby made to that certain Energy Services Agreement, dated as of _____, 20____ (the "Agreement"), between Supplier and Customer, pursuant to which Supplier, at Customer's request, has agreed to provide certain Services to the property commonly known as _____, located at _____, and as more particularly described in Exhibit "1", attached hereto and incorporated herein by this reference (the "Premises").

The purpose of this Memorandum is to provide notice of the Agreement and, in accordance therewith, Supplier and Customer hereby acknowledge and agree that notwithstanding the manner or method by which the Equipment (as such terms are hereinafter defined) are installed in the Premises, (i) none of the Equipment nor any part thereof shall be deemed to be a "fixture" attached to the Premises subject to the lien of any mortgage or other encumbrance on the Premises; and (ii) the Equipment is and shall remain the personal property of Supplier (subject to the terms and conditions of the Agreement) and the Equipment is not to be deemed part of the collateral pledged to any lender or creditor of Customer as security for the repayment of any indebtedness of Customer.

As used herein, the term "Equipment" shall mean Supplier's district energy facility and related piping and communication apparatus which facilitate Supplier's provision of Services to the Premises, including, without limitation, piping, valves, metering equipment, controls and additional equipment, if any, described in the Agreement and installed by Supplier on the Premises pursuant to the terms of the Agreement for use in providing Services to the Premises, and all replacements, modifications and additions thereof.

IN WITNESS WHEREOF, Supplier and Customer have executed this instrument as of the day and year set forth below.

Dated: _____, 20____

ENERGY CENTER _____ LLC

BY: _____ BY: _____
NAME: _____ NAME: _____
TITLE: _____ TITLE: _____

Exhibit "1" TO MEMORANDUM OF AGREEMENT
LEGAL DESCRIPTION OF PREMISES

[to be inserted]

SAMPLE

APPENDIX G FORM OF LENDER'S CONSENT AND NONDISTURBANCE AGREEMENT

THIS CONSENT AND NONDISTURBANCE AGREEMENT (this "Lender Consent Agreement") is made as of the ____ day of _____, 20__, by _____ ("Lender").

RECITALS:

A. Energy Center _____ LLC, a Delaware Limited Liability Company ("Supplier"), and _____ (the "Customer") have entered into a certain Energy Services Agreement, dated as of _____ (the "Agreement"), pursuant to which Supplier will supply the Services (as defined in the Agreement) to the property commonly known as the _____, and legally described _____ as _____ (the "Premises").

B. Subject to the terms and conditions of the Agreement, Supplier will have access to and over certain portions of the Premises at the times and for the purposes set forth in the Agreement.

C. Customer is the _____ of the Premises.

D. Customer has encumbered its interest in the Premises pursuant to the terms and conditions of that certain _____ made by Customer to Lender, dated _____, and recorded with the _____ Recorder as Document No. _____ (the "Mortgage").

E. A condition precedent to the effectiveness of Supplier's obligations under the Agreement is the execution and delivery of this Lender Consent Agreement by Lender.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lender hereby agrees as follows:

1. Lender hereby acknowledges and consents to the terms and conditions of the Agreement. Further, Lender agrees that if title to the Premises is transferred to Lender (or Lender's nominee) by foreclosure, deed in lieu of foreclosure or otherwise, then (i) the Agreement will remain in full force and effect and the rights and remedies of Supplier under the Agreement will not be disturbed or otherwise affected by such transfer of title, and (ii) Lender (or Lender's nominee) will be deemed to be the "Customer" under the Agreement, and, without the need for further written agreement, Lender will be deemed to have assumed all of the rights and obligations of Customer thereunder.
2. Lender acknowledges and agrees that (i) notwithstanding the manner or method by in which the Primary Services Line entering the Premises and the Energy Transfer Station (as such terms are defined in the Agreement) are installed in the Premises, neither the Primary Services Line or the Energy Transfer Station, or any other equipment of Supplier installed or situated in the Premises, nor any part thereof, will be deemed to be a "fixture" attached to the Premises subject to the lien of the Mortgage, and (ii) the Primary Services Line, the Energy Transfer Station, or any other equipment of Supplier installed or situated in the Premises are the property of Supplier and will at no time be deemed part of the collateral pledged to Lender as security for the repayment of any indebtedness of Customer to Lender.

3. Lender will execute or cause to be executed such additional instruments and will do or cause to be done such further acts (including the recording of such instruments) as Supplier may reasonably request in order to comply with the intent and purposes of this Lender Consent Agreement.
4. It is intended that the covenants, agreements, promises and duties of Customer set forth in the Agreement, unless otherwise expressly stated therein to the contrary, are all to be construed as covenants that, to the fullest extent legally possible, touch and concern the Premises and, therefore, will run with and be binding upon and burden the Premises.
5. This Lender Consent Agreement will be effective from and after its execution and delivery by Lender without the need for execution or acceptance by Supplier.

IN WITNESS WHEREOF, Lender has caused this Lender Consent Agreement to be duly executed as of the date set forth above.

By: _____
Title: _____

Acknowledged and agreed as of this ____ day of _____,

Customer:

By: _____
Title: _____

SAMPLE

APPENDIX H
FORM OF LANDLORD CONSENT AND ESTOPPEL

To: Energy Center _____ LLC

The undersigned ("Landlord") has leased to _____ ("Tenant")
those _____ certain _____ premises _____ commonly _____ known
as _____

_____ and bearing a legal description of:

(the
"Premises") pursuant to the terms and conditions of that certain Lease, dated _____, between
Tenant and Landlord (the "Lease"). Tenant desires to enter into a certain Energy Services Agreement,
dated as of _____, 20____ (the "Agreement") with Energy Center _____ LLC ("Supplier"), pursuant to
which Supplier will be providing Services to the Premises. Supplier is requiring delivery of this Landlord
Consent and Estoppel as a condition precedent to its execution of the Agreement. Accordingly, Landlord
hereby acknowledges and consents to the Agreement, and agrees as follows: (i) as of the date hereof,
Landlord has no knowledge of the existence of a default by Tenant under the Lease, or of any
circumstance that, but for the giving of notice or the passage of time, or both, would constitute such a
default, (ii) the Lease is in full force and effect and the term of the Lease is currently scheduled to expire
on _____, and (iii) neither Tenant's execution of the Agreement, nor Supplier's providing
Services to the Premises pursuant to the Agreement, will be a violation of the terms or conditions of the
Lease. Supplier or its representatives may enter upon the Premises at any reasonable time upon prior
reasonable notice to Landlord to inspect, repair, maintain, replace or remove its property from the
Premises in accordance with the terms of the Agreement.

Executed as of the _____ day of _____, 20____

By: _____

Title: _____

APPENDIX I
CITY OF SAN DIEGO GENERAL CONTRACT TERMS AND PROVISIONS

ORIGINAL



THE CITY OF SAN DIEGO
GENERAL CONTRACT TERMS AND PROVISIONS
APPLICABLE TO GOODS, SERVICES, AND CONSULTANT CONTRACTS

ARTICLE I SCOPE AND TERM OF CONTRACT

1.1 Scope of Contract. The scope of contract between the City and a provider of goods and/or services (Contractor) is described in the Contract Documents. The Contract Documents are comprised of the Master Energy Services Agreement (including all Schedules thereto) between Contractor and City dated ____, 2018 (the "Master Agreement"), Request for Proposal, Invitation to Bid, or other solicitation document (Solicitation); the successful bid or proposal; the letter awarding the contract to Contractor; the City's written acceptance of exceptions or clarifications to the Solicitation, if any; and these General Contract Terms and Provisions.

1.2 Effective Date. A contract between the City and Contractor (Contract) is effective on the last date that the contract is signed by the parties and approved by the City Attorney in accordance with Charter section 40. Unless otherwise terminated, this Contract is effective until it is completed or as otherwise agreed upon in writing by the parties, whichever is the earliest. A Contract term cannot exceed five (5) years unless approved by the City Council.

1.3 Contract Extension. The City may, in its sole discretion, unilaterally exercise an option to extend the Contract as described in the Contract Documents. In addition, the City may, in its sole discretion, unilaterally extend the Contract on a month-to-month basis following contract expiration if authorized under Charter section 99 and the Contract Documents. Contractor shall not increase its pricing in excess of the percentage increase described in the Contract.

ARTICLE II CONTRACT ADMINISTRATOR

2.1 Contract Administrator. The Purchasing Agent or designee is the Contract Administrator for purposes of this Contract, and has the responsibilities described in this Contract, in the San Diego Charter, and in Chapter 2, Article 2, Divisions 5, 30, and 32.

2.1.1 Contractor Performance Evaluations. The Contract Administrator will evaluate Contractor's performance throughout the term of the contract. This evaluation will be based on criteria including the quality of goods or services, the timeliness of performance, and adherence to applicable laws, including prevailing wage and living wage. City will provide Contractors who receive an unsatisfactory rating with a copy of the evaluation and an opportunity to respond. City may consider final evaluations, including Contractor's response, in evaluating future proposals and bids for contract award.

2.2 Notices. Unless otherwise specified, in all cases where written notice is required under this Contract, service shall be deemed sufficient if the notice is personally delivered or deposited in the United States mail, with first class postage paid, attention to the Purchasing Agent. Proper notice is effective on the date of personal delivery or five (5) days after deposit in a United States postal mailbox unless provided otherwise in the Contract. Notices to the City shall be sent to:

Purchasing Agent
City of San Diego, Purchasing and Contracting Division
1200 3rd Avenue, Suite 200
San Diego, CA 92101-4195

ARTICLE III COMPENSATION

3.1 Manner of Payment. Contractor will be paid monthly, in advance or arrears, for goods and/or services provided in accordance with the terms and provisions specified in the Contract.

3.2 Invoices.

3.2.1 Invoice Detail. Contractor's invoice must be on Contractor's stationary with Contractor's name, address, and remittance address if different. Contractor's invoice must have a date, an invoice number, a purchase order number, a description of the goods or services provided, and an amount due.

3.2.2 Service Contracts. Contractor must submit invoices for services to City by the 10th of the month following the month in which Contractor provided services. Invoices must include the address of the location where services were performed and the dates in which services were provided.

3.2.3 Goods Contracts. Contractor must submit invoices for goods to City within seven days of the shipment. Invoices must describe the goods provided.

3.2.4 Parts Contracts. Contractor must submit invoices for parts to City within seven calendar (7) days of the date the parts are shipped. Invoices must include the manufacturer of the part, manufacturer's published list price, percentage discount applied in accordance with Pricing Page(s), the net price to City, and an item description, quantity, and extension.

3.2.5 Extraordinary Work. City will not pay Contractor for extraordinary work unless Contractor receives prior written authorization from the Contract Administrator. Failure to do so will result in payment being withheld for services. If approved, Contractor will include an invoice that describes the work performed and the location where the work was performed, and a copy of the Contract Administrator's written authorization.

3.2.6 Reporting Requirements. Contractor must submit the following reports using the City's web-based contract compliance portal. Incomplete and/or delinquent reports may cause payment delays, non-payment of invoice, or both. For questions, please view the City's online tutorials on how to utilize the City's web-based contract compliance portal.

3.2.6.1 Not used

3.2.6.2 Monthly Invoicing and Payments. Contractor and Contractor's

subcontractors and suppliers must submit Monthly Invoicing and Payment Reports by the fifth (5th) day of the subsequent month.

3.3 Annual Appropriation of Funds. Contractor acknowledges that the Contract term may extend over multiple City fiscal years, and that work and compensation under this Contract is contingent on the City Council appropriating funding for and authorizing such work and compensation for those fiscal years. This Contract may be terminated at the end of the fiscal year for which sufficient funding is not appropriated and authorized. City is not obligated to pay Contractor for any amounts not duly appropriated and authorized by City Council.

3.4 Price Adjustments. Prices will be adjusted as set forth in the Contract.

ARTICLE IV SUSPENSION AND TERMINATION

4.1 City's Right to Terminate for Default. City may terminate this Contract for default in accordance with the terms of the Contract. If the City properly terminates this Contract for default of Contractor, City may procure, upon such terms and in such manner as the Purchasing Agent may deem appropriate, equivalent goods or services and Contractor shall be liable to City for any excess costs, subject to the limitations in the Contract.

4.2 Termination for Bankruptcy or Assignment for the Benefit of Creditors. If Contractor files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors, the City may at its option and without further notice to, or demand upon Contractor, terminate this Contract, and terminate each and every right of Contractor, and any person claiming rights by and through Contractor under this Contract as set forth in the Contract.

4.3 Remedies Cumulative. City's remedies are cumulative and are not intended to be exclusive of any other remedies or means of redress to which City may be lawfully entitled in case of any breach or threatened breach of any provision of this Contract except that City may only terminate the Contract for Contractor's default or bankruptcy as set forth in the Contract.

ARTICLE V ADDITIONAL CONTRACTOR OBLIGATIONS

5.1 Inspection and Acceptance. The City will inspect and accept goods provided under this Contract at the shipment destination unless specified otherwise. Inspection will be made and acceptance will be determined by the City department shown in the shipping address of the Purchase Order or other duly authorized representative of City.

5.2 Responsibility for Lost or Damaged Shipments. Contractor bears the risk of loss or damage to goods prior to the time of their receipt and acceptance by City. City has no obligation to accept damaged shipments and reserves the right to return damaged goods, at Contractor's sole expense, even if the damage was not apparent or discovered until after receipt.

5.3 Responsibility for Damages. Contractor is responsible for all damage that occurs as a result of Contractor's fault or negligence or that of its' employees, agents, or representatives in connection with the performance of this Contract. Contractor shall immediately report any such damage to people and/or property to the Contract Administrator.

5.4 Delivery. Delivery shall be made on the delivery day specified in the Contract Documents.

5.5 Delay.. Contractor must immediately notify City in writing if there is, or it is anticipated that there will be, a delay in performance. The written notice must explain the cause for the delay and provide a reasonable estimate of the length of the delay.

5.5.1 If a delay in performance is caused by any unforeseen event(s) beyond the control of the parties, City shall allow Contractor to a reasonable extension of time to complete performance, but Contractor will not be entitled to damages or additional compensation. Any such extension of time must be approved in writing by City. The following conditions may constitute such a delay: war; changes in law or government regulation; labor disputes; strikes; fires, floods, adverse weather or other similar condition of the elements necessitating cessation of the performance; inability to obtain materials, equipment or labor; or other specific reasons agreed to between City and Contractor. This provision does not apply to a delay caused by Contractor's acts or omissions (other than in accordance with the Contract). Contractor is not entitled to an extension of time to perform if a delay is caused by Contractor's inability to obtain materials, equipment, or labor unless City has received, in a timely manner, documentary proof satisfactory to City of Contractor's inability to obtain materials, equipment, or labor, in which case City's approval must be in writing.

5.6 Restrictions and Regulations Requiring Contract Modification. Contractor shall immediately notify City in writing of any regulations or restrictions that may or will require Contractor to alter the material, quality, workmanship, or performance of the goods and/or services to be provided. City reserves the right to accept any such alteration, including any resulting reasonable price adjustments.

5.7 Warranties. All goods and/or services provided under the Contract must be warranted by Contractor or manufacturer for at least twelve (12) months after acceptance by City, except automotive equipment. Automotive equipment must be warranted for a minimum of 12,000 miles or 12 months, whichever occurs first, unless otherwise stated in the Contract. Contractor is responsible to City for all warranty service, parts, and labor. Contractor is required to ensure that warranty work is performed at a facility acceptable to City and that services, parts, and labor are available and provided to meet City's schedules and deadlines. Contractor may establish a warranty service contract with an agency satisfactory to City instead of performing the warranty service itself. If Contractor is not an authorized service center and causes any damage to equipment being serviced, which results in the existing warranty being voided, Contractor will be liable for all costs of repairs to the equipment, or the costs of replacing the equipment with new equipment that meets City's operational needs.

5.8 Industry Standards. Contractor shall provide goods and/or services acceptable to City in strict conformance with the Contract. Contractor shall also provide goods and/or services in accordance with the standards customarily adhered to by an experienced and competent provider of the goods and/or services called for under this Contract using the degree of care and skill ordinarily exercised by reputable providers of such goods and/or services. Where approval by City, the Mayor, or other representative of City is required, it is understood to be general approval only and does not relieve Contractor of responsibility for complying with all applicable laws, codes, policies, regulations, and good business practices.

5.9 Records Retention and Examination. Contractor shall retain, protect, and maintain in an accessible location all records and documents, including paper, electronic, and computer records, relating to this Contract for five (5) years after receipt of final payment by City under this Contract. Contractor shall make all such records and documents available for inspection, copying, or other reproduction, and auditing by authorized representatives of City, at City's expense, including the Purchasing Agent or designee. Contractor shall make available all requested data and records at reasonable locations within City or County of San Diego at any time during normal business hours, and as often as City deems necessary. If records are not made available within the City or County of San Diego, Contractor shall pay City's travel costs to the location where the records are maintained and shall pay for all related travel expenses. Contractor must include this provision in all subcontracts made in connection with this Contract.

5.9.1 Contractor shall maintain records of all subcontracts entered into with all firms, all project invoices received from Subcontractors and Suppliers, all purchases of materials and services from Suppliers, and all joint venture participation. Records shall show name, telephone number including area code, and business address of each Subcontractor and Supplier, and joint venture partner, and the total amount actually paid to each firm. Project relevant records, regardless of tier, may be periodically reviewed by the City.

5.10 Quality Assurance Meetings. Upon City's request, Contractor shall schedule one or more quality assurance meetings with City's Contract Administrator to discuss Contractor's performance. If requested, Contractor shall schedule the first quality assurance meeting no later than eight (8) weeks from the date of commencement of work under the Contract. At the quality assurance meeting(s), City's Contract Administrator will provide Contractor with feedback, will note any deficiencies in Contract performance, and provide Contractor with an opportunity to address and correct such deficiencies. The total number of quality assurance meetings that may be required by City will depend upon Contractor's performance.

5.11 Duty to Cooperate with Auditor. The City Auditor may, in his sole discretion, at no cost to the Contractor, with the exception of Contractor's costs to prepare records and other such information requested by the City Auditor, and for purposes of performing his responsibilities under Charter section 39.2, review Contractor's records to confirm contract compliance. Contractor shall make reasonable efforts to cooperate with Auditor's requests.

5.12 Safety Data Sheets. If specified by City in the solicitation or otherwise required by this Contract, Contractor must send with each shipment one (1) copy of the Safety Data Sheet (SDS) for each item shipped. Failure to comply with this procedure will be cause for immediate termination of the Contract for violation of safety procedures.

5.13 Project Personnel. Except as formally approved by the City, the key personnel identified in Contractor's bid or proposal shall be the individuals who will actually complete the work. Changes in staffing must be reported in writing and approved by the City.

5.13.1 Criminal Background Certification. Contractor certifies that all employees working on this Contract have had a criminal background check and that said employees are clear of any sexual and drug related convictions. Contractor further certifies that all employees hired by Contractor or a subcontractor shall be free from any felony convictions.

5.13.2 Photo Identification Badge. Contractor shall provide a company photo identification badge to any individual assigned by Contractor or subcontractor to perform services or deliver goods on City premises. Such badge must be worn at all times while on City premises. City reserves the right to require Contractor to pay fingerprinting fees for personnel assigned to work in sensitive areas. All employees shall turn in their photo identification badges to Contractor upon completion of services and prior to final payment of invoice.

5.14 Standards of Conduct. Contractor is responsible for maintaining standards of employee competence, conduct, courtesy, appearance, honesty, and integrity satisfactory to the City.

5.14.1 Supervision. Contractor shall provide adequate and competent supervision at all times during the Contract term. Contractor shall be readily available to meet with the City. Contractor shall provide the telephone numbers where its representative(s) can be reached.

5.14.2 City Premises. Contractor's employees and agents shall comply with all City rules and regulations while on City premises.

5.14.3 Removal of Employees. City may request Contractor immediately remove from assignment to the City on City premises any employee found unfit to perform duties at the City. Contractor shall comply with all such requests.

5.15 Licenses and Permits. Contractor shall, without additional expense to the City, be responsible for obtaining any necessary licenses, permits, certifications, accreditations, fees and approvals for complying with any federal, state, county, municipal, and other laws, codes, and regulations applicable to Contract performance. This includes, but is not limited to, any laws or regulations requiring the use of licensed contractors to perform parts of the work.

5.16 Contractor and Subcontractor Registration Requirements. Prior to the award of the Contract or Task Order, Contractor and Contractor's subcontractors and suppliers must register with the City's web-based vendor registration and bid management system. The City may not

award the Contract until registration of all subcontractors and suppliers is complete. In the event this requirement is not met within the time frame specified by the City, the City reserves the right to rescind the Contract award and to make the award to the next responsive and responsible proposer of bidder.

ARTICLE VI INTELLECTUAL PROPERTY RIGHTS

6.1 Contractor Works. Contractor Works means tangible and intangible information and material that: (a) had already been conceived, invented, created, developed or acquired by Contractor prior to the effective date of this Contract; or (b) were conceived, invented, created, or developed by Contractor after the effective date of this Contract. All Contractor Works, and all modifications or derivatives of such Contractor Works, including all intellectual property rights in or pertaining to the same, shall be owned solely and exclusively by Contractor.

6.2 Intellectual Property Warranty and Indemnification. If Deliverable Materials provided hereunder and used for purposes authorized hereunder become the subject of a claim, suit or allegation of copyright, trademark or patent infringement, City shall have the right, in its sole discretion, to require Contractor to produce, at Contractor's own expense, new non-infringing materials, deliverables or works as a means of remedying any claim of infringement in addition to any other remedy available to the City under law or equity. Contractor further agrees to indemnify, defend, and hold harmless the City, its officers, employees and agents from and against any and all claims, actions, costs, judgments or damages, of any type, alleging or threatening that any Deliverable Materials, supplies, equipment, services or works provided under this contract and used for purposes authorized hereunder infringe the copyright, trademark, patent or other intellectual property or proprietary rights of any third party (Third Party Claim of Infringement). If a Third Party Claim of Infringement is threatened or made before Contractor receives payment under this Contract, City shall be entitled, upon written notice to Contractor, to withhold some or all of such payment.

6.3 Software Licensing. Contractor represents and warrants that the software, if any, as delivered to City, does not contain any program code, virus, worm, trap door, back door, time or clock that would erase data or programming or otherwise cause the software to become inoperable, inaccessible, or incapable of being used in accordance with its user manuals, either automatically, upon the occurrence of licensor-selected conditions or manually on command. Contractor further represents and warrants that all third party software, delivered to City or used by Contractor in the performance of the Contract, is fully licensed by the appropriate licensor.

6.4 Royalties, Licenses, and Patents. Unless otherwise specified, Contractor shall pay all royalties, license, and patent fees associated with the goods that are the subject of this solicitation.

ARTICLE VII INDEMNIFICATION AND INSURANCE

7.2 Insurance. Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by Contractor, his agents, representatives, employees or subcontractors.

Contractor shall provide, at a minimum, the following:

7.2.1 Commercial General Liability. Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal and advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

7.2.2 Commercial Automobile Liability. Insurance Services Office Form Number CA 0001 covering Code 1 (any auto) or, if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

7.2.3 Workers' Compensation. Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

7.2.4 Professional Liability (Errors and Omissions). For consultant contracts, insurance appropriate to Consultant's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

7.2.5 Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:

7.2.5.1 Additional Insured Status. The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Contractor's insurance through the addition of both CG 20 10 07 04,; and CG 20 37 07 04 . Blanket additional insured endorsements are acceptable.

7.2.5.2 Primary Coverage. For any claims related to this contract,

Contractor's Commercial General Liability insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

7.2.5.3 Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to City. This notice can be provided by either Contractor or Contractor's Insurance agent/broker.

7.2.5.4 Waiver of Subrogation. Contractor hereby grants to City a waiver of any right to subrogation which the Workers' Compensation insurer of said Contractor may acquire against City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer. Blanket waiver of subrogation endorsements are acceptable.

7.2.5.5 Claims Made Policies(. The
Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work. Insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract of work. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, Contractor must purchase "extended reporting" coverage for a minimum of three (3) years after completion of work.

7.3 Self-Insured Retentions. Self-insured retentions must be declared to and approved by City. City may require Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

7.4 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VI, unless otherwise acceptable to City.

City will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California. All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

7.5 Verification of Coverage. Contractor shall furnish City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Contractor's obligation to provide them. City reserves the right to require detailed summaries of all required insurance policies, including endorsements required by these specifications, at any time.

7.6 Special Risks or Circumstances. City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances, but only before Contractor commences the work and/or services hereunder.

7.7 Additional Insurance. Contractor may obtain additional insurance not required by this Contract.

7.8 Excess Insurance. All policies providing excess coverage to City shall contain no exclusions that are broader than those contained in the primary policy or policies including but not limited to all endorsements.

7.9 Subcontractors. Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a format at least as broad as the CG 20 10 07 04 endorsement.

ARTICLE VIII BONDS

8.1 N/A

ARTICLE IX CITY-MANDATED CLAUSES AND REQUIREMENTS

9.1 Contractor Certification of Compliance. By signing this Contract, Contractor certifies that Contractor is aware of, and will comply with, these City-mandated clauses throughout the duration of the Contract.

9.1.1 Drug-Free Workplace Certification. Contractor shall comply with City's Drug-Free Workplace requirements set forth in Council Policy 100-17, which is incorporated into the Contract by this reference.

9.1.2 Contractor Certification for Americans with Disabilities Act (ADA) and State Access Laws and Regulations: Contractor shall comply with all accessibility requirements under the ADA and under Title 24 of the California Code of Regulations (Title 24). When a conflict exists between the ADA and Title 24, Contractor shall comply with the most restrictive requirement (i.e., that which provides the most access). Contractor also shall comply with the City's ADA Compliance/City Contractors requirements as set forth in Council Policy 100-04, which is incorporated into this Contract by reference. Contractor warrants and certifies compliance with all federal and state access laws and regulations and further certifies that any subcontract agreement for this contract contains language which indicates the subcontractor's agreement to abide by the provisions of the City's Council Policy and any applicable access laws and regulations.

9.1.3 Non-Discrimination Requirements.

9.1.3.1 Compliance with City's Equal Opportunity Contracting Program (EOCP). Contractor shall comply with City's EOCP Requirements. Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor shall provide equal opportunity in all employment practices. Prime Contractors shall ensure that their subcontractors comply with this program. Nothing in this Section shall be interpreted to hold a Prime Contractor liable for any discriminatory practice of its subcontractors.

9.1.3.2 Non-Discrimination Ordinance. Contractor shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of subcontractors, vendors or suppliers. Contractor shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result in Contract termination, debarment, or other sanctions. Contractor shall ensure that this language is included in contracts between Contractor and any subcontractors, vendors and suppliers.

9.1.3.3 Compliance Investigations. Upon City's request, Contractor agrees to provide to City, within sixty calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Contractor for each subcontract or supply contract. Contractor further agrees to fully cooperate in any investigation conducted by City pursuant to City's Nondiscrimination in Contracting Ordinance. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result in Contract termination, debarment, and other sanctions.

9.1.4 Equal Benefits Ordinance Certification. Unless an exception applies, Contractor shall comply with the Equal Benefits Ordinance (EBO) codified in the San Diego Municipal Code (SDMC). Failure to maintain equal benefits is a material breach of the Contract.

9.1.5 Contractor Standards. Contractor shall comply with applicable Contractor Standards provisions codified in the SDMC. Contractor understands and agrees that violation of Contractor Standards may be considered a material breach of the Contract and may result in Contract termination, debarment, and other sanctions.

9.1.6 Noise Abatement. Contractor shall operate, conduct, or construct without violating the City's Noise Abatement Ordinance codified in the SDMC.

9.1.7 Storm Water Pollution Prevention Program. Contractor shall comply with the City's Storm Water Management and Discharge Control provisions codified in Division 3 of Chapter 4 of the SDMC, as may be amended, and any and all applicable Best Management Practice guidelines and pollution elimination requirements in performing or delivering services

at City owned, leased, or managed property, or in performance of services and activities on behalf of City regardless of location.

Contractor shall comply with the City's Jurisdictional Urban Runoff Management Plan encompassing Citywide programs and activities designed to prevent and reduce storm water pollution within City boundaries as adopted by the City Council on January 22, 2008, via Resolution No. 303351, as may be amended.

Contractor shall comply with each City facility or work site's Storm Water Pollution Prevention Plan, as applicable, and institute all controls needed while completing the services to minimize any negative impact to the storm water collection system and environment.

9.1.8 Service Worker Retention Ordinance. If applicable, Contractor shall comply with the Service Worker Retention Ordinance (SWRO) codified in the SDMC.

9.1.9 Product Endorsement. Contractor shall comply with Council Policy 000-41 concerning product endorsement which requires that any advertisement referring to City as a user of a good or service will require the prior written approval of the Mayor.

9.1.10 Business Tax Certificate. Unless the City Treasurer determines in writing that a contractor is exempt from the payment of business tax, any contractor doing business with the City of San Diego is required to obtain a Business Tax Certificate (BTC) and to provide a copy of its BTC to the City before a Contract is executed.

9.1.11 Equal Pay Ordinance. Unless an exception applies, Contractor shall comply with the Equal Pay Ordinance codified in San Diego Municipal Code sections 22.4801 through 22.4809. Contractor shall certify in writing that it will comply with the requirements of the EPO.

9.1.11.1 Contractor and Subcontract Requirement. The Equal Pay Ordinance applies to any subcontractor who performs work on behalf of a Contractor to the same extent as it would apply to that Contractor. Any Contractor subject to the Equal Pay Ordinance shall require all of its subcontractors to certify compliance with the Equal Pay Ordinance in its written subcontracts.

ARTICLE X CONFLICT OF INTEREST AND VIOLATIONS OF LAW

10.1 Conflict of Interest Laws. Contractor is subject to all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices including, but not limited to, California Government Code sections 1090, *et. seq.* and 81000, *et. seq.*, and the Ethics Ordinance, codified in the SDMC. City may determine that Contractor must complete one or more statements of economic interest disclosing relevant financial interests. Upon City's request, Contractor shall submit the necessary documents to City.

10.2 Contractor's Responsibility for Employees and Agents. Contractor is required to establish and make known to its employees and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business or other relationships.

10.3 Contractor's Financial or Organizational Interests. In connection with any task, Contractor shall not recommend or specify any product, supplier, or contractor with whom Contractor has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

10.4 Certification of Non-Collusion. Contractor certifies that: (1) Contractor's bid or proposal was not made in the interest of or on behalf of any person, firm, or corporation not identified; (2) Contractor did not directly or indirectly induce or solicit any other bidder or proposer to put in a sham bid or proposal; (3) Contractor did not directly or indirectly induce or solicit any other person, firm or corporation to refrain from bidding; and (4) Contractor did not seek by collusion to secure any advantage over the other bidders or proposers.

10.5 Hiring City Employees. This Contract shall be unilaterally and immediately terminated by City if Contractor employs an individual who within the twelve (12) months immediately preceding such employment did in his/her capacity as a City officer or employee participate in negotiations with or otherwise have an influence on the selection of Contractor.

ARTICLE XI DISPUTE RESOLUTION

11.1 Mediation. If a dispute arises out of or relates to this Contract and cannot be settled through normal contract negotiations, Contractor and City shall use mandatory non-binding mediation before having recourse in a court of law.

11.2 Selection of Mediator. A single mediator that is acceptable to both parties shall be used to mediate the dispute. The mediator will be knowledgeable in the subject matter of this Contract, if possible.

11.3 Expenses. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties, unless they agree otherwise.

11.4 Conduct of Mediation Sessions. Mediation hearings will be conducted in an informal manner and discovery will not be allowed. The discussions, statements, writings and admissions will be confidential to the proceedings (pursuant to California Evidence Code sections 1115 through 1128) and will not be used for any other purpose unless otherwise agreed by the parties in writing. The parties may agree to exchange any information they deem necessary. Both parties shall have a representative attend the mediation who is authorized to settle the dispute, though

City's recommendation of settlement may be subject to the approval of the Mayor and City Council. Either party may have attorneys, witnesses or experts present.

11.5 Mediation Results. Any agreements resulting from mediation shall be memorialized in writing. The results of the mediation shall not be final or binding unless otherwise agreed to in writing by the parties. Mediators shall not be subject to any subpoena or liability, and their actions shall not be subject to discovery.

ARTICLE XII MANDATORY ASSISTANCE

12.1 Mandatory Assistance. If a third party dispute or litigation, or both, arises out of, or relates in any way to the services provided to the City under a Contract, Contractor, its agents, officers, and employees agree to assist in resolving the dispute or litigation upon City's request. Contractor's assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation, at no cost to Contractor.

12.2 Compensation for Mandatory Assistance. City will compensate Contractor for fees incurred for providing Mandatory Assistance. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the third party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of Contractor, its agents, officers, and employees, Contractor shall reimburse City for all fees paid to Contractor, its agents, officers, and employees for Mandatory Assistance to the extent of such Contractor's negligent acts or omissions..

12.3 Attorneys' Fees Related to Mandatory Assistance. In providing City with dispute or litigation assistance, Contractor or its agents, officers, and employees may incur expenses and/or costs. Contractor agrees that any attorney fees it may incur as a result of assistance provided under Section 12.2 are not reimbursable, except to the extent provided in this Contract.

ARTICLE XIII MISCELLANEOUS

13.1 Headings. All headings are for convenience only and shall not affect the interpretation of this Contract.

13.2 Non-Assignment. Contractor may not assign the obligations under this Contract, whether by express assignment or by sale of the company, nor any monies due or to become due under this Contract, without City's prior written approval except as provided in the Contract. Any assignment in violation of this paragraph shall constitute a default and is grounds for termination of this Contract at the City's sole discretion subject to the provisions in the Contract. In no event shall any putative assignment create a contractual relationship between City and any putative assignee.

13.3 Independent Contractors. Contractor and any subcontractors employed by Contractor are independent contractors and not agents of City. Any provisions of this Contract that may appear to give City any right to direct Contractor concerning the details of performing or providing the goods and/or services, or to exercise any control over performance of the Contract, shall mean only that Contractor shall follow the direction of City concerning the end results of the performance.

13.4 Subcontractors. All persons assigned to perform any work related to this Contract, including any subcontractors, are not deemed to be employees of City, and Contractor shall be directly responsible for their work.

13.5 Covenants and Conditions. All provisions of this Contract expressed as either covenants or conditions on the part of City or Contractor shall be deemed to be both covenants and conditions.

13.6 Compliance with Controlling Law. Contractor shall comply with all applicable local, state, and federal laws, regulations, and policies. Contractor's act or omission in violation of applicable local, state, and federal laws, regulations, and policies is grounds for contract termination subject to provisions of the Contract. In addition to all other remedies or damages allowed by law, Contractor is liable to City for all damages, including costs for substitute performance, sustained as a result of the violation. In addition, Contractor may be subject to suspension, debarment, or both subject to provisions of the Contract.

13.7 Governing Law. The Contract shall be deemed to be made under, construed in accordance with, and governed by the laws of the State of California without regard to the conflicts or choice of law provisions thereof.

13.8 Venue. The venue for any suit concerning solicitations or the Contract, the interpretation of application of any of its terms and conditions, or any related disputes shall be in the County of San Diego, State of California.

13.9 Successors in Interest. This Contract and all rights and obligations created by this Contract shall be in force and effect whether or not any parties to the Contract have been succeeded by another entity, and all rights and obligations created by this Contract shall be vested and binding on any party's successor in interest.

13.10 No Waiver. No failure of either City or Contractor to insist upon the strict performance by the other of any covenant, term or condition of this Contract, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Contract, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Contract, and each and every covenant, condition, and term hereof shall continue in full force and effect without respect to any existing or subsequent breach.

13.11 Severability. The unenforceability, invalidity, or illegality of any provision of this Contract shall not render any other provision of this Contract unenforceable, invalid, or illegal.

13.12 Drafting Ambiguities. The parties acknowledge that they have the right to be advised by legal counsel with respect to the negotiations, terms and conditions of this Contract, and the decision of whether to seek advice of legal counsel with respect to this Contract is the sole responsibility of each party. This Contract shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Contract.

13.13 Amendments. Neither this Contract nor any provision hereof may be changed, modified, amended or waived except by a written agreement executed by duly authorized representatives of City and Contractor. Any alleged oral amendments have no force or effect. The Purchasing Agent must sign all Contract amendments.

13.14 Conflicts Between Terms. If this Contract conflicts with an applicable local, state, or federal law, regulation, or court order, applicable local, state, or federal law, regulation, or court order shall control. Varying degrees of stringency among the main body of this Contract, the exhibits or attachments, and laws, regulations, or orders are not deemed conflicts, provided that the Contract shall control over any conflicts in these General Contract Terms and Conditions. Each party shall notify the other as soon as practicable upon the identification of any apparent conflict or inconsistency concerning this Contract.

13.15 Survival of Obligations. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with this Contract, as well as all continuing obligations indicated in this Contract, shall survive, completion and acceptance of performance and termination, expiration or completion of the Contract.

13.16 Confidentiality of Services. All data, information, correspondence, proposals, reports of estimates compiled or composed by Contractor with respect to the delivery of Services by Contractor to City, as authorized by applicable local, state or federal law, shall be kept confidential for 5 years after creation and used only by Contractor, its affiliates and their employees, subcontractors and agents for purposes of providing Services under the Contract. Neither the documents nor their contents shall be released by Contractor or any subcontractor to any other third party without the prior written consent of City during such 5 year period. This provision does not apply to information that: (1) was publicly known, or otherwise known to Contractor, at the time it was disclosed to Contractor by City; (2) subsequently becomes publicly known through no act or omission of Contractor; or (3) otherwise becomes known to Contractor other than through disclosure by City.

13.17 Insolvency. If Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the Contract, written notification of the bankruptcy to the Purchasing Agent and the Contract Administrator responsible for administering the Contract. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was

filed, the identity of the court in which the bankruptcy petition was filed, and a listing of City contract numbers and contracting offices for all City contracts against which final payment has not been made. This obligation remains in effect until final payment is made under this Contract.

13.18 No Third Party Beneficiaries. Except as may be specifically set forth in this Contract, none of the provisions of this Contract are intended to benefit any third party not specifically referenced herein. No party other than City and Contractor shall have the right to enforce any of the provisions of this Contract.

13.19 Actions of City in its Governmental Capacity. Nothing in this Contract shall be interpreted as limiting the rights and obligations of City in its governmental or regulatory capacity.

EXHIBIT 1 OF APPENDIX I

WAGE REQUIREMENTS

By signing this Contract, Contractor certifies that he or she is aware of the wage provisions described herein and shall comply with such provisions before commencing services.

A. PREVAILING WAGES. Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work performed under this Contract is subject to State prevailing wage laws. For construction work performed under this Contract cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed under this Contract cumulatively exceeding \$15,000, **Contractor** and its subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed below. This requirement is in addition to the requirement to pay Living Wage pursuant to San Diego Municipal Code sections 22.4201 through 22.4245. Contractor must determine which per diem rate is highest for each classification of work (i.e. Prevailing Wage Rate or Living Wage Rate), and pay the highest of the two rates to their employees. Living Wage applies to workers who are not subject to Prevailing Wage Rates.

1. Compliance with Prevailing Wage Requirements. Pursuant to sections 1720 through 1861 of the California Labor Code, **Contractor** and its subcontractors shall ensure that all workers who perform work under this Contract are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). This includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

1.1. Copies of such prevailing rate of per diem wages are on file at the City of San Diego's Equal Opportunity Contracting Department and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Contractor and its subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.

1.2. The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of this Contract. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to this Contract in the same manner as if it had been published in said publication. If the predetermined wage rate

refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of this Contract, each successive predetermined wage rate shall apply to this Contract on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of this Contract, such wage rate shall apply to the balance of the Contract.

2. Penalties for Violations. Contractor and its subcontractors shall comply with California Labor Code section 1775 in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed. This shall be in addition to any other applicable penalties allowed under Labor Code sections 1720 - 1861.

3. Payroll Records. Contractor and its subcontractors shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. Contractor shall require its subcontractors to also comply with section 1776. Contractor and its subcontractors shall submit weekly certified payroll records online via the City's web-based Labor Compliance Program. Contractor is responsible for ensuring its subcontractors submit certified payroll records to the City. Contractor and its subcontractors shall also furnish the records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required in Labor Code section 1771.4.

4. Apprentices. Contractor and its subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. Contractor shall be held responsible for their compliance as well as the compliance of their subcontractors with sections 1777.5, 1777.6 and 1777.7.

5. Working Hours. Contractor and its subcontractors shall comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restrict working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specify penalties to be imposed on design professionals and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.

6. Required Provisions for Subcontracts. Contractor shall include at a minimum a copy of the following provisions in any contract they enter into with a subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.

7. Labor Code Section 1861 Certification. Contractor in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its employees and by signing this Contract, Contractor certifies that "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will

comply with such provisions before commencing the performance of the work of this Contract."

8. Labor Compliance Program. The City has its own Labor Compliance Program authorized in August 2011 by the DIR. The City will withhold contract payments when payroll records are delinquent or deemed inadequate by the City or other governmental entity, or it has been established after an investigation by the City or other governmental entity that underpayment(s) have occurred. For questions or assistance, please contact the City of San Diego's Equal Opportunity Contracting Department at 619-236-6000.

9. Contractor and Subcontractor Registration Requirements. This project is subject to compliance monitoring and enforcement by the DIR. A bidder or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or enter into any contract for public work, as defined in this chapter of the Labor Code unless currently registered and qualified to perform the work pursuant to Section 1725.5. In accordance with Labor Code section 1771.1.(a), "[i]t is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded."

9.1. A bidder's inadvertent error in listing a subcontractor who is not registered pursuant to Labor Code section 1725.5 in a response to a solicitation shall not be grounds for filing a bid protest or grounds for considering the bid non-responsive provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered contractor pursuant to Public Contract Code section 4107.

9.2. A Contract entered into with any bidder or subcontractor in violation of Labor Code section 1771.1(a) shall be subject to cancellation, provided that a Contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, bidder, or any subcontractor to comply with the requirements of section 1725.5 of this section.

9.3. By submitting a bid or proposal to the City, Contractor is certifying that he or she has verified that all subcontractors used on this public works project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and Contractor shall provide proof of registration for themselves and all listed subcontractors to the City at the time of bid or proposal due date or upon request.

10. Stop Order. For Contractor or its subcontractor(s) engaging in the performance of any public work contract without having been registered

in violation of Labor Code sections 1725.5 or 1771.1, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered Contractor or unregistered subcontractor(s) on ALL public works until the unregistered Contractor or unregistered subcontractor(s) is registered. Failure to observe a stop order is a misdemeanor.

11. List of all Subcontractors. The City may ask Contractor for the most current list of subcontractors (regardless of tier), along with their DIR registration numbers, utilized on this contract at any time during performance of this contract, and Contractor shall provide the list within ten (10) working days of the City's request. Additionally, Contractor shall provide the City with a complete list of all subcontractors utilized on this contract (regardless of tier), within ten working days of the completion of the contract, along with their DIR registration numbers. The City shall withhold final payment to Contractor until at least 30 days after this information is provided to the City.

12. Exemptions for Small Projects. There are limited exemptions for installation, alteration, demolition, or repair work done on projects of \$25,000 or less. The Contractor shall still comply with Labor Code sections 1720 et. seq. The only recognized exemptions are listed below:

12.1. Registration. The Contractor will not be required to register with the DIR for small projects. (Labor Code section 1771.1).

12.2. Certified Payroll Records. The records required in Labor Code section 1776 shall be required to be kept and submitted to the City of San Diego, but will not be required to be submitted online with the DIR directly. The Contractor will need to keep those records for at least three years following the completion of the contract. (Labor Code section 1771.4).

12.3. List of all Subcontractors. The Contractor shall not be required to hire only registered subcontractors and is exempt from submitting the list of all subcontractors that is required in section 11 above. (Labor Code section 1773.3).

B. Living Wages. This Contract is subject to the City's Living Wage Ordinance (LWO), codified at SDMC sections 22.4201 through 22.4245. The LWO requires payment of minimum hourly wage rates and other benefits unless an exemption applies. SDMC section 22.4225 requires each contractor to fill out and file a living wage certification with the City Manager within thirty (30) days of Award of the Contract. LWO wage and health benefit rates are adjusted annually in accordance with SDMC section 22.4220(b) to reflect the Consumer Price Index. Service contracts, financial assistance agreements, and City facilities agreements must include this upward adjustment of wage rates to covered employees on July 1 of each year. In addition, Contractor agrees to require all of its subcontractors, sublessees, and concessionaires subject to the LWO to comply with the LWO and all applicable regulations and rules.

1.1. Exemption from Living Wage Ordinance. Pursuant to SDMC section 22.4215, this Contract may be exempt from the LWO. For a

determination on this exemption, Contractor must complete the Living Wage Ordinance Application for Exemption.

C. Highest Wage Rate Applies. Contractor is required to pay the highest applicable wage rate where more than one wage rate applies.

APPENDIX J
REQUIRED SUPPLIER SUBMITTALS

EOC Form for Informal Sole Source and Cooperative Contracts AUG 2018

Contractor Standard Pledge of Compliance 3 2018

PREMISES SCHEDULE #1

This Premises Schedule #1 consists of the various exhibits attached hereto (collectively, this "Schedule") and sets forth the terms and conditions pursuant to which Supplier shall provide certain services to the Premises described below. Capitalized terms not defined herein shall have the meanings given to them in the Master Energy Services Agreement dated as of _____ (the "Master Agreement") entered into by and between Supplier and Customer, which is incorporated herein by this reference. The Master Agreement, together with this Schedule and any Schedule entered into in connection therewith, is collectively the "Agreement."

Premises (Services address): 1200 Third Avenue, San Diego, CA 92101

Is the Premises subject to a mortgage or monetary lien? ☒ yes ☐ no
If yes, please refer to Appendix G to the Master Agreement.

Does Customer own the Premises? ☐ yes ☒ no
If yes, please refer to Appendix H to the Master Agreement.

The Agreement supersedes and replaces that certain Cooling Service Agreement dated as of November 11, 1971, by and between the parties as successors-in-interest thereto (as amended or otherwise modified from time to time, the "Prior Agreement"). As of the Services Commencement Date, the Prior Agreement shall terminate, without any liability to any party or any of their affiliates or representatives, except for amounts due for Services provided thereunder through the effective date of termination and except for obligations which survive termination pursuant to the terms of the Prior Agreement..

Customer warrants and represents that the information set forth above is true and correct. Each of the following individuals warrants and represents that he or she is duly authorized to enter this Schedule as of the date set forth below.

Executed by Supplier and Customer as of _____, _____.

SUPPLIER

By: [Signature]
Its: Vice President

CUSTOMER

By: [Signature]
Its: acting chief operating officer

Approved As To Form

Mara W. Elliott

BY: [Signature] Date: 4-5-9

NAME: Hilda R. Mendoza

TITLE: Deputy City Attorney

This Schedule contains the following Exhibits:

Exhibit 1: Business Terms and Conditions

Exhibit 2: Notices

Exhibit 3: Interconnect Drawings and Assumptions

EXHIBIT 1 TO SCHEDULE #1
BUSINESS TERMS AND CONDITIONS

SAN DIEGO

Services:

chilled water ☒
other ☐ (specify): _____

Contract Capacity:

800 tons (chilled water). For the avoidance of doubt, the maximum 15-minute demand for Services is the Contract Capacity of 800 tons in any given 15-minute period of any given day of the Term.

Charges:

Capacity Charge: \$40 per ton per month. (Contract Capacity) x (\$40/ton) = monthly Capacity Charge.

Consumption Charge: is a pass-through of Supplier's actual costs on a \$ per ton-hour, as further described in Section C below.

In addition, Customer will pay to Supplier any franchise fees and taxes levied upon or with respect to the Services under this Master Agreement, including without limitation any use or license fees levied upon or with respect to the Services.

Services Commencement Date: March 1, 2019, subject to the satisfaction of the conditions precedent set forth in Section 19 of Appendix C to the Master Agreement. If Supplier is unable to provide Services to Customer due to Supplier's fault then a new Services Commencement Date shall be established based on Supplier's ability to provide said Services to Customer. Customer shall not incur any Capacity Charges or Consumption Charges during any such delay.

Final Proposal Pricing Date: August 18, 2017, which is the date on which Supplier and Customer agreed upon the initial Capacity Charge and Consumption Charge for the Services.

Term: Twenty years following the Services Commencement Date, but in no event beyond the term of the current franchise, pursuant to San Diego Ordinance No. 10639 ("Current Franchise"), any extension of the Current Franchise, or any new franchise granted by the City of San Diego, in its sole discretion, to allow Supplier to provide the Services ("Initial Term"). Customer may, in its sole discretion, extend the Initial Term for two additional five-year periods, but in no event beyond the term of the current franchise, pursuant to San Diego Ordinance No. 10639 ("Current Franchise"), any extension of the Current Franchise, or any new franchise granted by the City of San Diego, in its sole discretion, to allow Supplier to provide the Services (each an "Extended Term" and, collectively with the Initial Term, the "Term") by notifying Supplier in writing, not more than six months or less than three months prior to the expiration of the Initial Term or Extended Term. When signed by Customer's duly authorized representative and approved by the San Diego City Attorney, Customer warrants and represents to Supplier that Customer's City Council has duly approved this Schedule and the Term.

Additional Terms:

- A. Invoicing. The Capacity Charge will be prorated for partial first and last months within the Term based on the number of Service days during the month within the Term. The Consumption Charge will be invoiced each calendar month in arrears as further described in Section C below. Payment will be due as set forth in Section 5(a) of Appendix C to the Master Agreement.

B. Capacity Charge Adjustment. The Capacity Charge will be adjusted annually on the first day of January after the Final Proposal Pricing Date and each January 1st thereafter as follows:

- i. The product of (a) the most recent monthly Capacity Charge, multiplied by (b) the percentage increase, if any, in the monthly average CPI for the 12 months immediately preceding July 1 of the previous calendar year. The percentage increase in the monthly average CPI is calculated by dividing (1) the monthly average CPI for the 12 months immediately preceding July 1 of the previous calendar year by (2) the monthly average CPI for the previous 12 months. For example, the adjustment as of January 1, 2018, will be the monthly average of the CPI for the period July 2016 through June 2017 divided by the monthly average of the CPI for the period July 2015 through June 2016.
- ii. In no event shall the foregoing adjustments based on changes in the CPI result in a decrease from the prior year's Capacity Charges.
- iii. For purposes hereof, the "Consumer Price Index" or "CPI" means the Western Region, Size A City Average Consumer Price Index as published by the Bureau of Labor Statistics, all items other than food and energy, not seasonally adjusted, Series ID: CUURA400SA0L1E, as it appears in the "News" as published monthly by the United States Department of Labor, Bureau of Labor Statistics); *provided, however*, that if said Consumer Price Index shall cease to exist, is changed, or no longer provides a reliable cost trending indicator, then the term "Consumer Price Index" shall mean such other or similar index or formula as Supplier reasonably selects to measure changes in material, maintenance, repair, and/or labor costs.

C. Consumption Charge. The Consumption Charge will be equal to the product of (i) Customer's metered usage (in tons per hour) of the Services during each month of the Term, multiplied by (ii) Supplier's actual per ton-hour cost of energy (including natural gas, electricity and related transmission and distribution charges), chemicals and water, together with any associated taxes incurred by Supplier to provide Services to all of its customers (including Customer) during such month. The Consumption Charge will be subject to a monthly true-up based upon any difference (whether positive or negative) between Supplier's estimated and actual costs incurred in the calendar month.

D. Customer's Exceedances of Contract Capacity. If Customer's 15-minute demand for Services exceeds the Contract Capacity on any three different days during the Term, then Customer shall be required to select one of the options listed below:

- i. If Supplier has the available capacity, and upon Supplier's consent, which may be withheld in its sole discretion, Customer may elect to increase the Contract Capacity to the maximum demand reached during the three days that the 15-minute demand exceeded Customer's Contract Capacity for the remainder of the Term and the Capacity Charge shall be increased by a *pro rata* amount and Customer shall be responsible for the incremental Capacity Charge in connection with such additional usage; or
- ii. Customer may, within 30 days following the notification from Supplier, implement demand reduction techniques to lower Customer's demand so as to not exceed the Contract Capacity. Should Customer exceed the Contract Capacity on any three different days for a second time, then Supplier may elect to increase the Contract Capacity in accordance with and subject to the restrictions set forth in subsection (i) above or physically limit Customer's maximum demand to the Contract Capacity.

For the avoidance of doubt, Customer will be responsible for the incremental Consumption Charges in connection with such additional usage and will be billed accordingly.

- E. Minimum Capacity Charge. Notwithstanding any contrary provision in this Agreement, beginning on the earlier of (i) the Services Commencement Date and (ii) the Service Availability Date (defined below), Customer will pay the Capacity Charge for chilled water Services each month at each metered location at the Premises. For purposes of this Agreement, the "Service Availability Date" means the date on which Supplier has completed installation and commissioning of all Equipment in accordance with Exhibit 3 to this Schedule, but Supplier is not able to supply Services because Customer has failed to install and commission its equipment on its side of the Interconnection Point.
- F. Annual Appropriation of Funds. Supplier acknowledges that the Term may extend over multiple fiscal years of Customer, and Supplier understands and agrees that work and compensation under this Agreement is contingent on the Customer's City Council appropriating funding for and authorizing such work and compensation for those fiscal years. No legal liability on the part of the Customer shall arise for any such payment unless funds are duly appropriated and authorized by Customer's City Council. Customer may terminate this Schedule if sufficient funds are not duly appropriated and authorized for any given fiscal year, or if funds appropriated and authorized for this Schedule are exhausted before the fiscal year concludes. Customer represents that funds have been adequately appropriated for the full fiscal year during which the Service Commencement Date will occur. Customer shall provide to Supplier reasonable advance notice of any such non-appropriation event, and in the case of such event, Supplier shall have the right to terminate this Schedule.
- G. Wage Requirements. This Agreement is subject to the wage requirements as set forth in Exhibit 1 of Appendix I to the Master Agreement.
- H. Submittals Required with this Agreement. Supplier is required to submit all forms and information listed in Appendix J to the Master Agreement before the Master Agreement and this Schedule is executed by Customer.

EXHIBIT 2 to SCHEDULE #1
NOTICES

Notices under the Agreement are to be sent to the parties as follows:

A. Generally:

To Supplier:

Energy Center San Diego LLC
901 Kettner Blvd

San Diego, CA 92101

Attention: Jay Zaghloul
Client Relations Director
Telephone: (602) 281-9849
Mobile: (602) 524-4051

E-Mail: Jay.Zaghloul@clearwayenergy.com

To Customer:

The City of San Diego
1200 3rd Avenue, Suite 1700
San Diego, CA 92101

Attention: Cybele L. Thompson
Title: Director
Telephone: 619.236.6145
Mobile: 858.775.9662
E-Mail: thompsonC@sandiego.gov
Fax: 619.236.6706

B. For operational purposes:

To Supplier:

Energy Center San Diego LLC
901 Kettner Blvd
San Diego, CA 92101

Primary Contact:
San Diego Plant Manager
Telephone: (619) 231-0015
Mobile: (619) 520-3940
E-Mail: Brian.Marshall@clearwayenergy.com

Secondary Operating Representative:
Attention: Mike Buter
Director, Operations
Telephone: (480) 727-9064
Cell: (623) 606-8010
Fax: (480) 727-9063
E-Mail: Mike.Buter@clearwayenergy.com

To Customer:

CBRE, Inc.
1200 3rd Avenue, Suite 405
San Diego, CA 92101
Primary Operating Representative:
Attention: Mary H. Blagg
Title: Associate Director
Telephone: 619.232.8919
Mobile: 619.481.8222
E-Mail: mary.blagg@cbre.com
Fax: 619.232.0253

Secondary Operating Representative:
Attention: Cyndi Poes
Title: Associate Real Estate Manager
Telephone: 619.232.8919
Mobile: _____
E-Mail: Cyndi.poes@cbre.com
Fax: 619.232.0253

EXHIBIT 3 TO SCHEDULE #1
INTERCONNECT DRAWINGS AND ASSUMPTIONS

Supplier and Customer agree to the following terms and conditions of Service:

1. **Design:** Supplier will design the Energy Transfer Station (“ETS”) up to the Interconnection Point as shown in the drawing or sketch to be attached to which shall become a part of this Exhibit 3. All applicable codes and standards will be followed. If required, Supplier will discuss any necessary design modifications to the secondary system with the Customer.
2. **Primary Service Line:** Supplier has installed the service line running from its main distribution pipes to the Interconnection Point to the primary side of the Premises (the “Primary Service Line”).
3. **Energy Transfer Station Space:** The Customer will provide Supplier’s requirements for space for the installation, operation, and maintenance of the Supplier’s equipment and Customer’s interconnection equipment at no cost to Supplier. This will include space for the service lines, control panel, a 120 volt 20A electrical termination point, and from the Customer’s emergency power supply if available, and interconnecting piping. Supplier and the Customer will agree on the routing of pipes through the Premises and the location of the ETS to determine the most advantageous solution under the circumstances. Notwithstanding the foregoing, Supplier acknowledges and agrees that as of the date of this Agreement, Customer has provided all of the foregoing requirements and agreed to the foregoing routing of pipes through the Premises and the location of the ETS.
4. **Equipment:** Supplier will provide all equipment on the primary side of Supplier’s ETS or Interconnection Point, including isolating valves, thermometers, thermowells, control valve and energy meter (the “Equipment”). Supplier will maintain Supplier’s equipment during the term of this Agreement at Supplier’s sole cost and expense. On the Customer’s side of the Interconnection Point, the Customer will install its interconnecting piping and its related equipment from the Premises’ supply and return header pipe to the Interconnection Point and the 120 volt electrical feed termination point and internet access point for the control panel located in the ETS Space).

Supplier shall be granted and have the ability to adjust the chilled water supply temperature to achieve the desired and specified return water temperature.

The Customer shall modulate secondary side chilled water system flow rate to achieve the water return temperatures allowed under this Agreement (see, System parameters, below). The objective of the Customer’s control system shall be to control the supply temperature to the Premises and at the same time maximize the differential temperature on the primary and secondary sides.

5. **Installation:** Supplier will install the Primary Service Line and ETS up to the Supplier’s side of the Interconnection Point. The Customer will connect to the Premises’ cooling system from Interconnection Point. Supplier will also install the necessary electrical and control equipment and connect to an electrical termination point located in the space provided by the Customer. All associated piping systems will be pressure tested by Supplier for leakage in accordance with the ASME/ANSI B31 Code.
6. **Commissioning:** Supplier will commission the system. This will include system flushing and start-up of control equipment. During and after the commissioning, the Customer’s chief

operator will be responsible for the Premises' internal chilled water system including flushing the system to ensure that it is free of any debris or contaminants to the Supplier's criteria of its chilled water system acceptable water quality.

7. System Parameters

- Chilled Water Temperatures on Customer's side (secondary side) of the Interconnection Point:
 - Customer Supply APPROXIMATE AVERAGE Temperature Requirements: 41 °F
 - Customer Return MINIMUM Temperature Requirements: 56 °F
- Design Operating pressure:
 - Primary: 150 psi
 - Secondary: 150 psi

8. Assumptions: Specific assumptions of Installation at the Premises include:

- 1) Customer to provide a dedicated 120v-20A service at no charge for Supplier's control systems within 10-feet of the ETS
- 2) Customer to provide internet access to Supplier

9. Drawings: Pursuant to the existing equipment and interconnections in place.

PREMISES SCHEDULE #2

This Premises Schedule #2 consists of the various exhibits attached hereto (collectively, this "Schedule") and sets forth the terms and conditions pursuant to which Supplier shall provide certain services to the Premises described below. Capitalized terms not defined herein shall have the meanings given to them in the Master Energy Services Agreement dated as of _____ (the "Master Agreement") entered into by and between Supplier and Customer, which is incorporated herein by this reference. The Master Agreement, together with this Schedule and any Schedule entered into in connection therewith, is collectively the "Agreement."

Premises (Services address): 101 Ash Street, San Diego, CA 92101

Is the Premises subject to a mortgage or monetary lien? ☒ yes ☐ no

If yes, please refer to Appendix G to the Master Agreement.

Does Customer own the Premises? ☐ yes ☒ no

If yes, please refer to Appendix H to the Master Agreement.

Customer warrants and represents that the information set forth above is true and correct. Each of the following individuals warrants and represents that he or she is duly authorized to enter this Schedule as of the date set forth below.

Executed by Supplier and Customer as of _____, _____.

SUPPLIER

By: [Signature]
Its: Vice President

CUSTOMER

By: [Signature]
Its: Deputy City Attorney

Approved As To Form

Mara W. Elliott

BY: [Signature] Date: 4-5-19

NAME: Walter R. Henderson

TITLE: Deputy City Attorney

This Schedule contains the following Exhibits:

Exhibit 1: Business Terms and Conditions

Exhibit 2: Notices

Exhibit 3: Interconnect Drawings and Assumptions

EXHIBIT 1 TO SCHEDULE #2
BUSINESS TERMS AND CONDITIONS

SAN DIEGO

Services:

chilled water ☒
other ☐ (specify): _____

Contract Capacity:

800 tons (chilled water). For the avoidance of doubt, the maximum 15-minute demand for Services is the Contract Capacity of 800 tons in any given 15-minute period of any given day of the Term.

Charges:

Capacity Charge: \$43 per ton per month. (Contract Capacity) x (\$43/ton) = monthly Capacity Charge.

Consumption Charge: is a pass-through of Supplier's actual costs on a \$ per ton-hour, as further described in Section C below.

In addition, Customer will pay to Supplier any franchise fees and taxes levied upon or with respect to the Services under this Master Agreement, including without limitation any use or license fees levied upon or with respect to the Services.

Services Commencement Date: July 1, 2019, or such earlier date on which Supplier has completed installation and commissioning of all Equipment in accordance with Exhibit 3 to this Schedule, subject to the satisfaction of the conditions precedent set forth in Section 19 of Appendix C to the Master Agreement. If Supplier is unable to provide Services to Customer due to Supplier's fault then a new Services Commencement Date shall be established based on Supplier's ability to provide said Services to Customer. Customer shall not incur any Capacity Charges or Consumption Charges during any such delay.

Final Proposal Pricing Date: August 18, 2017, which is the date on which Supplier and Customer agreed upon the initial Capacity Charge and Consumption Charge for the Services.

Term: Twenty years following the Services Commencement Date, but in no event beyond the term of the current franchise, pursuant to San Diego Ordinance No. 10639 ("Current Franchise"), any extension of the Current Franchise, or any new franchise granted by the City of San Diego, in its sole discretion, to allow Supplier to provide the Services ("Initial Term"). Customer may, in its sole discretion, extend the Initial Term for two additional five-year periods, but in no event beyond the term of the current franchise, pursuant to San Diego Ordinance No. 10639 ("Current Franchise"), any extension of the Current Franchise, or any new franchise granted by the City of San Diego, in its sole discretion, to allow Supplier to provide the Services (each an "Extended Term" and, collectively with the Initial Term, the "Term") by notifying Supplier in writing, not more than six months or less than three months prior to the expiration of the Initial Term or Extended Term. When signed by Customer's duly authorized representative and approved by the San Diego City Attorney, Customer warrants and represents to Supplier that Customer's City Council has duly approved this Schedule and the Term.

Additional Terms:

- A. **Ramp Up Period.** During the first 12 months after the Service Commencement Date the Capacity Charge shall be assessed based on the Premises' highest historical fifteen (15)-minute average measured monthly peak cooling demand. This monthly peak cooling demand shall remain the basis

for the monthly Capacity Charge until exceeded thus setting a new monthly peak cooling demand that shall take effect immediately. After the 12 months Ramp Up Period the monthly Capacity Charge shall be based on the Contract Capacity of 800 tons.

- B. Invoicing. The Capacity Charge will be prorated for partial first and last months within the Term based on the number of Service days during the month within the Term. The Consumption Charge will be invoiced each calendar month in arrears as further described in Section D below. Payment will be due as set forth in Section 5(a) of Appendix C to the Master Agreement.
- C. Capacity Charge Adjustment. The Capacity Charge will be adjusted annually on the first day of January after the Final Proposal Pricing Date and each January 1st thereafter as follows:
- i. The product of (a) the most recent monthly Capacity Charge, multiplied by (b) the percentage increase, if any, in the monthly average CPI for the 12 months immediately preceding July 1 of the previous calendar year. The percentage increase in the monthly average CPI is calculated by dividing (1) the monthly average CPI for the 12 months immediately preceding July 1 of the previous calendar year by (2) the monthly average CPI for the previous 12 months. For example, the adjustment as of January 1, 2018, will be the monthly average of the CPI for the period July 2016 through June 2017 divided by the monthly average of the CPI for the period July 2015 through June 2016.
 - ii. In no event shall the foregoing adjustments based on changes in the CPI result in a decrease from the prior year's Capacity Charges.
 - iii. For purposes hereof, the "Consumer Price Index" or "CPI" means the Western Region, Size A City Average Consumer Price Index as published by the Bureau of Labor Statistics, all items other than food and energy, not seasonally adjusted, Series ID: CUURA400SA0L1E, as it appears in the "News" as published monthly by the United States Department of Labor, Bureau of Labor Statistics; *provided, however*, that if said Consumer Price Index shall cease to exist, is changed, or no longer provides a reliable cost trending indicator, then the term "Consumer Price Index" shall mean such other or similar index or formula as Supplier reasonably selects to measure changes in material, maintenance, repair, and/or labor costs.
- D. Consumption Charge. The Consumption Charge will be equal to the product of (i) Customer's metered usage (in tons per hour) of the Services during each month of the Term, multiplied by (ii) Supplier's actual per ton-hour cost of energy (including natural gas, electricity and related transmission and distribution charges), chemicals and water, together with any associated taxes incurred by Supplier to provide Services to all of its customers (including Customer) during such month. The Consumption Charge will be subject to a monthly true-up based upon any difference (whether positive or negative) between Supplier's estimated and actual costs incurred in the calendar month.
- E. Customer's Exceedances of Contract Capacity. If Customer's 15-minute demand for Services exceeds the Contract Capacity on any three different days during the Term, then Customer shall be required to select one of the options listed below:
- i. If Supplier has the available capacity, and upon Supplier's consent, which may be withheld in its sole discretion, Customer may elect to increase the Contract Capacity to the maximum demand reached during the three days that the 15-minute demand exceeded Customer's Contract Capacity for the remainder of the Term and the Capacity Charge shall be increased by a *pro rata* amount and Customer shall be responsible for the incremental Capacity Charge in connection with such additional usage; or

- ii. Customer may, within 30 days following the notification from Supplier, implement demand reduction techniques to lower Customer's demand so as to not exceed the Contract Capacity. Should Customer exceed the Contract Capacity on any three different days for a second time, then Supplier may elect to increase the Contract Capacity in accordance with and subject to the restrictions set forth in subsection (i) above or physically limit Customer's maximum demand to the Contract Capacity.

For the avoidance of doubt, Customer will be responsible for the incremental Consumption Charges in connection with such additional usage and will be billed accordingly.

- F. Minimum Capacity Charge. Notwithstanding any contrary provision in this Agreement, beginning on the earlier of (i) the Services Commencement Date and (ii) the Service Availability Date (defined below), Customer will pay the Capacity Charge for chilled water Services each month at each metered location at the Premises. For purposes of this Agreement, the "Service Availability Date" means the date on which Supplier has completed installation and commissioning of all Equipment in accordance with Exhibit 3 to this Schedule, but Supplier is not able to supply Services because Customer has failed to install and commission its equipment on its side of the Interconnection Point.
- G. Annual Appropriation of Funds. Supplier acknowledges that the Term may extend over multiple fiscal years of Customer, and Supplier understands and agrees that work and compensation under this Agreement is contingent on the Customer's City Council appropriating funding for and authorizing such work and compensation for those fiscal years. No legal liability on the part of the Customer shall arise for any such payment unless funds are duly appropriated and authorized by Customer's City Council. Customer may terminate this Schedule if sufficient funds are not duly appropriated and authorized for any given fiscal year, or if funds appropriated and authorized for this Schedule are exhausted before the fiscal year concludes. Customer represents that funds have been adequately appropriated for the full fiscal year during which the Service Commencement Date will occur. Customer shall provide to Supplier reasonable advance notice of any such non-appropriation event, and in the case of such event, Supplier shall have the right to terminate this Schedule.
- H. Wage Requirements. This Agreement is subject to the wage requirements as set forth in Exhibit 1 of Appendix I to the Master Agreement.
- I. Submittals Required with this Agreement. Supplier is required to submit all forms and information listed in Appendix J to the Master Agreement before the Master Agreement and this Schedule is executed by Customer.

EXHIBIT 2 to SCHEDULE #2
NOTICES

Notices under the Agreement are to be sent to the parties as follows:

A. Generally:

To Supplier:

Energy Center San Diego LLC
901 Kettner Blvd

San Diego, CA 92101

Attention: Jay Zaghloul
Client Relations Director
Telephone: (602) 281-9849
Mobile: (602) 524-4051

E-Mail: Jay.Zaghloul@clearwayenergy.com

To Customer:

The City of San Diego
1200 3rd Avenue, Suite 1700
San Diego, CA 92101

Attention: Cybele L. Thompson
Title: Director
Telephone: 619.236.6145
Mobile: 858.775.9662
E-Mail: thompsonC@sandiego.gov
Fax: 619.236.6706

B. For operational purposes:

To Supplier:

Energy Center San Diego LLC
901 Kettner Blvd
San Diego, CA 92101

Primary Contact:
San Diego Plant Manager
Telephone: (619) 231-0015
Mobile: (619) 520-3940
E-Mail: Brian.Marshall@clearwayenergy.com

Secondary Operating Representative:
Attention: Mike Buter
Director, Operations
Telephone: (480) 727-9064
Cell: (623) 606-8010
Fax: (480) 727-9063
E-Mail: Mike.Buter@clearwayenergy.com

To Customer:

CBRE, Inc.
1200 3rd Avenue, Suite 405
San Diego, CA 92101
Primary Operating Representative:
Attention: Mary H. Blagg
Title: Associate Director
Telephone: 619.232.8919
Mobile: 619.481.8222
E-Mail: mary.blagg@cbre.com
Fax: 619.232.0253

Secondary Operating Representative:
Attention: Cyndi Poes
Title: Associate Real Estate Manager
Telephone: 619.232.8919
Mobile: _____
E-Mail: Cyndi.poes@cbre.com
Fax: 619.232.0253

EXHIBIT 3 TO SCHEDULE #2
INTERCONNECT DRAWINGS AND ASSUMPTIONS

Supplier and Customer agree to the following terms and conditions of Service:

1. **Design:** Supplier will design the Energy Transfer Station ("ETS") up to the Interconnection Point as shown in the drawing or sketch to be attached to which shall become a part of this Exhibit 3. All applicable codes and standards will be followed. If required, Supplier will discuss any necessary design modifications to the secondary system with the Customer.
2. **Primary Service Line:** Supplier has installed the service line running from its main distribution pipes to the Interconnection Point to the primary side of the Premises (the "Primary Service Line").
3. **Energy Transfer Station Space:** The Customer will provide Supplier's requirements for space for the installation, operation, and maintenance of the Supplier's equipment and Customer's interconnection equipment at no cost to Supplier. This will include space for the service lines, heat exchangers, pumps, control panel, a 120 volt 20A electrical termination point, and from the Customer's emergency power supply if available, and interconnecting piping. Supplier and the Customer will agree on the routing of pipes through the Premises and the location of the ETS to determine the most advantageous solution under the circumstances. Notwithstanding the foregoing, Supplier acknowledges and agrees that as of the date of this Agreement, Customer has provided all of the foregoing requirements and agreed to the foregoing routing of pipes through the Premises and the location of the ETS.
4. **Equipment:** Supplier will provide all equipment on the primary side of Supplier's ETS or Interconnection Point, including isolating valves, heat exchangers, thermometers, thermowells, control valve and energy meter (the "Equipment"). Supplier will maintain Supplier's equipment during the term of this Agreement at Supplier's sole cost and expense. On the Customer's side of the Interconnection Point, the Customer will install its interconnecting piping and its related equipment from the Premises' supply and return header pipe to the Interconnection Point and the 120 volt electrical feed termination point and internet access point for the control panel located in the ETS Space).

Supplier shall be granted and have the ability to adjust the chilled water supply temperature to achieve the desired and specified return water temperature.

The Customer shall modulate secondary side chilled water system flow rate to achieve the water return temperatures allowed under this Agreement (see, System parameters, below). The objective of the Customer's control system shall be to control the supply temperature to the Premises and at the same time maximize the differential temperature on the primary and secondary sides.

5. **Installation:** Supplier will install the Primary Service Line and ETS up to the Supplier's side of the Interconnection Point. The Customer will connect to the Premises' cooling system from Interconnection Point. Supplier will also install the necessary electrical and control equipment and connect to an electrical termination point located in the space provided by the Customer. All associated piping systems will be pressure tested by Supplier for leakage in accordance with the ASME/ANSI B31 Code.

6. **Commissioning:** Supplier, together with the Customer's chief operator, will commission the system. This will include system flushing and start-up of control equipment. During and after the commissioning, the Customer's chief operator will be responsible for the Premises' internal chilled water system including flushing the system to ensure that it is free of any debris or contaminants to the Supplier's criteria of its chilled water system acceptable water quality.

7. **System Parameters**

- Chilled Water Temperatures on Customer's side (secondary side) of the Interconnection Point:
 - Customer Supply APPROXIMATE AVERAGE Temperature Requirements: 41 °F
 - Customer Return MINIMUM Temperature Requirements: 56 °F
- Design Operating pressure:
 - Primary: 150 psi
 - Secondary: 150 psi

8. **Assumptions:** Specific assumptions of Installation at the Premises include:

- 1) Customer to provide a dedicated 120v-20A service at no charge for Supplier's control systems within 10-feet of the ETS
- 2) Customer to provide internet access to Supplier

9. **Drawings:** Drawings to be attached upon completion of design and considered a part of this Agreement:

(to be attached)

RESOLUTION NUMBER R- **312222**DATE OF FINAL PASSAGE **MAR 07 2019**

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO AUTHORIZING AN AGREEMENT WITH
ENERGY CENTER SAN DIEGO LLC TO PROVIDE CHILLED
WATER TO THE PROPERTIES LOCATED AT 1200 THIRD
AVENUE AND 101 ASH STREET IN THE CITY OF
SAN DIEGO.

WHEREAS, buildings located throughout Downtown San Diego use a chilled water loop system to condition the air within the buildings and this approach provides flexibility and economies of scale as only one plant is necessary for air cooling rather than each building generating its own air conditioning; and

WHEREAS, Energy Center San Diego LLC (NRG) has a non-exclusive franchise, which is scheduled to expire in 2021, to construct, maintain, and use a chilled water loop system to a four-square-mile service area in Downtown San Diego to various buildings, including the recently completed San Diego Central Courthouse and the properties the City of San Diego (City) currently leases located at 1200 Third Avenue (CCP) and 101 Ash Street; and

WHEREAS, CCP was constructed in 1978 and designed to use the chilled water loop system for air conditioning with NRG's predecessor-in-interest providing the chilled water from the time the building opened, and approval of the proposed agreement would provide for the City to have a direct contract with the service provider; and

WHEREAS, NRG provided chilled water for air conditioning to 101 Ash Street while the property was occupied by Sempra; and

WHEREAS, 101 Ash Street has the infrastructure for both the chilled water loop system and traditional cooling system, and City staff has determined that using chilled water for air

conditioning will be more energy efficient than the use, maintenance, and eventual replacement of on-premise equipment; and

WHEREAS, using the chilled water loop system for air conditioning of buildings eliminates the capital cost of equipment and the associated repair and maintenance costs, allows the City to only pay for what it needs and uses, is energy efficient, reduces electricity costs, and is environmentally friendly by eliminating all Freon and associated chemicals used for air conditioning in the buildings; and

WHEREAS, the proposed contract with NRG is for a term of 20 years and two five-year options to extend, at the City's sole discretion, unless NRG's franchise rights terminate earlier; NOW, THEREFORE,

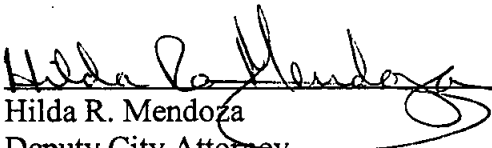
BE IT RESOLVED, by the Council of the City of San Diego, that the Mayor, or his designee, is authorized and directed to execute the Master Energy Services Agreement with Energy Center San Diego LLC, on file in the Office of the City Clerk as Document No.

RR-312222, for the supply of chilled water to 1200 Third Avenue and 101 Ash Street, San Diego, CA 92101.

BE IT FURTHER RESOLVED, that the Chief Financial Officer is authorized to expend an amount estimated to be \$31,000,000 over twenty (20) years and \$7,750,000 over each of the two five-year extension options, depending on actual usage by the City of San Diego, for the purpose of funding the Master Energy Services Agreement to supply chilled water for air conditioning to 1200 Third Avenue and 101 Ash Street, San Diego, CA 92101, with Energy Center San Diego LLC, contingent upon the adoption of the Annual Appropriation Ordinance for the applicable fiscal year and contingent upon the Chief Financial Officer furnishing one or more

certificates certifying that funds necessary for expenditure are, or will be, on deposit with the
City Treasurer.

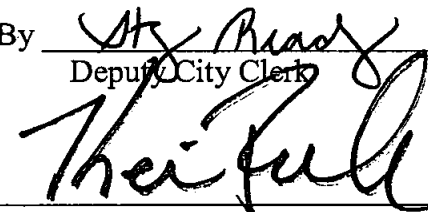
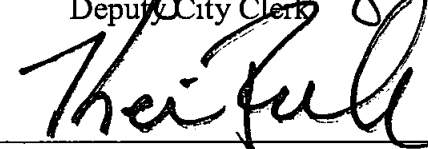
APPROVED: MARA W. ELLIOTT, City Attorney

By 
Hilda R. Mendoza
Deputy City Attorney

HRM:nja
01/17/19
02/06/19 Cor. Copy
Or. Dept: READ
Doc. No.: 1911675

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this
meeting of FEB 25 2019.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

KEVIN L. FAULCONER, Mayor

Approved: 3/7/19
(date)

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on FEB 25 2019, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	☒	☐	☐	☐
Jennifer Campbell	☒	☐	☐	☐
Chris Ward	☒	☐	☐	☐
Monica Montgomery	☒	☐	☐	☐
Mark Kersey	☒	☐	☐	☐
Chris Cate	☒	☐	☐	☐
Scott Sherman	☒	☐	☐	☐
Vivian Moreno	☒	☐	☐	☐
Georgette Gómez	☒	☐	☐	☐

Date of final passage MAR 07 2019.

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By *My Brady*, Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 312222

Passed by the Council of The City of San Diego on February 25, 2019, by the following vote:

YEAS: **BRY, CAMPBELL, WARD, MONTGOMERY, KERSEY, CATE, SHERMAN,**
MORENO, GÓMEZ.

NAYS: **NONE.**

NOT PRESENT: **NONE.**

RECUSED: **NONE.**

AUTHENTICATED BY:

KEVIN L. FAULCONER

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

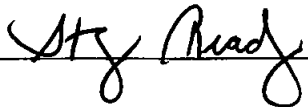
By: **Stacy D. Ready**, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true, and correct copy of
RESOLUTION NO. **R-312222**, approved on **February 25, 2019**. The date of final
passage is **March 7, 2019**.

ELIZABETH S. MALAND

City Clerk of the City of San Diego, California

(Seal)

By: , Deputy