



# CARLSBAD MUNICIPAL WATER DISTRICT AND CITY COUNCIL JOINT AGENDA BILL

<b>AB#</b>	21,482	<b>APPROVAL OF AN AGREEMENT BETWEEN AND AMONG THE CITY OF CARLSBAD AND THE CARLSBAD MUNICIPAL WATER DISTRICT, CABRILLO POWER I LLC, CARLSBAD ENERGY CENTER LLC, AND SAN DIEGO GAS &amp; ELECTRIC</b>	<b>DEPT. HEAD</b>
<b>MTG.</b>	1/14/2014		<b>CITY ATTY.</b>
<b>DEPT.</b>	CA		<b>CITY MGR.</b>

BTB  
CB

**RECOMMENDED ACTION:**

1. That the Carlsbad Municipal Water District adopt Resolution No. 1487 approving an Agreement between and among the City of Carlsbad (City) and the Carlsbad Municipal Water District (CMWD), Cabrillo Power I LLC and Carlsbad Energy Center LLC (collectively NRG), and San Diego Gas & Electric (SDG&E), addressing City and CMWD support for a change in the proposed technology of the approved Carlsbad Energy Center Project (CECP) plant and the submittal of a Petition to Amend (PTA) application to the California Energy Commission (CEC) for approval of this technology change, conditioned upon the decommissioning, demolition, removal and remediation of the current Encina Power Station (EPS) site, as well as other changes in CECP plant design, energy infrastructure and property considerations beneficial to the residents of Carlsbad (Exhibit 1).
  
2. That the City Council adopt Resolution No. 2014-010 approving an Agreement between and among the City of Carlsbad (City) and the Carlsbad Municipal Water District (CMWD), Cabrillo Power I LLC and Carlsbad Energy Center LLC (collectively NRG), and San Diego Gas & Electric (SDG&E), addressing City and CMWD support for a change in the proposed technology of the approved Carlsbad Energy Center Project (CECP) plant and the submittal of a Petition to Amend (PTA) application to the California Energy Commission (CEC) for approval of this technology change, conditioned upon the decommissioning, demolition, removal and remediation of the current Encina Power Station (EPS) site, as well as other changes in CECP plant design, energy infrastructure and property considerations beneficial to the residents of Carlsbad (Exhibit 2).

Dept. Contacts: Celia A. Brewer, City Attorney 760-434-2891  
Gary T. Barberio, Assistant City Manager 760-434-2822

<b>FOR CITY CLERKS USE ONLY.</b>			
<b>COUNCIL ACTION:</b>	APPROVED	<input checked="" type="checkbox"/>	
	DENIED	<input type="checkbox"/>	CONTINUED TO DATE SPECIFIC <input type="checkbox"/> _____
	CONTINUED	<input type="checkbox"/>	CONTINUED TO DATE UNKNOWN <input type="checkbox"/>
	WITHDRAWN	<input type="checkbox"/>	RETURNED TO STAFF <input type="checkbox"/>
	AMENDED	<input type="checkbox"/>	OTHER – SEE MINUTES <input type="checkbox"/>

**ITEM EXPLANATION:**

In May of 2012 the CEC approved NRG's application for certification for the CECP. That approval was for a 558 Megawatt combined cycle power plant located east of the existing EPS, between the railroad tracks and Interstate 5. As a part of that approval, 3 of the 5 boiler units at the existing EPS plant would be decommissioned, with the remaining 2 boiler units continuing to operate. Consequently, the decommissioning of the entire plant (all 5 units) and the demolition and removal of the existing EPS structures would not occur until an unspecified and uncertain future date. This leaves the possibility of having two power plants in operation at the same time on Carlsbad's coastline.

The City of Carlsbad opposed the CECP throughout the five year CEC process, and the City's motion for reconsideration was denied. The City subsequently took its case to the California Supreme Court but that challenge was also denied in October of 2012. The CECP is now fully permitted and could proceed to construction and operation.

Since October of 2012, the energy supply environment in Southern California has dramatically changed. The San Onofre Nuclear Generation Station (SONGS) initially ceased operation in January 2012. In June 2013, SDG&E and Southern California Edison determined they would not recommence power generation at SONGS. This early closure of SONGS, approximately 9 years earlier than anticipated, has caused an increased and accelerated need for power generation facilities in Southern California. The California Independent System Operator (CAISO) has determined that additional power generation capacity is needed in the San Diego Region by 2018.

Given the CAISO determination, SDG&E is now considering entering into a Power Purchase Agreement (PPA) with NRG, but only if NRG is willing to change the proposed technology of the approved CECP from a "combined-cycle configuration" plant to a "peaker configuration" plant and submit a PTA application to the CEC for approval of this technology change. NRG is interested in submitting a PTA application, but only if the City would be supportive of such an application.

On December 3, 2013, the City Council adopted Resolution No. 2013-288 (Exhibit 3), directing "staff to negotiate with SDG&E and NRG in an attempt to reach a mutually beneficial agreement acceptable to all three parties, supporting a change in the proposed CECP technology conditioned upon the decommissioning, demolition, and remediation of the current Encina Power Station site, as well as other changes in energy infrastructure and property considerations beneficial to the residents of Carlsbad." Over a 3 day negotiation period (December 18 – December 20, 2013), the three parties were able to reach agreement on certain non-binding terms and entered into a Memorandum of Understanding (MOU), dated December 20, 2013 (Exhibit 4). The MOU clarified the intentions and obligations of the three parties with respect to the negotiation of a formal, binding Agreement and set forth the terms that would be included in an Agreement.

City staff, NRG and SDG&E have completed the drafting of the Agreement (included as an attachment to Reso No. 2014 - , Exhibit 1) and the Agreement is now being presented to the City Council and the Board of Directors for their consideration and approval. A summary of the specific provisions of the Agreement is provided in the attached Exhibit 5. The general points of the Agreement are as follows:

- NRG will amend its CECP project, proposing a plant that is more environmentally friendly, lower profile, utilizing "peaker configuration" technology, with the amount of power generation facilities allowed on site and hours of operation capped.
- NRG will immediately begin the process to completely shut down and demolish the Encina Power Station structures at no cost to taxpayers and begin the process to remediate and redevelop the site.
- SDG&E will pursue the relocation of its operations yard ("North Coast Service Center") at NRG's expense and transfer ownership of the service center property (along with the Cannon Park site) from SDG&E to the city, as long as it is cost neutral to SDG&E and its ratepayers, freeing up the service center land for more appropriate uses. If it is not possible to relocate the service center, NRG will pay the city \$10 million.
- In exchange for these conditions the city will support the new CECP project.

Given the critical and urgent need for new power generation in Southern California and in the SDG&E service area, and the amount of time necessary to secure the permits that will be needed to construct the Amended CECP, NRG and SDG&E have indicated that approval of the Agreement by the City is necessary before January 31, 2014. If the proposed Agreement is not approved by the City, NRG has indicated its intention to proceed with the construction of the approved CECP plant design that is currently permitted.

#### **FISCAL IMPACT:**

Since December 2007, a total of \$1,900,000 in funds have been appropriated by the City Council towards the city's efforts in regards to the CECP. To date, the city has expended \$1,826,000 in these efforts, leaving a balance of \$74,000.

Staff is requesting that the City Council appropriate an additional \$200,000 from the General Fund and authorize the Administrative Services Director to transfer the funds as appropriate to be utilized in the city's efforts in regards to the CECP and the implementation of the Agreement, if said Agreement is approved by the City Council.

#### **ENVIRONMENTAL IMPACT:**

Environmental review of the activities relating to the proposed Agreement is within the exclusive jurisdiction of other agencies, including without limitation the California Energy Commission and California Public Utilities Commission, which have served and/or will serve as the Lead Agencies for compliance with the California Environmental Quality Act (CEQA). To the extent that any activities relating to the proposed Agreement may be subject to environmental review by the City, such activities would be exempt from CEQA pursuant to CEQA Guidelines section 15271 (Early Activities Relating to Thermal Power Plants) and/or involve future activities which are conditional upon review and approval by other regulatory agencies and/or are too speculative for review at this time. The City will perform any environmental review which may be required if and when such activities are proposed and/or become sufficiently defined to allow for meaningful environmental review.

**EXHIBITS:**

1. City Council Resolution No. 2014-010, with the Agreement, dated January 14, 2014, between the City of Carlsbad and the Carlsbad Municipal Water District, Cabrillo Power I LLC, Carlsbad Energy Center LLC, and San Diego Gas & Electric attached as Exhibit A.
2. CMWD Resolution No. 1487, with the Agreement, dated January 14, 2014, between the City of Carlsbad and the Carlsbad Municipal Water District, Cabrillo Power I LLC, Carlsbad Energy Center LLC and San Diego Gas & Electric attached as Exhibit A.
3. City Council Resolution No. 2013-288.
4. Memorandum of Understanding, dated December 20, 2013.
5. Summary of Specific Provisions of the Agreement.
6. Aerial photo – Location Map
7. Aerial photo – Land Dedications Map

**RESOLUTION NO. 2014-010**

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2 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARLSBAD,  
3 CALIFORNIA, APPROVING AN AGREEMENT BETWEEN AND  
4 AMONG THE CITY OF CARLSBAD (CITY) AND THE CARLSBAD  
5 MUNICIPAL WATER DISTRICT (CMWD), CABRILLO POWER I LLC  
6 AND CARLSBAD ENERGY CENTER LLC (COLLECTIVELY, NRG), AND  
7 SAN DIEGO GAS & ELECTRIC (SDG&E), ADDRESSING CITY AND  
8 CMWD SUPPORT FOR A CHANGE IN THE PROPOSED TECHNOLOGY  
9 OF THE APPROVED CARLSBAD ENERGY CENTER PROJECT (CECP)  
10 PLANT AND THE SUBMITTAL OF A PETITION TO AMEND (PTA)  
11 APPLICATION TO THE CALIFORNIA ENERGY COMMISSION (CEC)  
12 FOR APPROVAL OF THIS TECHNOLOGY CHANGE, CONDITIONED  
13 UPON THE DECOMMISSIONING, DEMOLITION, REMOVAL AND  
14 REMEDIATION OF THE CURRENT ENCINA POWER STATION (EPS)  
15 SITE, AS WELL AS OTHER CHANGES IN CECP PLANT DESIGN,  
16 ENERGY INFRASTRUCTURE AND PROPERTY CONSIDERATIONS  
17 BENEFICIAL TO THE RESIDENTS OF CARLSBAD

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18 WHEREAS, in May of 2012, the California Energy Commission approved NRG's  
19 application for certification of the Carlsbad Energy Center Project (CECP). That approval was for  
20 a 558 Megawatt combined cycle power plant located east of the existing Encina Power Station  
21 (EPS), between the railroad tracks and Interstate 5. As a part of that approval, 3 of the 5 boiler  
22 units at the existing EPS would be decommissioned, with the remaining 2 boiler units  
23 continuing to operate. Consequently, the decommissioning of the entire plant (all 5 units) and  
24 the demolition and removal of the existing EPS structures would not occur until an unspecified  
25 and uncertain future date. The CECP is now fully permitted and could proceed to construction  
26 and operation; and

27 WHEREAS, the City participated as an intervenor in the proceedings before the  
28 California Energy Commission (CEC) concerning the application for certification of the CECP and  
vigorously opposed the approval of said application; and

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WHEREAS, during the pendency of said proceedings, the City took certain legislative actions concerning the construction of a new power plant in the Coastal Zone; and

WHEREAS, the CEC acknowledged that the CECP would be inconsistent with said legislative actions, including the City’s General Plan and related land use ordinances, regulations and standards, but overrode said inconsistencies and approved the application for certification on the grounds that the CECP was required for public convenience and necessity and there were not more prudent and feasible means of achieving public convenience and necessity; and

WHEREAS, since October of 2012, the energy supply environment in Southern California has dramatically changed. The San Onofre Nuclear Generation Station (SONGS) ceased operation in January 2012. In June 2013, SDG&E and Southern California Edison determined they would not recommence power generation at SONGS. The closure of SONGS has caused an increased and accelerated need for power generation facilities in Southern California. The California Independent System Operator (CAISO) has determined that additional power generation capacity is currently needed in the San Diego Region by 2018; and

WHEREAS given the CAISO determination, SDG&E is interested in entering into a Power Purchase Agreement (PPA) with NRG, but only if NRG is willing to change the proposed technology of the approved CECP from a “combined-cycle configuration” plant to a “peaker configuration” plant and submit a Petition to Amend (PTA) application to the CEC for approval of this technology change. NRG is interested in submitting a PTA application, but only if the City would be supportive of such an application; and

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1           WHEREAS on December 3, 2013, the City Council adopted Resolution No. 2013-288  
2 directing "staff to negotiate with SDG&E and NRG in an attempt to reach a mutually beneficial  
3 agreement acceptable to all three parties, supporting a change in the proposed CECP  
4 technology conditioned upon the decommissioning, demolition, and remediation of the current  
5 Encina Power Station site, as well as other changes in energy infrastructure and property  
6 considerations beneficial to the residents of Carlsbad"; and  
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8           WHEREAS, staff negotiated based on NRG's intention to submit a PTA application to the  
9 CEC for an amendment to the existing approval of the CECP which would provide for a  
10 redesigned electrical generating facility that would have a smaller environmental footprint,  
11 lower profile and lower stack heights utilizing a "peaker configuration" and would facilitate  
12 retirement and removal of the existing Encina Power Station; and  
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14           WHEREAS, the three parties reached an agreement on certain non-binding terms and  
15 entered into a Memorandum of Understanding (MOU), dated December 20, 2013. The MOU  
16 clarified the intentions and obligations of the three parties with respect to the negotiation of a  
17 formal, binding Agreement and set forth the terms that would be included in an Agreement;  
18 and  
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20           WHEREAS, City staff, CMWD staff, NRG and SDG&E have drafted an Agreement  
21 incorporating the terms from the MOU; and

22           WHEREAS, the Agreement will provide significant benefits to the City of Carlsbad as well  
23 as increasing energy supplies to the region. Some of those benefits include:

- 24           • NRG will amend its CECP project, proposing a plant that is more  
25 environmentally friendly, lower profile, utilizing "peaker configuration"  
26 technology, with the amount of power generation and hours of operation  
27 capped.

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- NRG will immediately begin the process to completely shut down and demolish the Encina Power Station structures at no cost to taxpayers and begin the process to remediate and redevelop the site.
- SDG&E will pursue the relocation its operations yard ("North Coast Service Center") at NRG's expense and transfer ownership of the service center property (along with the Cannon Park site) from SDG&E to the City, freeing up the service center land for more appropriate uses. If it is not possible to relocate the service center, NRG will pay the city \$10 million.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Carlsbad, California, as follows that:

1. The above recitations are true and correct.
2. That it is in the best interests of the City of Carlsbad to enter into the attached agreement (Exhibit A) with the Carlsbad Municipal Water District, Cabrillo Power I LLC, Carlsbad Energy Center LLC, and San Diego Gas & Electric.
3. That the Mayor is authorized to execute the attached agreement with the Carlsbad Municipal Water District, Cabrillo Power I LLC, Carlsbad Energy Center LLC, and San Diego Gas & Electric.
4. That City staff shall review the City's prior legislative actions concerning the CECP and shall recommend such changes, if any, as may be necessary to reflect the changed circumstances, reduced environmental profile and significant community benefits associated with the amendment.
5. That the Administrative Services Director is authorized to appropriate \$200,000 from the General Fund to be utilized in the city's efforts in regards to the CECP and the implementation of the Agreement.

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PASSED, APPROVED AND ADOPTED at a Joint Special Meeting of the Carlsbad City Council and Carlsbad Municipal Water District Board of Directors, held on the 14th day of January 2014, by the following vote:


AYES: Council Members Packard, Wood, Blackburn.

NOES: None.

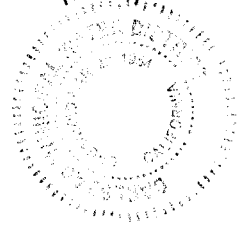
ABSENT: Council Members Hall, Douglas.

  
MARK PACKARD, Mayor Pro Tem

ATTEST:

  
BARBARA ENGLESON, City Clerk

(SEAL)



**SETTLEMENT AGREEMENT**

**DATED AS OF JANUARY 14, 2014**

**BETWEEN AND AMONG**

**THE CITY OF CARLSBAD,**

**CARLSBAD MUNICIPAL WATER DISTRICT,**

**CABRILLO POWER I LLC,**

**CARLSBAD ENERGY CENTER LLC**

**AND**

**SAN DIEGO GAS & ELECTRIC COMPANY**

## LIST OF EXHIBITS

Exhibit A	Legal Description of the Encina Site
Exhibit B	Map of the Encina Site
Exhibit C	Area Map of the Encina Site
Exhibit D	Form of NRG Support Letter
Exhibit E	Form of City Support Letter
Exhibit F	Form of Assumption of Obligations Agreement
Exhibit G	Form of Amendment
Exhibit H	Form of Memorandum of Agreement
Exhibit I	Form of Fossil Fuel Deed Restriction
Exhibit J	Legal Description of North Coast Services Center Site
Exhibit K	Map of North Coast Services Center Site
Exhibit L	Legal Description of Parcel 11
Exhibit M	Map of Parcel 11
Exhibit N	Legal Description of Cannon Park
Exhibit O	Map of Cannon Park
Exhibit P	Legal Description of Agua Hedionda North Shore Bluff Parcel
Exhibit Q	Map of Agua Hedionda North Shore Bluff Parcel
Exhibit R	Form of Guaranty
Exhibit S	Map of Encina Redevelopment Site
Exhibit T	Map of CECP Site

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (this "Agreement") is entered into as of January 14, 2014, by and among the City of Carlsbad, a charter city, located in San Diego County (the "City"), and Carlsbad Municipal Water District ("CMWD"), Cabrillo Power I LLC and Carlsbad Energy Center LLC (collectively, "NRG"), and San Diego Gas & Electric Company ("SDG&E"). The City, NRG and SDG&E are sometimes referred to in this Agreement collectively as the "Parties" and individually as a "Party", except that SDG&E is a Party solely for purposes of Article 5 and Article 12. Unless otherwise defined in this Agreement, initially capitalized terms used in this Agreement shall have the meaning given them in Article 1 below.

The Parties are entering into this Agreement to resolve long-standing disputes between the City and NRG regarding the Carlsbad Energy Center Project ("CECP" or the "Project"), and to provide for the redevelopment of the site of the Encina Power Station. This Agreement, if and when it becomes effective according to its terms, provides for, among other things: (i) the retirement, decommissioning, demolition and removal of the Encina Power Station, (ii) the remediation and redevelopment of the Encina Redevelopment Site (as defined below), (iii) the permitting, construction and development of the CECP, (iv) the relocation and construction of the New Service Center (as defined below), and (v) other changes in energy infrastructure and property considerations beneficial to the residents of Carlsbad.

### RECITALS

THIS AGREEMENT is made with reference to the following facts and circumstances:

A. **WHEREAS**, NRG owns real property located in the City, in the County of San Diego, California, bounded generally by Cannon Road to the south, Interstate 5 to the east, the Agua Hedionda Lagoon to the north, and Carlsbad Boulevard to the west (the "Encina Site"). A legal description of the Encina Site is attached to this Agreement as Exhibit A, and a map of the Encina Site is attached as Exhibit B, provided that in the event of any inconsistency between the map and the legal description, the legal description shall control. Also attached, as Exhibit C, is a map of the area in which the Encina Site is located;

B. **WHEREAS**, at the Encina Site, NRG operates facilities known as Units 1-5 (individually a "Unit" and collectively the "Units," the "Encina Power Station" or the "Station") for the purpose of generating and selling electric power. The Encina Power Station is currently subject to a Resource Adequacy Agreement ("RA Agreement") and a Participating Generator Agreement ("Participating Generator Agreement") with the California Independent System Operator ("ISO");

C. **WHEREAS**, NRG filed an application for the construction and development of the CECP with the California Energy Commission (the "Commission") on or about September 2007 (Docket No. 07-AFC-06) (the "Application");

D. **WHEREAS**, the City conditionally opposed this Application;

E. **WHEREAS**, from 2007 through 2012 the Commission processed this Application and, in May of 2012, issued its Order (Order No. 12-0531-06) and Decision approving the construction and development of the Project subject to the conditions stated therein;

F. **WHEREAS**, the San Onofre Nuclear Generation Station (“SONGS”) ceased operation January 2012 and in June 2013 Southern California Edison determined that they would not recommence power generation at SONGS;

G. **WHEREAS**, the early closure of SONGS has caused an increased and accelerated need for power generation facilities in Southern California, and the ISO has determined that additional generating capacity is currently needed in the San Diego region;

H. **WHEREAS**, NRG and SDG&E have represented to the City that they are interested in entering into a tolling or power purchase agreement (“Proposed PPA”) for the Project but only if (i) SDG&E and NRG are able to come to mutually acceptable terms on the Proposed PPA and (ii) NRG amends its permits for the Project to allow a change in proposed technology (“Amendment”), and NRG has represented that it would amend its permits only if the City would be supportive of such an Amendment;

I. **WHEREAS**, the Amendment would request approval of a redesigned electrical generating facility that would have a smaller environmental footprint, lower profile, and lower stack heights, and would facilitate the retirement and removal of the Encina Power Station;

J. **WHEREAS**, on December 3, 2013, the City adopted a resolution that provides:

“That the City Council does hereby direct staff to negotiate with SDG&E and NRG in an attempt to reach a mutually beneficial agreement acceptable to all three parties, supporting a change in the proposed CECP technology conditioned upon the decommissioning, demolition, and remediation of the current Encina Power Station site, as well as other changes in energy infrastructure and property considerations beneficial to the residents of Carlsbad.”;

K. **WHEREAS**, the City, NRG and SDG&E contemplate that SDG&E will relocate its North Coast Service Center provided that the cost of the proposed relocation and construction of the New Service Center be done in a manner which is cost-neutral to SDG&E and its ratepayers; and

L. **WHEREAS**, the Parties now wish to fully and finally resolve disputes involving the CECP and the Encina Power Station, by providing for, among other things: (i) the retirement, decommissioning, demolition, and removal of the Encina Power Station, (ii) the remediation and redevelopment of the Encina Redevelopment Site (as defined below), (iii) the provisions of the Amendment and the construction and development of the CECP, (iv) the relocation and construction of the New Service Center, and (v) other changes in energy infrastructure and property considerations beneficial to the residents of Carlsbad.

## AGREEMENT

ACCORDINGLY, to settle long-standing disputes and in consideration of the mutual covenants and agreements in this Agreement and for other good and valuable consideration, the receipt and adequacy of which are acknowledged, the Parties agree to the following terms and conditions:

### ARTICLE 1

#### DEFINITIONS

##### 1.1 Definitions

- (a) “Affiliate” means, with respect to a Person, any Person that directly or indirectly Controls, is Controlled by or is under Common Control with that Person.
- (b) “Agreement” shall have the meaning set forth in the opening paragraph of this Agreement.
- (c) “Amendment” shall have the meaning set forth in Recital H and set forth in Exhibit G.
- (d) “Application” shall have the meaning set forth in Recital C.
- (e) “Assumption of Obligations” shall mean the agreement in recordable form attached as Exhibit F.
- (f) “Attorneys’ Fees and Costs” means any and all reasonable attorneys’ fees, costs, expenses and disbursements, including, but not limited to, expert witness fees and costs, travel time and associated costs, transcript preparation fees and costs, document copying, exhibit preparation, courier, postage, facsimile, long-distance and communications expenses, court costs and the costs and fees associated with any other legal, administrative or alternative dispute resolution proceeding, fees and costs associated with execution upon any judgment or order, and costs on appeal.
- (g) “CEQA” means the California Environmental Quality Act.
- (h) “CECP” shall have the meaning set forth in the second opening paragraph of this Agreement.
- (i) “CECP Site” shall mean the approximately 30 acre site on which the newly constructed CECP will be situated and which is identified in the map attached as Exhibit T.
- (j) “City” shall have the meaning set forth in the opening paragraph of this Agreement.
- (k) “City Support Letter” shall have the meaning set forth in Section 3.4(b)(i).

(l) “CMWD” shall have the meaning set forth in the opening paragraph of this Agreement.

(m) “Commission” shall have the meaning set forth Recital C.

(n) “Control” means the power to direct the affairs or management of another Person, whether by contract, operation of law or otherwise. “Controlled by” and “Controlling” have correlative meanings. “Common Control” means that two Persons are both Controlled by the same other Person.

(o) “DOE” mean the United States Department of Energy.

(p) “Effective Date” shall have the meaning set forth in Section 2.3(b).

(q) “Electric Reliability Removal Conditions” means, for one or more Units of the Station, that:

(i) NRG has not received an order or determination from a federal, state or local governmental agency or authority, including, but not limited to, the ISO, with jurisdiction requiring NRG to continue operating a Unit or Units at the Station or finding that a Unit or Units are necessary for reliability, thereby preventing the shutdown of one or more Units; and

(ii) NRG has obtained any necessary approvals for the Shutdown, including from the ISO, the California State Water Resources Control Board, and the San Diego County Air Pollution Control District.

(r) “Encina Power Station” shall have the meaning set forth in Recital B.

(s) “Encina Redevelopment Site” shall mean the area comprising the Encina Site, excluding, however, the CECP Site. The Encina Redevelopment Site will be subject to future redevelopment and a map of the area is identified on Exhibit S.

(t) “Encina Site” shall mean the entire approximately 95 acre site currently occupied by the Encina Power Station, exclusive of the SDG&E switchyard, and which is identified on Exhibits A, B, and C.

(u) “EPC Contract Notice to Proceed” shall have the meaning set forth in Section 5.4(b).

(v) “Event of Default” shall have the meaning set forth in Article 7.

(w) “Excluded Transfer” shall mean:

(i) any Transfer to an Affiliate of NRG, provided that NRG Energy, Inc. continues to guarantee performance of NRG’s obligations under the Guaranty;

(ii) any Transfer of an easement or license over a portion of the Site, that would not allow the Transferee to use that portion of the Site to generate electricity with equipment or machinery that is powered by the combustion of fossil fuels and which would not otherwise interfere with NRG's ability to perform its obligations under this Agreement;

(iii) After demolition and removal of above-ground structures in satisfaction of Section 6.1, any Transfer of an interest, in addition to an easement or license, over a portion of the Site, provided that such Transfer would not allow the Transferee to use that portion of the Site to generate electricity with equipment or machinery that is powered by the combustion of fossil fuels and which would not otherwise interfere with NRG's ability to perform its obligations under this Agreement; and

(iv) any condemnation or exercise of eminent domain authority, whether whole or partial, by a governmental authority or other entity with statutory authority under state law to exercise eminent domain authority.

(x) "Existing Deed of Trust" means any deed of trust securing the Existing Secured Loan and encumbering the site.

(y) "Existing Secured Loan" means the term loan and revolving credit facility under the credit agreement, dated as of July 1, 2011 as amended or modified from time to time, among NRG Energy, Inc., as borrower, the several banks and other financial institutions or entities from time to time parties to the credit agreement, Morgan Stanley Senior Funding, Inc. as syndication agents, and CitiCorp North America, as administrative agent and collateral agent, which loan is secured by the Existing Deed of Trust.

(z) "Existing Secured Loan Parties" means the several banks and other financial institutions or entities that are from time to time parties to the existing secured loan, Morgan Stanley Senior Funding, Inc., as syndication agents, and Morgan Stanley Senior Funding, Inc., as administrative agent and collateral agent, and any of their successors and assigns, including any person receiving an interest in the site or the member interests of NRG from any of the foregoing as a result of their exercise of any of their rights or remedies under the Existing Secured Loan.

(aa) "Feasibility Studies" shall have the meaning set forth in Section 5.3(a).

(bb) "FERC" means the Federal Energy Regulatory Commission or any successor.

(cc) "Final Shutdown Date" means the earlier of (a) midnight of December 31, 2017 or (b) the commercial operation date of CECP (as such term is defined under the facility's PPA).

(dd) "Fossil Fuel Restriction" shall have the meaning set forth in Section 3.5.

(ee) "Guaranty" shall have the meaning set forth in Section 2.5.

(ff) "Indemnified Parties" means the City (including, but not limited to, all of its respective boards, commissions, departments, agencies and other subdivisions), all Agents of the City, and their respective heirs, legal representatives, successors and assigns, and each of them.



- (gg) “Indemnify” means indemnify, protect, defend and hold harmless.
- (hh) “Independent Guaranty Amount” shall have the meaning set forth in Section 2.5(a).
- (ii) “IODs” shall have the meaning set forth in Section 2.4(b).
- (jj) “ISO” shall have the meaning set forth in Recital B.
- (kk) “ISO Tariff” shall mean the tariff of the ISO, as it may be amended, supplemented, or replaced (in whole or in part) from time to time.

(ll) “Laws” shall mean all present and future applicable laws, ordinances, rules, regulations, permits, authorizations, orders and requirements, whether or not in the contemplation of the Parties, that may affect or be applicable to the Encina Site or any part of the Encina Site (including, without limitation, any subsurface area), or the use of the Encina Site and the buildings and improvements on or affixed to the Encina Site, including, without limitation, all consents or approvals required to be obtained from, and all rules and regulations of, and all building and zoning laws of, all federal, state, county and municipal governments, and their departments, bureaus, agencies or commissions, authorities, board of officers, or any other body or bodies exercising similar functions, having or acquiring jurisdiction of the Encina Site, and similarly the term “Law” shall be construed to mean the same as the above in the singular as well as the plural.

(mm) “Loss” or “Losses” when used with reference to any indemnity means any and all claims, demands, losses, liabilities, damages (including foreseeable and unforeseeable consequential damages to the extent arising from third party claims), liens, obligations, interest, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses (including, without limitation, reasonable Attorneys’ Fees and Costs, and consultants’ fees and costs) of whatever kind or nature, known or unknown, contingent or otherwise.

(nn) “Memorandum of Agreement” shall have the meaning set forth in Section 2.2(a) of this Agreement.

(oo) “New Service Center” shall refer to the new service center to be constructed in connection with the North Coast Service Center as set forth in Section 5.1(b).

(pp) “New Service Center Location” shall have the meaning as set forth in Section 5.2(a).

(qq) “North Coast Service Center” shall refer to the existing facility that is owned by SDG&E and that is located at the current North Coast Service Center Site.

(rr) “North Coast Service Center Site” shall refer to the current location of the North Coast Service Center located at the corner of Cannon Road and Carlsbad Boulevard. A legal description of the current property is attached hereto as Exhibit J, a map of the current property is attached hereto as Exhibit K.

(ss) “North Coast Service Center Redevelopment Site” shall mean the area comprised of the North Coast Service Center Site, Cannon Park, and the Agua Hedionda North Shore Bluff Parcel.

(tt) “NRG” shall have the meaning set forth in the opening paragraph of Agreement.

(uu) “NRG Support Letter” shall have the meaning set forth in Section 3.4(a)(ii).

(vv) “NSC Cost Cap” shall have the meaning set forth in Section 5.4(a).

(ww) “NSC Costs” shall have the meaning set forth in Section 5.4(a).

(xx) “Official Records” means the official records of the City and of the County of San Diego, California.

(yy) “Party” or “Parties” shall have the meanings set forth in the opening paragraph of this Agreement.

(zz) “Person” means any individual, partnership, corporation (including, but not limited to, any business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture or any other entity or association, the United States, or other federal, state or local governmental entity.

(aaa) “Petition to Amend” shall have the meaning set forth in Section 6.1.

(bbb) “Project” shall have the meaning set forth in the opening paragraph of this Agreement.

(ccc) “Proposed PPA” shall have the meaning set forth in Recital H.

(ddd) “Prudent Utility Practices” means the practices, methods, standards and acts engaged in or approved by a significant portion of the applicable segment of the electric power generation industry pertaining to facilities of the type, similar size and location to Encina Power Station that, in light of the facts that are known, or reasonably should have been known, at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with Laws, permits, codes, standards, equipment manufacturer’s recommendations, reliability, safety, environmental protection, economy, and expedition. Prudent Utility Practices are not limited to the optimum practice, method, standard or act to the exclusion of all others, but rather to those practices, methods, standards and acts generally acceptable or approved by a significant portion of the applicable segment of the electric power generation industry in the United States.

(eee) “RA Agreement” shall have the meaning set forth in Recital B.

(fff) “Relocation Guaranty Amount” shall have the meaning set forth in Section 2.5(c).

(ggg) “SDG&E” shall have the meaning set forth in the opening paragraph of this Agreement.

**(hhh)** “Shut Down” or “Shutdown” means the permanent and irrevocable cessation of electricity generation operations at the Encina Power Station in accordance with all applicable laws and regulations, such that the Encina Power Station may no longer be used to generate electricity or reactive power on any basis (including, but not limited to, any reliability-must-run or other intermittent or emergency basis) or emit any hazardous materials in conjunction with the operation of any electrical generation facilities comprising the Encina Power Station. For purposes of this Agreement, “Shutdown” does not include any significant hazardous materials remediation activities on the Site.

**(iii)** “Shut Down Guaranty Amount” shall have the meaning set forth in Section 2.5(b).

**(jjj)** “Shutdown Obligation” means the obligation of NRG to Shut Down the Encina Power Station set forth in Section 3.1(a)(ii).

**(kkk)** “SONGS” shall have the meaning set forth in Recital F.

**(lll)** “Station” shall have the meaning set forth in Recital B.

**(mmm)** “Term” shall have the meaning set forth in Section 2.1.

**(nnn)** “Termination Notice” shall have the meaning set forth in Section 5.6(a).

**(ooo)** “Transfer” means sell, convey, assign, transfer, alienate or otherwise dispose of (directly or indirectly, by one or more transactions, and by operation of law or otherwise) (i) all or any material part of the ownership interest or rights in any portion of the Encina Site and/or this Agreement, or (ii) all or a Controlling portion of the member interests in NRG.

Notwithstanding the generality of the foregoing, however, “Transfer” shall exclude (i) an Excluded Transfer and (ii) any encumbrance executed in connection with a financing undertaken by NRG for CECP.

**(ppp)** “Transferee” means a Person to whom a Transfer is made.

**(qqq)** “Unit” or “Units” shall have the meaning set forth in Recital B.

## ARTICLE 2

### GENERAL TERMS

#### 2.1 Term of Agreement

The term of this Agreement (the “Term”) shall commence on the Effective Date (as defined in Section 2.3(b)) and shall remain in effect until the Parties have fulfilled all of their obligations under this Agreement, unless terminated earlier in writing in accordance with the terms and conditions of this Agreement.

## 2.2 Covenants Running with the Land

(a) **Recordation of Memorandum of Agreement.** The City and NRG agree to execute, acknowledge, and cause a memorandum of this Agreement substantially in the form attached to this Agreement as Exhibit H (the “Memorandum of Agreement”) to be recorded in the Official Records as soon as possible following the Effective Date in accordance with California Civil Code Section 1468.

(b) **Binding on Successors.** Upon recordation of the Memorandum of Agreement as provided in Section 2.2(a) above, this Agreement shall constitute covenants running with the Encina Site binding on all successors and assigns of NRG; provided, however, this Agreement, including the covenants on the part of NRG, shall not be binding on the Existing Secured Loan Parties or any of their successors or assigns.

(c) **Termination of Agreement.** Upon any termination of this Agreement, the City shall, at NRG’s written request, execute a notice of termination of the Agreement to be recorded in the Official Records, and this obligation of the City shall survive any such termination of this Agreement.

## 2.3 Agreement Approvals and Effective Date

(a) **NRG Approval.** NRG has obtained all required approvals for it to enter into this Agreement.

(b) **City Approval.** Once NRG has signed and delivered this Agreement to the City, the City shall timely submit this Agreement to the City Council for approval. Notwithstanding anything in this Agreement to the contrary, NRG understands and agrees that no officer or employee of the City has authority to bind the City to this Agreement unless and until the City Council shall have duly adopted a resolution in its sole and absolute discretion approving this Agreement. Therefore, any obligations of the Parties under this Agreement are contingent upon such approval, and this Agreement shall not be effective unless and until such approvals are obtained in accordance with the City’s applicable ordinances and codes. If a City Council resolution approving this Agreement becomes effective, then the effective date of this Agreement (the “Effective Date”) shall be the same date that such resolution becomes effective. Notwithstanding the foregoing, if a resolution approving this Agreement does not become effective by January 31, 2014, then this Agreement shall terminate and shall be of no force and effect unless the City acting through the City Attorney, and NRG, in their respective sole discretion, agree in writing to extend such date and such a resolution is duly enacted and becomes effective on or before such extended date.

(c) **SDG&E Approval.** SDG&E may be required to obtain certain regulatory approvals in connection with its obligations under Article 5 of this Agreement, including from the California Public Utilities Commission. To the extent such approvals are required, SDG&E will use reasonable efforts to obtain all such required approvals as soon as commercially practicable. The Parties agree that SDG&E’s obligations under this Agreement are contingent on such approvals, if any.

## 2.4 Improvements

(a) **Easements.** The City will provide a project description to NRG regarding easements for the Agua Hedionda Lift Station and the Vista-Carlsbad Interceptor Sewer Pipeline that coordinates with the Poseidon easement. NRG shall submit an application to the Commission within 60 days after receipt of project description and NRG will execute easements within 10 days of Commission approval.

(b) **PDP Land Transfers.** Within 90 days of the Effective Date, NRG agrees to grant Irrevocable Offers of Dedications (“IODs”) for the Hubbs Site Parcel, Bluff Area Parcel, South Power Plant Parcel, and Fishing Beach Parcel, as described in Planning Commission Resolution 6632, subject to reasonable restrictions and reservations necessary to ensure public safety and the continuity of power plant operations.

## 2.5 Guaranty

(a) **Independent Guaranty.** NRG agrees to deliver to the City a Guaranty from NRG Energy, Inc. in the form of Exhibit R and in the amount of five million dollars (\$5,000,000) (the “Independent Guaranty Amount”) within ten (10) business days from the Effective Date. The City shall release this amount once all obligations under this Agreement have been satisfied to the City’s satisfaction; provided, however, that if the Commission does not issue a final decision approving the Amendment and NRG notifies the City in writing that it is ending further development of the CECP, and provided further that NRG does not have any outstanding liabilities or obligations to the City under this Agreement, the City’s consent to such request to reduce this amount will not be unreasonably withheld.

(b) **Shut Down Obligation.** Within ten (10) business days after the Final Shut Down Date, NRG will increase the amount of the Guaranty by twenty million dollars (\$20,000,000) (the “Shut Down Guaranty Amount”), bringing the total amount of the Guaranty to twenty five million dollars (\$25,000,000). Upon NRG’s request, the City shall release the Shut Down Guaranty Amount following NRG’s satisfaction of all obligations under Section 6.1. Following NRG’s commencement of demolition and removal of above ground structures, and provided that NRG does not have any outstanding liabilities or obligations to the City under this Agreement at such time, NRG may request, and the City will reasonably consider, a proportionate reduction in the Shut Down Guaranty Amount upon the completion of certain key milestones, with such milestones and reductions to be established by NRG and the City at such time.

(c) **Relocation of North Coast Service Center.** Within ten (10) business days after the EPC Contract Notice to Proceed is issued, NRG will increase the amount of the Guaranty by an additional amount of twenty two million five hundred thousand (\$22,500,000) (the “Relocation Guaranty Amount”) for a total Guaranty amount of forty seven million and five hundred thousand dollars (\$47,500,000). If the credit rating for Carlsbad Energy Center is equal to or exceeds NRG Energy, Inc.’s credit rating as of the Effective Date, with the consent of the City, which shall not be unreasonably withheld, NRG may elect to substitute a Guaranty from Carlsbad Energy Center LLC for the Relocation Guaranty Amount. Upon NRG’s request, the City shall release the Relocation Guaranty Amount following NRG’s satisfaction of all obligations under Article 5. At NRG’s request, the City will reduce the Relocation Guaranty

Amount in proportion to NRG's payments made in accordance with Article 5; provided, that if NRG makes the ten million dollar (\$10,000,000) payment under Section 5.6(b) following issuance of the Termination Notice, the City shall release the entire Relocation Guaranty Amount.

### ARTICLE 3

#### POWER STATION SHUTDOWN PROCESS

##### 3.1 Agreement to Permanently Shut Down the Encina Power Station

###### (a) Shutdown Obligation.

(i) Within thirty (30) days of the Effective Date, NRG shall initiate measures to Shut Down Units 1-5 of the Encina Power Station. Such measures shall include, but not be limited to, amending the compliance plan for the Encina Power Station in connection with the State Water Resource Control Board's regulation addressing the use of once-through cooling by coastal power plants.

(ii) Subject to the Electric Reliability Removal Conditions and provided that (x) the California Public Utilities Commission has issued a final decision approving a power purchase agreement for CECP and (y) the Commission has issued a final decision approving the Amendment, NRG agrees to Shut Down the Encina Power Station no later than the Final Shutdown Date (the "Shutdown Obligation"). Notwithstanding the foregoing, if NRG issues a final notice to proceed with construction of CECP without having received California Public Utilities Commission approval, such condition shall be deemed satisfied.

(iii) Subject to the provisions of Section 3.3, NRG will diligently apply for and exercise its best efforts to obtain any regulatory approvals and permits needed to Shut Down Units 1-5 and to ensure that the Electric Reliability Removal Conditions are satisfied as soon as reasonably possible. NRG will not, directly or indirectly, request that any regulatory agency with jurisdiction over the Shut Down of the Encina Power Station deny or delay the approvals needed for the Shut Down. Further, NRG will take no action which is cause for the regulatory agency to deny or delay any approvals or other matters needed to satisfy the Electric Reliability Removal Conditions.

(iv) The Electric Reliability Removal Conditions are solely for the benefit of NRG. If some, but not all, of the Electric Reliability Removal Conditions are not satisfied for reasons other than an Event of Default by NRG or NRG's failure to timely obtain a needed approval for the Shut Down, then NRG, in its sole and absolute discretion, may upon not less than ten (10) days' written notice to the City describing in reasonable detail the unsatisfied condition(s) either: (x) suspend performance of its obligation to Shut Down the applicable Unit or the Encina Power Station only until such condition is satisfied, or (y) waive the satisfaction of such conditions as NRG may set forth in its sole and absolute discretion in a written notice to the City.

(v) Notwithstanding anything in this Agreement to the contrary, if the United States Department of Energy ("DOE"), ISO or other entity having jurisdiction over NRG

or the Encina Power Station orders or decrees it necessary for any Unit or Units to continue to operate past the Final Shutdown Date, then NRG shall be permitted to operate the applicable Unit or Units in accordance with such order or decree. Nothing in this subsection (v) shall relieve either Party from its support obligations under Section 3.4 or prevent either Party from challenging the effectiveness or legality of such order, provided, however, each Party shall provide the other Party copies of any such order and any legal challenges to such order. In the event NRG receives an order under this Section 3.1(a)(v), NRG and City shall comply with Section 3.4 until such time as the Unit or Units is/are released from such order.

(vi) Notwithstanding any provision in this Agreement to the contrary, in the event that CECP becomes commercially operable and the Encina Power Station continues to operate, NRG will pay the City (on a monthly basis), a liquidated damages payment equal to \$1/kW-mo. multiplied by the greater of (a) the generating capacity of the Unit or Units (in MW) remaining online past the Final Shutdown Date or (b) 300 MW. If the Shutdown occurs during a portion of a calendar month, then the monthly payment shall be pro-rated based on the number of days during which the Unit or Units were operational and the number of days in that calendar month. Such liquidated damages shall continue until the Shutdown of the Encina Power Station.

(b) **Accelerated Shutdown.** Nothing in this Agreement shall prohibit NRG from an accelerated Shutdown of a Unit or Units, whereby the Shutdown would occur in advance of the Final Shutdown Date.

(c) **Post-Shutdown Activities.** Within ninety (90) days of the Shutdown of the Encina Power Station, NRG (i) shall ensure that the Encina Power Station facilities and improvements are in a secure, inoperable condition and do not pose a physical or environmental safety hazard to members of the public or visitors of the Encina Site, consistent with Prudent Utility Practices and all applicable regulatory requirements and approvals; (ii) shall seek to terminate applicable permits and registrations that are no longer needed after the Shutdown of the Encina Power Station, (iii) shall request termination of the ISO Participating Generator Agreement and FERC market-based rate tariff as applicable to the Encina Power Station, and (iv) shall take appropriate actions in support of those requests, consistent with all applicable legal requirements.

### **3.2 Notices Regarding Electric Reliability Removal Conditions**

NRG shall promptly provide the City with copies of any and all notices, correspondence or other documents to or from the ISO, FERC or other agency relating to the Electric Reliability Removal Conditions; provided, however, that failure to provide copies of such notices shall not constitute an event of default under Section 7.1.

### **3.3 Limitation on Future Contracts; No Actions to Prolong Need for Encina Power Station**

With the exception of any contractual arrangements required to be entered into in connection with Electric Reliability Removal Conditions, NRG represents, warrants and

covenants that its obligation to Shut Down the Encina Power Station under this Agreement shall not be limited by any existing contracts it has or may in the future have to operate any or all of the Units on the Encina Site. NRG further agrees not to take any actions that may prolong the need for the Encina Power Station to continue operating for electric reliability or any other purposes inconsistent with the terms and conditions of this Agreement; the City nonetheless acknowledges that NRG has the right, in its sole and absolute discretion so long as consistent with the terms and conditions of this Agreement, to continue to operate, maintain, repair, replace and improve the Encina Power Station, in accordance with all applicable laws, regulations, and permits, until the Final Shutdown Date; provided, however, that NRG may be required to operate, maintain and repair the Encina Power Station beyond the Final Shutdown Date if the Electric Reliability Removal Conditions have not been met.

### **3.4 Mutual Support for Shutdown Efforts and NRG's Regulatory Compliance Pending Shutdown**

#### **(a) NRG's Support for Shutdown Efforts.**

(i) No later than fifteen (15) business days after approval of the Amendment by the Commission, NRG shall submit to the ISO a written notice of intent to retire the Encina Power Station as of Final Shutdown Date.

(ii) Within five (5) business days of the City's request, NRG shall deliver a letter (the "NRG Support Letter"), in the form attached as Exhibit D, to other governmental agencies or third parties.

**(b) City's Support of NRG's Regulatory Compliance Pending Shutdown.** As long as there is not an Event of Default by NRG under this Agreement, for period beginning with the Effective Date and ending on the Final Shutdown Date, the City agrees to support any and all regulatory approvals required for the continued operation of any of the Units before Shutdown, such support to consist of:

(i) within five (5) business days of NRG's request the City shall submit a letter from the City Attorney ("City Support Letter"), to the relevant governmental agency, in the form attached to this Agreement as Exhibit E, and

(ii) upon reasonable prior notice provided by NRG, the City shall participate in a reasonable number of meetings with the relevant governmental agencies, provided that the City's participation under this subsection 3.4(b)(ii) shall consist of verbally affirming City's support for the renewal or issuance of the relevant regulatory approval for the Encina Power Station, as stated in the City Support Letter.

In the event of a dispute between the Parties regarding the City's compliance with its obligations under subsections 3.4(b)(i)-(ii), and before NRG delivers any Notice of Default under Article 7 for noncompliance with these obligations, both Parties shall, upon request of either Party, meet and confer in good faith to attempt to resolve such dispute over a period of ten (10) business days. Further, NRG shall not deliver a Notice of Default under Article 7 for City's alleged non-compliance with its obligations under Sections 3.4(b)(i)-(ii) before the expiration of the ten (10) business day period following delivery to the City of written notice of such dispute.



Any other actions by the City in support of NRG’s regulatory compliance pending Shutdown in addition to the actions specified under this Section 3.4(b) shall be at the sole discretion of the City. If the City decides to rescind its support on or after the Final Shutdown Date, then the City may, in its sole discretion, take such action as it deems appropriate to oppose or condition the continued operation of the Encina Power Station or any portion of the Encina Power Station, including, but not limited to, opposing the extension or renewal of any operating permits and/or the imposition by governmental regulatory authorities of air and water quality mitigation measures or other operating requirements or limitations.

### **3.5 Fossil Fuel Deed Restriction**

NRG agrees to limit fossil fuel generation on the Encina Site to the generating capacity proposed in the current project description (e.g., six LMS100s) to be proposed in the Petition to Amend and any black start equipment potentially required by the ISO. NRG agrees that no future modifications to the CECP shall be undertaken that exceed the environmental envelope, profile or footprint of CECP as presented in the Amendment. Within ten (10) business days after the Shut Down, NRG shall record a restrictive covenant for the benefit of the City in the Official Records, in the form attached to this Agreement as Exhibit I, which provides that no portion of the Encina Site, with the exception of the CECP Site, may be used to generate electricity with equipment or machinery that is powered by the combustion of fossil fuels (except the following used on the Encina Site: ancillary equipment or machinery; back-up generators; or distributed energy sources approved by the City in a redevelopment plan), all as more particularly set forth in such exhibit (the “Fossil Fuel Restriction”). Except with respect to the Existing Secured Loan Parties as provided in Section 2.2 of this Agreement, the Fossil Fuel Restriction shall constitute covenants running with the land, binding on successors and assigns of NRG. In the event that an Existing Secured Loan Party, or its successor or assignee, takes ownership or possession of the Site and fails to assume NRG’s obligations and rights under this Agreement under Section 2.2 of this Agreement, and the Agreement terminates after the Fossil Fuel Restriction has been recorded, then following any such termination the City shall, at the written request of NRG or the Existing Secured Loan Party (or its successor or assignee), execute and cause a quitclaim deed to be recorded in the Official Records evidencing the termination of the Fossil Fuel Restriction; this obligation of the City shall survive any such termination of this Agreement. Notwithstanding the foregoing, and also as provided in Section 2.2 of this Agreement, the Parties understand and agree that, in the event of a refinancing of the Existing Secured Loan that provides for full repayment, NRG shall ensure – supported by written evidence reasonably satisfactory to the City – that this Agreement, including the Fossil Fuel Restriction, has priority over the deed of trust securing the refinanced loan and, accordingly, that the Fossil Fuel Restriction shall thereafter be binding on all successors and assigns of NRG without exception.

## **ARTICLE 4**

### **AMENDMENTS TO THE CECP PERMITS**

#### **4.1 City Support of CECP Permits Amendment Applications**

(a) Provided that NRG is not in default under any obligations to the City under the Agreement and in substantial compliance with the provisions of the Amendment agreed to by the

City, the City agrees not to oppose permits or authorities accommodating the continued operation of the Encina Power Station through the Final Shutdown Date.

(b) The City shall support the Amendment; provided that the City has a reasonable and meaningful opportunity to review and comment on the Amendment prior to filing with the Commission to confirm that the Amendment is consistent with Exhibit G and the Amendment is filed with the Commission consistent with the provisions of Exhibit G. The City will issue the City Support letter, a form of which is set forth in Exhibit E, in connection with the Amendment and to government agencies as requested by NRG. Upon reasonable prior notice provided by NRG, the City shall also participate in a reasonable number of meetings with the relevant governmental agencies, provided that the City's participation under this subsection shall consist of verbally affirming City's support for the Amendment.

(c) As per the request of the City, NRG will incorporate a provision in the Petition to Amend to be filed with the Commission in connection with the Amendment and in any power purchase agreement for CECP that CECP will not operate between the hours of midnight and 6 am, except to the extent reasonably required for reliability-related purposes or as otherwise required by the ISO Tariff. A decision by the Commission declining to apply this limitation to the CECP shall not absolve the City of its support obligation set forth in Section 4.1(b).

#### **4.2 Services for CECP**

(a) NRG agrees to work with the Carlsbad Fire Department in good faith to address those fire safety concerns that were previously raised in connection with the Application in the Amendment and any other reasonable fire safety concerns during the Amendment process.

(b) NRG agrees to reimburse the City for costs incurred in accordance with actual services performed by the City as contemplated by currently adopted fee and permit schedules, including applicable and appropriate impact fees, which are not expected to exceed \$1 MM.

(c) The City, CMWD and NRG will work together to establish related services to CECP, including recycled water supply, potable water supply, sanitary sewer service and fire response.

(d) The City will work with NRG to accommodate gas line service to CECP on the east side of the railroad tracks.

### **ARTICLE 5**

#### **SDG&E PROVISIONS**

##### **5.1 Relocation of the North Coast Service Center**

(a) SDG&E has advised the City that with the early retirement of SONGS and future closures of plants that use once-through cooling technology, the SDG&E area will be deficient of electricity generating capacity by 2018. SDG&E has requested that the City support the Amendment for the development of CECP as set forth in this Agreement

(b) In addition and subject to regulatory approvals and other conditions and agreements specified here, SDG&E has agreed to the relocation of SDG&E's North Coast Service Center, currently located at the corner of Cannon Road and Carlsbad Boulevard ("North Coast Service Center Site"), with the North Coast Service Center Site and certain other properties to be transferred to the City upon completion and occupancy of the newly relocated North Coast Service Center ("New Service Center").

(c) The New Service Center is to be built at NRG's sole cost, subject to the NSC Cost Cap (defined below), and to SDG&E's specifications and conditions. NRG will build the New Service Center, or will cause it to be built, in accordance with such specifications; provided, however, that the City, in its sole discretion, may elect to build the New Service Center, or to cause it to be built. The Parties acknowledge and agree that the cost of the relocation and the construction of the New Service Center, and the structure of the transaction, will be at no cost to the City or to SDG&E, and in a manner that is cost-neutral to SDG&E and its ratepayers.

(d) If the City and SDG&E do not proceed with the proposed relocation of the New Service Center, then NRG shall make the payment to the City in accordance with Section 5.6(b) below.

## **5.2 Identification of Property for the New Service Center Location**

(a) The City and SDG&E will work together to identify a mutually acceptable alternative location for the New Service Center to be located ("New Service Center Location"). Currently SDG&E and the City may review: (i) the land currently owned by SDG&E north of Cannon Road known as Parcel 11 (a legal description of Parcel 11 is attached hereto as Exhibit L, a map of Parcel 11 is attached hereto as Exhibit M) or (ii) another site mutually acceptable to both the City and SDG&E, as determined by each in its respective and sole discretion, provided that such site shall be made available at no cost to SDG&E. The City shall cooperate on community outreach and education on the New Service Center Location.

(b) In the event that SDG&E and the City cannot agree on a mutually acceptable New Service Center Location by March 1, 2016, then either the City or SDG&E may provide the Termination Notice as set forth in Section 5.6 below.

## **5.3 Feasibility Studies and Ongoing Coordination Regarding SDG&E Specifications and Conditions for the New Service Center**

(a) Within sixty (60) days after the Effective Date, SDG&E will meet with the City to identify and cause the environmental, land use, traffic and nodal analysis studies associated with studying the feasibility of the New Service Center ("Feasibility Studies") to be prepared. SDG&E shall pay for the Feasibility Studies subject to reimbursement for such studies as provided for below.

(b) As soon as reasonably possible, but by no later than March 31<sup>st</sup>, 2015, SDG&E will provide all required specifications and conditions for the New Service Center to NRG and the City. In connection with this SDG&E will provide a budget and cost statement representing its budget for the NSC Costs (defined below), including, to the extent available, (i) any available budget or cost estimates for the construction of the New Service Center; and (ii) a statement or

budget of all other costs for the relocation (including the Feasibility Studies) of the North Coast Service Center. Such budget will not exceed the NSC Cost Cap as provided in Section 5.4 and will be prepared such that the New Service Center can be reasonably and prudently constructed for an amount that will not exceed the NSC Cost Cap.

#### **5.4 New Service Center Relocation and Construction Cost Cap: NRG Funding and Conditions**

(a) NRG agrees to fund up to \$22.5 million (\$22,500,000) (the “NSC Cost Cap”) toward the “all-in” cost of the relocation of the North Coast Service Center according to SDG&E’s specifications and conditions, including the cost of construction, furniture, fixtures, equipment, IT infrastructure, architectural, engineering and consulting costs, all relocation costs, reasonable contingencies and the reimbursements for the Feasibility Studies under Section 5.3(a) (collectively, the “NSC Costs”).

(b) NRG’s obligation to fund the NSC Costs is conditioned upon NRG’s issuance of a final notice to proceed under its engineering, procurement and construction contract for CECP (the “EPC Contract Notice to Proceed”).

(c) Upon NRG’s issuance of the EPC Contract Notice to Proceed, NRG, SDG&E and the City shall meet within thirty (30) days of such final notice to review the projected NSC Costs in relation to the NSC Cost Cap and construction of the New Service Center.

(i) If the projected NSC Costs are less than or equal to the NSC Cost Cap, and a Termination Notice has not been issued under Section 5.6, NRG will build the New Service Center, or will cause it to be built, in accordance with SDG&E’s specifications and conditions; provided, however, that the City, in its sole discretion, may elect to build the New Service Center, or to cause it to be built. Subject to the NSC Cost Cap and the conditions and provisions stated herein, NRG agrees to fund the NSC Costs. Subject to the NSC Cost Cap, SDG&E will be reimbursed by NRG for costs associated with the Feasibility Studies and such reimbursement shall be made as agreed by NRG and SDG&E; provided, however, that any amounts reimbursed for Feasibility Studies will reduce the NSC Cost Cap on a dollar-for-dollar basis.

(ii) If the projected NSC Costs exceed the NSC Cost Cap, SDG&E, NRG and the City shall meet in good faith to consider potential modifications to this Article 5, including, without reservation, changes to the New Service Center specifications and conditions, the NSC Cost Cap, or agreements to fund the costs in excess of the NSC Cost Cap; provided, however, that any subsequent modifications will be strictly subject to execution of future binding definitive agreements and obtaining any required regulatory approvals.

#### **5.5 Conditions to SDG&E’s Obligation to Relocate the North Coast Service Center**

SDG&E's Relocation of the North Coast Service Center is subject to the following conditions:

- (a) Identification of the New Service Center Location in accordance with Section 5.2.
- (b) SDG&E obtaining any required regulatory approvals with the understanding that SDG&E will diligently and in good faith seek all regulatory approvals needed for the relocation of the North Coast Service Center as contemplated in this Agreement.
- (c) A Private Letter Ruling, if necessary, satisfactory to SDG&E, issued by the Internal Revenue Service confirming the tax treatment of the transactions outlined herein.
- (d) Construction of the New Service Center and turnover of the completed and operational New Service Center to SDG&E.

#### **5.6 Termination of Proposed Relocation of the North Coast Service Center; NRG Payment**

(a) Either the City or SDG&E may issue a notice terminating the obligations and agreement to relocate the North Coast Service Center (the "Termination Notice") under the following circumstances:

(i) if the City and SDG&E cannot agree upon a mutually acceptable New Service Center Location;

(ii) if construction of the New Service Center does not commence before the third (3rd) anniversary of the commercial operation date for CECP;

(iii) if the projected cost of relocation of the North Coast Service Center cannot be accomplished within the NSC Cost Cap, and SDG&E, NRG and the City are unable to agree upon subsequent modifications pursuant to Section 5.4(c)(ii); or

(iv) if SDG&E and the City jointly elect not to proceed with the relocation of the North Coast Service Center.

(b) Within 30 days of receipt of the Termination Notice, NRG shall pay the City of Carlsbad the sum of \$10 million (\$10,000,000); provided, however, that NRG will owe this amount only if CECP achieves commercial operation, in which case NRG shall make the payment within 30 days of commercial operation or the Termination Notice, whichever is later. Thus, if the New Service Center does not proceed and NRG does not fund the costs of the New Service Center, NRG shall be responsible for the payment as provided in this Section 5.6(b).

(c) Notwithstanding any other provision in this Agreement, the City's issuance of a Termination Notice will not affect NRG's remaining obligations under this Agreement, except to the extent expressly set forth in this Article 5.

#### **5.7 Transfer of SDG&E Property upon the Relocation of the North Coast Service Center**

Upon the completion and occupancy of the New Service Center, SDG&E shall transfer (i) the existing North Coast Services Center Site and buildings, (ii) Cannon Park (a legal description of Cannon Park is attached hereto as Exhibit N, a map of Cannon Park is attached hereto as Exhibit O), and (iii) the Agua Hedionda North Shore Bluff Parcel (APN 206-070-16) (a legal description of the Agua Hedionda North Shore Bluff Parcel is attached hereto as Exhibit P, a map of the Agua Hedionda North Shore Bluff Parcel is attached hereto as Exhibit Q), to the City in fee simple, free and clear of all financial liabilities and financial liens, simultaneously with SDG&E receiving title to the New Service Center. SDG&E will be responsible for remediating preexisting environmental conditions to applicable industrial standards pursuant to applicable law. The City and SDG&E will determine if such remediation shall be conducted before or after the transfer of title. If the site is to be remediated prior to the transfer, SDG&E shall commence the remediation within sixty (60) days after occupancy of the New Service Center, shall proceed in a diligent and timely manner to remediate the site and shall then transfer the properties under this Section 5.7 upon completion of the remediation. If the remediation is to occur following the transfer, the City will provide at least one-hundred twenty (120) days notice that SDG&E is to commence remediation of the site and the remediation shall proceed in a diligent and timely manner to completion.

### **5.8 Long-Term Plan for Substation Improvements and Expansions**

The Parties acknowledge that SDG&E has recently undertaken certain improvements and upgrades of the Encina Power Station substation. The City has asked SDG&E to consider relocating the Encina Power Station substation away from the Encina Site. SDG&E has agreed that as part of a long-term plan, and contingent upon execution and regulatory approval of the Proposed PPA, and subject to any other required regulatory approvals, it will work in good faith with the City to identify and ultimately permit a site, such that any future material improvements or expansions to the transmission system, beyond those needed for the CECP, be made at the alternate site in lieu of the existing Encina Power Station. SDG&E will update the City at least annually on the status of the long-term plan as it relates to the identification and permitting of such a site. The City acknowledges and agrees that the substation design at the alternate site and any associated transmission design will be based on SDG&E design standards and specifications. The alternate site will be subject to a feasibility review by SDG&E to ensure a constructible site. Any design enhancements requested by the City that are not part of SDG&E's customary design standard and specifications will be paid for by the City unless SDG&E and City otherwise agree.

## **ARTICLE 6**

### **REDEVELOPMENT PROCESS**

#### **6.1 Demolition and Removal of Above-Ground Structures**

(a) Provided that (i) the California Public Utilities Commission has issued a final decision approving a power purchase agreement for CECP and (ii) the Commission has issued a final decision approving the Amendment, NRG agrees to fund at its sole cost the physical demolition and removal of the above-ground structures of the Encina Power Station in accordance with Laws and the milestones set forth below. Notwithstanding the foregoing, if NRG issues a final notice to proceed with construction of CECP without having received

California Public Utilities Commission approval, such condition shall be deemed satisfied. Details regarding the demolition and removal of the Encina Power Station will be incorporated into the petition to amend (“Petition to Amend”) the Commission-issued license for CECP in which NRG seeks authority to construct CECP as reflected in Exhibit G, and following the issuance of a decision by the Commission approving such Petition to Amend, NRG will obtain all additional permits, if any, consistent with the schedule outlined below.

(b) Provided that (i) the California Public Utilities Commission has issued a final decision approving a power purchase agreement for CECP and (ii) the Commission has issued a final decision approving the Amendment, NRG shall commence physical demolition and removal of the above-ground structures of the Encina Power Station within one (1) year after Shut Down. NRG will also use good faith efforts to identify opportunities to begin and implement decommissioning prior to such date, including the removal of unused tanks. Notwithstanding the foregoing, if NRG issues a final notice to proceed with construction of CECP without having received California Public Utilities Commission approval, such condition shall be deemed satisfied.

(c) Provided that (i) the California Public Utilities Commission has issued a final decision approving a power purchase agreement for CECP and (ii) the Commission has issued a final decision approving the Amendment, NRG agrees to complete physical demolition and removal of the above-ground structures of the Encina Power Station within two (2) years of the commencement of demolition activities. Notwithstanding the foregoing, if NRG issues a final notice to proceed with construction of CECP without having received California Public Utilities Commission approval, such condition shall be deemed satisfied.

## **6.2 Redevelopment and Remediation**

(a) The City and NRG acknowledge that they have a mutual interest in the productive reuse of the Encina Redevelopment Site. The City staff and NRG will work in good faith to address the redevelopment of the Encina Redevelopment Site in the pending General Plan update.

(b) If the City takes fee title to the North Coast Service Center Site, as contemplated by Article 5 of this Agreement, the City and NRG work in good faith to consider a joint development strategy for the Encina Redevelopment Site and the North Coast Service Center Redevelopment Site, comprising basic principles to be identified in a subsequent binding agreement.

(c) NRG shall present an initial proposed strategy for redevelopment of the Encina Redevelopment Site to City of Carlsbad staff within one-hundred eighty (180) days of the Effective Date of this Agreement.

(d) With the exception of any remediation required under a Commission decision approving the Amendment or applicable law, remediation of the Encina Redevelopment Site shall be undertaken in conjunction with redevelopment of the Encina Redevelopment Site.

(e) The City and NRG shall work in good faith to determine a mutually acceptable and appropriate alignment for the Coastal Rail Trail; provided, however, that failure to reach

agreement on the alignment for the Coastal Rail Trail shall not impact performance of the obligations established in this Agreement.

## ARTICLE 7

### EVENTS OF DEFAULT

#### 7.1 Defaults by NRG

Each of the following shall constitute an “Event of Default” by NRG under this Agreement:

(a) NRG fails to perform any of its obligations set forth in this Agreement, which failure is not a separate Event of Default, and which continues without cure for a period of thirty (30) days following the date the City provides written notice specifying the nature of such failure; provided, however, if a longer period of time than thirty (30) days is reasonably necessary to effect such cure, then no Event of Default shall exist as long as NRG commences such cure within such thirty (30) day period and then proceeds diligently in the prosecution of such cure to completion.

(b) NRG fails to perform its obligation to permanently Shut Down the Encina Power Station by the Final Shutdown Date (except solely as expressly provided in Section 3.1(a)).

(c) NRG fails to (i) timely perform its obligations under Section 6.1, or (ii) fails to make payment under Section 5.6(b), provided such failure to pay is not cured within five business days.

(d) Any representation made by NRG to the City contained in this Agreement proves to be false or misleading in any material respect at the time that such representation was made.

(e) NRG files a petition for relief, or an order for relief is entered against NRG in any case under applicable bankruptcy or insolvency law that is now or later in effect, whether for liquidation or reorganization, and this Agreement has been rejected or deemed rejected by the debtor in such case.

(f) NRG attempts to Transfer this Agreement, any portion of the Encina Site, or both, to a Transferee without the prior written consent of the City.

(g) A Transferee, not including an Existing Secured Loan Party, fails to execute an Assumption of Obligations and does not comply with the Shutdown Obligation.

#### 7.2 Defaults by the City

The following shall constitute an Event of Default by the City under this Agreement:

(a) The City fails to perform any of its obligations set forth in this Agreement, which failure continues without cure for a period of thirty (30) days following the date NRG provides written notice specifying the nature of such failure; provided, however, if a longer period of time



than thirty (30) days is reasonably necessary to effect such cure, then no Event of Default shall exist as long as the City commences such cure within such thirty (30) day period and then proceeds diligently in the prosecution of such cure to completion.

(b) Any representation made by the City to NRG contained in this Agreement proves to be false or misleading in any material respect at the time that such representation was made.

## ARTICLE 8

### REMEDIES

#### 8.1 Remedies of the City

(a) **Specific Performance.**

(i) If an Event of Default by NRG occurs, then the City shall have the right to bring an action for specific performance or other equitable relief, or any other remedy authorized by applicable law.

(ii) In the event that a Transferee, with the exception of an Existing Secured Loan Party, fails to execute an Assumption of Obligations and does not comply with the Shutdown Obligation, the City shall have the right of specific performance against the Transferee to require it to comply with the Shutdown Obligation.

(b) **Suspension of Performance.** Notwithstanding anything to the contrary in this Agreement, if at any time an Event of Default by NRG occurs before the Shutdown, then the City shall, in addition to its other remedies under this Section 8.1, have the right to suspend performance of its obligations under this Agreement until such Event of Default is cured by NRG.

(c) **NRG's Consent to Specific Performance and Waiver of Rights.**

(i) In any action by the City for specific performance or injunctive relief under Article 3, Article 4, and Section 6.1 and Section 6.2 of this Agreement, NRG hereby consents to the City's right to seek specific performance of the Agreement. Further, NRG agrees that the City is fully entitled to seek a preliminary or permanent injunction to prevent further breach of the Agreement; to compel performance in aid of a decree of specific performance; or where the further breach may render specific performance meaningless or otherwise impair the City's ability to obtain performance of the Agreement. In connection with such requests for specific performance or injunctive relief, NRG acknowledges and agrees that:

a. Specific performance may be compelled to compel performance of the following provisions of this Agreement: Article 3, Article 4, and Article 6;

b. Monetary damages are not an adequate remedy at law for the breach of these provisions. Further and notwithstanding the liquidated damages provided for under Section 3.1(a)(vi) and the fact that this liquidated damage provision is

damages do not constitute an adequate remedy at law such as to deny entry of a decree of specific performance of the Agreement or either a preliminary or permanent injunction;

c. The Agreement is fair and reasonable to NRG and the failure to specifically enforce the Agreement would effectively deny the City the rights bargained for under this Agreement;

d. NRG's breach of the Agreement, as well as the continued or threatened breach of the Agreement, will cause great and irreparable injury to the City that can only be remedied by specific performance of the Agreement and issuance of a preliminary and/or permanent injunction;

e. Specific performance and issuance of a preliminary and/or permanent injunction cannot be denied based on the argument that there is a need for continuous supervision by the court or lack of mutuality or any other equitable defense or objection;

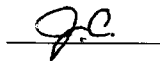
f. In connection with the request for a preliminary and/or permanent injunction which constitutes a mandatory injunction compelling NRG's performance under the Agreement, NRG acknowledges that this extraordinary form of relief is appropriate and proper under the unique circumstances of this Agreement and that a mandatory injunction should issue if the City demonstrates that it will incur irreparable injury if performance is not compelled. NRG further agrees that in the event of a mandatory injunction compelling performance that such injunction shall not be stayed by any appeal of the injunctive order;

g. NRG waives any other equitable defense to the entry of the injunction;

h. NRG waives any requirement that the city post a bond or any other security in connection with such injunctive relief; and

i. The remedies here shall be in addition to any and all other legal or equitable remedies that may be available to the City under this agreement.

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## 8.2 Remedies of NRG

(a) **Specific Performance.** If an Event of Default by the City occurs, then NRG shall have the right to bring an action for specific performance or other equitable relief, or any other remedy authorized by applicable law, subject to the limitation set forth in Section 8.3.

(b) **Suspension of Performance.** Notwithstanding anything to the contrary in this Agreement, if at any time an Event of Default by the City occurs before the Shutdown, then NRG shall, in addition to its other remedies under this Section 8.2, have the right to suspend

**(a) Specific Performance.** If an Event of Default by the City occurs, then NRG shall have the right to bring an action for specific performance or other equitable relief, or any other remedy authorized by applicable law, subject to the limitation set forth in Section 8.3.

**(b) Suspension of Performance.** Notwithstanding anything to the contrary in this Agreement, if at any time an Event of Default by the City occurs before the Shutdown, then NRG shall, in addition to its other remedies under this Section 8.2, have the right to suspend performance of its obligations under this Agreement until such Event of Default is cured by the City.

**(c) Consent to Specific Performance and Waiver of Rights by the City.** In any action by NRG for specific performance or injunctive relief under this Agreement, City hereby consents to NRG's right to seek specific performance of the Agreement. Further, City agrees that NRG is fully entitled to seek a preliminary or permanent injunction to prevent further breach of the Agreement; to compel performance in aid of a decree of specific performance; or where the further breach may render specific performance meaningless or otherwise impair NRG's ability to obtain performance of the Agreement. In connection with such requests for specific performance or injunctive relief, City acknowledges and agrees that:

(i) Specific performance may be compelled to compel performance of the provisions of this Agreement;

(ii) Monetary damages are not an adequate remedy at law for the breach of these provisions;

(iii) The Agreement is fair and reasonable to City and the failure to specifically enforce the Agreement would effectively deny NRG the rights bargained for under this Agreement;

(iv) City's breach of the Agreement, as well as the continued or threatened breach of the Agreement, will cause great and irreparable injury to NRG that can only be remedied by specific performance of the Agreement and issuance of a preliminary and/or permanent injunction;

(v) Specific performance and issuance of a preliminary and/or permanent injunction cannot be denied based on the argument that there is a need for continuous supervision by the court or lack of mutuality or any other equitable defense or objection;

(vi) In connection with the request for a preliminary and/or permanent injunction which constitutes a mandatory injunction compelling City's performance under the Agreement, City acknowledges that this extraordinary form of relief is appropriate and proper under the unique circumstances of this Agreement and that a mandatory injunction should issue if NRG demonstrates that it will incur irreparable injury if performance is not compelled. City further agrees that in the event of a mandatory injunction compelling performance that such injunction shall not be stayed by any appeal of the injunctive order;

(vii) City waives any other equitable defense to the entry of the injunction;

(viii) City waives any requirement that NRG post a bond or any other security in connection with such injunctive relief; and

(ix) The remedies here shall be in addition to any and all other legal or equitable remedies that maybe available to NRG under this agreement.

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### 8.3 Limitations of Liability

(a) **Direct Monetary Damages: No Consequential or Incidental Damages.** The City and NRG agree that they may be held liable for any monetary or liquidated damages arising directly out of a breach of the obligations of this Agreement or any Event of Default. Notwithstanding this, neither the City nor NRG shall be liable for, and the City and NRG each waive any claim for, any incidental or consequential damages, arising out of any Event of Default on the part of NRG or the City.

(b) **No Individual Liability.** NRG agrees that no member, commissioner, official, advisor, agent or employee of the City will be personally liable to NRG, or any successor in interest, due to an Event of Default by the City. The City agrees that no directors, officers, shareholders, members, employees, advisers or agents of NRG or of its Affiliates will be personally liable to the City, due to an Event of Default by NRG.

### 8.4 LIQUIDATED DAMAGES

(a) IN THE EVENT THAT CECP BECOMES COMMERCIALY OPERABLE AND THE ENCINA POWER STATION CONTINUES TO OPERATE, NRG HAS AGREED TO MAKE THE LIQUIDATED DAMAGE PAYMENT AS PROVIDED BY SECTION 3.1(A) (VI).

(b) NRG AND THE CITY HAVE AGREED TO THE DAMAGE PROVISION SET FORTH IN SECTION 3.1(A) (VI). NRG AND THE CITY ACKNOWLEDGE AND AGREE THAT THIS PROVISION APPLIES SOLELY TO CONTINUED OPERATION OF THE ENCINA POWER PLANT AS SET FORTH IN SECTION 3.1(A) (VI) AND FURTHER ACKNOWLEDGE THAT THIS PROVISION IS REASONABLE AT THE TIME OF THE AGREEMENT AS THAT TERM IS USED IN CALIFORNIA CIVIL CODE SECTION 1671. TO THE EXTENT NECESSARY TO SUPPORT THE STATEMENT THAT THIS PROVISION IS REASONABLE AT THE TIME OF THE AGREEMENT: (I) NRG ACKNOWLEDGES, AGREES AND UNDERSTANDS THAT THE CITY WOULD INCUR DAMAGES IN THE EVENT THAT ENCINA POWER STATION CONTINUED TO OPERATE AFTER THE DATE THAT CECP BECAME COMMERCIALY OPERABLE BUT THAT THOSE DAMAGES AND COMPENSATION TO THE CITY WILL BE EXTREMELY DIFFICULT AND IMPRACTICAL TO ASCERTAIN IN PART DUE TO THE FACT THAT THE CONTINUED OPERATION HAS AN IMPACT ON THE CITY AND ITS RESIDENTS AND THE QUANTIFICATION OF THOSE POTENTIAL DAMAGES CANNOT BE DONE AT THIS TIME; (II) NRG ADMITS THAT THIS IS A REASONABLE PROVISION GIVEN THE DIFFICULTY OF QUANTIFYING THESE DAMAGES AND THE

AMOUNT OF REASONABLE COMPENSATION TO THE CITY IN THE EVENT THAT THE ENCINA POWER PLANT CONTINUES IN OPERATION.

(c) THE LIQUIDATED DAMAGES SO IMPOSED ARE NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT ARE INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO THE CITY AS PROVIDED BY CALIFORNIA CIVIL CODE SECTIONS 1671(b). NRG AGREES, ACKNOWLEDGES AND REPRESENTS THAT THE LIQUIDATED DAMAGES SET FORTH HEREIN ARE REASONABLE AT THE TIME OF THIS AGREEMENT AND ARE NOT A PENALTY OR FORFEITURE AND NRG IS ESTOPPED FROM ARGUING THAT THE LIQUIDATED DAMAGE PROVISION IS UNENFORCEABLE OR CONSTITUTES A PENALTY.

(d) NOTWITHSTANDING THE IMPOSITION AND PAYMENT OF SUCH LIQUIDATED DAMAGES, NRG ACKNOWLEDGES AND AGREES THAT THE CITY MAINTAINS ITS RIGHTS TO SEEK SPECIFIC PERFORMANCE OF THE AGREEMENT AS PROVIDED FOR IN SECTION 8.1(C), ACKNOWLEDGES THAT THE LIQUIDATED DAMAGES DO NOT CONSTITUTE AN ADEQUATE REMEDY AT LAW AND AGREES THAT SUCH LIQUIDATED DAMAGES DO NOT IMPAIR OR PREVENT THE CITY FROM SEEKING SPECIFIC PERFORMANCE OF ARTICLE 3 (OR ANY OTHER PROVISION OF THIS AGREEMENT) OR INJUNCTIVE RELIEF IN CONNECTION WITH THE ENFORCEMENT OF THIS AGREEMENT.

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## ARTICLE 9

### INDEMNITY

#### 9.1 Indemnification of the City

Subject to the terms, conditions and limitations set forth below and to the extent permitted by law, NRG agrees to and shall Indemnify the Indemnified Parties from and against any and all Losses (including, without limitation, any judgments, settlements, consent decrees, stipulated judgments or other partial or complete terminations of any actions or proceedings that require any of the Indemnified Parties to take any action) imposed upon, incurred by or asserted against any of the Indemnified Parties in connection with the occurrence or existence of any of the following arising as a result of this Agreement: (i) any accident, injury to or death of any Person or loss or damage to property occurring on the Encina Site; (ii) any accident, injury to or death of any person or loss or damage to property occurring near or around the Encina Site and that shall be directly or indirectly caused by the negligent act or omission or willful misconduct of NRG or its agents, tenants or invitees; (iii) any development, construction, operation, use, occupation, management, marketing, leasing, condition, financing or refinancing, sale or Transfer of the Encina Site; (iv) non-compliance with applicable Laws, including, but not limited to, Laws relating to hazardous materials, disabled access (including, without limitation, the

American with Disabilities Act) and unreinforced masonry buildings; (v) any third-party contracts entered into by or on behalf of NRG with respect to the Encina Site; (vi) any civil rights actions or other legal actions or suits initiated by any occupant or invitee of the Encina Site; and (vii) any claim that NRG and the City are joint venturers. Notwithstanding the foregoing, NRG shall not be required to Indemnify the Indemnified Parties against Losses if such Losses are caused by the negligence or willful misconduct of the City or the Agency or their respective directors, officers, employees, agents, successors and assigns, including the negligence or willful misconduct of the Indemnified Parties (or failing to act) or in the City's regulatory capacity in the exercise of its police powers.

## 9.2 Terms and Conditions

The foregoing indemnity is subject to the following terms and conditions.

**(a) Immediate Obligation to Defend.** NRG specifically acknowledges that it has an immediate and independent obligation to defend the Indemnified Parties from any claim that is actually or potentially within the scope of the indemnity provisions of Section 9.1, even if such claim is or may be groundless, fraudulent or false. Such obligation arises at the time such claim is tendered to NRG by an Indemnified Party and continues at all times after such tender.

**(b) Notice.** The Indemnified Parties agree to give notice to NRG with respect to any suit or claim initiated against the Indemnified Parties. Such notice shall be given at the address for notices of NRG set forth in this Agreement, and in no event later than the earlier of (i) ten (10) days after valid service of process as to any suit or (ii) fifteen (15) days after receiving written notification of the filing of such suit or the assertion of such claim, which the City has reason to believe is likely to give rise to a claim for indemnity under this Article. If notice is not given to NRG in a timely manner as provided in this Article, then, except as provided below, NRG's liability shall terminate as to the matter for which such notice is not given, provided that failure to notify NRG shall not affect the rights of the Indemnified Parties or the obligations of NRG under this Article unless NRG is materially prejudiced by such failure, and then only to the extent of such prejudice.

**(c) Defense.** NRG shall, at its option but subject to the reasonable consent and approval of the Indemnified Parties, be entitled to control the defense, compromise or settlement of any such matter through counsel of NRG's own choice; provided, however, in all cases the Indemnified Parties shall be entitled to participate in such defense, compromise, or settlement at their respective expense. If NRG shall fail, however, in the Indemnified Party's reasonable judgment, within a reasonable time following notice from the Indemnified Parties alleging such failure, to take reasonable and appropriate action to defend, compromise or settle such suit or claim, the Indemnified Parties shall have the right promptly to hire counsel at NRG's sole expense to carry out such defense, compromise or settlement, which expense shall be immediately due and payable to the Indemnified Parties upon receipt by NRG of a properly detailed invoice; provided that NRG must consent in writing to any proposed compromise or settlement, which consent shall not be unreasonably withheld.

**(d) Insurance.** The indemnity contained in Section 9.1 shall not be limited by any insurance carried by NRG.

(e) **Survival.** The indemnity contained in this Section shall survive any termination of this Agreement as to matters or Losses that arise during the term of this Agreement.

(f) **No Limitation on Other Obligations.** The agreement to Indemnify set forth above is in addition to, and in no way shall be construed to limit or replace, any other obligations or liabilities that NRG may have to the City under any other permits, approvals or agreements with the City, at common law or otherwise.

(g) **Limitation.** NRG has no duty under Section 9.1 regarding any claim against any Indemnified Parties directly related to the existence, interpretation and/or enforcement of this Agreement.

## ARTICLE 10

### SETTLEMENT

#### 10.1 Negotiated Settlement

The discussions that have produced this Agreement have been conducted with the explicit understanding that they are privileged under California Evidence Code section 1152 and Federal Rule of Evidence 408, and that such discussions shall be without prejudice to the position of any party and may not be used in any manner in any proceeding or otherwise, except as may be necessary to enforce this Agreement or as otherwise required by law.

## ARTICLE 11

### RESERVED

#### 11.1 Reserved

## ARTICLE 12

### GENERAL

#### 12.1 Notices

Except as otherwise expressly provided in this Agreement, all notices, demands, approvals, consents and other formal communications between the Parties required or permitted under this Agreement shall be in writing and shall be deemed given and effective upon the date of receipt (i) if given by personal delivery on a business day (or the next business day if delivered personally on a day that is not a business day), (ii) if sent for next-business-day delivery (with all expenses prepaid) by a reliable overnight delivery service, with receipt of delivery, or (iii) if mailed by United States registered or certified mail, first class postage prepaid, to the Party at their respective addresses for notice designated below. For convenience of the Parties, copies of notices may also be given by facsimile to the facsimile number set forth below or such other number as may be provided from time to time by notice given in the manner required under this Agreement; however, neither Party may give official or binding notice by

facsimile. The effective time of a notice shall not be affected by the receipt, before receipt of the original, of a facsimile copy of the notice.

**(a)** In the case of a notice or communication to the City:

Celia A. Brewer, Esq.  
City Attorney for City of Carlsbad  
General Counsel for Carlsbad Municipal Water District  
1200 Carlsbad Village Drive  
Carlsbad, CA 92008  
Celia.Brewer@carlsbadca.gov

Stephen C. Hall, Esq.  
Troutman Sanders LLP  
805 SW Broadway, Suite 1560  
Portland, OR 97205  
stephen.hall@troutmansanders.com

Fletcher W. Paddison, Esq.  
Troutman Sanders LLP  
11682 El Camino Real  
Suite 400  
San Diego, CA 92130-2092  
fletcher.paddison@troutmansanders.com

**(b)** And in the case of a notice or communication sent to NRG or NRG:

Sean Beatty  
West Region General Counsel  
NRG Energy, Inc.  
P.O. Box 192  
Pittsburg, CA 94565  
sean.beatty@nrgenergy.com

**(c)** And in the case of a notice or communication sent to SDG&E:

Diana Day  
Assistant General Counsel  
SDG&E  
101 Ash Street,  
HQ11  
San Diego, CA 92101  
dday@semprautilities.com

Every notice given to a Party to this Agreement, under the terms of this Agreement, must state (or must be accompanied by a cover letter that states) substantially the following:



- (i) the Section of this Agreement under which the notice is given and the action or response required, if any;
- (ii) if applicable, the period of time within which the recipient of the notice must respond;
- (iii) if approval is being requested, shall be clearly marked “Request for Approval under the Settlement Agreement”;
- (iv) if a notice of a disapproval or an objection that is subject to a reasonableness standard, shall specify with particularity the reasons for the disapproval or objection; and
- (v) if applicable, that the failure to object to the notice within the stated time period will be deemed to be the equivalent of the recipient’s approval of or consent to the request for approval that is the subject matter of the notice.

If a request for approval states a period of time for approval that is less than the time period provided for in this Agreement for such approval, the time period stated in this Agreement shall be the controlling time period.

In no event shall a recipient’s approval of or consent to the subject matter of a notice be deemed to have been given by its failure to object to such notice if such notice (or the accompanying cover letter) does not comply with the requirements of this Section.

Any mailing address or facsimile number may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days before the effective date of the change.

## **12.2 Relationship of Parties: No Joint Venture or Partnership**

The subject of this Agreement is an agreement for the Shutdown of the Encina Power Station and for a private development, with neither Party acting as the agent of the other Party in any respect. None of the provisions in this Agreement is intended to or shall be construed or deemed to render the City or SDG&E a partner in NRG’s business, or joint venturer or member in any development or joint enterprise with NRG, including, but not limited to, the development or reuse of the Encina Site. NRG shall Indemnify the City against any Losses relating to any claim of any such joint venture as provided in Section 9.1. Nothing in this Agreement is intended to or shall be construed to create any principal-agent relationship between SDG&E, NRG and the City. Nothing in this Agreement is intended or shall be construed as to create any obligation between SDG&E and NRG to enter into the Proposed PPA.

## **12.3 Conflict of Interest**

No member, official or employee of the City may have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement that affects her or his personal interest or the interests of any corporation, partnership or association in which she or he is interested directly or indirectly.

#### 12.4 Time of Performance

(a) **Expiration.** All performance dates (including cure dates) expire at 5:00 p.m., Carlsbad, California time, on the performance or cure date, unless otherwise provided in this Agreement.

(b) **Weekends and Holidays.** A performance date that falls on a Saturday, Sunday or City holiday (or official City furlough day) is deemed extended to the next City working day.

(c) **Days for Performance.** All periods for performance specified in this Agreement in terms of days shall be calendar days, and not business days, unless otherwise expressly provided in this Agreement.

(d) **Time of the Essence.** Time is of the essence for each and every provision of this Agreement.

#### 12.5 Interpretation of Agreement

(a) **Words of Inclusion.** The use of the terms “including,” “such as” or words of similar import when following any general term, statement or matter shall not be construed to limit such term, statement or matter to the specific items or matters set forth, whether or not language of non-limitation is used with reference to such items or matters. Rather, such terms shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter.

(b) **No Presumption Against Drafter.** This Agreement has been negotiated at arm’s length and between Persons sophisticated and knowledgeable in the matters dealt with in this Agreement. In addition, experienced and knowledgeable legal counsel has represented each Party. Accordingly, this Agreement shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Agreement.

(c) **Costs and Expenses.** The Party on which any obligation is imposed in this Agreement shall be solely responsible for paying all costs and expenses incurred in the performance of such obligation, unless the provision imposing such obligation specifically provides to the contrary.

(d) **Agreement References.** A reference to any provision, term or matter “in this Agreement,” “herein” or “hereof,” or words of similar import shall be deemed to refer to any and all provisions of this Agreement reasonably related in the context of such reference, unless such reference refers solely to a specific numbered or lettered Article, Section or paragraph of this Agreement or any specific subdivision of this Agreement.

(e) **Approvals and Consents.** Unless this Agreement otherwise expressly provides, all approvals, consents or determinations to be made by or on behalf of the City under this Agreement shall be made by the City Attorney, or his or her designee. Unless otherwise provided in this Agreement, whenever approval, consent or satisfaction is required of a Party under this Agreement, it shall not be unreasonably withheld or delayed. Except with respect to matters that

a Party is expressly entitled to determine in its sole and absolute discretion, the reasons for disapproval shall be stated in reasonable detail in writing. Approval by NRG or the City to or of any act or request by the other shall not be deemed to waive or render unnecessary approval to or of any similar or subsequent acts or requests.

**(f) Recitals.** The Recitals in this Agreement are included for convenience of reference only and are not intended to create or imply covenants under this Agreement. In the event of any conflict or inconsistency between the Recitals and the terms and conditions of this Agreement, the terms and conditions of this Agreement shall control.

**(g) Captions.** The captions preceding the articles and Sections of this Agreement have been inserted for convenience of reference only. Such captions shall not define or limit the scope or intent of any provision of this Agreement.

**(h) Exhibits.** Whenever an "Exhibit" is referenced, it means an attachment to this Agreement unless otherwise specifically identified. All such Exhibits are incorporated in this Agreement by reference.

#### **12.6 Successors and Assigns**

This Agreement is binding upon and will inure to the benefit of the successors and assigns of the City and NRG, except as expressly provided in this Agreement.

#### **12.7 No Third Party Beneficiaries**

This Agreement is made and entered into for the sole protection and benefit of the Parties and their successors and assigns, except as expressly provided in this Agreement.

#### **12.8 Counterparts**

This Agreement may be executed in counterparts and by facsimile or e-mailed signatures, each of which is deemed to be an original, and all such counterparts shall constitute one and the same instrument.

#### **12.9 Entire Agreement**

This Agreement, including the attached Exhibits, constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes all negotiations or previous conditions mentioned in or incidental to this Agreement (including, but not limited to, any term sheets relating to any of the subject matters of this Agreement). No parol evidence of any prior draft of this Agreement or any other agreement shall be permitted to contradict or vary the terms of this Agreement.

#### **12.10 Governing Law**

The laws of the State of California shall govern the interpretation and enforcement of this Agreement. As part of the consideration for the City's entering into this Agreement, all Parties agree that all actions or proceedings arising directly or indirectly under this Agreement may, at the sole option of the City, be litigated in courts located within the State of California, in the City of Carlsbad, County of San Diego, and the Parties expressly consent to the jurisdiction of any such local, state or federal court, and consents that any service of process in such action or proceeding may be made by personal service upon the Parties wherever the Parties may then be located, or by certified or registered mail directed to the Parties at the address set forth in this Agreement for the delivery of notices.

#### **12.11 Extensions by the City**

Upon the request of NRG or SDG&E, the City Attorney or his or her designee may, by written instrument and in the City Attorney's sole and absolute discretion, extend the time for NRG's or SDG&E's performance of any term, covenant or condition of this Agreement or permit the curing of any default upon such terms and conditions as he or she determines appropriate, including but not limited to, the time within which NRG or SDG&E shall agree to such terms or conditions, provided, however, any such extension for more than thirty (30) days or the permissive curing of any particular material default will be subject to approval of the City Council by resolution and in no event will operate to release any of NRG's or SDG&E's obligations nor constitute a waiver of the City's rights regarding any other term, covenant or condition of this Agreement or any other default in, or breach by NRG or SDG&E of, this Agreement or otherwise affect compliance with the other dates for performance under this Agreement.

#### **12.12 Further Assurances**

The Parties agree to execute and acknowledge such other and further documents as may be necessary or reasonably required to effectuate the terms of this Agreement. The City Attorney is authorized to execute on behalf of the City any closing or similar documents and any contracts, agreements, memoranda or similar documents with State, regional or local entities or other Persons that are necessary or proper to achieve the purposes and objectives of this Agreement and do not materially increase the obligations of the City under this Agreement, if the City Attorney determines that the document is necessary or proper, consistent with the purposes of this Agreement and in the City's best interests. The City Attorney's signature of any such document shall conclusively evidence such a determination by him or her.

#### **12.13 Severability**

If any provision of this Agreement, or its application to any Person or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision shall not affect any other provision of this Agreement or the application of such provision to any other Person or circumstance, and the remaining portions of this Agreement shall continue in full force and effect, unless enforcement of this Agreement as so modified by and in response to such invalidation would be grossly inequitable under all of the circumstances, or would frustrate the fundamental purposes of this Agreement.

## **12.14 Amendments; Corrections of Technical Errors**

Neither this Agreement nor any of its terms may be terminated, amended or modified except by a written instrument executed by the Parties. Any material amendment of this Agreement shall be subject to approval of the City Council by resolution. If by reason of inadvertence, and contrary to the intention of the Parties, errors are made in this Agreement in the legal description or the reference to or within any Exhibit with respect to a legal description, in the boundaries of any parcel in any map or drawing that is an Exhibit, or in the typing of this Agreement or any of its Exhibits, the Parties by mutual agreement may correct such error by written memorandum executed by them without the necessity of amendment of this Agreement. The City Attorney may execute any such written memorandum on behalf of the City.

## **12.15 Representations, Warranties and Covenants**

(a) **NRG Representation, Warranties and Covenants.** NRG represents, warrants, and covenants to the City that as of the Effective Date, each of the following statements is accurate and complete:

(i) **Valid Existence; Good Standing.** NRG represents that both Cabrillo Power I LLC and Carlsbad Energy Center LLC are Delaware limited liability companies duly organized, validly existing and in good standing under the laws of the State of California. NRG represents that each entity has all requisite power and authority to own its property and conduct its business as presently conducted.

(ii) **Authority.** NRG represents that each of Cabrillo Power I LLC and Carlsbad Energy Center LLC has all requisite power and authority to execute and deliver this Agreement and to carry out and perform all of its duties and obligations under this Agreement. Without limiting the foregoing, NRG has obtained any and all required approvals. NRG will provide as a condition of the City's obligations under this Agreement (x) written resolutions from Cabrillo Power I LLC and Carlsbad Energy Center LLC authorizing the execution of and performance their obligations under this Agreement and (y) a written resolution from NRG Energy, Inc., in its role as Guarantor, authorizing NRG Energy, Inc. to guarantee the prompt and complete performance of NRG's obligations under this Agreement.

(iii) **No Limitation on Ability to Perform.** Neither limited liability company agreements, nor any other agreement or Law prohibits or materially limits or otherwise affects the right or power of NRG to enter into and perform all of the terms and covenants of this Agreement. Neither NRG nor any of its members are party to or bound by any contract, agreement, indenture, trust agreement, note, obligation or other instrument that prohibits or materially limits or otherwise affects the same. Except as expressly stated in this Agreement, no consent, authorization or approval of, or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other Person is required for the due execution, delivery and performance by NRG of this Agreement or any of the terms and covenants contained in this Agreement (or if required, any such consent, authorization or approval has been obtained, any such action has occurred, and any such notice has been given). There are no pending or threatened

suits or proceedings or undischarged judgments affecting NRG before any court, governmental agency, or arbitrator that, if determined adversely to NRG, might materially adversely affect the enforceability of this Agreement or the ability of NRG to perform its obligations under this Agreement.

(iv) **Valid Execution.** The execution and delivery of this Agreement (and the agreements contemplated in this Agreement) by NRG have been duly and validly authorized by all necessary action on the part of NRG. Upon its execution and delivery by all Parties and City Council approval under Section 2.3(b), this Agreement will be a legal, valid, binding and enforceable obligation of NRG.

(v) **Business Licenses.** To NRG's knowledge, NRG has obtained all licenses required to conduct business in City and it is not in default of any fees or taxes due to the City.

(vi) **Financial Matters.** (1) NRG is not in default under, and has not received notice asserting that it is in default under, any agreement for borrowed money, (2) NRG has not filed a petition for relief under any chapter of the U.S. Bankruptcy Code and has no present intention to petition for relief under any chapter of the U.S. Bankruptcy Code, (3) to NRG's knowledge, no involuntary petition naming NRG as debtor has been filed under any chapter of the U.S. Bankruptcy Code, and (4) NRG has the financial wherewithal to perform all of its financial and other obligations under this Agreement.

For purposes of the foregoing representations and warranties, whenever a statement is qualified by reference to NRG's knowledge or lack of knowledge, such reference is intended to refer to, and be limited to, matters within the actual knowledge of, or which should be discovered upon a reasonably diligent inquiry by, those officers of NRG who are most knowledgeable with NRG's business dealings with the Encina Site.

(b) **City Representations, Warranties, and Covenants.** The City represents, warrants, and covenants to NRG that as of the Effective Date, each of the following statements is accurate and complete:

(i) **Authority.** The City has all requisite power and authority to execute and deliver this Agreement and to carry out and perform all of its duties and obligations under this Agreement.

(ii) **Valid Execution.** The execution and delivery of this Agreement (and the agreements contemplated in this Agreement) by the City have been duly and validly authorized by all necessary action on the part of the City. Upon its execution and delivery by all Parties and City Council approval under Section 2.3(b), this Agreement will be a legal, valid, binding and enforceable obligation of the City. The City has provided (or upon written request will provide) to NRG a written resolution of the City authorizing the execution of and performance by the City of its obligations under this Agreement.

(iii) **Defaults.** The execution, delivery and performance of this Agreement do not and will not violate or result in a violation of, contravene or conflict with, or

constitute a default under (A) any agreement, document or instrument to which the City is a party or (B) any applicable law, statute, ordinance or regulation.

For purposes of the foregoing representations and warranties, whenever a statement is qualified by reference to the City's knowledge or lack of knowledge, such reference is intended to refer to, and be limited to, matters within the actual knowledge of, or which should be discovered upon a reasonably diligent inquiry by employees of the City Attorney who are most knowledgeable with this Agreement.

#### **12.16 Cooperation and Non-Interference**

In connection with this Agreement, the Parties shall reasonably cooperate with one another to achieve the objectives and purposes of this Agreement. In so doing, the Parties shall each refrain from doing anything that would render its performance under this Agreement impossible and each shall do everything that this Agreement contemplates that the Party shall do to accomplish the objectives and purposes of this Agreement. In all situations arising out of this Agreement, the Parties shall each attempt to avoid and minimize the damages resulting from the conduct of the other and shall take all reasonably necessary measures to achieve the provisions of this Agreement.

#### **12.17 Attorneys' Fees and Costs**

NRG shall pay to City on demand any and all Attorneys' Fees and Costs incurred or paid by City in enforcing NRG's obligations under this Agreement. City shall pay to NRG on demand any and all Attorneys' Fees and Costs incurred or paid by NRG in enforcing City's obligations under this Agreement.

#### **12.18 Transfer**

NRG acknowledges and agrees that during the term of the Agreement any Transfer of the Agreement, any portion of the Encina Site, or both, requires the prior written consent of the City, which will not be unreasonably withheld, conditioned, or delayed, provided that the Transferee (i) has the financial capability of performing NRG's obligations under this Agreement, as reasonably determined by the City in its sole discretion; provided, however, that a Transferee with a credit rating equal to or higher than NRG Energy, Inc. from a nationally-recognized credit rating agency shall be deemed to meet this condition, and (ii) enters into an Assumption of Obligations Agreement set forth in Exhibit F.

#### **12.19 Survival**

Notwithstanding anything to the contrary in this Agreement, the following provisions shall survive the expiration of the Term or any other termination of this Agreement: (i) any obligation that arises and was not satisfied before termination shall survive any termination of this Agreement except to the extent otherwise provided in this Agreement; (ii) the releases and indemnities set forth in Article 9 and Article 10 of this Agreement shall continue as set forth in those articles, and (iii) any provision expressly stated in this Agreement to survive in whole or in part following a termination of this Agreement.

**12.20 Exhibits**

The attached Exhibits A-T are made a part of this Agreement.



IN WITNESS WHEREOF, the City of Carlsbad, Carlsbad Municipal Water District, Cabrillo Power I LLC, Carlsbad Energy Center LLC, and San Diego Gas & Electric Company have caused this Agreement to be executed on the date first written above.

**CABRILLO POWER I LLC**

By: John Chilton  
Title: PRESIDENT

**CARLSBAD ENERGY CENTER LLC**

By: John Chilton  
Title: PRESIDENT

**CITY OF CARLSBAD  
AND  
CARLSBAD MUNICIPAL WATER  
DISTRICT**

By: Mark Parkland  
Title: Mayor Pro Tem

*Solely with respect to Article 5 and  
Article 12*

**SAN DIEGO GAS & ELECTRIC**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

IN WITNESS WHEREOF, the City of Carlsbad, Carlsbad Municipal Water District, Cabrillo Power I LLC, Carlsbad Energy Center LLC, and San Diego Gas & Electric Company have caused this Agreement to be executed on the date first written above.

**CABRILLO POWER I LLC**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**CARLSBAD ENERGY CENTER LLC**

By: \_\_\_\_\_

Title: \_\_\_\_\_

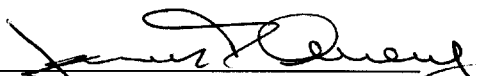
**CITY OF CARLSBAD  
AND  
CARLSBAD MUNICIPAL WATER  
DISTRICT**

By: \_\_\_\_\_

Title: \_\_\_\_\_

*Solely with respect to Article 5 and  
Article 12*

**SAN DIEGO GAS & ELECTRIC**

By:  \_\_\_\_\_

Title: SVP Power Supply

**EXHIBIT A**

**Legal Description of the Encina Site**

[INSERTED ON THE FOLLOWING PAGE]

**LEGAL DESCRIPTION**

(Exceptions Not Noted)

**The land referred to herein is situated in the State of California, County of San Diego, City of Carlsbad, and described as follows:**

That portion of Lot "H" of Rancho Agua Hedionda, in the City of Carlsbad, County of San Diego, State of California, according to Partition Map thereof No. 823, filed in the Office of the County Recorder of San Diego County, November 16, 1896; being Parcel No. 4 of that certain Certificate of Compliance recorded October 30, 2001 as file no. 2001-0789068 of Official Records, and more particularly described as:

Commencing at the intersection of the easterly line of the 100.00 foot wide right-of-way of the Atchison Topeka and Santa Fe Railroad with the northerly line of Canon Road (60.00 feet wide); thence long said easterly line north 22°30'13" west, 1564.78 feet to the TRUE POINT OF BEGINNING; thence continuing along said easterly line north 22°30'13" west, 1990.35 feet to the beginning of a non-tangent curve concave to the northwest having a radius of 1005.37 feet, a radial to said beginning bears south 85°54'14" east; thence northeasterly 36.76 feet along said curve through a central angle of 02°05'42"; thence non-tangent to said curve north 22°30'13" west, 302.87 feet; thence leaving said easterly line north 61°25'37" east, 14.19 feet; thence north 30°30'37" east, 34.90 feet; thence south 40°47'43" east, 63.50 feet; thence south 69°10'23" east, 38.00 feet; thence north 79°19'37" east, 285.00 feet; thence north 88°07'37" east, 333.14 feet; thence north 81°53'37" east, 13.68 feet to the westerly right-of-way line of California State Highway XI-SD-2B (I-5); thence along said right-of-way line south 17°57'05" east, 204.93 feet; thence south 12°34'11" east, 424.72 feet; thence south 22°07'51" east, 239.68 feet; thence south 22°30'37" east, 1210.91 feet; thence leaving said right-of-way line south 67°37'25" west, 492.66 feet; thence south 62°25'13" west, 126.26 feet to the TRUE POINT OF BEGINNING,

Together with that portion of said Lot H described as follows:

Commencing at the northeasterly corner of Record of Survey No. 14621, in the City of Carlsbad, County of San Diego, State of California, recorded in the Office of the County Recorder of San Diego County, August 14, 1994 as file no. 1994-500086, said corner being on the westerly line of the right-of-way of the Atchison Topeka and Santa Fe Railroad; thence along said westerly line and easterly line of Record of Survey 14621 south 28°40'19" east, 656.70 feet to the most southerly corner of said Record of Survey No. 14621; thence continuing south 28°40'19" east, 275.00 feet to the TRUE POINT OF BEGINNING; thence leaving said westerly line south 56°25'30" west, 61.30 feet; thence south 04°59'18" west, 27.61 feet; thence south 39°37'42" east, 61.38 feet; thence south 77°21'22" east, 49.55 feet; thence south 26°45'53" east, 232.92 feet; thence south 17°52'19" east, 115.92 feet; thence south 02°16'37" east, 55.06 feet; thence south 24°00'58" west, 44.47 feet; thence south 40°45'14" west, 126.60 feet; thence south 29°41'50" west, 83.42 feet; thence south 27°27'35" west, 90.04 feet; thence south 35°18'30" west, 212.59 feet; thence south 19°22'01" east, 108.34 feet; thence south 30°56'56" east, 304.06 feet; thence south 14°30'21" west, 175.27 feet; thence south 00°09'57" east, 123.11 feet; thence south 26°53'37" east, 119.99 feet; thence south 34°46'51" west, 23.60 feet; thence north 61°27'21" west, 142.77 feet; thence north 22°47'32" west, 47.01 feet; thence south 67°12'28" west, 16.03 feet; thence south 22°47'32" east, 22.23 feet; thence south 58°37'31" west, 97.99 feet; thence south 41°35'28" west, 110.44 feet; thence north 74°44'52" west, 164.81 feet; thence north 05°57'51" west, 202.95 feet; thence north 30°14'20" west, 64.23 feet; thence north 64°31'22" west, 293.59 feet to the easterly line of the 100.00 foot wide Carlsbad Boulevard; thence along said easterly line of Carlsbad

Boulevard south 24°07'36" east, 913.18 feet to the beginning of a curve concave southwesterly having a radius of 4050.00 feet; thence southeasterly 348.89 feet along said curve through a central angle of 04°56'09"; thence south 19°11'27" east, 15.63 feet to the beginning of a curve concave northeasterly having a radius of 5216.55 feet; thence southeasterly 900.29 feet along said curve through a central angle of 09°53'18"; thence leaving said easterly line of Carlsbad Boulevard north 60°43'42" east, 103.71 feet; thence north 71°53'50" east, 49.05 feet; thence north 88°29'46" east, 149.63 feet; thence north 77°06'32" east, 80.00 feet; thence north 68°28'15" east, 121.97 feet; thence north 63°21'54" east, 220.51 feet; thence north 67°56'35" east, 167.57 feet; thence north 76°27'03" east, 60.33 feet; thence south 77°37'36" east, 172.85 feet; thence south 60°55'41" east, 66.30 feet; thence south 45°30'57" east, 47.42 feet; thence south 82°40'44" east, 84.31 feet; thence south 44°29'52" east, 52.55 feet to said westerly right-of-way line of said Atchison Topeka and Santa Fe Railroad; thence along said westerly line north 22°30'13" west, 2664.53 feet; thence north 28°40'19" west, 835.14 feet to the TRUE POINT OF BEGINNING.

The above described parcel of land contains 95.08 acres more or less.

Assessor's Parcel Numbers: 210-010-43, and 210-010-43 (with other property).

(End of Legal Description)

# EXHIBIT B

## Map of the Encina Site



# EXHIBIT C

## Area Map of the Encina Site



**EXHIBIT D**

**Form of NRG Support Letter**

**Re: Cabrillo Power I LLC's Support of the Shutdown of the Encina Power Station**

Dear \_\_\_\_\_:

In response to longstanding concerns and disputes related to the operation of the Encina Power Station, Cabrillo Power I LLC (NRG) and the City of Carlsbad (City) have entered into a Settlement Agreement dated as of January 14, 2014, to permanently shut down the Encina Power Station on the earlier of the commercial operation of the Carlsbad Energy Center or December 31, 2017, provided that the Encina Power Station is no longer needed for electric reliability as set forth in the Settlement Agreement.

NRG fully supports the shutdown of the Encina Power Station as soon as it is not needed for reliability. More particularly, NRG does not intend to operate the Encina Power Station after commercial operation of the Carlsbad Energy Center or December 31, 2017, whichever is earlier, and accordingly is committed to working with the California Independent System Operator and the City to achieve the permanent shutdown of the Encina Power Station by the earlier of those milestones.

Very truly yours,  
CABRILLO POWER I LLC

[signed by authorized officer or officers]



**EXHIBIT E**

**Form of City Support Letter**

**Re: City's Support of the Approvals Needed for Licensing and Operation of the Carlsbad Energy Center and Interim Operation of the Encina Power Station**

Dear \_\_\_\_\_:

Consistent with the terms of the Settlement Agreement dated as of January 14, 2014, among multiple parties, including Carlsbad Energy Center LLC, Cabrillo Power I LLC and the City of Carlsbad (City), I write this letter to indicate the support of the City for the issuance of the permit or license for the operation of the Carlsbad Energy Center.

City further supports renewal of any permits or licenses necessary for the interim operation of the Encina Power Station. Under the Settlement Agreement, Cabrillo Power I LLC has agreed to shut down the Encina Power Station on the earlier of commercial operation of the Carlsbad Energy Center or December 31, 2017, provided it is released from reliability requirements by the California Independent System Operator (ISO). Accordingly, the City supports the renewal of the permits for the Encina Power Station until the earlier of commercial operation of the Carlsbad Energy Center or December 31, 2017.

A representative of the City is authorized to meet in person with your agency to communicate the support referenced in this letter.

Very truly yours,

City Attorney  
City of Carlsbad

**EXHIBIT F**

**Form of Assumption of Obligations Agreement**

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:



*(Space above this line for Recorder's use only)*

**ASSUMPTION OF OBLIGATIONS AGREEMENT**

This Assumption of Obligations (this "Assumption") dated as of \_\_\_\_\_, 2014, is by **Cabrillo Power I LLC** and **Carlsbad Energy Center LLC** (collectively the "Assignor"), \_\_\_\_\_, a \_\_\_\_\_ (the "Assignee"), and the **City of Carlsbad**, a charter city located in San Diego County (the "City").

**Factual Background**

A. The Assignor owns real property located in the City, in the County of San Diego, California, bounded generally by Cannon Road to the south, Interstate 5 to the east, the Agua Hedionda Lagoon to the north, and Carlsbad Boulevard to the west (the "Site").

B. The Assignor and the City entered into that certain Settlement Agreement dated for reference purposes as of January 14, 2014 (the "Agreement"). Capitalized terms not defined in this Assumption have the meanings given them in the Agreement.

C. The Assignor wishes to convey to the Assignee its entire right, title and interest in and to that portion of the Site, as more particularly described in Exhibit A attached to the Agreement (the "Transferred Property") and its rights under the Agreement to the extent pertaining to the Transferred Property. In connection therewith, Assignee has agreed to assume [certain/all] of Assignor's unfulfilled and/or continuing obligations under the Agreement, all as set forth in this Assignment.

## Agreement

Therefore, the City, the Assignor and the Assignee agree as follows:

(1) Reaffirmation of Obligations. The Assignor reaffirms all of its obligations under the Agreement (to the extent such obligations remain unfulfilled as of the date this instrument is executed), and the Assignor acknowledges that to its knowledge, [except for \_\_\_\_\_] the City is presently not in default of any of its obligations under the Agreement. The City reaffirms all of its obligations under the Agreement (to the extent such obligations remain unfulfilled as of the date this instrument is executed), and the City acknowledges that to its knowledge, [except for \_\_\_\_\_] the Assignor is presently not in default of any of its obligations under the Agreement.

(2) Effective Date. Effective as of \_\_\_\_\_ (the “Effective Date”) Assignor assigns to Assignee all of its right, title and interest in and to the Agreement [to the extent pertaining to the Transferred Property].

(3) Assumption. The Assignee assumes and agrees to faithfully perform for the benefit of the City all obligations of the Assignor under, and to be bound by all of the provisions of, the Agreement that remain unfulfilled as of the Effective Date; provided, however, the Assignee shall not assume the following obligations:\_\_\_\_\_. Upon this Assumption becoming effective, the Assignor shall have no further obligations to the City, and the City shall have no further obligations to the Assignor, with respect to the obligations of the Assignor under the Agreement assumed by and the rights of the Owner under the Agreement assigned to the Assignee.

(4) Representations and Warranties of Assignor. The Assignor represents and warrants to the City as follows:

(A) No Event of Default on the part of Assignor, or to Assignor’s knowledge, no event or condition that, with notice or lapse of time or both, would constitute an Event of Default on the part of Assignor, exists under the Agreement.

(B) The execution, delivery, and performance by the Assignor of this Assignment (x) will not contravene any legal requirements applicable to the Assignor or the Transferred Property, and (y) will not conflict with, breach or contravene any other agreement binding upon the Assignor or the Transferred Property.

(5) Representations and Warranties of Assignee: The Assignee represents and warrants to the Agency and the City as follows:

(A) The Assignee has reviewed the Agreement and is familiar with its terms and provisions.

(B) The Assignee makes for itself all representations, agreements and warranties of the Assignor set forth in Section 12.15(a) of the Agreement, effective as of the date hereof [to the extent applicable to the Transferred Property], subject to the following modifications: \_\_\_\_\_.

(C) The Assignee has obtained all consents in connection with its assumption of the obligations provided in this Assumption and for its acquisition of the Transferred Property that may be required by any agreement to which it is a party. Other than the consents so obtained, no consent to the acquisition of the Transferred Property is required under any agreement to which Assignee is a party.

(D) The execution, delivery, and performance by the Assignee of this Assumption and any other documents required under this Assumption (x) will not contravene any legal requirements applicable to the Assignee, and (y) will not conflict with, breach or contravene any other agreement binding upon the Assignee.

(E) To the knowledge of Assignee, there are no actions, suits or proceedings at law or in equity or by or before any governmental authority now pending against the Assignee, or threatened against or affecting the Assignee, in which there is a reasonable possibility of an adverse determination and that are reasonably likely individually or in the aggregate, if adversely determined, have a material adverse effect on the ability of the Assignee to perform such obligations under the Agreement as are being assumed by the Assignee.

(6) Address for Notices. All notices to the Assignee shall be sent to the following addresses:

Attention: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Telephone: \_\_\_\_\_

(7) No Prejudice. This Agreement shall not prejudice any rights or remedies of the City under the Agreement.

(8) Integration. This Assumption contains the entire agreement of the parties with respect to the matters contemplated in this Assumption and supersedes all prior negotiations.

(9) Modification. This Assumption may be amended or modified only in a writing signed by the parties.

(10) Counterparts. This Assumption may be executed in any number of counterparts which together shall be deemed the same instrument.

(11) Unenforceability. If any provision of this Assumption shall be determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, then that portion shall be deemed severed and the remaining parts shall remain in full force as though the invalid, illegal, or unenforceable portion had not been a part of this Assumption.

(12) Governing Law. The parties agree that this Assumption shall be construed and interpreted in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the Assignor, the Assignee and the City have caused this Agreement to be duly executed.

ASSIGNOR: CABRILLO POWER I LLC AND  
CARLSBAD ENERGY CENTER LLC

By: \_\_\_\_\_

CITY: CITY OF CARLSBAD

By: \_\_\_\_\_

ASSIGNEE:

By: \_\_\_\_\_

## **EXHIBIT G**

### **Form of Amendment**

#### **Carlsbad Energy Center Project Amendment**

In accordance with Section 4.1(b) of the Agreement, this Exhibit G sets forth certain provisions of NRG's proposed Petition to Amend (defined below) and Amendment (defined below), which provisions are a material part of the City's consideration for entering into the Agreement; provided, however, that the Commission's failure to adopt the midnight to 6:00 a.m. operating limitation shall not absolve the City of its support obligation set forth in the Agreement. Unless otherwise defined in this Exhibit G, initially capitalized terms used in this Exhibit G shall have the meaning given them in Article I of the Agreement. In the event of any conflict or inconsistency between Exhibit G and the terms and conditions of the Agreement, the terms and conditions of the Agreement shall prevail.

Carlsbad Energy Center LLC ("NRG") intends to modify the Carlsbad Energy Center Project ("CECP") to replace the currently licensed combined-cycle configuration with a peaker configuration. To accomplish this modification, NRG will submit a Petition to Amend ("PTA") to the California Energy Commission ("Commission") requesting that the Commission amend its May 2012 Final Decision in Docket 07-AFC-06 in which it granted the Application for Certification of the CECP (the "Final Decision" and such Commission amendment, the "Amendment"). The CECP PTA will demonstrate the extraordinary circumstances that have arisen, including those associated with the premature closure of the San Onofre Nuclear Generating Station, and that necessitate changes to the Final Decision. The PTA will also include certain NRG obligations from the Agreement relating to the Final Shutdown, decommissioning, demolition, and removal of the Encina Power Station, which are set forth below.

#### **The Project Description for the CECP PTA will address the following:**

1. Site Preparation and Tank Farm Demolition. NRG will demolish the following existing facilities to enable construction of the amended CECP as well as creation of associated laydown areas:
  - a. Aboveground Fuel Oil Storage Tanks 4-7 located east of the railroad tracks and west of Interstate 5. The footprint of the amended CECP will occupy the current location of Tanks 4-7.
  - b. Aboveground Fuel Oil Storage Tanks 1 and 2 located west of the railroad tracks. The footprint of those tanks will be used for construction laydown.
  - c. Site grading including removal of internal berms within the tank farm basin and preparation of ingress/egress routes.
  
2. Construction of Supporting Facilities.
  - a. Industrial water supply interconnection from City supplied reclaim water source at Cannon Road, if available (preferred) or from Ocean Water Purification System (small desalination plant if needed).

- b. Ocean Water Purification System (if needed).
  - c. Natural gas line interconnection from Cannon Road (preferred, if feasible; interconnect with existing infrastructure, if not) and gas metering and compression systems.
  - d. Fire Prevention Systems and hydrants east of the railroad tracks; commission/test associated back up diesel power pump to support Fire Prevention Systems.
  - e. Water and Aqueous Ammonia Storage Tanks.
  - f. Administration Building/Control Room.
  - g. Operations and Maintenance Building.
  - h. Stormwater management systems.
  - i. Industrial waste discharge interconnections.
3. Construction of no more than six General Electric LMS100s.
- a. Construction of no more than six General Electric LMS100s and supporting equipment (transformers, air cooled condensers, lubricating systems, selective catalytic reduction (“SCR”) for emissions control, etc).
  - b. Construction of the LMS100s will be below grade to minimize the visual profile of the units, stacks, and associated equipment.
  - c. Construction of black start, diesel powered generation equipment (anticipated to be 1-2 MWs) to be located on east side of railroad tracks (if needed by the ISO).
  - d. Interconnect into the 138 and 230 kV switchyards located on west side of the railroad tracks and appurtenant to SDG&E utilities and structures supporting the transmission of electricity to and from the switchyards.
  - e. Interconnect with constructed reclaimed or CECP desalination water supplies and natural gas supply, including associated gas metering and gas compression equipment.
  - f. Conduct commissioning of units, including installation and testing of SCR and continuous emissions monitoring systems (“CEMS”) for the respective units.
  - g. Conduct commissioning of black start unit (if needed by the ISO).
4. Environmental Characteristics. Environmental characteristics will include the following:
- a. Reduced criteria air pollutants compared to the permitted CECP.
  - b. Reduced greenhouse gas emissions compared to the permitted CECP.
  - c. Elimination of the use of ocean water for plant use (unless the City is not able to provide reclaimed water).
  - d. Reduced noise levels compared to the permitted CECP.
  - e. No operation between midnight and 6:00 am, except to the extent reasonably required for reliability-related purposes or as otherwise required by the ISO Tariff.
  - f. Lower plant profile and visibility.

- g. Removal of all aboveground oil storage tanks (see 1 a and b).
  - h. Demolition and removal of the Encina Power Station in a time certain unless required by the ISO or other agency for system reliability (see 5 below).
  - i. Revised vegetation and screening plan developed in cooperation with the City
  - j. Resolution of City fire safety concerns.
  - k. Development of the Coastal Rail Trail in a manner agreed to with the City.
5. Final Shutdown Date, Shut Down, decommissioning, demolition and removal. The PTA and the Amendment will incorporate the following requirements from the Agreement relating to the Final Shutdown Date, Shut Down, decommissioning, demolition and removal of the Encina Power Station, all of which requirements are expressly subject to the terms and conditions of the Agreement:
- a. NRG will permanently Shut Down the Encina Power Station on the earlier of the commercial operation date of CECP or December 31, 2017 (i.e., the Final Shutdown Date).
  - b. Within ninety (90) days of the Shutdown of the Encina Power Station, NRG shall ensure that the Encina Power Station facilities and improvements are in a secure, inoperable condition and do not pose a physical or environmental safety hazard to members of the public or visitors of the Encina Site, consistent with Prudent Utility Practices and all applicable regulatory requirements and approvals.
  - c. NRG shall commence physical demolition and removal of the above-ground structures of the Encina Power Station within one (1) year after Shut Down.
  - d. NRG and its contractor(s) will use commercially reasonable efforts to sequence the work to complete demolition and removal in the most timely and efficient manner, taking into consideration any hourly fieldwork restrictions/constraints at the site. The demolition scope of work will include the following:
    - i. Demolition to existing grade of Encina Power Station power block building and stack, including removal of steam boilers and associated equipment and removal of the combustion turbine (e.g., the black start unit). Removal of buildings, structures, equipment, and remaining storage tanks at the Encina Power Station (i.e., administrative building, operations/maintenance/warehouse buildings, industrial wastewater management system, intake/discharge structures not otherwise assumed by Poseidon).
    - ii. The overall project objective is to decontaminate and demolish the Site in a safe, cost-effective and environmentally safe manner, and in compliance with all applicable laws.
    - iii. NRG's contractor will prepare an updated hazardous materials survey. NRG's contractor shall properly handle, manage or remove and dispose of



- all hazardous materials and wastes in accordance with all local, state and federal regulations.
- iv. NRG and its contractors will develop, implement and maintain a storm water pollution prevention and sediment and soil erosion control plan in accordance with all local, state and federal regulations.
  - v. Site restoration activities after demolition: grading/backfilling to match existing surrounding grade. Surrounding grade may include existing concrete/asphalt surfaces. Clean, suitable fill material reused from the site or from offsite will be utilized to support back filling operation.
  - vi. Site grading and drainage will match the current site contours. Existing stormwater management systems would be utilized west of the railroad tracks. Erosion controls shall be installed and maintained during demolition site activities.
- e. NRG agrees to complete physical demolition and removal of the above-ground structures of the Encina Power Station within two (2) years of the commencement of demolition activities.
  - f. NRG agrees to limit fossil fuel generation on the Encina Site to the generating capacity proposed in the current project description (e.g., six LMS100s) proposed in the Amendment and any black start equipment potentially required by the ISO.
  - g. NRG agrees that no future modifications to the CECP shall be undertaken that exceed the environmental envelope, profile or footprint of CECP as presented in the PTA and Amendment.

### **Anticipated Amendment Approval Schedule**

Subject to processing and approval by applicable regulatory agencies (e.g., CEC, California Public Utilities Commission, San Diego County Air Pollution Control District, U.S. Environmental Protection Agency, San Diego Regional Water Quality Control Board), the following is the anticipated permitting/approval schedule for the Amendment:

1. March 2014 - File CECP PTA with the Commission.
2. March 2014 – File Air Permit Applications with San Diego County Air Pollution Control District (“SDAPCD”).
3. June 2014 – Commission Site Informational Work Shop and Initial Data Requests.
4. October 2014 – SDAPCD Preliminary Determination of Compliance.
5. December 2014 – Commission Preliminary Staff Assessment and Workshop.
6. April 2015 – Commission Final Staff Assessment Report.
7. June 2015 – Commission Evidentiary Hearings
8. August 2015 – Commission Presiding Member’s Proposed Decision on CECP PTA.
9. September 2015 – Commission Decision on CECP PTA.

**EXHIBIT H**

**Form of Memorandum of Agreement**

RECORDING REQUESTED BY AND)  
WHEN RECORDED MAIL TO: )  
)  
City Clerk )  
CITY OF CARLSBAD )  
1200 Carlsbad Village Drive )  
Carlsbad, California 92008-1989 )

Space above this line for Recorder's use

Assessor's Parcel Number [CLICK HERE](#)

Project Number and Name [CLICK HERE](#)

**NOTICE OF RESTRICTION ON SALE OR CONVEYANCE OF REAL PROPERTY**

The real property located in the City of Carlsbad, County of San Diego, State of California which is described on Exhibit "A" attached hereto (the "Property").

Pursuant to Government Code Section 27281.5(a), Notice is hereby given that the owner of the Property as set forth below is hereby restricted from conveying, transferring or granting the Property to any other party, except as provided under the Settlement Agreement (described below) and this restriction is imposed by the City of Carlsbad on the Property.

This Notice shall be recorded in the County Recorder's Office for the County of San Diego which recordation is permitted pursuant to the provisions of Government Code Section 27281.5(a). Upon recordation, this Notice provides constructive notice of the restriction on the conveyance or transfer of the Property.

This Notice is provided pursuant to that certain Settlement Agreement, Dated as of January 14, 2014, Between and Among the City of Carlsbad, Carlsbad Municipal Water District, Cabrillo Power I LLC, Carlsbad Energy Center LLC and San Diego Gas & Electric Company, approved by the City of Carlsbad pursuant to City Of Carlsbad Resolution No. 2014-010, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA, APPROVING AN AGREEMENT BETWEEN AND AMONG THE CITY OF CARLSBAD (CITY)

AND THE CARLSBAD MUNICIPAL WATER DISTRICT (CMWD), NRG ENERGY, INC. (NRG), AND SAN DIEGO GAS & ELECTRIC (SDG&E), ADDRESSING CITY AND CMWD SUPPORT FOR A CHANGE IN THE PROPOSED TECHNOLOGY OF THE APPROVED CARLSBAD ENERGY CENTER PROJECT (CECP) PLANT AND THE SUBMITTAL OF A PETITION TO AMEND (PTA) APPLICATION TO THE CALIFORNIA ENERGY COMMISSION (CEC) FOR APPROVAL OF THIS TECHNOLOGY CHANGE, CONDITIONED UPON THE DECOMMISSIONING, DEMOLITION, REMOVAL AND REMEDIATION OF THE CURRENT ENCINA POWER STATION (EPS) SITE, AS WELL AS OTHER CHANGES IN CECP PLANT DESIGN, ENERGY INFRASTRUCTURE AND PROPERTY CONSIDERATIONS BENEFICIAL TO THE RESIDENTS OF CARLSBAD, approved by the City of Carlsbad on January 14, 2014. A copy is on file at the City of Carlsbad Planning Division.

OWNER:

\_\_\_\_\_  
Owner's Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print name and title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print name and title

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

CITY OF CARLSBAD

\_\_\_\_\_  
DON NEU,  
City Planner

\_\_\_\_\_  
Date

\_\_\_\_\_  
CELIA A. BREWER, City Attorney  
City Attorney

By: \_\_\_\_\_  
Assistant City Attorney

\_\_\_\_\_  
Date

*(Proper notarial acknowledgment of execution by Contractor must be attached.)*

*(Chairman, president or vice-president and secretary, assistant secretary, CFO or assistant treasurer must sign for corporations. Otherwise, the corporation must attach a resolution certified by the secretary or assistant secretary under corporate seal empowering the officer(s) signing to bind the corporation.)*

*(If signed by an individual partner, the partnership must attach a statement of partnership authorizing the partner to execute this instrument).*



**EXHIBIT I**

**Form of Fossil Fuel Deed Restriction**

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

---

*(Space above this line for Recorder's use only)*

**DECLARATION OF ENVIRONMENTAL RESTRICTION REGARDING USE**

This Declaration Of Environmental Restriction Regarding Use (this "Declaration") is made as of \_\_\_\_\_, \_\_\_\_\_, by **NRG Cabrillo Power I LLC** and **Carlsbad Energy Center LLC** (collectively "NRG"), in favor of the **City of Carlsbad**, a charter city, located in San Diego County (the "City"). NRG and the City are sometimes collectively referred to below as the "Parties."

**Recitals**

THIS DECLARATION is made with reference to the following facts and circumstances:

- A. NRG owns real property located in the City, in the County of San Diego, California, bounded generally by Cannon Road to the south, Interstate 5 to the east, the Agua Hedionda Lagoon to the north, and Carlsbad Boulevard to the west (the "Site"). A legal description of the Site is attached to this Declaration as Exhibit A. If there is any conflict or inconsistency between the general description of the Site and the attached legal description, the attached legal description shall control.
- B. At the Site, NRG previously operated facilities known as Units 1-5 (individually a "Unit" and collectively the "Units," the "Encina Power Station") for the purpose of generating and selling electric power.
- C. On or about January 14, 2014, NRG and the City entered into a Settlement Agreement (the "Settlement Agreement"), under which the Parties agreed to resolve certain outstanding disputes. All capitalized terms in this Declaration not defined in this Declaration shall have the meaning given to them in the Settlement Agreement.

- D. Before the date of this Declaration, NRG permanently shut down the operation of the Encina Power Station in accordance with requirements and procedures described in the Settlement Agreement. The final shutdown date of the Encina Power Station was \_\_\_\_\_, 20\_\_.
- E. In accordance with NRG's obligations under into the Settlement Agreement, NRG now wishes to record this Declaration describing certain permanent restrictions on the use of the Site following the shutdown of the Plant. The Parties intend that this Declaration have priority over any mortgage, deed of trust or similar instrument now or later encumbering any or all of the Site.

### **Agreement**

ACCORDINGLY, NRG, on behalf of itself and its successors and assigns, its and their licensees and invitees, and all persons claiming by and through them, covenants to and agrees with the City, for the benefit of the City and the City's Property, as follows:

1. **Restriction Regarding Use of Fossil Fuels.** From and after the date this Declaration is recorded in the Official Records of San Diego County, California, and except solely for the limited purposes provided in section 2 below, the Site shall not be used for the generation of electricity by any plant, facility, machinery or other equipment that is powered by the combustion of Fossil Fuels. "**Fossil Fuels**" means petroleum or any petroleum product, coal or any coal-based product, natural gas, or other hydrocarbon-based fuel. The Parties intend that this restriction run with the Site in perpetuity. The purpose of this restriction is to protect human health and safety and the environment.
2. **Exceptions.** The restriction set forth in section 1 above shall not apply to: (i) the operation of the Carlsbad Energy Center Project ("CECP") in the configuration described in Exhibit G to the Settlement Agreement which is located on the Site; provided that changes to the configuration of the CECP that do not exceed the environmental envelope, profile or footprint of CECP as reflected in Exhibit G are permitted; (ii) ancillary equipment or machinery; (iii) back-up generators; (iv) distributed energy sources approved by the City in a redevelopment plan; or (v) any Existing Secured Loan Party, as set forth in Section 2.2 of the Settlement Agreement.
3. **Enforcement.** The City may, in its sole discretion, rely on this Declaration to enforce any of its covenants or restrictions. The City, but not the general public, shall have all rights and remedies available at law or in equity to enforce the covenants and restrictions set forth in this Declaration. All rights and remedies available to the City under this Declaration or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other available right or remedy. In the event of any breach of the covenants or restrictions by NRG under this Declaration, the City shall be entitled to recover all attorneys' fees and costs in connection with City's enforcement activities and actions.

4. Notice and Cure Rights. Before taking enforcement actions under section 3 above, the City shall provide written notice to NRG of any actual or alleged violation of the covenants or restrictions set forth in this Declaration. Such notices shall be given to NRG at the address last furnished by NRG in writing to the City. NRG shall have a period of ten (10) days after receipt of such notice to cure such violation; provided, however, if the violation is not capable of cure within such ten (10) day period, NRG shall have such additional time as shall be reasonably required to complete a cure so long as NRG promptly undertakes action to commence the cure within the ten (10) day period and then diligently prosecutes the same to completion. The time in which NRG may cure is referred to in this Declaration as the “Cure Period,” and the City shall not exercise any legal or equitable remedies during the Cure Period so long as NRG is diligently pursuing such cure. Notwithstanding anything to the contrary in this section, in no event shall the Cure Period exceed six (6) months.
5. Covenants Running with the Land; Binding on Successors. This Declaration, including the covenants set forth above, constitute covenants running with the land in perpetuity and shall bind and burden NRG and any successor owner or occupier.
6. Constructive Notice and Acceptance. Every person or entity who now or later owns or acquires any right, title or interest in or to all or any portion of the Site is, and shall be, conclusively deemed to have consented to and agreed to every covenant, condition, restriction contained in this Declaration, whether or not any reference to this Declaration is contained in the instrument by which such person or entity acquired such interest.
7. Injunctive Relief. Notwithstanding anything to the contrary contained in this Declaration, and without limiting section 3 above, the City may seek and obtain injunctive relief in any court of competent jurisdiction to restrain NRG from any conduct in breach of this Declaration that causes or threatens to cause immediate and irreparable harm to the extent such equitable relief is otherwise available.
8. No Waiver. No waiver by the City (including, without limitation, any of its boards, commissions, officers, employees or agents) of any violation under this Declaration shall be effective or binding unless and to the extent expressly made in writing by the City, and no such waiver may be implied from any failure by the City to take action with respect to such violation. No express written waiver of any violation shall constitute a waiver of any subsequent violation in the performance of the same or any other provision of this Declaration.
9. Severability. Should any provision or portion of this Declaration be declared invalid or in conflict with any law, the validity of all remaining provisions shall remain unaffected and in full force and effect.
10. Governing Law; Venue. The laws of the State of California shall govern the interpretation and enforcement of this Declaration. As part of the consideration for the City’s entering into Settlement Agreement and this Declaration, NRG agrees that all actions or proceedings arising directly or indirectly under this Declaration may, at the sole option of the City, be litigated in courts located within the State of California, in the County of San Diego, and



NRG expressly consents to the jurisdiction of any such local, state or federal court, and consents that any service of process in such action or proceeding may be made by personal service upon NRG wherever NRG may then be located, or by certified or registered mail directed to NRG at the address set forth in this Declaration for the delivery of notices.

11. Notices. Except as otherwise expressly provided in this Declaration, all notices, demands, approvals, consents and other formal communications between the Parties required or permitted under this Declaration shall be in writing and shall be deemed given and effective upon the date of receipt (i) if given by personal delivery on a business day (or the next business day if delivered personally on a day that is not a business day), (ii) if sent for next-business-day delivery (with all expenses prepaid) by a reliable overnight delivery service, with receipt of delivery, or (iii) if mailed by United States registered or certified mail, first class postage prepaid, to the Party at their respective addresses for notice designated below. For convenience of the Parties, copies of notices may also be given by facsimile to the facsimile number set forth below or such other number as may be provided from time to time by notice given in the manner required under this Declaration; however, neither Party may give official or binding notice by facsimile. The effective time of a notice shall not be affected by the receipt, before receipt of the original, of a telefacsimile copy of the notice.

- (a) In the case of a notice or communication by NRG to the City:

Celia A. Brewer, Esq.  
City Attorney for City of Carlsbad  
General Counsel for Carlsbad Municipal Water District  
1200 Carlsbad Village Drive  
Carlsbad, CA 92008  
Celia.Brewer@carlsbadca.gov

- (b) And in the case of a notice or communication sent by the City to NRG:

Sean Beatty  
West Region General Counsel  
NRG Energy, Inc.  
P.O. Box 192  
Pittsburg, CA 94565  
sean.beatty@nrgenergy.com

Every notice given to a Party to this Declaration, under the terms of this Declaration, must state (or must be accompanied by a cover letter that states) substantially the following: the section of this Declaration under which the notice is given and the action or response required, if any; and if applicable, the period of time within which the recipient of the notice must respond.

In no event shall a recipient's approval of or consent to the subject matter of a notice be deemed to have been given by its failure to object to such notice if such notice (or the accompanying cover letter) does not comply with the requirements of this Section.

Any mailing address or number may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days before the effective date of the change.

IN WITNESS WHEREOF, NRG has duly executed this Declaration as of the date first written above.

NRG ENERGY, INC. ON BEHALF OF ITSELF  
AND ITS SUBSIDIARIES, INCLUDING  
CABRILLO POWER I LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A  
TO  
DECLARATION OF ENVIRONMENTAL RESTRICTION REGARDING  
USE**

**Legal Description of the Site**

[INSERTED ON THE FOLLOWING PAGE]

**LEGAL DESCRIPTION**  
(Exceptions Not Noted)

The land referred to herein is situated in the State of California, County of San Diego, City of Carlsbad, and described as follows:

That portion of Lot "H" of Rancho Agua Hedionda, in the City of Carlsbad, County of San Diego, State of California, according to Partition Map thereof No. 823, filed in the Office of the County Recorder of San Diego County, November 16, 1896; being Parcel No. 4 of that certain Certificate of Compliance recorded October 30, 2001 as file no. 2001-0789068 of Official Records, and more particularly described as:

Commencing at the intersection of the easterly line of the 100.00 foot wide right-of-way of the Atchison Topeka and Santa Fe Railroad with the northerly line of Canon Road (60.00 feet wide); thence long said easterly line north 22°30'13" west, 1564.78 feet to the TRUE POINT OF BEGINNING; thence continuing along said easterly line north 22°30'13" west, 1990.35 feet to the beginning of a non-tangent curve concave to the northwest having a radius of 1005.37 feet, a radial to said beginning bears south 85°54'14" east; thence northeasterly 36.76 feet along said curve through a central angle of 02°05'42"; thence non-tangent to said curve north 22°30'13" west, 302.87 feet; thence leaving said easterly line north 61°25'37" east, 14.19 feet; thence north 30°30'37" east, 34.90 feet; thence south 40°47'43" east, 63.50 feet; thence south 69°10'23" east, 38.00 feet; thence north 79°19'37" east, 285.00 feet; thence north 88°07'37" east, 333.14 feet; thence north 81°53'37" east, 13.68 feet to the westerly right-of-way lline of California State Highway XI-SD-2B (I-5); thence along said right-of-way line south 17°57'05" east, 204.93 feet; thence south 12°34'11" east, 424.72 feet; thence south 22°07'51" east, 239.68 feet; thence south 22°30'37" east, 1210.91 feet; thence leaving said right-of-way line south 67°37'25" west, 492.66 feet; thence south 62°25'13" west, 126.26 feet to the TRUE POINT OF BEGINNING,

Together with that portion of said Lot H described as follows:

Commencing at the northeasterly corner of Record of Survey No. 14621, in the City of Carlsbad, County of San Diego, State of California, recorded in the Office of the County Recorder of Sand Diego County, August 14, 1994 as file no. 1994-500086, said corner being on the westerly line of the right-of-way of the Atchison Topeka and Santa Fe Railroad; thence along said westerly line and easterly line of Record of Survey 14621 south 28°40'19" east, 656.70 feet to the most southerly corner of said Record of Survey No. 14621; thence continuing south 28°40'19" east, 275.00 feet to the TRUE POINT OF BEGINNING; thence leaving said westerly line south 56°25'30" west, 61.30 feet; thence south 04°59'18" west, 27.61 feet; thence south 39°37'42" east, 61.38 feet; thence south 77°21'22" east, 49.55 feet; thence south 26°45'53" east, 232.92 feet; thence south 17°52'19" east, 115.92 feet; thence south 02°16'37" east, 55.06 feet; thence south 24°00'58" west, 44.47 feet; thence south 40°45'14" west, 126.60 feet; thence south 29°41'50" west, 83.42 feet; thence south 27°27'35" west, 90.04 feet; thence south 35°18'30" west, 212.59 feet; thence south 19°22'01" east, 108.34 feet; thence south 30°56'56" east, 304.06 feet; thence south 14°30'21" west, 175.27 feet; thence south 00°09'57" east, 123.11 feet; thence south 26°53'37" east, 119.99 feet; thence south 34°46'51" west, 23.60 feet; thence north 61°27'21" west, 142.77 feet; thence north 22°47'32" west, 47.01 feet; thence south 67°12'28" west, 16.03 feet; thence south 22°47'32" east, 22.23 feet; thence south 58°37'31" west, 97.99 feet; thence south 41°35'28" west, 110.44 feet; thence north 74°44'52" west, 164.81 feet; thence north 05°57'51" west, 202.95 feet; thence north 30°14'20" west, 64.23 feet; thence north 64°31'22" west, 293.59 feet to the easterly line of the 100.00 foot wide Carlsbad Boulevard; thence along said easterly line of Carlsbad

Boulevard south 24°07'36" east, 913.18 feet to the beginning of a curve concave southwesterly having a radius of 4050.00 feet; thence southeasterly 348.89 feet along said curve through a central angle of 04°56'09"; thence south 19°11'27" east, 15.63 feet to the beginning of a curve concave northeasterly having a radius of 5216.55 feet; thence southeasterly 900.29 feet along said curve through a central angle of 09°53'18"; thence leaving said easterly line of Carlsbad Boulevard north 60°43'42" east, 103.71 feet; thence north 71°53'50" east, 49.05 feet; thence north 88°29'46" east, 149.63 feet; thence north 77°06'32" east, 80.00 feet; thence north 68°28'15" east, 121.97 feet; thence north 63°21'54" east, 220.51 feet; thence north 67°56'35" east, 167.57 feet; thence north 76°27'03" east, 60.33 feet; thence south 77°37'36" east, 172.85 feet; thence south 60°55'41" east, 66.30 feet; thence south 45°30'57" east, 47.42 feet; thence south 82°40'44" east, 84.31 feet; thence south 44°29'52" east, 52.55 feet to said westerly right-of-way line of said Atchison Topeka and Santa Fe Railroad; thence along said westerly line north 22°30'13" west, 2664.53 feet; thence north 28°40'19" west, 835.14 feet to the TRUE POINT OF BEGINNING.

The above described parcel of land contains 95.08 acres more or less.

Assessor's Parcel Numbers: 210-010-43, and 210-010-43 (with other property).

(End of Legal Description)

**EXHIBIT J**

**Legal Description of North Coast Services Center Site**

[INSERTED ON NEXT PAGE]

LEGAL DESCRIPTION  
EXHIBIT J

That certain parcel of land situated in the City of Carlsbad, County of San Diego, State of California, being more particularly described as follows:

Parcel 5 as described in the Certificate of Compliance recorded on October 30, 2001 as Document No. 2001-0789069 of Official Records of said San Diego County also as shown as Parcel 5 on Record of Survey No. 17350 filed in the Office of the County Recorder of said San Diego County on April 12, 2002 as File No. 2002-0308512.

Containing 16.37 acres more or less.

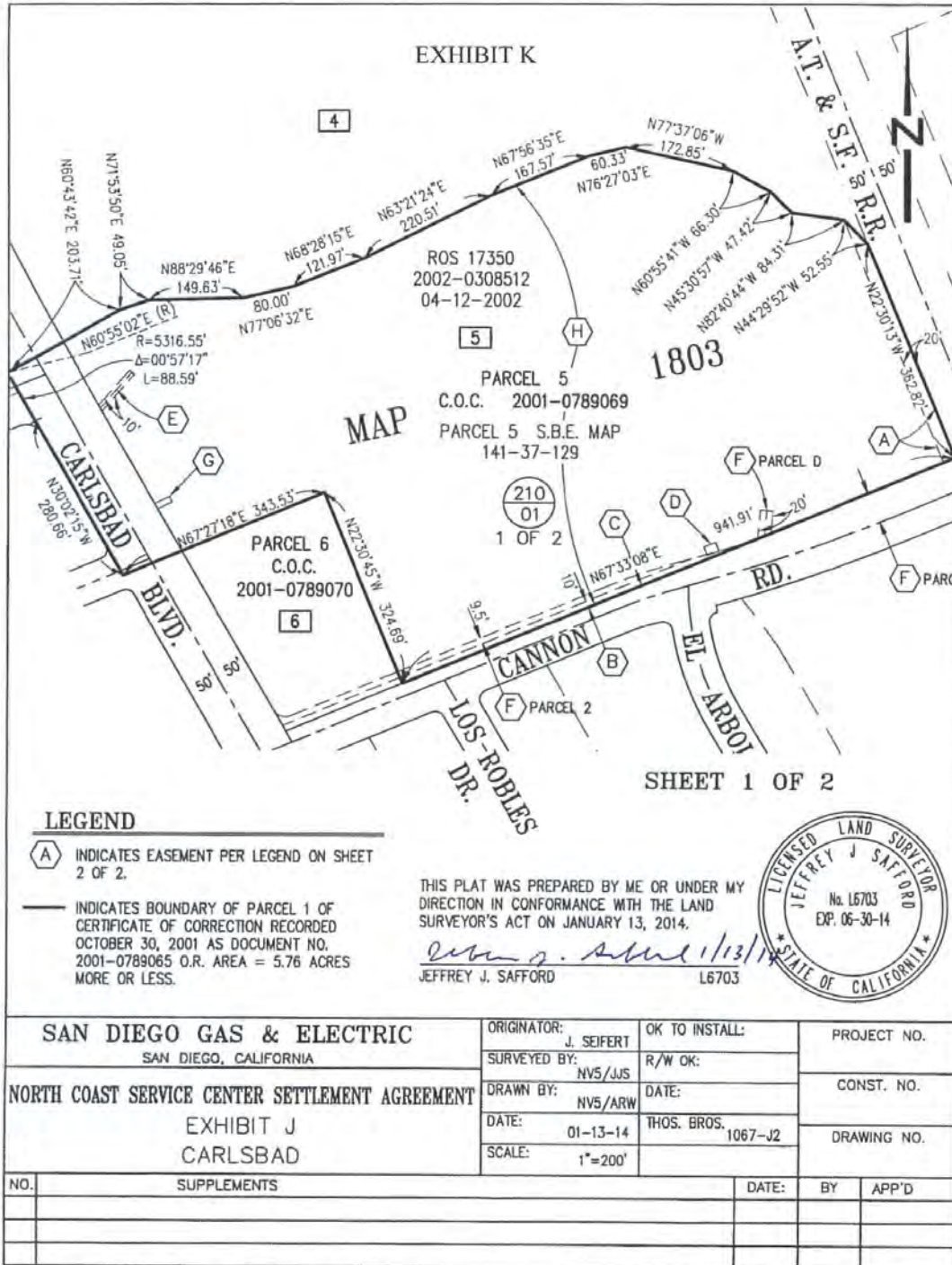
Prepared By:

Jeffrey J. Safford 1/13/14  
Jeffrey J. Safford, L.6703 Date



# EXHIBIT K

## Map of North Coast Services Center Site



NV5: G:\Weirich\NV5 Job Storage Pre-Number\North Coast Service Center Settlement Agreement\NCSCSA EXHIBIT.dwg POINTS FILE: N/A



EXHIBIT K

**EASEMENT LEGEND**

- (A) EASEMENT FOR ROAD PURPOSES GRANTED TO W.D. CANNON RECORDED ON JANUARY 21, 1953 IN BOOK 4722, PAGE 361, O.R.  
  
ALSO, AN EASEMENT AND RIGHT OF WAY FOR WATER PIPELINE PURPOSES.  
  
ALSO, AN EASEMENT AND RIGHT OF WAY FOR ROAD AND FOR WATER PIPELINE PURPOSES OVER THE EASTERLY 20 FEET OF THE SOUTHERLY 576.45 FEET OF THE PARCEL OF LAND CONVEYED TO SAN DIEGO GAS AND ELECTRIC COMPANY BY DEED RECORDED IN BOOK 2974, PAGE 493, O.R.  
  
ALSO, THE RIGHT, TITLE AND INTEREST OF GRANTOR IN ANY PIPE IN THE GROUND WITHIN SAID WATER PIPELINE RIGHTS OF WAY GRANTED HEREIN, GRANTEE, HOWEVER, TO REMOVE THE SAME OR SUCH PORTION THEREOF AS MAY CEASE TO BE USED WITHIN TWELVE MONTHS FROM DATE OF CESSATION OF USE, OTHERWISE TITLE TO SUCH PIPE TO REVERT TO THE GRANTOR, ITS SUCCESSORS OR ASSIGNS.
- (B) EASEMENT FOR A PUBLIC STREET GRANTED TO THE CITY OF CARLSBAD RECORDED ON APRIL 7, 1964 AS FILE NO. 62682, O.R.
- (C) EASEMENT FOR A PUBLIC STREET GRANTED TO THE CITY OF CARLSBAD RECORDED ON JUNE 24, 1964 AS FILE NO. 111718, O.R.
- (D) EASEMENT FOR A SEWER PUMPING STATION GRANTED TO THE CITY OF CARLSBAD RECORDED ON APRIL 14, 1965 AS FILE NO. 66049, O.R.
- (E) EASEMENT FOR A SEWER PIPELINE GRANTED TO THE CITY OF CARLSBAD RECORDED ON APRIL 14, 1965 AS FILE NO. 66050, O.R.
- (F) EASEMENT FOR ROAD AND PUBLIC UTILITY GRANTED TO THE CITY OF CARLSBAD RECORDED ON NOVEMBER 13, 1972 AS FILE NO. 303347, O.R.
- (G) EASEMENT FOR WATER PIPELINES, METERS, AND METER VAULT GRANTED TO THE CITY OF CARLSBAD RECORDED ON FEBRUARY 27, 1974 AS FILE NO. 74-049416, O.R.
- (H) INDICATES COVENANTS AND CONDITIONS CONTAINED IN AN AGREEMENT BY AND BETWEEN SAN DIEGO GAS AND ELECTRIC COMPANY AND CABRILLO POWER I LLC, A DELAWARE LIMITED LIABILITY COMPANY DATED MAY 20 1999 AND RECORDED MAY 21, 1999 AS FILE NO. 1999-0347270, O.R. REGARDING STAGING, MAINTENANCE AND OPERATION FACILITIES RELATED TO LICENSEE'S ELECTRICAL TRANSMISSION AND DISTRIBUTION SERVICES.

SHEET 2 OF 2

<b>SAN DIEGO GAS &amp; ELECTRIC</b> SAN DIEGO, CALIFORNIA  <b>NORTH COAST SERVICE CENTER SETTLEMENT AGREEMENT</b>  EXHIBIT J CARLSBAD		ORIGINATOR: J. SEIFERT	OK TO INSTALL:	PROJECT NO.
		SURVEYED BY: NV5/JJS	R/W OK:	CONST. NO.
		DRAWN BY: NV5/ARW	DATE:	
		DATE: 01-13-14	THOS. BROS. 1067-J2	DRAWING NO.
SCALE: 1"=200'				
NO.	SUPPLEMENTS	DATE:	BY	APP'D

NV5: G:\Weirich\NV5 Job Storage Pre-Number\North Coast Service Center Settlement Agreement\NCSCSA EXHIBIT.dwg

POINTS FILE: N/A



Parcel 5  
DOC # 2001-0789069

OCT 30, 2001 4:59 PM

RECORDING  
REQUESTED BY  
**STEWART TITLE OF CALIFORNIA**  
AND WHEN  
RECORDED MAIL TO:

OFFICIAL RECORDS  
SAN DIEGO COUNTY RECORDER'S OFFICE  
GREGORY J. SMITH, COUNTY RECORDER  
FEES: 20.00

025097

City Clerk  
CITY OF CARLSBAD  
1200 Carlsbad Village Dr.  
Carlsbad, CA 92008



SPACE ABOVE THIS LINE FOR RECORDER'S USE

ASSESSOR'S PARCEL NO. 210-010-39-00 (portion)  
PROJECT NO. & NAME: ADJ 00-10, Parcel 5  
Enclra Adjustment  
Case No. CE 01-40

**CERTIFICATE OF COMPLIANCE  
FOR ADJUSTMENT PLAT**  
(Section 86499.35 of the Government Code)

The City Engineer has determined that the real property described below, has been divided or has resulted from a division or combining of lots in compliance with the Subdivision Map Act and with the provisions of the Carlsbad Municipal Code pursuant thereto.

OWNER(S): Cabrillo Power I LLC, a Delaware Limited Liability Company

DESCRIPTION: (See Exhibit "A" attached. Exhibit "B" is attached for clarity only.)

NOTE: The description in Exhibit "A" attached has been provided by the owner of the property and neither the City of Carlsbad nor any of its officers or employees assume responsibility for the accuracy of said description.

This Certificate of Compliance shall have no force and effect if the above owners or any subsequent transferee or assignee acquires any contiguous property other than a lot or lots shown on a recorded subdivision map, parcel map or record of survey map filed pursuant to and prior to repeal (Stats. 1955, Ch. 1593) of Section 11575 of the Business and Professions Code;

This Certificate of Compliance shall in no way affect the requirements of any other County, State or Federal agency that regulates development of real property.

DATE: 10/29/01

BY: [Signature]  
Deputy City Engineer  
RCE 33061 EXP. 8/30/02  
33698

EXHIBIT "A"  
LEGAL DESCRIPTION  
ADJ 00-10 - ENCINA

025098

PARCEL 5

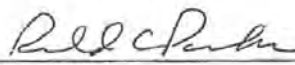
That portion of Rancho Agua Hedionda, in the City of Carlsbad, County of San Diego, State of California, according to Partition Map thereof No. 823, filed in the Office of the County Recorder of said County, November 16, 1896, described as follows:

Commencing at the Northeasterly corner of Record of Survey No. 14621, in the City of Carlsbad, County of San Diego, State of California, recorded in the Office of the County Recorder of San Diego County, August 14, 1994 as File No. 1994-500086, said corner being on the Westerly line of the Right-of-Way of the Atchison Topeka and Santa Fe Railroad; thence along said Westerly line and Easterly line of said Record of Survey 14621 South 28°40'19" East, 656.70 feet to the most Southerly corner of said Record of Survey No. 14621; thence continuing South 28°40'19" East, 1110.14 feet; thence South 22°30'13" East, 2664.53 feet TO THE TRUE POINT OF BEGINNING; thence continuing South 22°30'13" East, 362.82 feet to the Southeast corner of Parcel 1 described in Document No. 78-430841, recorded October 10, 1978, Official Records; thence leaving said Westerly line of Railroad and along the Southerly line of said Parcel 1, North 67°33'08" West, 941.91 feet; thence leaving said Southerly line North 22°30'45" West, 324.69 feet; thence South 67°27'18" West, 343.53 feet to the Westerly line of the 100 foot wide Carlsbad Boulevard; thence along said Westerly line of Carlsbad Boulevard North 30°02'15" West, 280.66 Feet to the beginning of a curve concave Easterly having a radius of 5316.55 feet; thence Northerly 88.59 feet along said curve through a central angle of 00°57'17"; thence leaving said Westerly line North 60°43'42" East, 203.71 feet; thence North 71°53'50" East, 49.05 feet; thence North 88°29'46" East, 149.63 feet; thence North 77°06'32" East, 80.00 feet; thence North 68°28'15" East, 121.97 feet; thence North 63°21'24" East, 220.51 feet; thence North 67°56'35" East, 167.57 feet; thence North 76°27'03" East, 60.33 feet; thence South 77°37'06" East, 172.85 feet; thence South 60°55'41" East, 66.30 feet; thence South 45°30'57" East, 47.42 feet; thence South 82°40'44" East, 84.31 feet; thence South 44°29'52" East, 52.55 feet to the TRUE POINT OF BEGINNING.

The hereinabove described parcel of land contains 16.37 acres more or less.

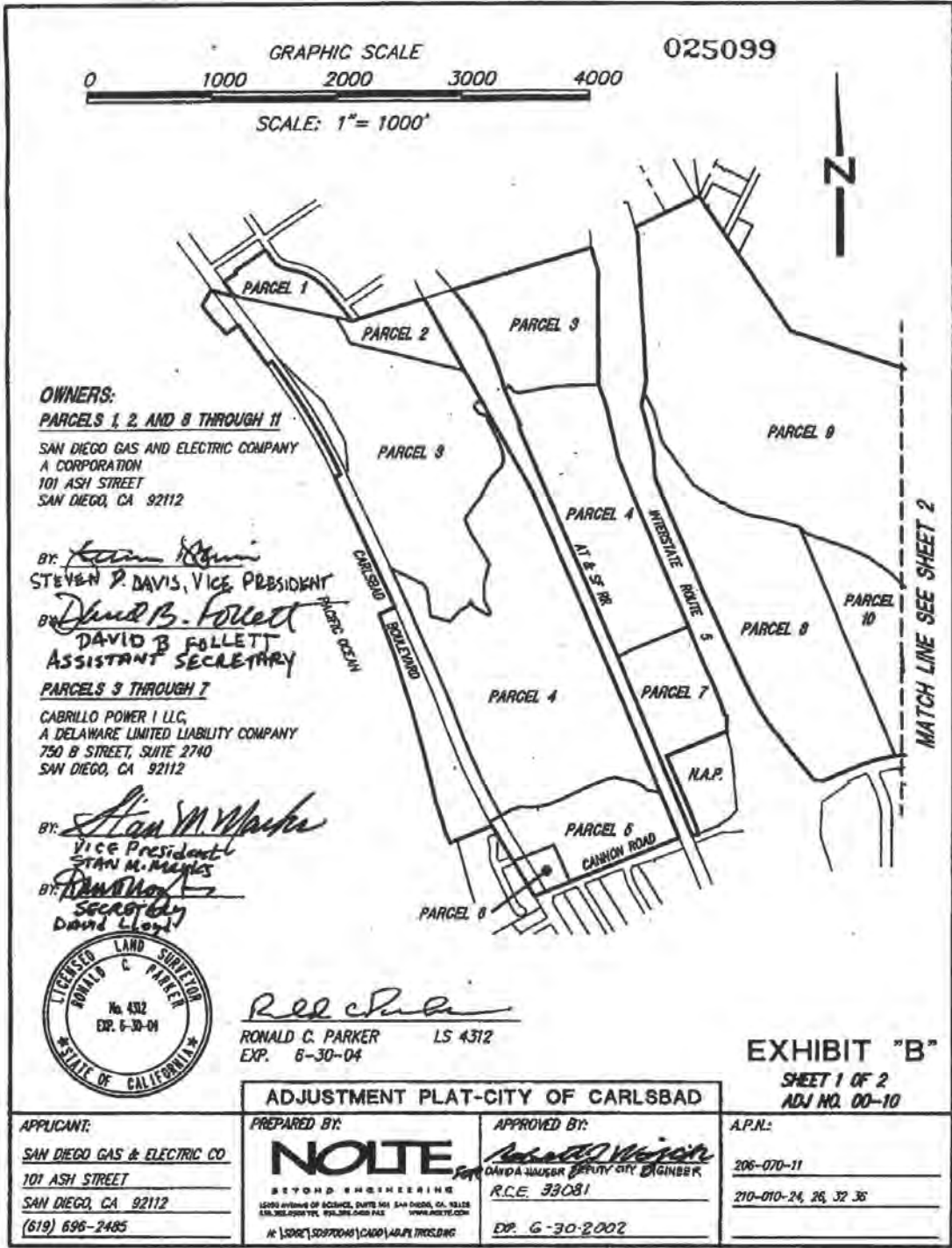
Prepared By:

Nolte Associates, Inc.

 10-22-01  
Ronald C. Parker Date  
Director of Survey



n:\ud1947\legal description parcel 5.doc



**OWNERS:**  
**PARCELS 1, 2, AND 8 THROUGH 11**  
 SAN DIEGO GAS AND ELECTRIC COMPANY  
 A CORPORATION  
 101 ASH STREET  
 SAN DIEGO, CA 92112

BY: *Steven P. Davis*  
 STEVEN P. DAVIS, VICE PRESIDENT

BY: *David B. Follett*  
 DAVID B. FOLLETT  
 ASSISTANT SECRETARY

**PARCELS 3 THROUGH 7**  
 CABRILLO POWER I LLC,  
 A DELAWARE LIMITED LIABILITY COMPANY  
 750 B STREET, SUITE 2740  
 SAN DIEGO, CA 92112

BY: *Stan M. Marks*  
 Vice President  
 STAN M. MARKS

BY: *David Lloyd*  
 Secretary  
 DAVID LLOYD



*Ronald C. Parker*  
 RONALD C. PARKER LS 4312  
 EXP. 6-30-04

**EXHIBIT "B"**  
 SHEET 1 OF 2  
 ADJ. NO. 00-10

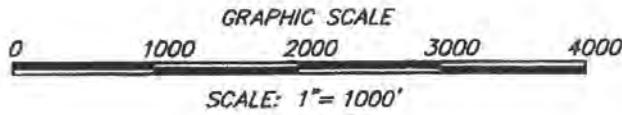
**ADJUSTMENT PLAT-CITY OF CARLSBAD**

**APPLICANT:**  
 SAN DIEGO GAS & ELECTRIC CO.  
 101 ASH STREET  
 SAN DIEGO, CA 92112  
 (619) 698-2485

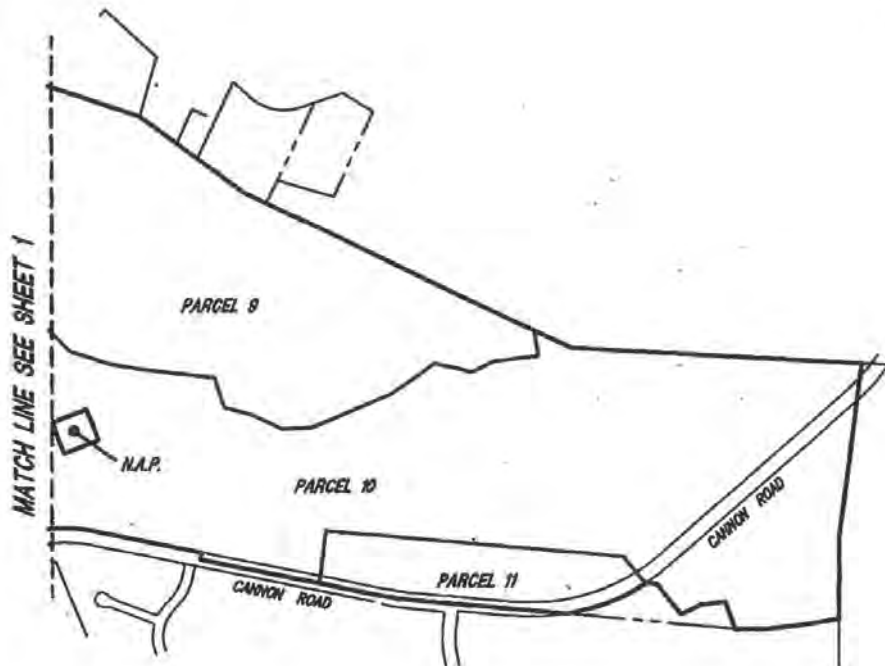
**PREPARED BY:**  
**NOLTE**  
 BEYOND ENGINEERING  
 1200 AVENUE OF SCIENCE, SUITE 101 SAN DIEGO, CA 92128  
 619.382.2000 TEL. 619.382.0400 FAX WWW.NOLTE.COM  
 M:\SPR\5097004\CAD\ADJPLAT.DWG

**APPROVED BY:**  
*Wanda Hauser*  
 WANDA HAUSER DEPUTY CITY ENGINEER  
 R.C.E. 33081  
 EXP. 6-30-2002

**A.P.N.:**  
 206-070-11  
 210-010-24, 26, 32, 36



025100



**EXHIBIT "B"**

SHEET 2 OF 2  
ADJ NO. 00-10

**ADJUSTMENT PLAT-CITY OF CARLSBAD**

<p>APPLICANT: SAN DIEGO GAS &amp; ELECTRIC CO 101 ASH STREET SAN DIEGO, CA 92112 (619) 696-2485</p>	<p>PREPARED BY: <b>NOLTE</b> BEYOND ENGINEERING 13070 AVENUE OF SCIENCE, SUITE 241 SAN DIEGO, CA 92126 954.246.0026 TEL. 954.246.0020 FAX WWW.NOLTE.COM A [SDGE] [SDG&amp;E] [CAG] [ADPL] [RCS] [RWD]</p>	<p>APPROVED BY: <i>David N. Hausler</i> DAVID N. HAUSLER DEPUTY CHIEF ENGINEER R.C.E. 33081 EXP. 6-30-2002</p>	<p>A.P.N.: 206-070-11 210-010-24, 26, 32, 35</p>
---------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------

State of California }  
County of San Diego }

025101

On October 29, 2001 before me, Kelly Murphy  
(Date) (Name, Title of Officer)

personally appeared Robert J. Wojcik  
(Name[s] of Signer[s])

\_\_\_\_\_,  personally known to me  
- OR -  (or proved to me on the basis of satisfactory evidence) to be the person(s) whose  
name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they  
executed the same in his/her/their authorized capacity(ies), and that by his/her/their  
signature(s) on the instrument the person(s), or entity upon behalf of which the person(s) acted,  
executed the instrument.

WITNESS my hand and official seal



Kelly Murphy  
Signature of Notary

(This area for official  
notary seal)

Title or Type of Document	<u>Certificate of Compliance for Adjustment Plat ADJ 00-10, Parcel 5</u>		
Date of Document	<u>10/29/01</u>	No. of Pages	<u>4</u>
Signer(s) other than named above			
_____			
_____			

**EXHIBIT L**

**Legal Description of Parcel 11**

[INSERTED ON NEXT PAGE]



LEGAL DESCRIPTION

EXHIBIT L

That certain parcel of land situated in the City of Carlsbad, County of San Diego, State of California, being more particularly described as follows:

Parcel 11 as described in the Certificate of Compliance recorded on October 30, 2001 as Document No. 2001-0789075 of Official Records of said San Diego County also as shown as Parcel 11 on Record of Survey No. 17350 filed in the Office of the County Recorder of said San Diego County on April 12, 2002 as File No. 2002-0308512.

Containing 20.55 acres more or less.

Prepared By:

Jeffrey J. Safford 1/14/14  
Jeffrey J. Safford, L6703 Date

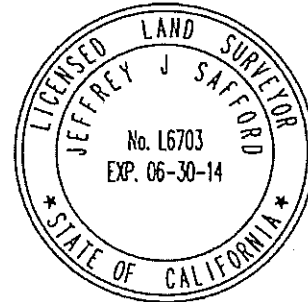


EXHIBIT M

211  
01

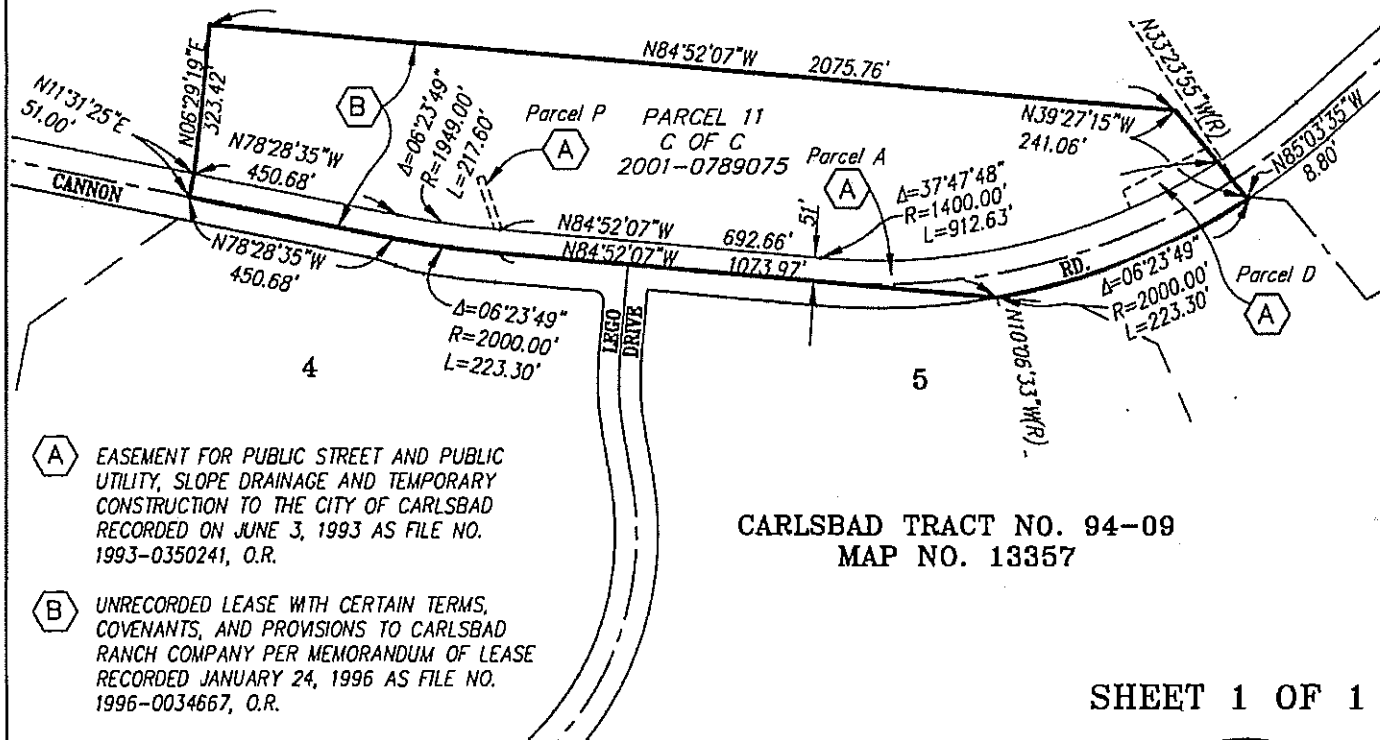
PARCEL 10  
C OF C  
2001-0789074

ROS 17350  
2002-0308512  
04-12-2002



POR. PAR. 7  
S.B.E. MAP  
141-37-73J

POR. LOT H,  
RANCHO AGUA HEDIONDA,  
MM 209



- (A) EASEMENT FOR PUBLIC STREET AND PUBLIC UTILITY, SLOPE DRAINAGE AND TEMPORARY CONSTRUCTION TO THE CITY OF CARLSBAD RECORDED ON JUNE 3, 1993 AS FILE NO. 1993-0350241, O.R.
- (B) UNRECORDED LEASE WITH CERTAIN TERMS, COVENANTS, AND PROVISIONS TO CARLSBAD RANCH COMPANY PER MEMORANDUM OF LEASE RECORDED JANUARY 24, 1996 AS FILE NO. 1996-0034667, O.R.

CARLSBAD TRACT NO. 94-09  
MAP NO. 13357

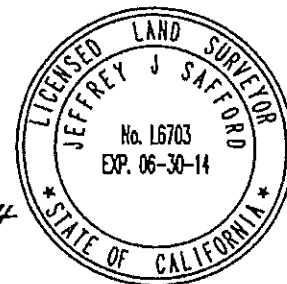
SHEET 1 OF 1

LEGEND

- (A) INDICATES EASEMENT AS NOTED HEREON.
- INDICATES BOUNDARY OF PARCEL 11 OF CERTIFICATE OF CORRECTION RECORDED OCTOBER 30, 2001 AS DOCUMENT NO. 2001-0789075 O.R. AREA = 20.55 ACRES (NET), MORE OR LESS.

THIS PLAT WAS PREPARED BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE LAND SURVEYOR'S ACT ON JANUARY 14, 2014.

*Jeffrey J. Safford*  
JEFFREY J. SAFFORD L6703



SAN DIEGO GAS & ELECTRIC SAN DIEGO, CALIFORNIA		ORIGINATOR: J. SEIFERT	OK TO INSTALL:	PROJECT NO.
		SURVEYED BY: NV5/JJS	R/W OK:	CONST. NO.
NORTH COAST SERVICE CENTER SETTLEMENT AGREEMENT EXHIBIT M CARLSBAD		DRAWN BY: NV5/ARW	DATE:	DRAWING NO.
		DATE: 01-13-14	THOS. BROS. 1067-J2	
		SCALE: 1"=400'		
NO.	SUPPLEMENTS	DATE:	BY	APP'D

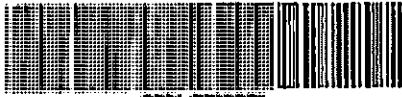
DOC # 2001-0789075

OCT 30, 2001 4:59 PM

RECORDING  
REQUESTED BY  
STEWART TITLE OF CALIFORNIA  
AND WHEN  
RECORDED MAIL TO:

OFFICIAL RECORDS  
SAN DIEGO COUNTY RECORDER'S OFFICE  
GREGORY J. SMITH, COUNTY RECORDER  
FEES: 20.00

025128



PRO  
31  
16M

City Clerk  
CITY OF CARLSBAD  
1200 Carlsbad Village Dr.  
Carlsbad, CA 92008

SPACE ABOVE THIS LINE FOR RECORDER'S USE

ASSESSOR'S PARCEL NO. 211-010-28-00  
PROJECT NO. & NAME: ADJ 00-10, Parcel 11  
Encina Adjustment  
Case No. CE 01-46

**CERTIFICATE OF COMPLIANCE  
FOR ADJUSTMENT PLAT**  
(Section 66499.35 of the Government Code)

The City Engineer has determined that the real property described below, has been divided or has resulted from a division or combining of lots in compliance with the Subdivision Map Act and with the provisions of the Carlsbad Municipal Code pursuant thereto.

OWNER(S): San Diego Gas & Electric Company, a Corporation

DESCRIPTION: (See Exhibit "A" attached. Exhibit "B" is attached for clarity only.)

NOTE: The description in Exhibit "A" attached has been provided by the owner of the property and neither the City of Carlsbad nor any of its officers or employees assume responsibility for the accuracy of said description.

This Certificate of Compliance shall have no force and effect if the above owners or any subsequent transferee or assignee acquires any contiguous property other than a lot or lots shown on a recorded subdivision map, parcel map or record of survey map filed pursuant to and prior to repeal (Stats. 1955, Ch. 1593) of Section 11575 of the Business and Professions Code;

This Certificate of Compliance shall in no way affect the requirements of any other County, State or Federal agency that regulates development of real property.

DATE: 10/29/01

BY: Robert J. Wajed  
Deputy City Engineer  
RCE 33084-EXP. 8/30/02  
7369B

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**  
**ADJ 00-10 - ENCINA**

025129

**PARCEL 11**

Parcel B of Certificate of Compliance recorded November 22, 1995 as File No. 1995-0532901 of Official Records, in the City of Carlsbad, County of San Diego, State of California.

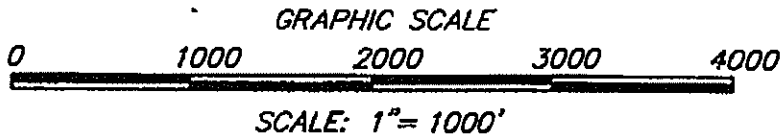
The hereinabove described parcel of land contains 20.55 acres more or less.

Prepared By:

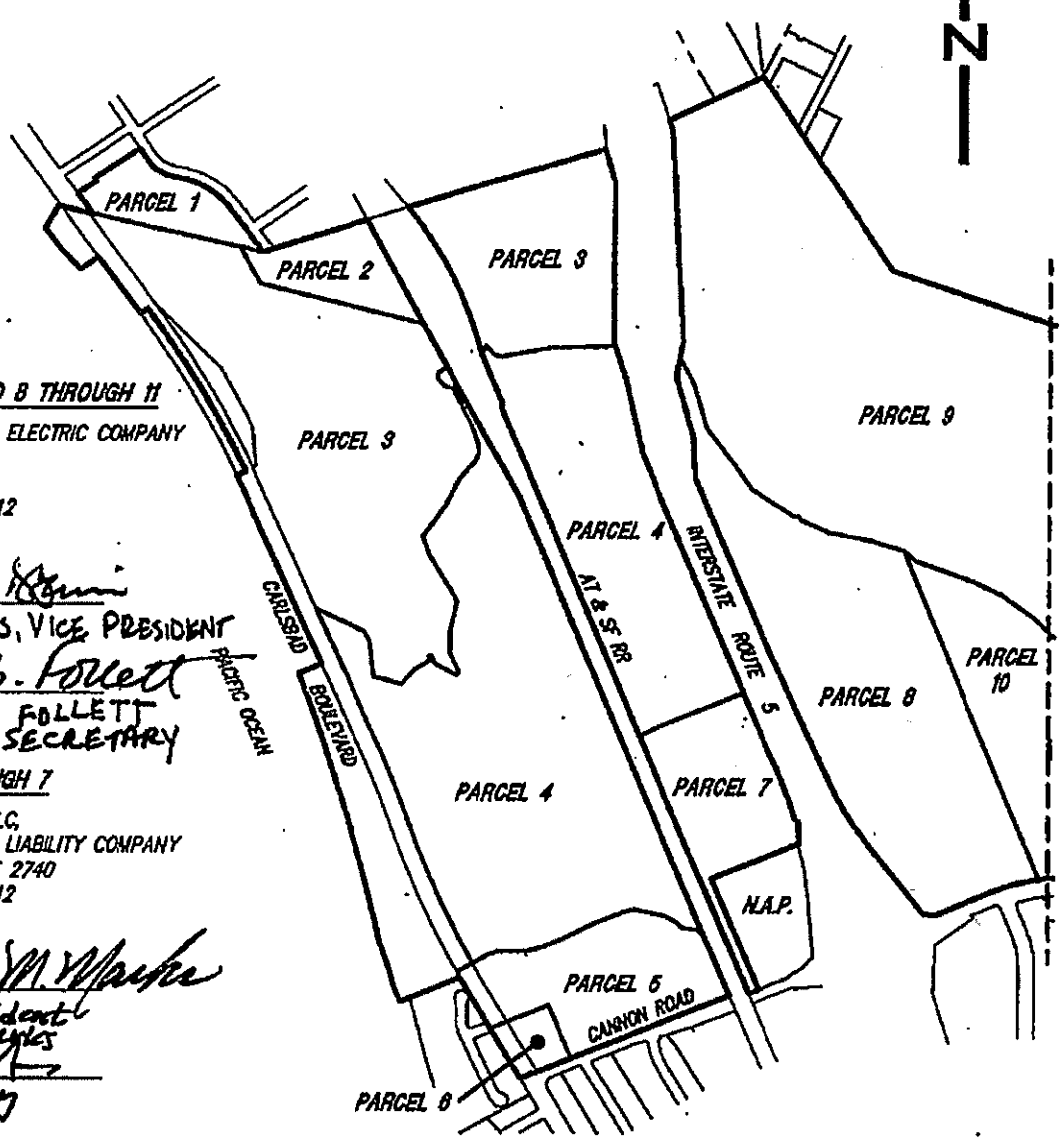
Nolte Associates, Inc.

*Ronald C. Parker*      *10/22/01*  
Ronald C. Parker      Date  
Director of Survey





025130



**OWNERS:**

**PARCELS 1, 2, AND 8 THROUGH 11**  
 SAN DIEGO GAS AND ELECTRIC COMPANY  
 A CORPORATION  
 101 ASH STREET  
 SAN DIEGO, CA 92112

BY: *Steven P. Davis*  
 STEVEN P. DAVIS, VICE PRESIDENT

BY: *David B. Follett*  
 DAVID B. FOLLETT  
 ASSISTANT SECRETARY

**PARCELS 3 THROUGH 7**  
 CABRILLO POWER I LLC,  
 A DELAWARE LIMITED LIABILITY COMPANY  
 750 B STREET, SUITE 2740  
 SAN DIEGO, CA 92112

BY: *Stan M. Markes*  
 VICE PRESIDENT  
 STAN M. MARKES

BY: *David Lyon*  
 SECRETARY  
 DAVID LYON

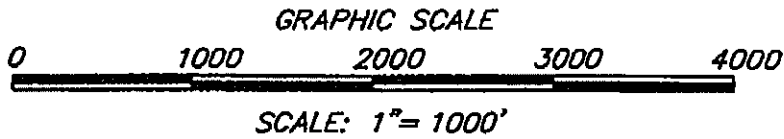


*Ronald C. Parker*  
 RONALD C. PARKER LS 4312  
 EXP. 6-30-04

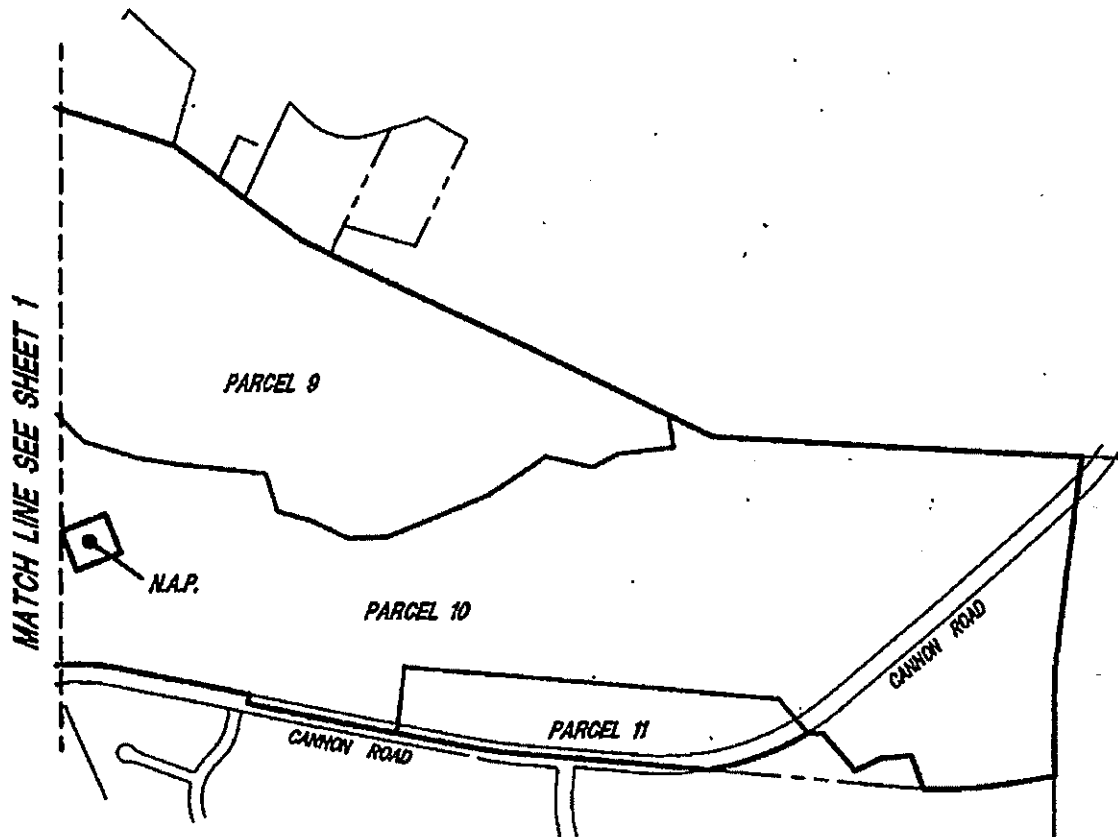
**EXHIBIT "B"**

SHEET 1 OF 2  
 ADJ NO. 00-10

ADJUSTMENT PLAT-CITY OF CARLSBAD			
<b>APPLICANT:</b> SAN DIEGO GAS & ELECTRIC CO 101 ASH STREET SAN DIEGO, CA 92112 (619) 696-2485	<b>PREPARED BY:</b> <b>NOLTE</b> BEYOND ENGINEERING <small>15070 AVENUE OF SCIENCE, SUITE 101 SAN DIEGO, CA 92128            619.362.0300 TEL. 619.322.0400 FAX WWW.NOLTE.COM</small> <small>#\SDGE\52870046\CAUD\ADJ.PETROS.DWG</small>	<b>APPROVED BY:</b> <i>David A. Waiser</i> DAVID A. WASER DEPUTY CITY ENGINEER R.C.E. 33081 EXP. 6-30-2002	<b>A.P.N.:</b> 205-070-11 210-010-24, 26, 32, 36



025131



**EXHIBIT "B"**

SHEET 2 OF 2  
ADJ NO. 00-10

<b>ADJUSTMENT PLAT-CITY OF CARLSBAD</b>			
<b>APPLICANT:</b> <u>SAN DIEGO GAS &amp; ELECTRIC CO.</u> <u>101 ASH STREET</u> <u>SAN DIEGO, CA 92112</u> <u>(619) 696-2485</u>	<b>PREPARED BY:</b> <b>NOLTE</b> <small>BEYOND ENGINEERING</small> <small>13020 AVENUE OF SCIENCE, SUITE 101 SAN DIEGO, CA 92126</small> <small>619.594.0000 TEL. 619.594.0400 FAX WWW.NOLTE.COM</small> <small># [SDGE]50970046[CADD]ADAP.TROS.DWG</small>	<b>APPROVED BY:</b>  <small>DAVID A. HAUSER, DEPUTY CITY ENGINEER</small> <u>R.C.E. 33081</u> <u>EXP. 6-30-2002</u>	<b>A.P.N.:</b> <u>206-070-11</u> <u>210-010-24, 26, 32 36</u>

State of California }  
County of San Diego }

025132

On October 29, 2001 before me, Kelly Murphy,  
(Date) (Name, Title of Officer)

personally appeared Robert J. Wojcik  
(Name[s] of Signer[s])

\_\_\_\_\_,  personally known to me  
- OR -  (or proved to me on the basis of satisfactory evidence) to be the person(s) whose  
name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they  
executed the same in his/her/their authorized capacity(ies), and that by his/her/their  
signature(s) on the instrument the person(s), or entity upon behalf of which the person(s) acted,  
executed the instrument.

WITNESS my hand and official seal



Kelly Murphy  
Signature of Notary

(This area for official  
notary seal)

Title or Type of Document	<u>Certificate of Compliance for Adjustment Plat ADJ 00-10, Parcel 11</u>		
Date of Document	<u>10/29/01</u>	No. of Pages	<u>4</u>
Signer(s) other than named above	_____		
	_____		

**EXHIBIT N**

**Legal Description of Cannon Park**

[INSERTED ON NEXT PAGE]



LEGAL DESCRIPTION

EXHIBIT N

That certain parcel of land situated in the City of Carlsbad, County of San Diego, State of California, being more particularly described as follows:

Parcel 6 as described in the Certificate of Compliance recorded on October 30, 2001 as Document No. 2001-0789070 of Official Records of said San Diego County also as shown as Parcel 6 on Record of Survey No. 17350 filed in the Office of the County Recorder of said San Diego County on April 12, 2002 as File No. 2002-0308512.

Containing 2.40 acres more or less.

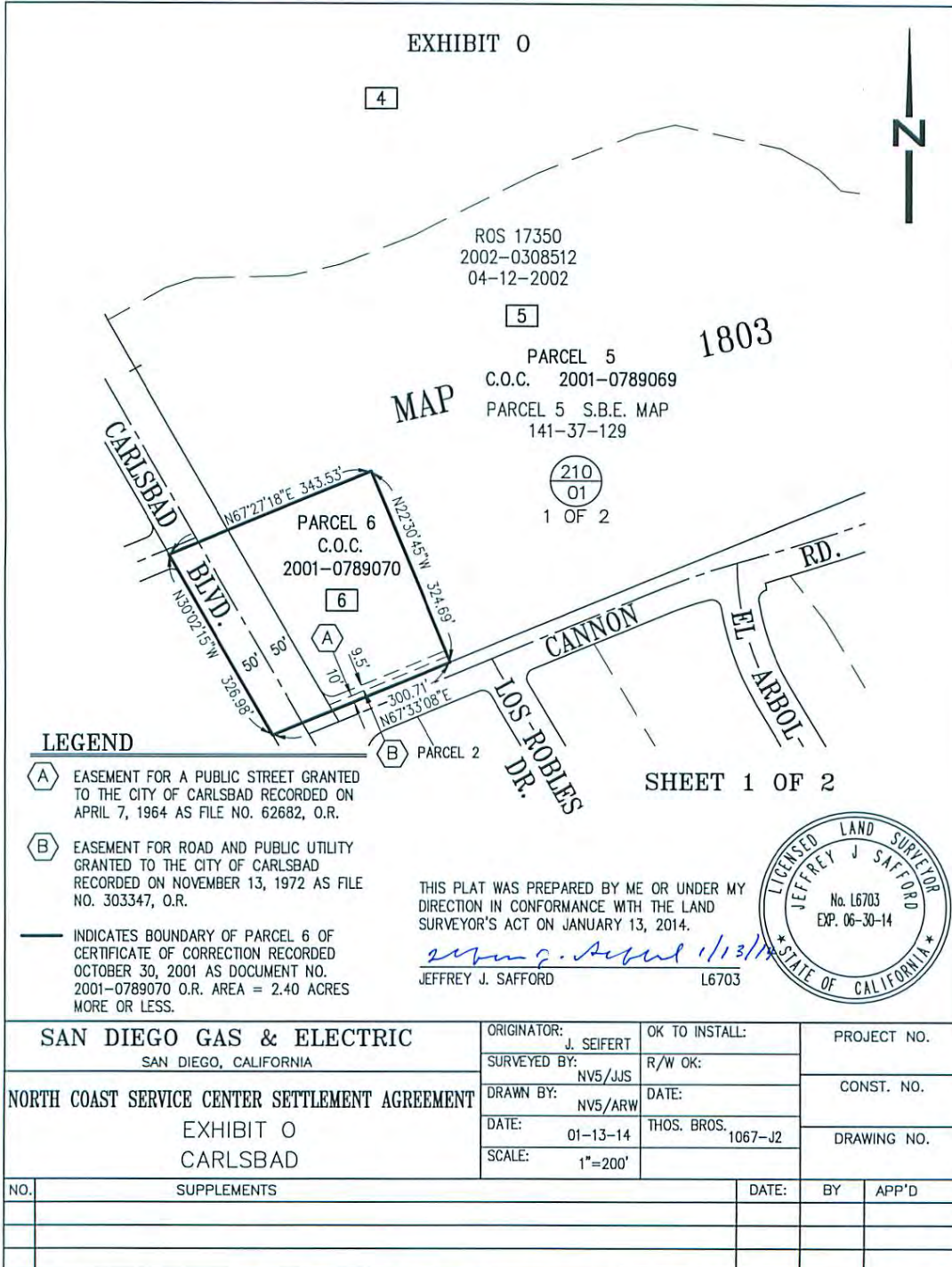
Prepared By:

Jeffrey J. Safford 1/13/14  
Jeffrey J. Safford, L6703 Date



# EXHIBIT O

## Map of Cannon Park



NV5: G:\Weirich\NV5 Job Storage Pre-Number\North Coast Service Center Settlement Agreement\NCSCSA EXHIBIT.dwg

POINTS FILE: N/A

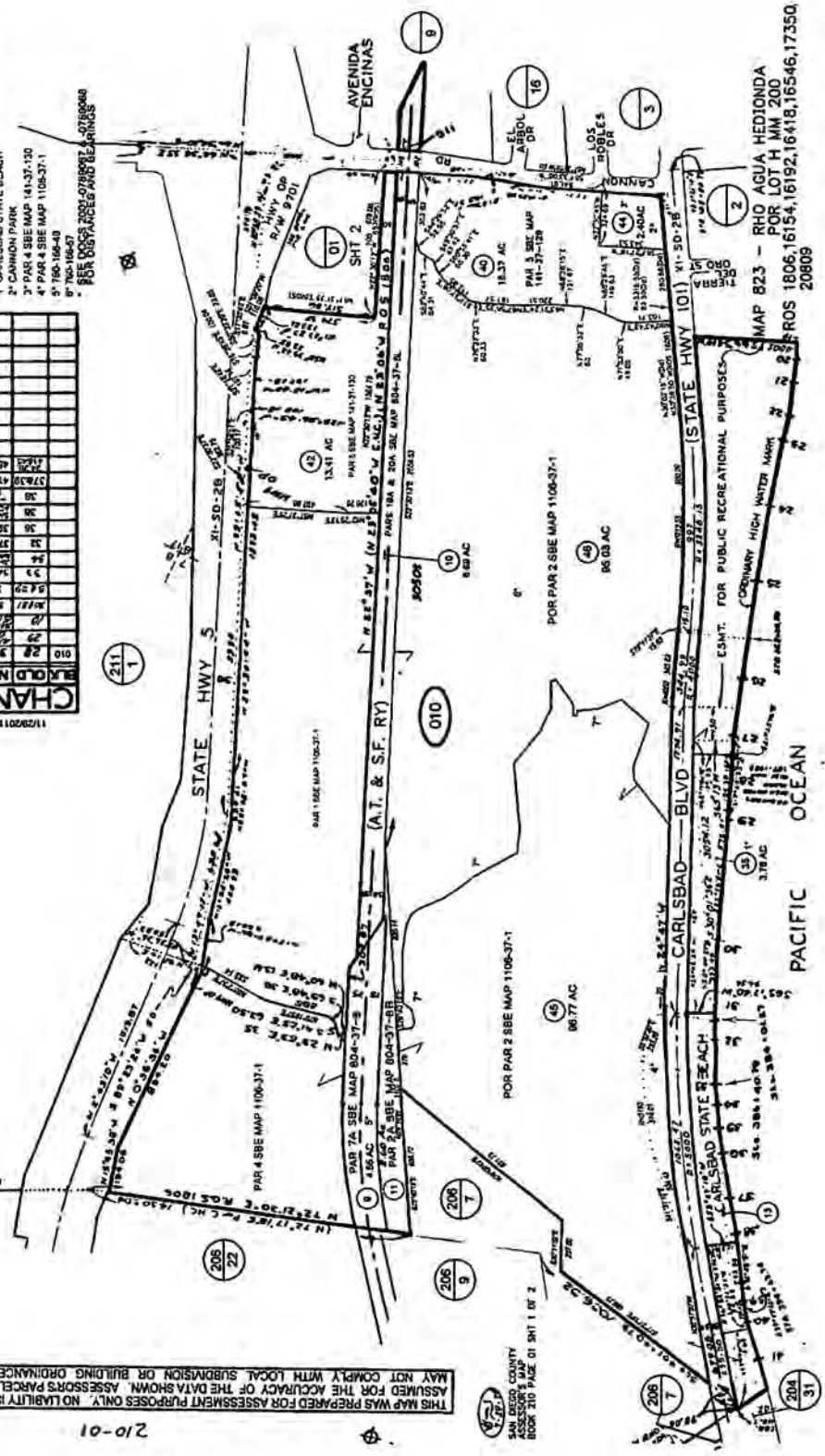
210-01  
SHT 1 OF 2  
1"=400'

CHANGES	
BLD NO.	NEW
010	29
010	28
010	27
010	26
010	25
010	24
010	23
010	22
010	21
010	20
010	19
010	18
010	17
010	16
010	15
010	14
010	13
010	12
010	11
010	10
010	09
010	08
010	07
010	06
010	05
010	04
010	03
010	02
010	01

- 1- CARLSBAD STATE BEACH
- 2- CANNON PARK
- 3- PAR 4 SBE MAP 1106-37-1
- 4- PAR 4 SBE MAP 1106-37-1
- 5- 760-166-43
- 6- 760-166-47
- FOR DISTANCE AND BEARING

THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY. NO LIABILITY IS ASSUMED FOR THE ACCURACY OF THE DATA SHOWN. ASSESSORS PARCELS MAY NOT COMPLY WITH LOCAL SUBDIVISION OR BUILDING ORDINANCES

210-01



MAP 823 - RHO AGUA HEDIONDA  
FOR LOT H MM 200  
PROS 1806,16154,16192,16418,16546,17350,  
20809

Parcel 6

DOC # 2001-0789070

OCT 30, 2001 4:59 PM

RECORDING REQUESTED BY STEWART TITLE OF CALIFORNIA

AND WHEN RECORDED MAIL TO:

City Clerk CITY OF CARLSBAD 1200 Carlsbad Village Dr. Carlsbad, CA 92008

FB  
5/1601

025102

OFFICIAL RECORDS SAN DIEGO COUNTY RECORDER'S OFFICE GREGORY J. SMITH, COUNTY RECORDER FEES: 20.00



SPACE ABOVE THIS LINE FOR RECORDER'S USE

ASSESSOR'S PARCEL NO. 210-010-24-00 PROJECT NO. & NAME: ADJ 00-10, Parcel 6 Encina Adjustment Case No. CE 01-41

CERTIFICATE OF COMPLIANCE FOR ADJUSTMENT PLAT (Section 66499.35 of the Government Code)

The City Engineer has determined that the real property described below, has been divided or has resulted from a division or combining of lots in compliance with the Subdivision Map Act and with the provisions of the Carlsbad Municipal Code pursuant thereto.

- OWNER(S): Cabrillo Power I LLC, a Delaware Limited Liability Company
DESCRIPTION: (See Exhibit "A" attached. Exhibit "B" is attached for clarity only.)
NOTE: The description in Exhibit "A" attached has been provided by the owner of the property and neither the City of Carlsbad nor any of its officers or employees assume responsibility for the accuracy of said description.

This Certificate of Compliance shall have no force and effect if the above owners or any subsequent transferee or assignee acquires any contiguous property other than a lot or lots shown on a recorded subdivision map, parcel map or record of survey map filed pursuant to and prior to repeal (Stats. 1955, Ch. 1593) of Section 11575 of the Business and Professions Code;
This Certificate of Compliance shall in no way affect the requirements of any other County, State or Federal agency that regulates development of real property.

DATE: 10/29/01

BY: [Signature] Deputy City Engineer RCE 38861 EXP. 8/30/02 39698

025103

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**  
**ADJ 00-10 - ENCINA**

**PARCEL 6**

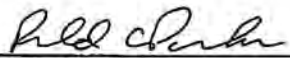
That portion of Rancho Agua Hedionda, in the City of Carlsbad, County of San Diego, State of California, according to Partition Map thereof No. 823, filed in the Office of the County Recorder of said County, November 16, 1896, described as follows:

Commencing at the Northeasterly corner of Record of Survey No. 14621, in the City of Carlsbad, County of San Diego, State of California, recorded in the Office of the County Recorder of San Diego County, August 14, 1994 as File No. 1994-500086, said corner being on the Westerly line of the Right-of-Way of the Atchison Topeka and Santa Fe Railroad; thence along said Westerly line and Easterly line of said Record of Survey 14621 South 28°40'19" East, 656.70 feet to the most Southerly corner of said Record of Survey No. 14621; thence continuing South 28°40'19" East, 1110.14 feet; thence South 22°30'13" East, 2664.53 feet; thence continuing South 22°30'13" East, 362.82 feet to the Southeast corner of Parcel 1 described in Document No. 78-430841, recorded October 10, 1978, Official Records; thence leaving said Westerly line of Railroad and along the Southerly line of said Parcel 1, North 67°33'08" West, 941.91 feet TO THE TRUE POINT OF BEGINNING; thence leaving said Southerly line North 22°30'45" West, 324.69 feet; thence South 67°27'18" West, 343.53 feet to the Westerly line of the 100 foot wide Carlsbad Boulevard; thence along said Westerly line South 30°02'15" East, 326.98 feet to a line that bears South 67°33'08" West from the TRUE POINT OF BEGINNING; thence North 67°33'08" East, 300.71 feet to the TRUE POINT OF BEGINNING.

The hereinabove describe parcel of land contain 2.40 acres more or less.

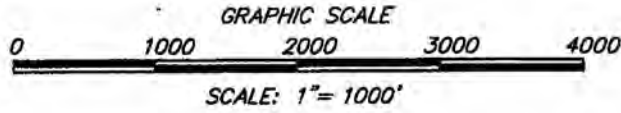
Prepared By:

Nolte Associates, Inc.

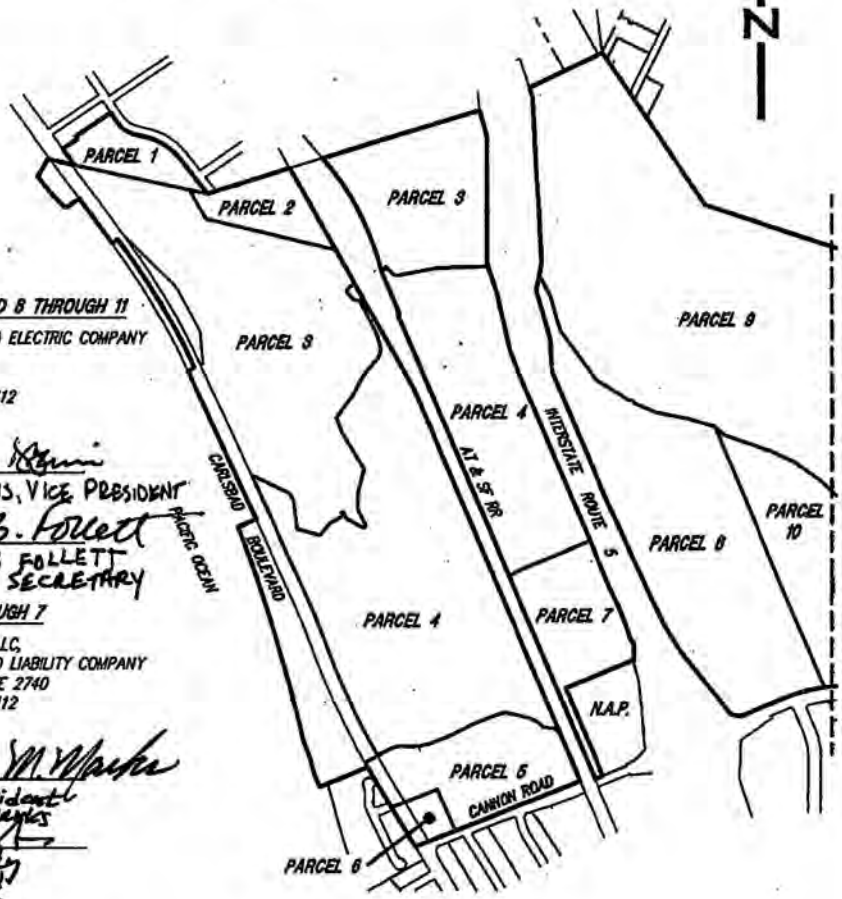
  
Ronald C. Parker                      10/22/01  
Director of Survey                      Date



n:\sd1947\legal description parcel 6.doc



025104



**OWNERS:**  
**PARCELS 1, 2, AND 8 THROUGH 11**  
 SAN DIEGO GAS AND ELECTRIC COMPANY  
 A CORPORATION  
 101 ASH STREET  
 SAN DIEGO, CA 92112

BY: *Steven P. Davis*  
 STEVEN P. DAVIS, VICE PRESIDENT  
 BY: *David B. Follett*  
 DAVID B. FOLLETT  
 ASSISTANT SECRETARY

**PARCELS 3 THROUGH 7**  
 CABRILLO POWER I LLC,  
 A DELAWARE LIMITED LIABILITY COMPANY  
 750 B STREET, SUITE 2740  
 SAN DIEGO, CA 92112

BY: *Stan M. Marks*  
 VICE PRESIDENT  
 STAN M. MARKS  
 BY: *David Lloyd*  
 SECRETARY  
 DAVID LLOYD

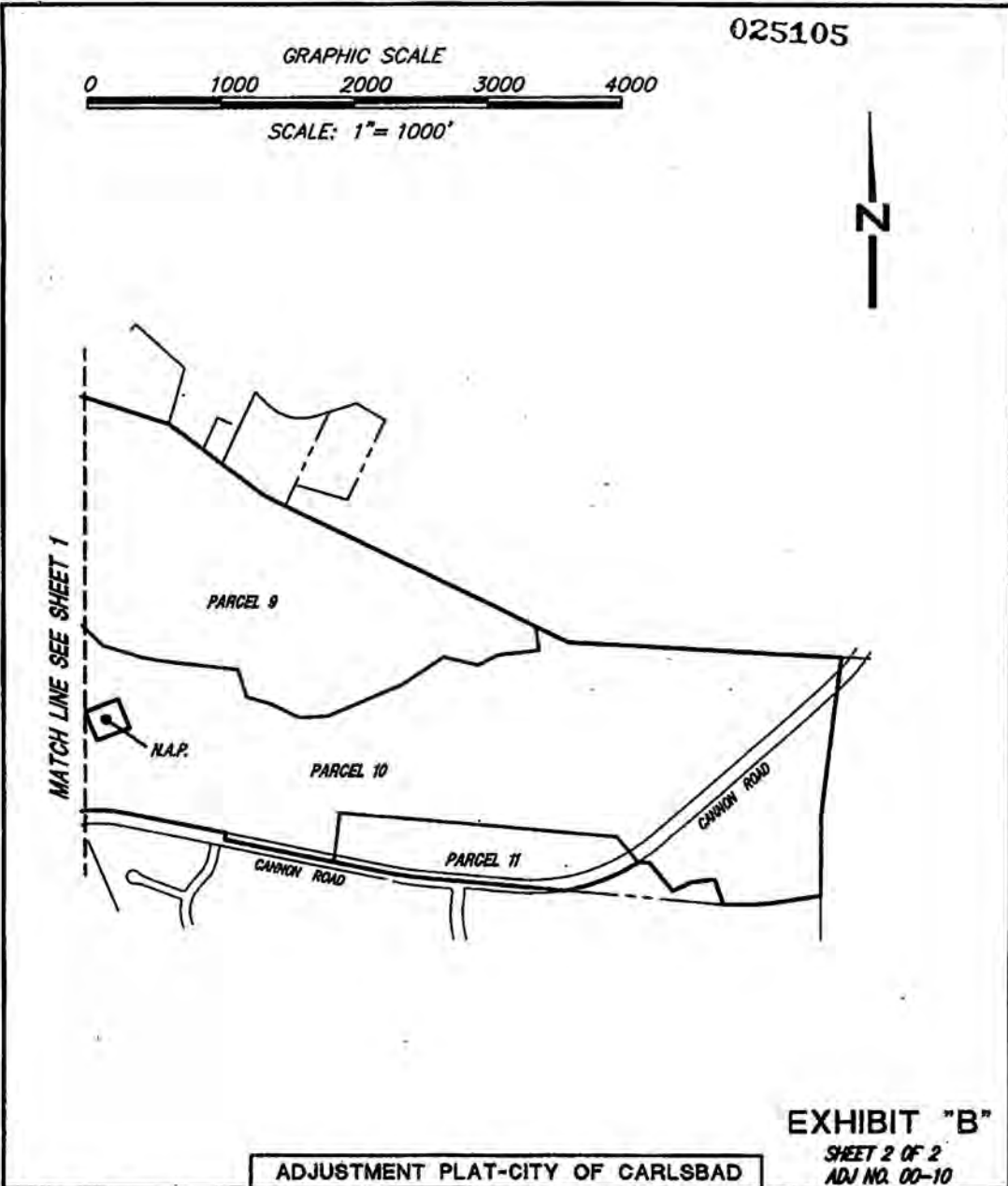
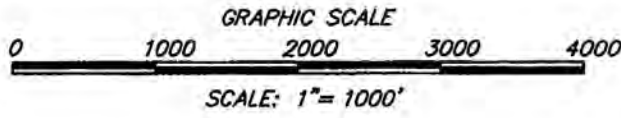


*Ronald C. Parker*  
 RONALD C. PARKER LS 4312  
 EXP. 6-30-04

**EXHIBIT "B"**  
 SHEET 1 OF 2  
 ADJ NO. 00-10

<b>ADJUSTMENT PLAT-CITY OF CARLSBAD</b>			
<b>APPLICANT:</b> SAN DIEGO GAS & ELECTRIC CO 101 ASH STREET SAN DIEGO, CA 92112 (619) 696-2485	<b>PREPARED BY:</b> <b>NOLTE</b> BEYOND ENGINEERING <small>10890 AVENUE OF SCIENCE, SUITE 1411 SAN DIEGO, CA 92186          619.365.0090 TEL 619.365.0400 FAX WWW.NOLTE.COM</small> N:\SPR\SPR7040\CA00\ADJ.PLOTS.DWG	<b>APPROVED BY:</b> <i>David A. Jauson</i> DAVID A. JAUSON DEPUTY CITY ENGINEER R.C.E. 33081 EXP. 6-30-2002	<b>A.P.N.:</b> 206-070-11 210-010-24, 26, 32, 36

025105



**EXHIBIT "B"**  
 SHEET 2 OF 2  
 ADJ NO. 00-10

ADJUSTMENT PLAT-CITY OF CARLSBAD		
<b>APPLICANT:</b> SAN DIEGO GAS & ELECTRIC CO 101 ASH STREET SAN DIEGO, CA 92112 (619) 696-2485	<b>PREPARED BY:</b> <b>NOLTE</b> <small>BEYOND ENGINEERING            1400 AVENUE OF SCIENCE, SUITE 101 SAN DIEGO, CA 92161            TEL: 314.050.7100 FAX: 314.050.7101 WWW.NOLTE.COM</small> <small>N   SDGE   SDPDS   CAD   ADJ PLAT   RECORDING</small>	<b>APPROVED BY:</b>  <small>DAVID A. HAUSER, DEPUTY CITY ENGINEER</small> R.C.E. 33081 EXP. 6-30-2002
		<b>A.P.N.:</b> 206-070-11 210-010-24, 26, 32, 38

State of California }  
County of San Diego }

025106

On October 29, 2001 before me, Kelly Murphy  
(Date) (Name, Title of Officer)

personally appeared Robert J. Wojcik  
(Name[s] of Signer[s])

\_\_\_\_\_,  personally known to me  
- OR -  (or proved to me on the basis of satisfactory evidence) to be the person(s) whose  
name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they  
executed the same in his/her/their authorized capacity(ies), and that by his/her/their  
signature(s) on the instrument the person(s), or entity upon behalf of which the person(s) acted,  
executed the instrument.

WITNESS my hand and official seal



Kelly Murphy  
Signature of Notary

(This area for official  
notary seal)

Title or Type of Document <u>Certificate of Compliance for Adjustment Plat ADJ 00-10, Parcel 6</u>	
Date of Document <u>10/29/01</u>	No. of Pages <u>4</u>
Signer(s) other than named above _____	
_____	



**EXHIBIT P**

**Legal Description of Agua Hedionda North Shore Bluff Parcel**

[INSERTED ON NEXT PAGE]

LEGAL DESCRIPTION

EXHIBIT P

That certain parcel of land situated in the City of Carlsbad, County of San Diego, State of California, being more particularly described as follows:

Parcel 1 as described in the Certificate of Compliance recorded on October 30, 2001 as Document No. 2001-0789065 of Official Records of said San Diego County also as shown as Parcel 1 on Record of Survey No. 17350 filed in the Office of the County Recorder of said San Diego County on April 12, 2002 as File No. 2002-0308512.

Containing 5.76 acres more or less.

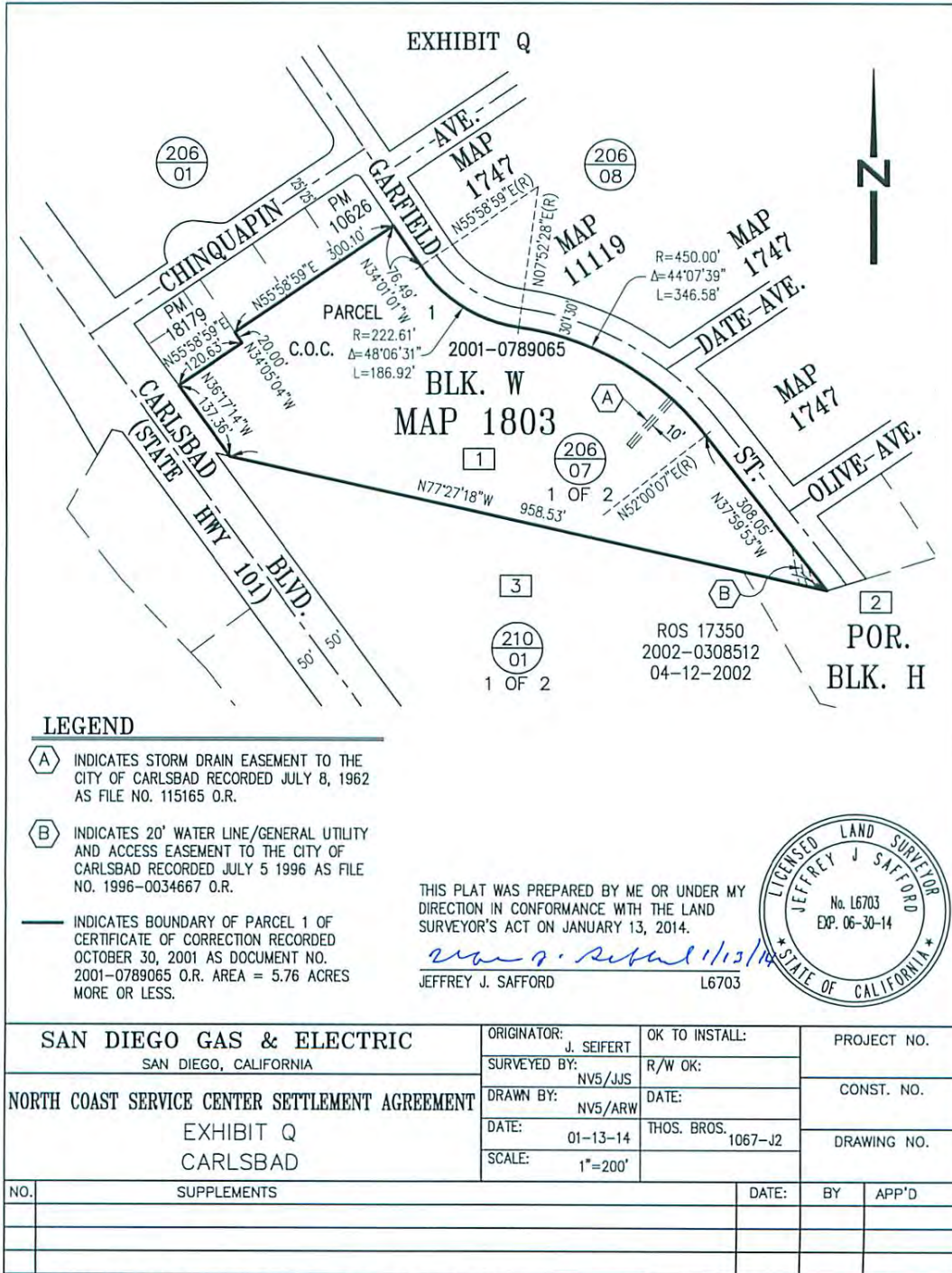
Prepared By:

Jeffrey J. Safford 11/13/14  
Jeffrey J. Safford, L6703 Date



# EXHIBIT Q

## Map of Agua Hedionda North Shore Bluff Parcel



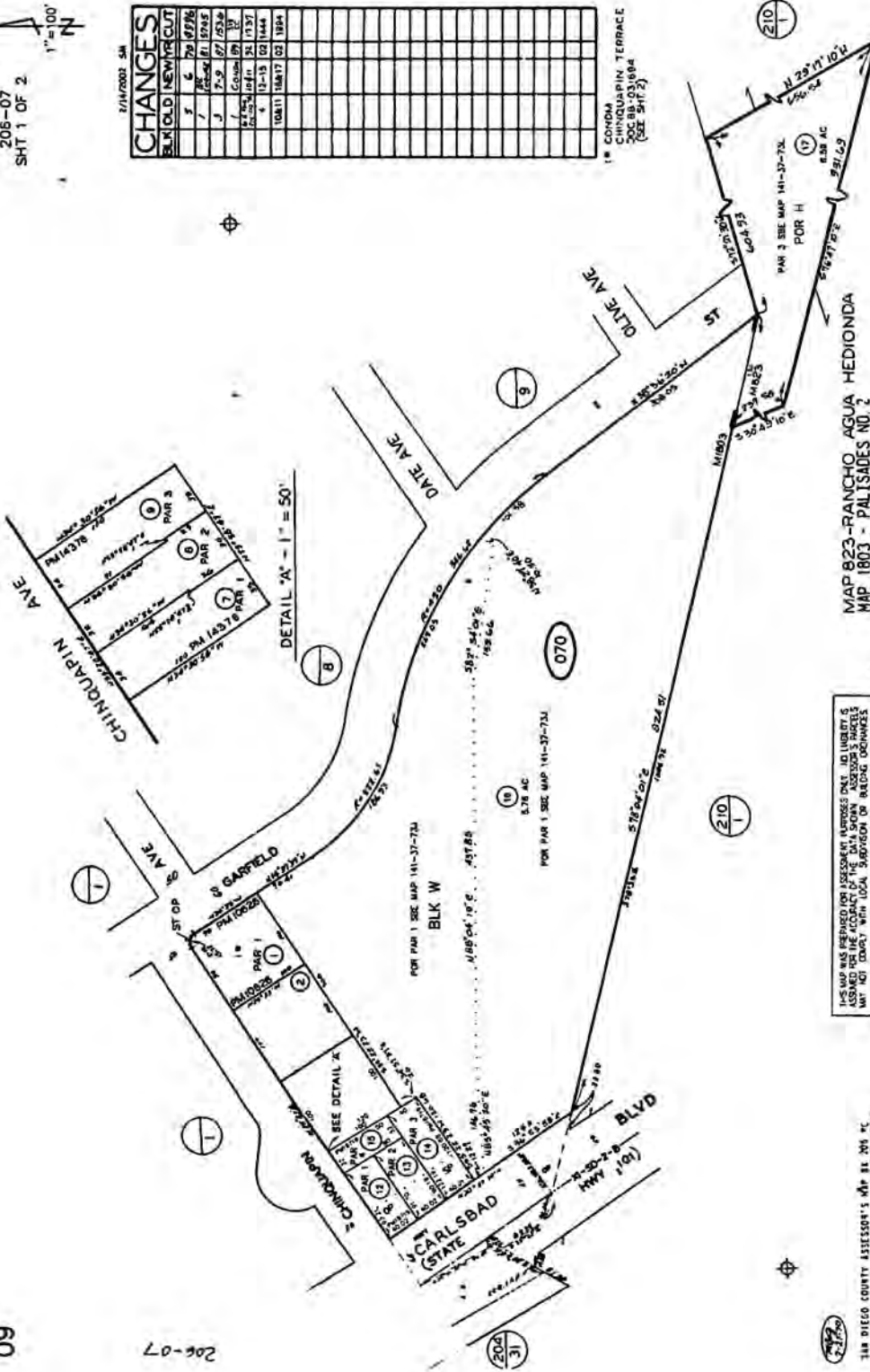
NV5: G:\Weirich\NV5 Job Storage Pre-Number\North Coast Service Center Settlement Agreement\NCSCSA EXHIBIT.dwg POINTS FILE: N/A

206-07  
SHT 1 OF 2  
1" = 100'

2/14/2003 SA

CHANGES		BLK OLD NEW/CUT	
1	7	70	8776
2	8	71	8785
3	9	72	8794
4	10	73	8803
5	11	74	8812
6	12	75	8821
7	13	76	8830
8	14	77	8839
9	15	78	8848
10	16	79	8857
11	17	80	8866
12	18	81	8875
13	19	82	8884
14	20	83	8893
15	21	84	8902
16	22	85	8911
17	23	86	8920
18	24	87	8929
19	25	88	8938
20	26	89	8947
21	27	90	8956
22	28	91	8965
23	29	92	8974
24	30	93	8983
25	31	94	8992
26	32	95	9001
27	33	96	9010
28	34	97	9019
29	35	98	9028
30	36	99	9037
31	37	100	9046

1" CONDM  
CONDUIT TRENCH  
200-03-1894  
(SEE SHIT 2)



THIS MAP WAS PREPARED FOR USE AS A REFERENCE ONLY. IT IS NOT TO BE USED AS A BASIS FOR ANY LEGAL ACTION. THE DATA SHOWN ARE THE PROPERTY OF THE ASSessor'S OFFICE. ANY REVISIONS TO THIS MAP WILL BE SHOWN ON A SUBSEQUENT EDITION.

SAN DIEGO COUNTY ASSESSOR'S MAP #1, 201, 1" = 100'  
SHT 1 OF 2

MAP #23-RANCHO AGUA HEDIONDA  
MAP 1963 - PALMSIDES NO. 2  
RGS 15249, 14821

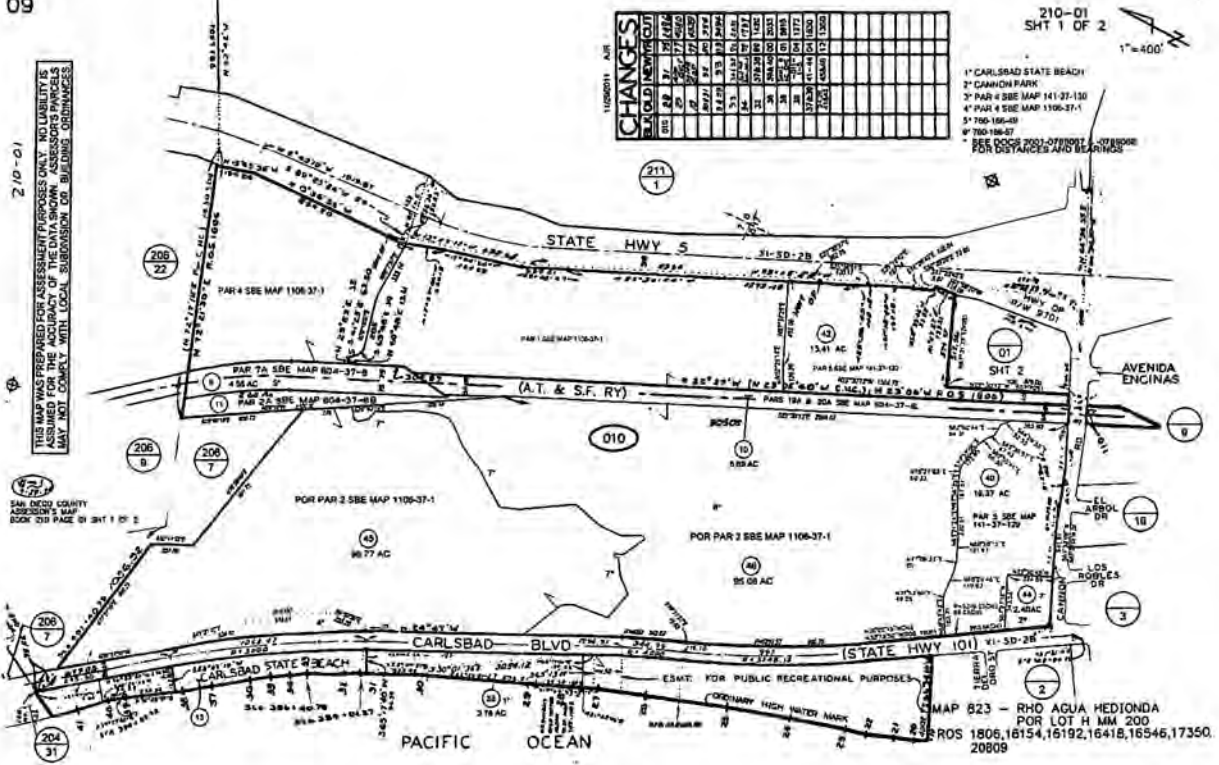


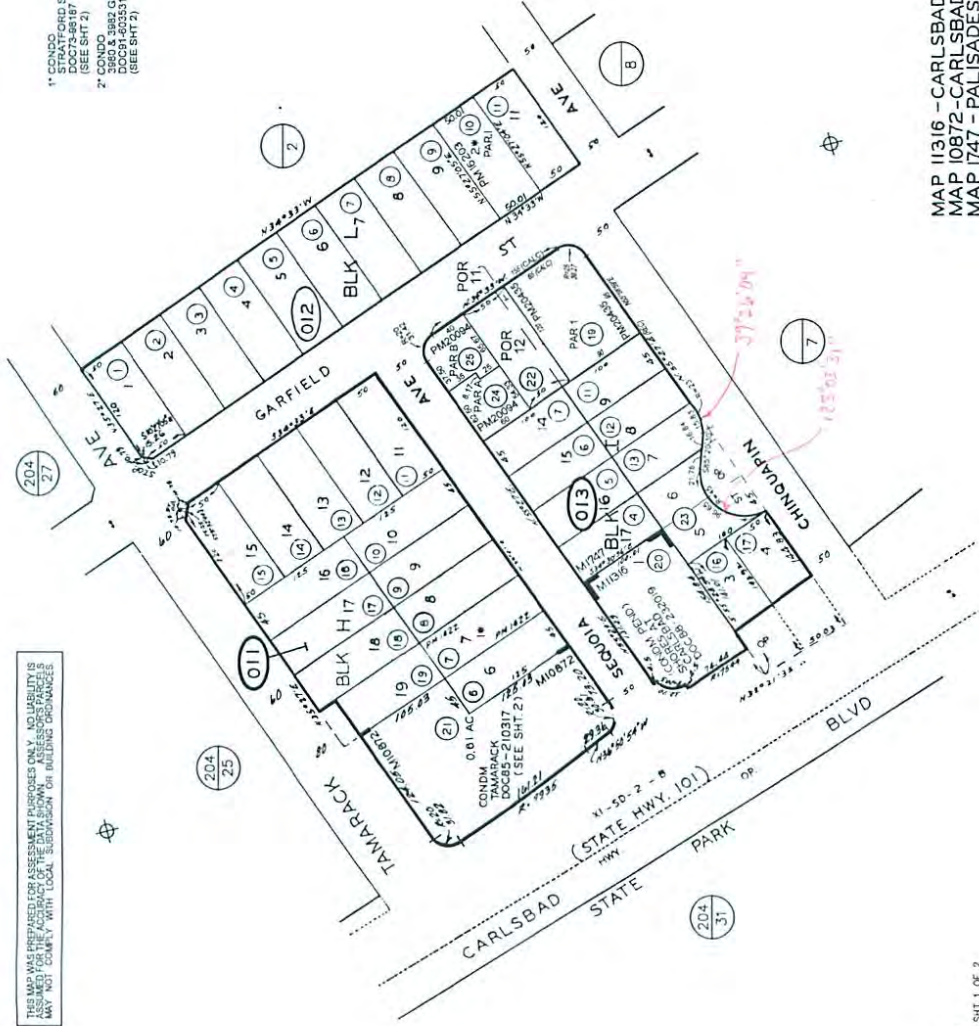
Exhibit Q – 3

THIS MAP WAS PREPARED FOR THE CITY OF CARLSBAD AND IS ASSUMED TO BE ACCURATE TO THE BEST OF THE MAPPER'S KNOWLEDGE. THE CITY OF CARLSBAD AND THE MAPPER ASSUME NO LIABILITY FOR THE ACCURACY OF THE DATA SHOWN ON THESE PARCELS. THE USER MAY NOT COMPLY WITH LOCAL, SUBDIVISION OR BUILDING ORDINANCES.

- 1\* CONDO. 300 SQ. FT. GARFIELD SQUARE (SEE SHT 2)
- 2\* CONDO. 300 SQ. FT. GARFIELD ST (SEE SHT 2)



206-01  
SHT 1 OF 2

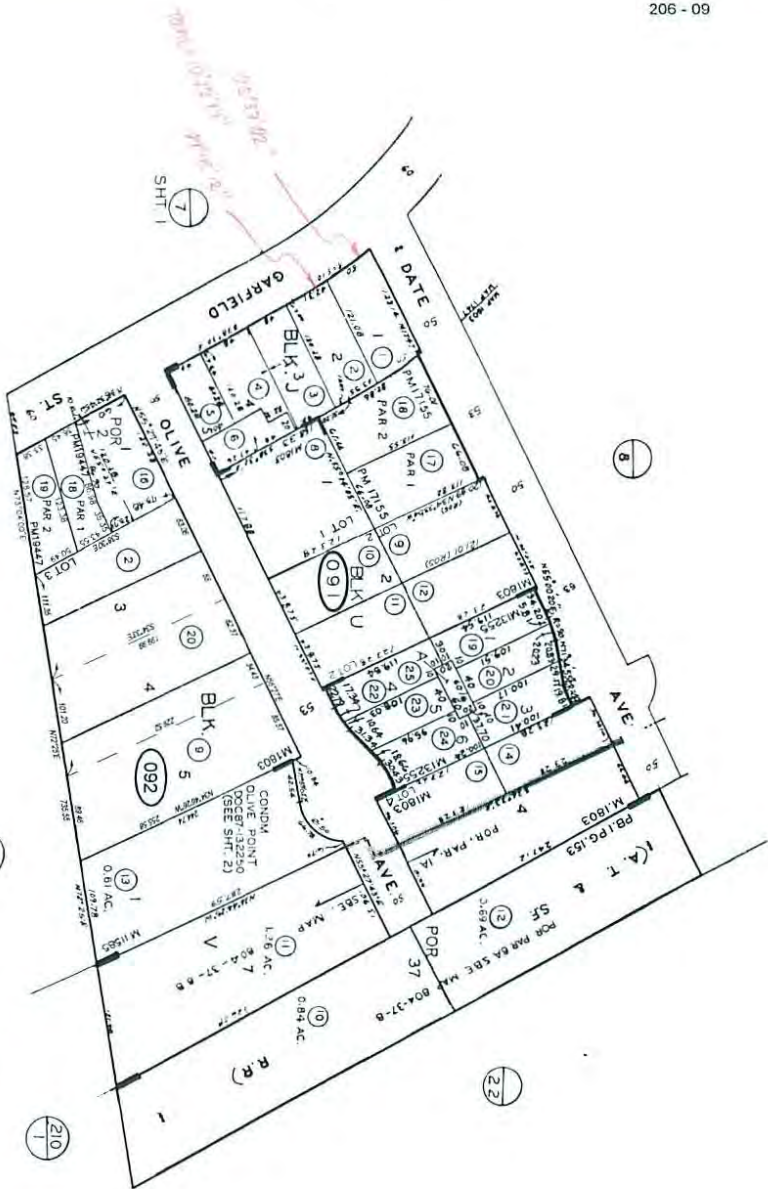


07/26/08 ALL

CHANGES	BLK	OLD	NEW	CUT
	009	9110	18179	67 5972
	011	7	6404	213 14
	011	19	7415	175 4979
	011	20	21	84 2065
	011	21	21	84 2065
	012	10	21	84 2065
	013	17-3	20	28 147
	013	20	CONDOM	63
	012	1	21	84 2065
	011	15	21	84 2065
	012	10	CONDOM	121 608
	013	21	21	84 2065
	013	13	21	84 2065
	013	21	21	84 2065
	013	18	21	84 2065

MAP 11316 - CARLSBAD TCT 84-18 (CONDM)  
 MAP 10872 - CARLSBAD TCT 81-44 (CONDM)  
 MAP 1747 - PALISADES

SAN DIEGO COUNTY  
 ASSASSORS' MAP  
 BOOK 206 PAGE 01 SHT 1 OF 2



206-09  
 SAN JUAN COUNTY  
 SUPERVISOR  
 BOARD 206 PAGE 09 SH 1 OF 2

THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY. NO LIABILITY IS ASSUMED FOR THE CORRECTNESS OF THE DATA SHOWN. INTERESTED PARTIES ARE ADVISED TO OBTAIN A CURRENT SURVEY OR RECORD DRAWING FOR THE PROPERTY.

MAP 13255-CITY OF CARLSBAD TCT 94-02  
 MAP 13256-CARLSBAD TCT 94-13 (CONDOM)  
 MAP 1609-FALL SADES NO.2  
 MAP 1747-FALL SADES  
 PBI PG153-RHO AGUA HEDIIONDA  
 ROS 12989, 13486

206-09  
 SH 1 OF 2



CHANGES		ACR	
BLK	OLD	NEW	CUT
097	16	975.277	44.15
092	6	7.3	77.116
092	13	CONDA	881 657
092	1	14115	790 1151
092	7	14115	16477 17355
091	13	19,25	941 63
092	17	18419	001 1232
092	388	20	14 1200
* OPEN SPACE			

Parcel 1

DOC # 2001-0789065

OCT 30, 2001 4:59 PM

RECORDING  
REQUESTED BY  
STEWART TITLE OF CALIFORNIA  
AND WHEN  
RECORDED MAIL TO:

025074

OFFICIAL RECORDS  
SAN DIEGO COUNTY RECORDER'S OFFICE  
GREGORY J. SMITH, COUNTY RECORDER  
FEES: 20.00

Flp  
SP  
10M

City Clerk  
CITY OF CARLSBAD  
1200 Carlsbad Village Dr.  
Carlsbad, CA 92008



SPACE ABOVE THIS LINE FOR RECORDER'S USE

ASSESSOR'S PARCEL NO. 206-070-10-00 and  
206-070-11-00 (portion)  
PROJECT NO. & NAME: ADJ 00-10, Parcel 1  
Encina Adjustment  
Case No. CE 01-36

**CERTIFICATE OF COMPLIANCE  
FOR ADJUSTMENT PLAT**  
(Section 66499.35 of the Government Code)

The City Engineer has determined that the real property described below, has been divided or has resulted from a division or combining of lots in compliance with the Subdivision Map Act and with the provisions of the Carlsbad Municipal Code pursuant thereto.

OWNER(S): San Diego Gas & Electric Company, a Corporation

DESCRIPTION: (See Exhibit "A" attached. Exhibit "B" is attached for clarity only.)

NOTE: The description in Exhibit "A" attached has been provided by the owner of the property and neither the City of Carlsbad nor any of its officers or employees assume responsibility for the accuracy of said description.

This Certificate of Compliance shall have no force and effect if the above owners or any subsequent transferee or assignee acquires any contiguous property other than a lot or lots shown on a recorded subdivision map, parcel map or record of survey map filed pursuant to and prior to repeal (Stats. 1955, Ch. 1593) of Section 11575 of the Business and Professions Code;

This Certificate of Compliance shall in no way affect the requirements of any other County, State or Federal agency that regulates development of real property.

DATE: 10/29/01

BY: Robert A. Wojcik  
Deputy City Engineer  
RCE 3208 EXP. 2/30/02  
33698



025075

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**  
**ADJ 00-10 - ENCINA**

**PARCEL 1**

All of Block "W" of Palisades Unit No. 2, according to Map thereof No. 1803, filed in the office of the County Recorder of said San Diego County, August 25, 1924; EXCEPTING therefrom, the Northeasterly 300 feet of the Northwesterly 100 feet thereof; ALSO EXCEPTING the Northwesterly 120 feet of said Block "W" lying Southwesterly of the Southwesterly line of said Northeasterly 300 feet, and the Southeasterly prolongation of said Southwesterly line.

The hereinabove described parcel of land contains 5.76 acres more or less.

Prepared By:

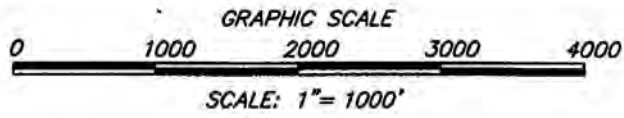
Nolte Associates, Inc.

*Ronald C. Parker* 10-22-01  
Ronald C. Parker Date  
Director of Survey



n:\sd1947\legal description parcel 1.doc

025076



**OWNERS:**  
**PARCELS 1, 2, AND 8 THROUGH 11**  
SAN DIEGO GAS AND ELECTRIC COMPANY  
A CORPORATION  
101 ASH STREET  
SAN DIEGO, CA 92112

BY: *Steven P. Davis*  
STEVEN P. DAVIS, VICE PRESIDENT

BY: *David B. Follett*  
DAVID B. FOLLETT  
ASSISTANT SECRETARY

**PARCELS 3 THROUGH 7**  
CABRILLO POWER I LLC,  
A DELAWARE LIMITED LIABILITY COMPANY  
750 B STREET, SUITE 2740  
SAN DIEGO, CA 92112

BY: *Stan M. Marks*  
VICE PRESIDENT  
STAN M. MARKS

BY: *David Lloyd*  
SECRETARY  
DAVID LLOYD

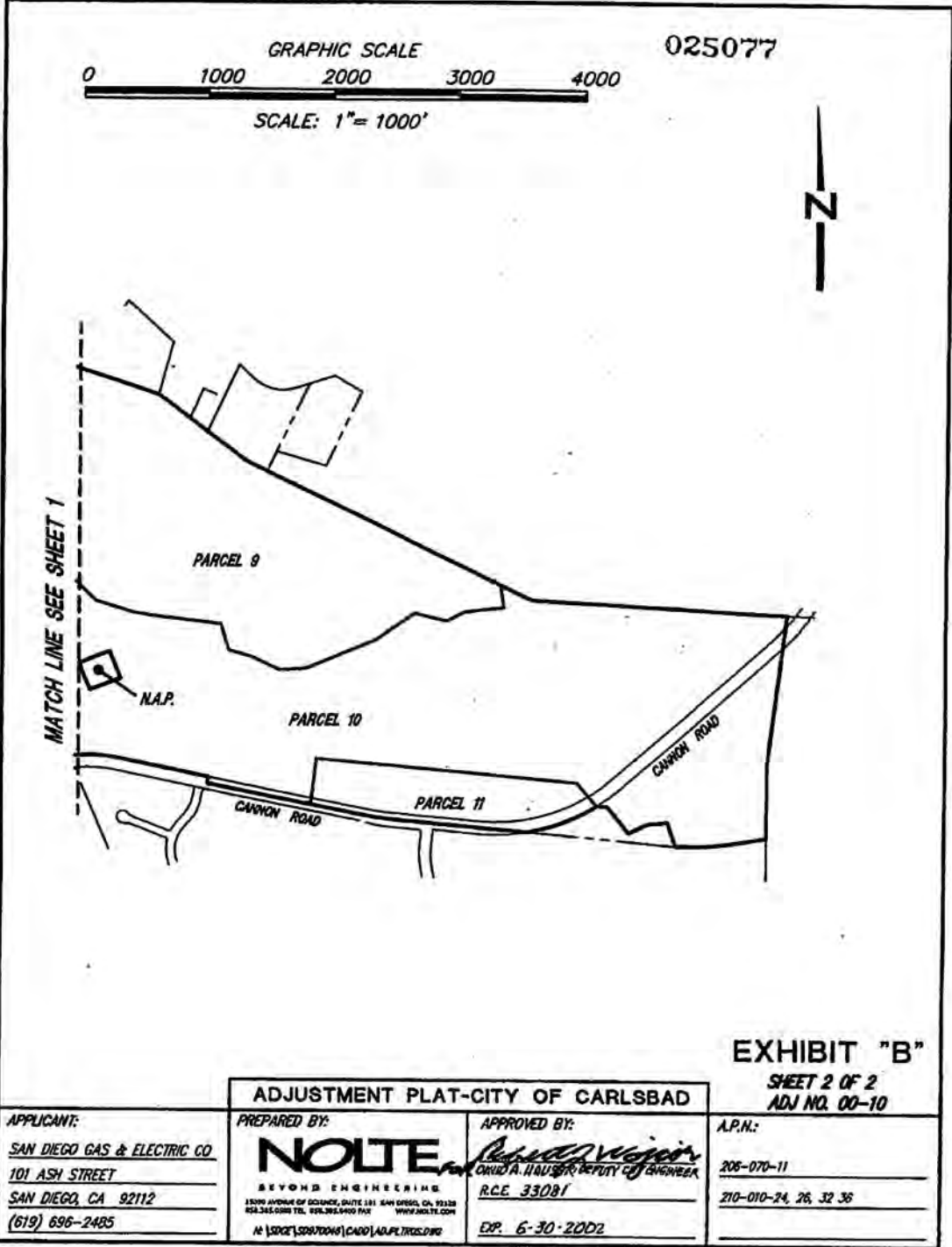
MATCH LINE SEE SHEET 2



*Ronald C. Parker*  
RONALD C. PARKER LS 4312  
EXP. 6-30-04

**EXHIBIT "B"**  
SHEET 1 OF 2  
ADJ. NO. 00-10

<b>ADJUSTMENT PLAT-CITY OF CARLSBAD</b>			
<b>APPLICANT:</b> SAN DIEGO GAS & ELECTRIC CO 101 ASH STREET SAN DIEGO, CA 92112 (619) 696-2485	<b>PREPARED BY:</b> <b>NOLTE</b> BEYOND ENGINEERING 1900 AVENUE OF SOURCES, SUITE 341 SAN DIEGO, CA 92128 P.O. BOX 1000 TEL. 619-383-6400 FAX WWW.NOLTE.COM # [5202] 520970048 CARLSBAD, CALIF. TRUSTING	<b>APPROVED BY:</b> <i>Roberta Wagner</i> ROBERTA WAGNER DEPUTY CITY ENGINEER R.C.E. 33081 EXP. 6-30-2002	<b>A.P.N.:</b> 206-070-11 210-010-24, 26, 32, 36



025078

State of California }  
County of San Diego }

On October 29, 2001 before me, Kelly Murphy  
(Date) (Name, Title of Officer)

personally appeared Robert J. Wojcik  
(Name[s] of Signer[s])

\_\_\_\_\_,  personally known to me  
- OR -  (or proved to me on the basis of satisfactory evidence) to be the person(s) whose  
name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they  
executed the same in his/her/their authorized capacity(ies), and that by his/her/their  
signature(s) on the instrument the person(s), or entity upon behalf of which the person(s) acted,  
executed the instrument.

WITNESS my hand and official seal



Kelly Murphy  
Signature of Notary

(This area for official  
notary seal)

Title or Type of Document <u>Certificate of Compliance for Adjustment Plat ADJ 00-10, Parcel 1</u>	
Date of Document <u>10/29/01</u>	No. of Pages <u>4</u>
Signer(s) other than named above _____	
_____	

**EXHIBIT R**  
**FORM OF GUARANTY**

## **Independent Guaranty Amount**

This Guaranty is executed and delivered as of this \_\_\_\_\_ day of -----, 2014 by NRG Energy, Inc., a Delaware corporation (“Guarantor”), in favor of the City of Carlsbad, a charter city, located in San Diego County (“City”), in connection with the performance by Cabrillo Power I LLC, a limited liability company, and Carlsbad Energy Center LLC, a limited liability company (collectively (“Owner”) of a Settlement Agreement dated January 14, 2014 between Owner and City (the “Settlement”).

### **- RECITALS -**

A. WHEREAS, the Owner operates facilities known as Units 1-5 (individually a “Unit” and collectively the “Units,” the “Encina Power Station” or the “Station”) for the purpose of generating and selling electric power;

B. WHEREAS, the Owner intends to build and operate new facilities known as the Carlsbad Energy Center Project (“CECP”) for the purpose of generating and selling electric power, and the City has historically opposed such project;

C. WHEREAS, the Parties have entered the Settlement to fully and finally resolve disputes involving the CECP and the retirement and removal of the Encina Power Station, by providing for, among other things: (i) the retirement, decommissioning, and removal of the Encina Power Station, (ii) the remediation and redevelopment of the Encina Power Station site, (iii) the provisions of the Amendment and the construction and development of the CECP, (iv) the relocation and construction of the new North Coast Service Center, and (v) other changes in energy infrastructure and property considerations beneficial to the residents of Carlsbad.

D. WHEREAS, Owner is controlled by Guarantor. Guarantor expects to derive material benefits from the performance of the Settlement by Owner and City. To induce City to enter into the Settlement and undertake the obligations as set out in the Settlement, Guarantor has agreed to guarantee the obligations of Owner as provided in this Guaranty.

NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

### **- AGREEMENT -**

1. Guaranty. Subject to the provisions of this Guaranty, Guarantor hereby absolutely, irrevocably, unconditionally, and fully guarantees to City the due, prompt, and complete observance, performance, and discharge of each and every obligation, including without limitation obligations that are financial or that require specific performance, of Owner under the Settlement, whether incurred before or after the date of delivery of this Guaranty (the “Obligations”). This is a guaranty of payment, not of collection, and as such, City shall not be required to institute, pursue, or exhaust any remedies against Owner before instituting suit, obtaining judgment, and executing thereon against Guarantor under this Guaranty.

2. Rights of City. Guarantor hereby grants to City, in City’s discretion and without the need to notify or obtain any consent from Guarantor, and without termination, impairment, or any other effect upon Guarantor’s duties hereunder, the power and authority from time to time:

(a) to renew, compromise, extend, accelerate, or otherwise change, substitute, supersede, or terminate the terms of performance of any of the Obligations, in each case in accordance with the Settlement;

(b) to grant any indulgences, forbearances, and waivers, on one or more occasions, for any length of time, with respect to Owner's performance of any of the Obligations; and

(c) to accept collateral, further guaranties, and/or other security for the Obligations, and, if so accepted, then to impair, exhaust, exchange, enforce, waive, or release any such security.

3. Performance. If any of the Obligations are not performed according to the tenor thereof, and any applicable notice and cure period provided by the Settlement has expired ("Default"), Guarantor shall immediately upon receipt of written demand by City (a) perform or cause Owner to perform the Obligation in Default, and (b) pay, reimburse, and indemnify City against any liabilities, damages, and related costs (including attorneys' fees) incurred by City as a result thereof up to but not to exceed a maximum cumulative amount of five million dollars (\$5,000,000), all in such manner and at such times as City may reasonably direct.

4. Satisfaction. Satisfaction by Guarantor of any duty hereunder incident to a particular Default or the occurrence of any other Default shall not discharge Guarantor except with respect to the Default satisfied, it being the intent of Guarantor that this Guaranty be continuing until twenty (20) years after the execution date of this Guaranty or such time as all of the Obligations have irrevocably been discharged in full, whichever is sooner, at which time this Guaranty shall automatically terminate. If at any time the performance of any Obligation by Owner or Guarantor is rescinded or voided under the federal Bankruptcy Code or otherwise, then Guarantor's duties hereunder shall continue and be deemed to have been automatically reinstated, restored, and continued with respect to that Obligation, as though the performance of that Obligation had never occurred, regardless of whether this Guaranty otherwise had terminated or would have been terminated following or as a result of that performance.

5. Notice of Acceptance. Guarantor waives and acknowledges notice of acceptance of this Guaranty by City.

6. Waivers by Guarantor. Guarantor hereby waives and agrees not to assert or take advantage of:

(a) all set-offs, counterclaims, and, subject to Section 3 above, all presentments, demands for performance, notices of non-performance, protests, and notices of every kind that may be required by Applicable Laws;

(b) any right to require City to proceed against Owner or any other person, or to require City first to exhaust any remedies against Owner or any other person, before proceeding against Guarantor hereunder;

(c) any defense based upon an election of remedies by City;

- (d) any duty of City to protect or not impair any security for the Obligations;
- (e) the benefit of any laws limiting the liability of a surety;

(f) any duty of City to disclose to Guarantor any facts concerning Owner, the Settlement, or any other circumstances, that would or allegedly would increase the risk to Guarantor under this Guaranty, whether now known or hereafter learned by City, it being understood that Guarantor is capable of and assumes the responsibility for being and remaining informed as to all such facts and circumstances; and

(g) until all Obligations in Default have been fully paid and/or performed, any rights of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery for any payment or performance by it hereunder. For the avoidance of doubt, if any amount is paid to Guarantor in violation of this provision, such amount shall be held by Guarantor for the benefit of, and promptly paid to, City.

7. Cumulative Remedies. The rights and remedies of City hereunder shall be cumulative and not alternative to any other rights, powers, and remedies that City may have at law, in equity, or under the Settlement. The obligations of Guarantor hereunder are independent of those of Owner and shall survive unaffected by the bankruptcy of Owner. City need not join Owner in any action against Guarantor to preserve its rights set forth herein.

8. Representations and Warranties. Guarantor represents and warrants to City as follows:

(a) Guarantor is a corporation, duly organized, validly existing, and in good standing under the laws of the state of its incorporation. Owner is a direct or indirect wholly-owned subsidiary of Guarantor. Guarantor has all necessary corporate power and authority to execute and deliver this Guaranty and to perform its obligations hereunder.

(b) The execution, delivery and performance of this Guaranty has been duly and validly authorized by all corporate proceedings of Guarantor and is not in violation of any law, judgment of court or government agency. This Guaranty has been duly and validly executed and delivered by Guarantor and constitutes a legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms.

9. Collection Costs. Guarantor hereby agrees to pay to City, upon demand, all reasonable attorneys' fees and other expenses which City may expend or incur in enforcing the Obligations against Owner and/or enforcing this Guaranty against Guarantor, whether or not suit is filed, including, without limitation, all attorneys' fees, and other expenses incurred by City in connection with any insolvency, bankruptcy, reorganization, arrangement, or other similar proceedings involving Owner that in any way affect the exercise by City of its rights and remedies hereunder.

10. Severability. Should any one or more provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions nevertheless shall be effective.

11. Waiver or Amendment. No provision of this Guaranty or right of City hereunder can be waived, nor can Guarantor be released from Guarantor's duties hereunder, except by a



writing duly executed by City. This Guaranty may not be modified, amended, revised, revoked, terminated, changed, or varied in any way whatsoever except by the express terms of a writing duly executed by City.

12. Successors and Assigns. This Guaranty shall inure to the benefit of and bind the successors and assigns of City and Guarantor.

13. Governing Law. This Guaranty shall be governed by and construed in accordance with the laws of the State of California without regard to the principles of conflicts of law thereof.

14. Notices. All notices, requests, claims, demands, and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt) by delivery in the manner contemplated by the Settlement, addressed as follows:

(a) if to City as provided in the Settlement

(b) if to Guarantor:

Sean Beatty  
West Region General Counsel  
NRG Energy, Inc.  
P.O. Box 192  
Pittsburg, CA 94565  
sean.beatty@nrgenergy.com

or to such other address(es) as the person to whom notice is given may have previously furnished to the others in writing in the manner set forth above.

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be duly executed and delivered to City as of the day written above.

**NRG Energy, Inc.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF

By: \_\_\_\_\_

Name:

Title:

)

) ss.

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_.

Notary Public: \_\_\_\_\_

(S E A L)

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(space above reserved for recording information)

## **Shut Down Guaranty Amount**

This Guaranty is executed and delivered as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by NRG Energy, Inc., a Delaware corporation (“Guarantor”), in favor of the City of Carlsbad, a charter city, located in San Diego County (“City”), in connection with the performance by Cabrillo Power I LLC, a limited liability company, and Carlsbad Energy Center LLC, a limited liability company (collectively (“Owner”) of a Settlement Agreement dated January 14, 2014 between Owner and City (the “Settlement”).

### **- RECITALS -**

- A. WHEREAS, the Owner operates facilities known as Units 1-5 (individually a “Unit” and collectively the “Units,” the “Encina Power Station” or the “Station”) for the purpose of generating and selling electric power;
- B. WHEREAS, the Owner intends to build and operate new facilities known as the Carlsbad Energy Center Project (“CECP”) for the purpose of generating and selling electric power and the City has historically opposed such project;
- C. WHEREAS, the Parties have entered the Settlement to fully and finally resolve disputes involving the CECP and the retirement and removal of the Encina Power Station, by providing for, among other things: (i) the retirement, decommissioning, and removal of the Encina Power Station, (ii) the remediation and redevelopment of the Encina Power Station site, (iii) the provisions of the Amendment and the construction and development of the CECP, (iv) the relocation and construction of the new North Coast Service Center, and (v) other changes in energy infrastructure and property considerations beneficial to the residents of Carlsbad.
- D. WHEREAS, Owner is controlled by Guarantor. Guarantor expects to derive material benefits from the performance of the Settlement by Owner and City. To induce City to enter into the Settlement and undertake the obligations as set out in the Settlement, Guarantor has agreed to guarantee the obligations of Owner as provided in this Guaranty.

NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

### **- AGREEMENT -**

1. Guaranty. Subject to the provisions of this Guaranty, Guarantor hereby absolutely, irrevocably, unconditionally, and fully guarantees to City the due, prompt, and complete observance, performance, and discharge of each and every obligation under Section 6.1 of the Settlement, including without limitation obligations that are financial or that require specific performance, of Owner, whether incurred before or after the date of delivery of this Guaranty (the “Obligations”). This is a guaranty of payment, not of collection, and as such, City shall not be required to institute, pursue, or exhaust any remedies against Owner before instituting suit, obtaining judgment, and executing thereon against Guarantor under this Guaranty.
2. Rights of City. Guarantor hereby grants to City, in City’s discretion and without the need to notify or obtain any consent from Guarantor, and without termination, impairment, or any other effect upon Guarantor’s duties hereunder, the power and authority from time to time:

(a) to renew, compromise, extend, accelerate, or otherwise change, substitute, supersede, or terminate the terms of performance of any of the Obligations, in each case in accordance with the Settlement;

(b) to grant any indulgences, forbearances, and waivers, on one or more occasions, for any length of time, with respect to Owner's performance of any of the Obligations; and

(c) to accept collateral, further guaranties, and/or other security for the Obligations, and, if so accepted, then to impair, exhaust, exchange, enforce, waive, or release any such security.

3. Performance. If any of the Obligations are not performed according to the tenor thereof, and any applicable notice and cure period provided by the Settlement has expired ("Default"), Guarantor shall immediately upon receipt of written demand by City (a) perform or cause Owner to perform the Obligation in Default, and (b) pay, reimburse, and indemnify City against any liabilities, damages, and related costs (including attorneys' fees) incurred by City as a result thereof up to but not to exceed a maximum cumulative amount of twenty million dollars (\$20,000,000), which is in addition to the Independent Guaranty Amount, all in such manner and at such times as City may reasonably direct.

4. Satisfaction. Satisfaction by Guarantor of any duty hereunder incident to a particular Default or the occurrence of any other Default shall not discharge Guarantor except with respect to the Default satisfied, it being the intent of Guarantor that this Guaranty be continuing until such time as all of the Obligations have irrevocably been discharged in full, at which time this Guaranty shall automatically terminate. If at any time the performance of any Obligation by Owner or Guarantor is rescinded or voided under the federal Bankruptcy Code or otherwise, then Guarantor's duties hereunder shall continue and be deemed to have been automatically reinstated, restored, and continued with respect to that Obligation, as though the performance of that Obligation had never occurred, regardless of whether this Guaranty otherwise had terminated or would have been terminated following or as a result of that performance.

5. Notice of Acceptance. Guarantor waives and acknowledges notice of acceptance of this Guaranty by City.

6. Waivers by Guarantor. Guarantor hereby waives and agrees not to assert or take advantage of:

(a) all set-offs, counterclaims, and, subject to Section 3 above, all presentments, demands for performance, notices of non-performance, protests, and notices of every kind that may be required by Applicable Laws;

(b) any right to require City to proceed against Owner or any other person, or to require City first to exhaust any remedies against Owner or any other person, before proceeding against Guarantor hereunder;

(c) any defense based upon an election of remedies by City;

- (d) any duty of City to protect or not impair any security for the Obligations;
- (e) the benefit of any laws limiting the liability of a surety;

(f) any duty of City to disclose to Guarantor any facts concerning Owner, the Settlement, or any other circumstances, that would or allegedly would increase the risk to Guarantor under this Guaranty, whether now known or hereafter learned by City, it being understood that Guarantor is capable of and assumes the responsibility for being and remaining informed as to all such facts and circumstances; and

(g) until all Obligations in Default have been fully paid and/or performed, any rights of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery for any payment or performance by it hereunder. For the avoidance of doubt, if any amount is paid to Guarantor in violation of this provision, such amount shall be held by Guarantor for the benefit of, and promptly paid to, City.

7. Cumulative Remedies. The rights and remedies of City hereunder shall be cumulative and not alternative to any other rights, powers, and remedies that City may have at law, in equity, or under the Settlement. The obligations of Guarantor hereunder are independent of those of Owner and shall survive unaffected by the bankruptcy of Owner. City need not join Owner in any action against Guarantor to preserve its rights set forth herein.

8. Representations and Warranties. Guarantor represents and warrants to City as follows:

(a) Guarantor is a corporation, duly organized, validly existing, and in good standing under the laws of the state of its incorporation. Owner is a direct or indirect wholly-owned subsidiary of Guarantor. Guarantor has all necessary corporate power and authority to execute and deliver this Guaranty and to perform its obligations hereunder.

(b) The execution, delivery and performance of this Guaranty has been duly and validly authorized by all corporate proceedings of Guarantor and is not in violation of any law, judgment of court or government agency. This Guaranty has been duly and validly executed and delivered by Guarantor and constitutes a legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms.

9. Collection Costs. Guarantor hereby agrees to pay to City, upon demand, all reasonable attorneys' fees and other expenses which City may expend or incur in enforcing the Obligations against Owner and/or enforcing this Guaranty against Guarantor, whether or not suit is filed, including, without limitation, all attorneys' fees, and other expenses incurred by City in connection with any insolvency, bankruptcy, reorganization, arrangement, or other similar proceedings involving Owner that in any way affect the exercise by City of its rights and remedies hereunder.

10. Severability. Should any one or more provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions nevertheless shall be effective.

11. Waiver or Amendment. No provision of this Guaranty or right of City hereunder can be waived, nor can Guarantor be released from Guarantor's duties hereunder, except by a

writing duly executed by City. This Guaranty may not be modified, amended, revised, revoked, terminated, changed, or varied in any way whatsoever except by the express terms of a writing duly executed by City.

12. Successors and Assigns. This Guaranty shall inure to the benefit of and bind the successors and assigns of City and Guarantor.

13. Governing Law. This Guaranty shall be governed by and construed in accordance with the laws of the State of California without regard to the principles of conflicts of law thereof.

14. Notices. All notices, requests, claims, demands, and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt) by delivery in the manner contemplated by the Settlement, addressed as follows:

(a) if to City as provided in the Settlement

(b) if to Guarantor:

Sean Beatty  
West Region General Counsel  
NRG Energy, Inc.  
P.O. Box 192  
Pittsburg, CA 94565  
sean.beatty@nrgenergy.com

or to such other address(es) as the person to whom notice is given may have previously furnished to the others in writing in the manner set forth above.

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be duly executed and delivered to City as of the day written above.

**NRG Energy, Inc.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF

By: \_\_\_\_\_

Name:

Title:

)

) ss.

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_.

Notary Public: \_\_\_\_\_

(S E A L)

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(space above reserved for recording information)

## Relocation Guaranty Amount

This Guaranty is executed and delivered as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by NRG Energy, Inc., a Delaware corporation (“Guarantor”), in favor of the City of Carlsbad, a charter city, located in San Diego County (“City”), in connection with the performance by Cabrillo Power I LLC, a limited liability company, and Carlsbad Energy Center LLC, a limited liability company (collectively (“Owner”) of a Settlement Agreement dated January 14, 2014 between Owner and City (the “Settlement”).

### - RECITALS -

- A. WHEREAS, the Owner operates facilities known as Units 1-5 (individually a “Unit” and collectively the “Units,” the “Encina Power Station” or the “Station”) for the purpose of generating and selling electric power;
- B. WHEREAS, the Owner intends to build and operate new facilities known as the Carlsbad Energy Center Project (“CECP”) for the purpose of generating and selling electric power and the City has historically opposed such project;
- C. WHEREAS, the Parties have entered the Settlement to fully and finally resolve disputes involving the CECP and the retirement and removal of the Encina Power Station, by providing for, among other things: (i) the retirement, decommissioning, and removal of the Encina Power Station, (ii) the remediation and redevelopment of the Encina Power Station site, (iii) the provisions of the Amendment and the construction and development of the CECP, (iv) the relocation and construction of the new North Coast Service Center, and (v) other changes in energy infrastructure and property considerations beneficial to the residents of Carlsbad.
- D. WHEREAS, Owner is controlled by Guarantor. Guarantor expects to derive material benefits from the performance of the Settlement by Owner and City. To induce City to enter into the Settlement and undertake the obligations as set out in the Settlement, Guarantor has agreed to guarantee the obligations of Owner as provided in this Guaranty.

NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

### - AGREEMENT -

1. Guaranty. Subject to the provisions of this Guaranty, Guarantor hereby absolutely, irrevocably, unconditionally, and fully guarantees to City the due, prompt, and complete observance, performance, and discharge of each and every obligation under Article 5 of the Settlement, including without limitation obligations that are financial or that require specific performance, of Owner, whether incurred before or after the date of delivery of this Guaranty (the “Obligations”). This is a guaranty of payment, not of collection, and as such, City shall not be required to institute, pursue, or exhaust any remedies against Owner before instituting suit, obtaining judgment, and executing thereon against Guarantor under this Guaranty.
2. Rights of City. Guarantor hereby grants to City, in City’s discretion and without the need to notify or obtain any consent from Guarantor, and without termination, impairment, or any other effect upon Guarantor’s duties hereunder, the power and authority from time to time:



(a) to renew, compromise, extend, accelerate, or otherwise change, substitute, supersede, or terminate the terms of performance of any of the Obligations, in each case in accordance with the Settlement;

(b) to grant any indulgences, forbearances, and waivers, on one or more occasions, for any length of time, with respect to Owner's performance of any of the Obligations; and

(c) to accept collateral, further guaranties, and/or other security for the Obligations, and, if so accepted, then to impair, exhaust, exchange, enforce, waive, or release any such security.

3. Performance. If any of the Obligations are not performed according to the tenor thereof, and any applicable notice and cure period provided by the Settlement has expired ("Default"), Guarantor shall immediately upon receipt of written demand by City (a) perform or cause Owner to perform the Obligation in Default, and (b) pay, reimburse, and indemnify City against any liabilities, damages, and related costs (including attorneys' fees) incurred by City as a result thereof up to but not to exceed a maximum cumulative amount of twenty-two million five hundred thousand dollars (\$22,500,000), all in such manner and at such times as City may reasonably direct; provided that such maximum cumulative amount shall be reduced in proportion to Owner's payments made in accordance with Article 5.

4. Satisfaction. Satisfaction by Guarantor of any duty hereunder incident to a particular Default or the occurrence of any other Default shall not discharge Guarantor except with respect to the Default satisfied, it being the intent of Guarantor that this Guaranty be continuing until such time as all of the Obligations have irrevocably been discharged in full, at which time this Guaranty shall automatically terminate. If at any time the performance of any Obligation by Owner or Guarantor is rescinded or voided under the federal Bankruptcy Code or otherwise, then Guarantor's duties hereunder shall continue and be deemed to have been automatically reinstated, restored, and continued with respect to that Obligation, as though the performance of that Obligation had never occurred, regardless of whether this Guaranty otherwise had terminated or would have been terminated following or as a result of that performance.

5. Notice of Acceptance. Guarantor waives and acknowledges notice of acceptance of this Guaranty by City.

6. Waivers by Guarantor. Guarantor hereby waives and agrees not to assert or take advantage of:

(a) all set-offs, counterclaims, and, subject to Section 3 above, all presentments, demands for performance, notices of non-performance, protests, and notices of every kind that may be required by Applicable Laws;

(b) any right to require City to proceed against Owner or any other person, or to require City first to exhaust any remedies against Owner or any other person, before proceeding against Guarantor hereunder;

- (c) any defense based upon an election of remedies by City;
- (d) any duty of City to protect or not impair any security for the Obligations;
- (e) the benefit of any laws limiting the liability of a surety;
- (f) any duty of City to disclose to Guarantor any facts concerning Owner, the Settlement, or any other circumstances, that would or allegedly would increase the risk to Guarantor under this Guaranty, whether now known or hereafter learned by City, it being understood that Guarantor is capable of and assumes the responsibility for being and remaining informed as to all such facts and circumstances; and
- (g) until all Obligations in Default have been fully paid and/or performed, any rights of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery for any payment or performance by it hereunder. For the avoidance of doubt, if any amount is paid to Guarantor in violation of this provision, such amount shall be held by Guarantor for the benefit of, and promptly paid to, City.

7. Cumulative Remedies. The rights and remedies of City hereunder shall be cumulative and not alternative to any other rights, powers, and remedies that City may have at law, in equity, or under the Settlement. The obligations of Guarantor hereunder are independent of those of Owner and shall survive unaffected by the bankruptcy of Owner. City need not join Owner in any action against Guarantor to preserve its rights set forth herein.

8. Representations and Warranties. Guarantor represents and warrants to City as follows:

(a) Guarantor is a corporation, duly organized, validly existing, and in good standing under the laws of the state of its incorporation. Owner is a direct or indirect wholly-owned subsidiary of Guarantor. Guarantor has all necessary corporate power and authority to execute and deliver this Guaranty and to perform its obligations hereunder.

(b) The execution, delivery and performance of this Guaranty has been duly and validly authorized by all corporate proceedings of Guarantor and is not in violation of any law, judgment of court or government agency. This Guaranty has been duly and validly executed and delivered by Guarantor and constitutes a legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms.

9. Collection Costs. Guarantor hereby agrees to pay to City, upon demand, all reasonable attorneys' fees and other expenses which City may expend or incur in enforcing the Obligations against Owner and/or enforcing this Guaranty against Guarantor, whether or not suit is filed, including, without limitation, all attorneys' fees, and other expenses incurred by City in connection with any insolvency, bankruptcy, reorganization, arrangement, or other similar proceedings involving Owner that in any way affect the exercise by City of its rights and remedies hereunder.

10. Severability. Should any one or more provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions nevertheless shall be effective.

11. Waiver or Amendment. No provision of this Guaranty or right of City hereunder can be waived, nor can Guarantor be released from Guarantor's duties hereunder, except by a writing duly executed by City. This Guaranty may not be modified, amended, revised, revoked, terminated, changed, or varied in any way whatsoever except by the express terms of a writing duly executed by City.

12. Successors and Assigns. This Guaranty shall inure to the benefit of and bind the successors and assigns of City and Guarantor.

13. Governing Law. This Guaranty shall be governed by and construed in accordance with the laws of the State of California without regard to the principles of conflicts of law thereof.

14. Notices. All notices, requests, claims, demands, and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt) by delivery in the manner contemplated by the Settlement, addressed as follows:

- (a) if to City as provided in the Settlement
- (b) if to Guarantor:

Sean Beatty  
West Region General Counsel  
NRG Energy, Inc.  
P.O. Box 192  
Pittsburg, CA 94565  
sean.beatty@nrgenergy.com

or to such other address(es) as the person to whom notice is given may have previously furnished to the others in writing in the manner set forth above.

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be duly executed and delivered to City as of the day written above.

**NRG Energy, Inc.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF

By: \_\_\_\_\_

Name:

Title:

)

) ss.

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_.

Notary Public: \_\_\_\_\_

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(space above reserved for recording information)

# EXHIBIT S

## Map of Encina Redevelopment Site



**EXHIBIT T**  
**Map of CECP Site**



RESOLUTION NO. 1487

1  
2 A RESOLUTION OF THE CARLSBAD MUNICIPAL WATER DISTRICT  
3 (CMWD) BOARD OF DIRECTORS OF CARLSBAD, CALIFORNIA  
4 APPROVING AN AGREEMENT BETWEEN AND AMONG THE CITY OF  
5 CARLSBAD (CITY) AND THE CARLSBAD MUNICIPAL WATER  
6 DISTRICT (CMWD), CABRILLO POWER I LLC AND CARLSBAD  
7 ENERGY CENTER LLC (COLLECTIVELY, NRG), AND SAN DIEGO GAS  
8 & ELECTRIC (SDG&E), ADDRESSING CITY AND CMWD SUPPORT  
9 FOR A CHANGE IN THE PROPOSED TECHNOLOGY OF THE  
10 APPROVED CARLSBAD ENERGY CENTER PROJECT (CECP) PLANT  
11 AND THE SUBMITTAL OF A PETITION TO AMEND (PTA)  
12 APPLICATION TO THE CALIFORNIA ENERGY COMMISSION (CEC)  
13 FOR APPROVAL OF THIS TECHNOLOGY CHANGE, CONDITIONED  
14 UPON THE DECOMMISSIONING, DEMOLITION, REMOVAL AND  
15 REMEDIATION OF THE CURRENT ENCINA POWER STATION (EPS)  
16 SITE, AS WELL AS OTHER CHANGES IN CECP PLANT DESIGN,  
17 ENERGY INFRASTRUCTURE AND PROPERTY CONSIDERATIONS  
18 BENEFICIAL TO THE RESIDENTS OF CARLSBAD  
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24 WHEREAS, in May of 2012, the California Energy Commission approved NRG's  
25 application for certification of the Carlsbad Energy Center Project (CECP). That approval was for  
26 a 558 Megawatt combined cycle power plant located east of the existing Encina Power Station  
27 (EPS), between the railroad tracks and Interstate 5. As a part of that approval, 3 of the 5 boiler  
28 units at the existing EPS would be decommissioned, with the remaining 2 boiler units  
continuing to operate. Consequently, the decommissioning of the entire plant (all 5 units) and  
the demolition and removal of the existing EPS structures would not occur until an unspecified  
and uncertain future date. The CECP is now fully permitted and could proceed to construction  
and operation; and

WHEREAS, the City participated as an intervenor in the proceedings before the  
California Energy Commission (CEC) concerning the application for certification of the CECP and  
vigorously opposed the approval of said application; and

1           WHEREAS, during the pendency of said proceedings, the City took certain legislative  
2 actions concerning the construction of a new power plant in the Coastal Zone; and

3           WHEREAS, the CEC acknowledged that the CECP would be inconsistent with said  
4 legislative actions, including the City's General Plan and related land use ordinances,  
5 regulations and standards, but overrode said inconsistencies and approved the application for  
6 certification on the grounds that the CECP was required for public convenience and necessity  
7 and there were not more prudent and feasible means of achieving public convenience and  
8 necessity; and  
9

10           WHEREAS, since October of 2012, the energy supply environment in Southern California  
11 has dramatically changed. The San Onofre Nuclear Generation Station (SONGS) ceased  
12 operation in January 2012. In June 2013, SDG&E and Southern California Edison determined  
13 they would not recommence power generation at SONGS. The closure of SONGS has caused an  
14 increased and accelerated need for power generation facilities in Southern California. The  
15 California Independent System Operator (CAISO) has determined that additional power  
16 generation capacity is currently needed in the San Diego Region by 2018; and  
17

18           WHEREAS given the CAISO determination, SDG&E is interested in entering into a Power  
19 Purchase Agreement (PPA) with NRG, but only if NRG is willing to change the proposed  
20 technology of the approved CECP from a "combined-cycle configuration" plant to a "peaker  
21 configuration" plant and submit a Petition to Amend (PTA) application to the CEC for approval  
22 of this technology change. NRG is interested in submitting a PTA application, but only if the City  
23 would be supportive of such an application; and  
24

25  
26 ///



1           WHEREAS on December 3, 2013, the City Council adopted Resolution No. 2013-288  
2 directing “staff to negotiate with SDG&E and NRG in an attempt to reach a mutually beneficial  
3 agreement acceptable to all three parties, supporting a change in the proposed CECP  
4 technology conditioned upon the decommissioning, demolition, and remediation of the current  
5 Encina Power Station site, as well as other changes in energy infrastructure and property  
6 considerations beneficial to the residents of Carlsbad”; and  
7

8           WHEREAS, staff negotiated based on NRG’s intention to submit a PTA application to the  
9 CEC for an amendment to the existing approval of the CECP which would provide for a  
10 redesigned electrical generating facility that would have a smaller environmental footprint,  
11 lower profile and lower stack heights utilizing a “peaker configuration” and would facilitate  
12 retirement and removal of the existing Encina Power Station; and  
13

14           WHEREAS, the three parties reached an agreement on certain non-binding terms and  
15 entered into a Memorandum of Understanding (MOU), dated December 20, 2013. The MOU  
16 clarified the intentions and obligations of the three parties with respect to the negotiation of a  
17 formal, binding Agreement and set forth the terms that would be included in an Agreement;  
18 and  
19

20           WHEREAS, City staff, CMWD staff, NRG and SDG&E have drafted an Agreement  
21 incorporating the terms from the MOU; and

22           WHEREAS, the Agreement will provide significant benefits to the Carlsbad Municipal  
23 Water District as well as increasing energy supplies to the region. Some of those benefits  
24 include:

- 25           • NRG will amend its CECP project, proposing a plant that is more  
26 environmentally friendly, lower profile, utilizing “peaker configuration”  
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PASSED, APPROVED AND ADOPTED at a Joint Special Meeting of the Carlsbad Municipal  
Water District Board of Directors and the Carlsbad City Council, held on the 14th day of January  
2014, by the following vote:

AYES: Board Members Packard, Wood, Blackburn.

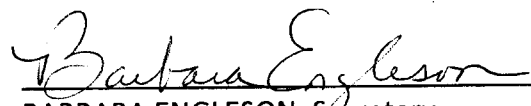
NOES: None.

ABSENT: Board Members Hall, Douglas.



MARK PACKARD, Vice President

ATTEST:



BARBARA ENGLESON, Secretary

(SEAL)



**SETTLEMENT AGREEMENT**

**DATED AS OF JANUARY 14, 2014**

**BETWEEN AND AMONG**

**THE CITY OF CARLSBAD,**

**CARLSBAD MUNICIPAL WATER DISTRICT,**

**CABRILLO POWER I LLC,**

**CARLSBAD ENERGY CENTER LLC**

**AND**

**SAN DIEGO GAS & ELECTRIC COMPANY**

## LIST OF EXHIBITS

Exhibit A	Legal Description of the Encina Site
Exhibit B	Map of the Encina Site
Exhibit C	Area Map of the Encina Site
Exhibit D	Form of NRG Support Letter
Exhibit E	Form of City Support Letter
Exhibit F	Form of Assumption of Obligations Agreement
Exhibit G	Form of Amendment
Exhibit H	Form of Memorandum of Agreement
Exhibit I	Form of Fossil Fuel Deed Restriction
Exhibit J	Legal Description of North Coast Services Center Site
Exhibit K	Map of North Coast Services Center Site
Exhibit L	Legal Description of Parcel 11
Exhibit M	Map of Parcel 11
Exhibit N	Legal Description of Cannon Park
Exhibit O	Map of Cannon Park
Exhibit P	Legal Description of Agua Hedionda North Shore Bluff Parcel
Exhibit Q	Map of Agua Hedionda North Shore Bluff Parcel
Exhibit R	Form of Guaranty
Exhibit S	Map of Encina Redevelopment Site
Exhibit T	Map of CECF Site

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (this "Agreement") is entered into as of January 14, 2014, by and among the City of Carlsbad, a charter city, located in San Diego County (the "City"), and Carlsbad Municipal Water District ("CMWD"), Cabrillo Power I LLC and Carlsbad Energy Center LLC (collectively, "NRG"), and San Diego Gas & Electric Company ("SDG&E"). The City, NRG and SDG&E are sometimes referred to in this Agreement collectively as the "Parties" and individually as a "Party", except that SDG&E is a Party solely for purposes of Article 5 and Article 12. Unless otherwise defined in this Agreement, initially capitalized terms used in this Agreement shall have the meaning given them in Article 1 below.

The Parties are entering into this Agreement to resolve long-standing disputes between the City and NRG regarding the Carlsbad Energy Center Project ("CECP" or the "Project"), and to provide for the redevelopment of the site of the Encina Power Station. This Agreement, if and when it becomes effective according to its terms, provides for, among other things: (i) the retirement, decommissioning, demolition and removal of the Encina Power Station, (ii) the remediation and redevelopment of the Encina Redevelopment Site (as defined below), (iii) the permitting, construction and development of the CECP, (iv) the relocation and construction of the New Service Center (as defined below), and (v) other changes in energy infrastructure and property considerations beneficial to the residents of Carlsbad.

### RECITALS

THIS AGREEMENT is made with reference to the following facts and circumstances:

A. **WHEREAS**, NRG owns real property located in the City, in the County of San Diego, California, bounded generally by Cannon Road to the south, Interstate 5 to the east, the Agua Hedionda Lagoon to the north, and Carlsbad Boulevard to the west (the "Encina Site"). A legal description of the Encina Site is attached to this Agreement as Exhibit A, and a map of the Encina Site is attached as Exhibit B, provided that in the event of any inconsistency between the map and the legal description, the legal description shall control. Also attached, as Exhibit C, is a map of the area in which the Encina Site is located;

B. **WHEREAS**, at the Encina Site, NRG operates facilities known as Units 1-5 (individually a "Unit" and collectively the "Units," the "Encina Power Station" or the "Station") for the purpose of generating and selling electric power. The Encina Power Station is currently subject to a Resource Adequacy Agreement ("RA Agreement") and a Participating Generator Agreement ("Participating Generator Agreement") with the California Independent System Operator ("ISO");

C. **WHEREAS**, NRG filed an application for the construction and development of the CECP with the California Energy Commission (the "Commission") on or about September 2007 (Docket No. 07-AFC-06) (the "Application");

D. **WHEREAS**, the City conditionally opposed this Application;

E. **WHEREAS**, from 2007 through 2012 the Commission processed this Application and, in May of 2012, issued its Order (Order No. 12-0531-06) and Decision approving the construction and development of the Project subject to the conditions stated therein;

F. **WHEREAS**, the San Onofre Nuclear Generation Station (“SONGS”) ceased operation January 2012 and in June 2013 Southern California Edison determined that they would not recommence power generation at SONGS;

G. **WHEREAS**, the early closure of SONGS has caused an increased and accelerated need for power generation facilities in Southern California, and the ISO has determined that additional generating capacity is currently needed in the San Diego region;

H. **WHEREAS**, NRG and SDG&E have represented to the City that they are interested in entering into a tolling or power purchase agreement (“Proposed PPA”) for the Project but only if (i) SDG&E and NRG are able to come to mutually acceptable terms on the Proposed PPA and (ii) NRG amends its permits for the Project to allow a change in proposed technology (“Amendment”), and NRG has represented that it would amend its permits only if the City would be supportive of such an Amendment;

I. **WHEREAS**, the Amendment would request approval of a redesigned electrical generating facility that would have a smaller environmental footprint, lower profile, and lower stack heights, and would facilitate the retirement and removal of the Encina Power Station;

J. **WHEREAS**, on December 3, 2013, the City adopted a resolution that provides:

“That the City Council does hereby direct staff to negotiate with SDG&E and NRG in an attempt to reach a mutually beneficial agreement acceptable to all three parties, supporting a change in the proposed CECP technology conditioned upon the decommissioning, demolition, and remediation of the current Encina Power Station site, as well as other changes in energy infrastructure and property considerations beneficial to the residents of Carlsbad.”;

K. **WHEREAS**, the City, NRG and SDG&E contemplate that SDG&E will relocate its North Coast Service Center provided that the cost of the proposed relocation and construction of the New Service Center be done in a manner which is cost-neutral to SDG&E and its ratepayers; and

L. **WHEREAS**, the Parties now wish to fully and finally resolve disputes involving the CECP and the Encina Power Station, by providing for, among other things: (i) the retirement, decommissioning, demolition, and removal of the Encina Power Station, (ii) the remediation and redevelopment of the Encina Redevelopment Site (as defined below), (iii) the provisions of the Amendment and the construction and development of the CECP, (iv) the relocation and construction of the New Service Center, and (v) other changes in energy infrastructure and property considerations beneficial to the residents of Carlsbad.

## AGREEMENT

ACCORDINGLY, to settle long-standing disputes and in consideration of the mutual covenants and agreements in this Agreement and for other good and valuable consideration, the receipt and adequacy of which are acknowledged, the Parties agree to the following terms and conditions:

### ARTICLE 1

#### DEFINITIONS

##### 1.1 Definitions

(a) “Affiliate” means, with respect to a Person, any Person that directly or indirectly Controls, is Controlled by or is under Common Control with that Person.

(b) “Agreement” shall have the meaning set forth in the opening paragraph of this Agreement.

(c) “Amendment” shall have the meaning set forth in Recital H and set forth in Exhibit G.

(d) “Application” shall have the meaning set forth in Recital C.

(e) “Assumption of Obligations” shall mean the agreement in recordable form attached as Exhibit F.

(f) “Attorneys’ Fees and Costs” means any and all reasonable attorneys’ fees, costs, expenses and disbursements, including, but not limited to, expert witness fees and costs, travel time and associated costs, transcript preparation fees and costs, document copying, exhibit preparation, courier, postage, facsimile, long-distance and communications expenses, court costs and the costs and fees associated with any other legal, administrative or alternative dispute resolution proceeding, fees and costs associated with execution upon any judgment or order, and costs on appeal.

(g) “CEQA” means the California Environmental Quality Act.

(h) “CECP” shall have the meaning set forth in the second opening paragraph of this Agreement.

(i) “CECP Site” shall mean the approximately 30 acre site on which the newly constructed CECP will be situated and which is identified in the map attached as Exhibit T.

(j) “City” shall have the meaning set forth in the opening paragraph of this Agreement.

(k) “City Support Letter” shall have the meaning set forth in Section 3.4(b)(i).



(l) “CMWD” shall have the meaning set forth in the opening paragraph of this Agreement.

(m) “Commission” shall have the meaning set forth Recital C.

(n) “Control” means the power to direct the affairs or management of another Person, whether by contract, operation of law or otherwise. “Controlled by” and “Controlling” have correlative meanings. “Common Control” means that two Persons are both Controlled by the same other Person.

(o) “DOE” mean the United States Department of Energy.

(p) “Effective Date” shall have the meaning set forth in Section 2.3(b).

(q) “Electric Reliability Removal Conditions” means, for one or more Units of the Station, that:

(i) NRG has not received an order or determination from a federal, state or local governmental agency or authority, including, but not limited to, the ISO, with jurisdiction requiring NRG to continue operating a Unit or Units at the Station or finding that a Unit or Units are necessary for reliability, thereby preventing the shutdown of one or more Units; and

(ii) NRG has obtained any necessary approvals for the Shutdown, including from the ISO, the California State Water Resources Control Board, and the San Diego County Air Pollution Control District.

(r) “Encina Power Station” shall have the meaning set forth in Recital B.

(s) “Encina Redevelopment Site” shall mean the area comprising the Encina Site, excluding, however, the CECP Site. The Encina Redevelopment Site will be subject to future redevelopment and a map of the area is identified on Exhibit S.

(t) “Encina Site” shall mean the entire approximately 95 acre site currently occupied by the Encina Power Station, exclusive of the SDG&E switchyard, and which is identified on Exhibits A, B, and C.

(u) “EPC Contract Notice to Proceed” shall have the meaning set forth in Section 5.4(b).

(v) “Event of Default” shall have the meaning set forth in Article 7.

(w) “Excluded Transfer” shall mean:

(i) any Transfer to an Affiliate of NRG, provided that NRG Energy, Inc. continues to guarantee performance of NRG’s obligations under the Guaranty;

(ii) any Transfer of an easement or license over a portion of the Site, that would not allow the Transferee to use that portion of the Site to generate electricity with equipment or machinery that is powered by the combustion of fossil fuels and which would not otherwise interfere with NRG's ability to perform its obligations under this Agreement;

(iii) After demolition and removal of above-ground structures in satisfaction of Section 6.1, any Transfer of an interest, in addition to an easement or license, over a portion of the Site, provided that such Transfer would not allow the Transferee to use that portion of the Site to generate electricity with equipment or machinery that is powered by the combustion of fossil fuels and which would not otherwise interfere with NRG's ability to perform its obligations under this Agreement; and

(iv) any condemnation or exercise of eminent domain authority, whether whole or partial, by a governmental authority or other entity with statutory authority under state law to exercise eminent domain authority.

(x) "Existing Deed of Trust" means any deed of trust securing the Existing Secured Loan and encumbering the site.

(y) "Existing Secured Loan" means the term loan and revolving credit facility under the credit agreement, dated as of July 1, 2011 as amended or modified from time to time, among NRG Energy, Inc., as borrower, the several banks and other financial institutions or entities from time to time parties to the credit agreement, Morgan Stanley Senior Funding, Inc. as syndication agents, and CitiCorp North America, as administrative agent and collateral agent, which loan is secured by the Existing Deed of Trust.

(z) "Existing Secured Loan Parties" means the several banks and other financial institutions or entities that are from time to time parties to the existing secured loan, Morgan Stanley Senior Funding, Inc., as syndication agents, and Morgan Stanley Senior Funding, Inc., as administrative agent and collateral agent, and any of their successors and assigns, including any person receiving an interest in the site or the member interests of NRG from any of the foregoing as a result of their exercise of any of their rights or remedies under the Existing Secured Loan.

(aa) "Feasibility Studies" shall have the meaning set forth in Section 5.3(a).

(bb) "FERC" means the Federal Energy Regulatory Commission or any successor.

(cc) "Final Shutdown Date" means the earlier of (a) midnight of December 31, 2017 or (b) the commercial operation date of CECP (as such term is defined under the facility's PPA).

(dd) "Fossil Fuel Restriction" shall have the meaning set forth in Section 3.5.

(ee) "Guaranty" shall have the meaning set forth in Section 2.5.

(ff) "Indemnified Parties" means the City (including, but not limited to, all of its respective boards, commissions, departments, agencies and other subdivisions), all Agents of the City, and their respective heirs, legal representatives, successors and assigns, and each of them.

- (gg) “Indemnify” means indemnify, protect, defend and hold harmless.
- (hh) “Independent Guaranty Amount” shall have the meaning set forth in Section 2.5(a).
- (ii) “IODs” shall have the meaning set forth in Section 2.4(b).
- (jj) “ISO” shall have the meaning set forth in Recital B.
- (kk) “ISO Tariff” shall mean the tariff of the ISO, as it may be amended, supplemented, or replaced (in whole or in part) from time to time.

(ll) “Laws” shall mean all present and future applicable laws, ordinances, rules, regulations, permits, authorizations, orders and requirements, whether or not in the contemplation of the Parties, that may affect or be applicable to the Encina Site or any part of the Encina Site (including, without limitation, any subsurface area), or the use of the Encina Site and the buildings and improvements on or affixed to the Encina Site, including, without limitation, all consents or approvals required to be obtained from, and all rules and regulations of, and all building and zoning laws of, all federal, state, county and municipal governments, and their departments, bureaus, agencies or commissions, authorities, board of officers, or any other body or bodies exercising similar functions, having or acquiring jurisdiction of the Encina Site, and similarly the term “Law” shall be construed to mean the same as the above in the singular as well as the plural.

(mm) “Loss” or “Losses” when used with reference to any indemnity means any and all claims, demands, losses, liabilities, damages (including foreseeable and unforeseeable consequential damages to the extent arising from third party claims), liens, obligations, interest, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses (including, without limitation, reasonable Attorneys’ Fees and Costs, and consultants’ fees and costs) of whatever kind or nature, known or unknown, contingent or otherwise.

(nn) “Memorandum of Agreement” shall have the meaning set forth in Section 2.2(a) of this Agreement.

(oo) “New Service Center” shall refer to the new service center to be constructed in connection with the North Coast Service Center as set forth in Section 5.1(b).

(pp) “New Service Center Location” shall have the meaning as set forth in Section 5.2(a).

(qq) “North Coast Service Center” shall refer to the existing facility that is owned by SDG&E and that is located at the current North Coast Service Center Site.

(rr) “North Coast Service Center Site” shall refer to the current location of the North Coast Service Center located at the corner of Cannon Road and Carlsbad Boulevard. A legal description of the current property is attached hereto as Exhibit J, a map of the current property is attached hereto as Exhibit K.

(ss) “North Coast Service Center Redevelopment Site” shall mean the area comprised of the North Coast Service Center Site, Cannon Park, and the Agua Hedionda North Shore Bluff Parcel.

(tt) “NRG” shall have the meaning set forth in the opening paragraph of Agreement.

(uu) “NRG Support Letter” shall have the meaning set forth in Section 3.4(a)(ii).

(vv) “NSC Cost Cap” shall have the meaning set forth in Section 5.4(a).

(ww) “NSC Costs” shall have the meaning set forth in Section 5.4(a).

(xx) “Official Records” means the official records of the City and of the County of San Diego, California.

(yy) “Party” or “Parties” shall have the meanings set forth in the opening paragraph of this Agreement.

(zz) “Person” means any individual, partnership, corporation (including, but not limited to, any business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture or any other entity or association, the United States, or other federal, state or local governmental entity.

(aaa) “Petition to Amend” shall have the meaning set forth in Section 6.1.

(bbb) “Project” shall have the meaning set forth in the opening paragraph of this Agreement.

(ccc) “Proposed PPA” shall have the meaning set forth in Recital H.

(ddd) “Prudent Utility Practices” means the practices, methods, standards and acts engaged in or approved by a significant portion of the applicable segment of the electric power generation industry pertaining to facilities of the type, similar size and location to Encina Power Station that, in light of the facts that are known, or reasonably should have been known, at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with Laws, permits, codes, standards, equipment manufacturer’s recommendations, reliability, safety, environmental protection, economy, and expedition. Prudent Utility Practices are not limited to the optimum practice, method, standard or act to the exclusion of all others, but rather to those practices, methods, standards and acts generally acceptable or approved by a significant portion of the applicable segment of the electric power generation industry in the United States.

(eee) “RA Agreement” shall have the meaning set forth in Recital B.

(fff) “Relocation Guaranty Amount” shall have the meaning set forth in Section 2.5(c).

(ggg) “SDG&E” shall have the meaning set forth in the opening paragraph of this Agreement.

**(hhh)** “Shut Down” or “Shutdown” means the permanent and irrevocable cessation of electricity generation operations at the Encina Power Station in accordance with all applicable laws and regulations, such that the Encina Power Station may no longer be used to generate electricity or reactive power on any basis (including, but not limited to, any reliability-must-run or other intermittent or emergency basis) or emit any hazardous materials in conjunction with the operation of any electrical generation facilities comprising the Encina Power Station. For purposes of this Agreement, “Shutdown” does not include any significant hazardous materials remediation activities on the Site.

**(iii)** “Shut Down Guaranty Amount” shall have the meaning set forth in Section 2.5(b).

**(jjj)** “Shutdown Obligation” means the obligation of NRG to Shut Down the Encina Power Station set forth in Section 3.1(a)(ii).

**(kkk)** “SONGS” shall have the meaning set forth in Recital F.

**(lll)** “Station” shall have the meaning set forth in Recital B.

**(mmm)** “Term” shall have the meaning set forth in Section 2.1.

**(nnn)** “Termination Notice” shall have the meaning set forth in Section 5.6(a).

**(ooo)** “Transfer” means sell, convey, assign, transfer, alienate or otherwise dispose of (directly or indirectly, by one or more transactions, and by operation of law or otherwise) (i) all or any material part of the ownership interest or rights in any portion of the Encina Site and/or this Agreement, or (ii) all or a Controlling portion of the member interests in NRG.

Notwithstanding the generality of the foregoing, however, “Transfer” shall exclude (i) an Excluded Transfer and (ii) any encumbrance executed in connection with a financing undertaken by NRG for CECP.

**(ppp)** “Transferee” means a Person to whom a Transfer is made.

**(qqq)** “Unit” or “Units” shall have the meaning set forth in Recital B.

## ARTICLE 2

### GENERAL TERMS

#### 2.1 Term of Agreement

The term of this Agreement (the “Term”) shall commence on the Effective Date (as defined in Section 2.3(b)) and shall remain in effect until the Parties have fulfilled all of their obligations under this Agreement, unless terminated earlier in writing in accordance with the terms and conditions of this Agreement.

## 2.2 Covenants Running with the Land

(a) **Recordation of Memorandum of Agreement.** The City and NRG agree to execute, acknowledge, and cause a memorandum of this Agreement substantially in the form attached to this Agreement as Exhibit H (the “Memorandum of Agreement”) to be recorded in the Official Records as soon as possible following the Effective Date in accordance with California Civil Code Section 1468.

(b) **Binding on Successors.** Upon recordation of the Memorandum of Agreement as provided in Section 2.2(a) above, this Agreement shall constitute covenants running with the Encina Site binding on all successors and assigns of NRG; provided, however, this Agreement, including the covenants on the part of NRG, shall not be binding on the Existing Secured Loan Parties or any of their successors or assigns.

(c) **Termination of Agreement.** Upon any termination of this Agreement, the City shall, at NRG’s written request, execute a notice of termination of the Agreement to be recorded in the Official Records, and this obligation of the City shall survive any such termination of this Agreement.

## 2.3 Agreement Approvals and Effective Date

(a) **NRG Approval.** NRG has obtained all required approvals for it to enter into this Agreement.

(b) **City Approval.** Once NRG has signed and delivered this Agreement to the City, the City shall timely submit this Agreement to the City Council for approval. Notwithstanding anything in this Agreement to the contrary, NRG understands and agrees that no officer or employee of the City has authority to bind the City to this Agreement unless and until the City Council shall have duly adopted a resolution in its sole and absolute discretion approving this Agreement. Therefore, any obligations of the Parties under this Agreement are contingent upon such approval, and this Agreement shall not be effective unless and until such approvals are obtained in accordance with the City’s applicable ordinances and codes. If a City Council resolution approving this Agreement becomes effective, then the effective date of this Agreement (the “Effective Date”) shall be the same date that such resolution becomes effective. Notwithstanding the foregoing, if a resolution approving this Agreement does not become effective by January 31, 2014, then this Agreement shall terminate and shall be of no force and effect unless the City acting through the City Attorney, and NRG, in their respective sole discretion, agree in writing to extend such date and such a resolution is duly enacted and becomes effective on or before such extended date.

(c) **SDG&E Approval.** SDG&E may be required to obtain certain regulatory approvals in connection with its obligations under Article 5 of this Agreement, including from the California Public Utilities Commission. To the extent such approvals are required, SDG&E will use reasonable efforts to obtain all such required approvals as soon as commercially practicable. The Parties agree that SDG&E’s obligations under this Agreement are contingent on such approvals, if any.

## 2.4 Improvements

(a) **Easements.** The City will provide a project description to NRG regarding easements for the Agua Hedionda Lift Station and the Vista-Carlsbad Interceptor Sewer Pipeline that coordinates with the Poseidon easement. NRG shall submit an application to the Commission within 60 days after receipt of project description and NRG will execute easements within 10 days of Commission approval.

(b) **PDP Land Transfers.** Within 90 days of the Effective Date, NRG agrees to grant Irrevocable Offers of Dedications (“IODs”) for the Hubbs Site Parcel, Bluff Area Parcel, South Power Plant Parcel, and Fishing Beach Parcel, as described in Planning Commission Resolution 6632, subject to reasonable restrictions and reservations necessary to ensure public safety and the continuity of power plant operations.

## 2.5 Guaranty

(a) **Independent Guaranty.** NRG agrees to deliver to the City a Guaranty from NRG Energy, Inc. in the form of Exhibit R and in the amount of five million dollars (\$5,000,000) (the “Independent Guaranty Amount”) within ten (10) business days from the Effective Date. The City shall release this amount once all obligations under this Agreement have been satisfied to the City’s satisfaction; provided, however, that if the Commission does not issue a final decision approving the Amendment and NRG notifies the City in writing that it is ending further development of the CECP, and provided further that NRG does not have any outstanding liabilities or obligations to the City under this Agreement, the City’s consent to such request to reduce this amount will not be unreasonably withheld.

(b) **Shut Down Obligation.** Within ten (10) business days after the Final Shut Down Date, NRG will increase the amount of the Guaranty by twenty million dollars (\$20,000,000) (the “Shut Down Guaranty Amount”), bringing the total amount of the Guaranty to twenty five million dollars (\$25,000,000). Upon NRG’s request, the City shall release the Shut Down Guaranty Amount following NRG’s satisfaction of all obligations under Section 6.1. Following NRG’s commencement of demolition and removal of above ground structures, and provided that NRG does not have any outstanding liabilities or obligations to the City under this Agreement at such time, NRG may request, and the City will reasonably consider, a proportionate reduction in the Shut Down Guaranty Amount upon the completion of certain key milestones, with such milestones and reductions to be established by NRG and the City at such time.

(c) **Relocation of North Coast Service Center.** Within ten (10) business days after the EPC Contract Notice to Proceed is issued, NRG will increase the amount of the Guaranty by an additional amount of twenty two million five hundred thousand (\$22,500,000) (the “Relocation Guaranty Amount”) for a total Guaranty amount of forty seven million and five hundred thousand dollars (\$47,500,000). If the credit rating for Carlsbad Energy Center is equal to or exceeds NRG Energy, Inc.’s credit rating as of the Effective Date, with the consent of the City, which shall not be unreasonably withheld, NRG may elect to substitute a Guaranty from Carlsbad Energy Center LLC for the Relocation Guaranty Amount. Upon NRG’s request, the City shall release the Relocation Guaranty Amount following NRG’s satisfaction of all obligations under Article 5. At NRG’s request, the City will reduce the Relocation Guaranty

Amount in proportion to NRG's payments made in accordance with Article 5; provided, that if NRG makes the ten million dollar (\$10,000,000) payment under Section 5.6(b) following issuance of the Termination Notice, the City shall release the entire Relocation Guaranty Amount.

### ARTICLE 3

#### POWER STATION SHUTDOWN PROCESS

#### 3.1 Agreement to Permanently Shut Down the Encina Power Station

##### (a) Shutdown Obligation.

(i) Within thirty (30) days of the Effective Date, NRG shall initiate measures to Shut Down Units 1-5 of the Encina Power Station. Such measures shall include, but not be limited to, amending the compliance plan for the Encina Power Station in connection with the State Water Resource Control Board's regulation addressing the use of once-through cooling by coastal power plants.

(ii) Subject to the Electric Reliability Removal Conditions and provided that (x) the California Public Utilities Commission has issued a final decision approving a power purchase agreement for CECP and (y) the Commission has issued a final decision approving the Amendment, NRG agrees to Shut Down the Encina Power Station no later than the Final Shutdown Date (the "Shutdown Obligation"). Notwithstanding the foregoing, if NRG issues a final notice to proceed with construction of CECP without having received California Public Utilities Commission approval, such condition shall be deemed satisfied.

(iii) Subject to the provisions of Section 3.3, NRG will diligently apply for and exercise its best efforts to obtain any regulatory approvals and permits needed to Shut Down Units 1-5 and to ensure that the Electric Reliability Removal Conditions are satisfied as soon as reasonably possible. NRG will not, directly or indirectly, request that any regulatory agency with jurisdiction over the Shut Down of the Encina Power Station deny or delay the approvals needed for the Shut Down. Further, NRG will take no action which is cause for the regulatory agency to deny or delay any approvals or other matters needed to satisfy the Electric Reliability Removal Conditions.

(iv) The Electric Reliability Removal Conditions are solely for the benefit of NRG. If some, but not all, of the Electric Reliability Removal Conditions are not satisfied for reasons other than an Event of Default by NRG or NRG's failure to timely obtain a needed approval for the Shut Down, then NRG, in its sole and absolute discretion, may upon not less than ten (10) days' written notice to the City describing in reasonable detail the unsatisfied condition(s) either: (x) suspend performance of its obligation to Shut Down the applicable Unit or the Encina Power Station only until such condition is satisfied, or (y) waive the satisfaction of such conditions as NRG may set forth in its sole and absolute discretion in a written notice to the City.

(v) Notwithstanding anything in this Agreement to the contrary, if the United States Department of Energy ("DOE"), ISO or other entity having jurisdiction over NRG



or the Encina Power Station orders or decrees it necessary for any Unit or Units to continue to operate past the Final Shutdown Date, then NRG shall be permitted to operate the applicable Unit or Units in accordance with such order or decree. Nothing in this subsection (v) shall relieve either Party from its support obligations under Section 3.4 or prevent either Party from challenging the effectiveness or legality of such order, provided, however, each Party shall provide the other Party copies of any such order and any legal challenges to such order. In the event NRG receives an order under this Section 3.1(a)(v), NRG and City shall comply with Section 3.4 until such time as the Unit or Units is/are released from such order.

(vi) Notwithstanding any provision in this Agreement to the contrary, in the event that CECP becomes commercially operable and the Encina Power Station continues to operate, NRG will pay the City (on a monthly basis), a liquidated damages payment equal to \$1/kW-mo. multiplied by the greater of (a) the generating capacity of the Unit or Units (in MW) remaining online past the Final Shutdown Date or (b) 300 MW. If the Shutdown occurs during a portion of a calendar month, then the monthly payment shall be pro-rated based on the number of days during which the Unit or Units were operational and the number of days in that calendar month. Such liquidated damages shall continue until the Shutdown of the Encina Power Station.

**(b) Accelerated Shutdown.** Nothing in this Agreement shall prohibit NRG from an accelerated Shutdown of a Unit or Units, whereby the Shutdown would occur in advance of the Final Shutdown Date.

**(c) Post-Shutdown Activities.** Within ninety (90) days of the Shutdown of the Encina Power Station, NRG (i) shall ensure that the Encina Power Station facilities and improvements are in a secure, inoperable condition and do not pose a physical or environmental safety hazard to members of the public or visitors of the Encina Site, consistent with Prudent Utility Practices and all applicable regulatory requirements and approvals; (ii) shall seek to terminate applicable permits and registrations that are no longer needed after the Shutdown of the Encina Power Station, (iii) shall request termination of the ISO Participating Generator Agreement and FERC market-based rate tariff as applicable to the Encina Power Station, and (iv) shall take appropriate actions in support of those requests, consistent with all applicable legal requirements.

### **3.2 Notices Regarding Electric Reliability Removal Conditions**

NRG shall promptly provide the City with copies of any and all notices, correspondence or other documents to or from the ISO, FERC or other agency relating to the Electric Reliability Removal Conditions; provided, however, that failure to provide copies of such notices shall not constitute an event of default under Section 7.1.

### **3.3 Limitation on Future Contracts; No Actions to Prolong Need for Encina Power Station**

With the exception of any contractual arrangements required to be entered into in connection with Electric Reliability Removal Conditions, NRG represents, warrants and

covenants that its obligation to Shut Down the Encina Power Station under this Agreement shall not be limited by any existing contracts it has or may in the future have to operate any or all of the Units on the Encina Site. NRG further agrees not to take any actions that may prolong the need for the Encina Power Station to continue operating for electric reliability or any other purposes inconsistent with the terms and conditions of this Agreement; the City nonetheless acknowledges that NRG has the right, in its sole and absolute discretion so long as consistent with the terms and conditions of this Agreement, to continue to operate, maintain, repair, replace and improve the Encina Power Station, in accordance with all applicable laws, regulations, and permits, until the Final Shutdown Date; provided, however, that NRG may be required to operate, maintain and repair the Encina Power Station beyond the Final Shutdown Date if the Electric Reliability Removal Conditions have not been met.

### **3.4 Mutual Support for Shutdown Efforts and NRG's Regulatory Compliance Pending Shutdown**

#### **(a) NRG's Support for Shutdown Efforts.**

(i) No later than fifteen (15) business days after approval of the Amendment by the Commission, NRG shall submit to the ISO a written notice of intent to retire the Encina Power Station as of Final Shutdown Date.

(ii) Within five (5) business days of the City's request, NRG shall deliver a letter (the "NRG Support Letter"), in the form attached as Exhibit D, to other governmental agencies or third parties.

**(b) City's Support of NRG's Regulatory Compliance Pending Shutdown.** As long as there is not an Event of Default by NRG under this Agreement, for period beginning with the Effective Date and ending on the Final Shutdown Date, the City agrees to support any and all regulatory approvals required for the continued operation of any of the Units before Shutdown, such support to consist of:

(i) within five (5) business days of NRG's request the City shall submit a letter from the City Attorney ("City Support Letter"), to the relevant governmental agency, in the form attached to this Agreement as Exhibit E, and

(ii) upon reasonable prior notice provided by NRG, the City shall participate in a reasonable number of meetings with the relevant governmental agencies, provided that the City's participation under this subsection 3.4(b)(ii) shall consist of verbally affirming City's support for the renewal or issuance of the relevant regulatory approval for the Encina Power Station, as stated in the City Support Letter.

In the event of a dispute between the Parties regarding the City's compliance with its obligations under subsections 3.4(b)(i)-(ii), and before NRG delivers any Notice of Default under Article 7 for noncompliance with these obligations, both Parties shall, upon request of either Party, meet and confer in good faith to attempt to resolve such dispute over a period of ten (10) business days. Further, NRG shall not deliver a Notice of Default under Article 7 for City's alleged non-compliance with its obligations under Sections 3.4(b)(i)-(ii) before the expiration of the ten (10) business day period following delivery to the City of written notice of such dispute.

Any other actions by the City in support of NRG's regulatory compliance pending Shutdown in addition to the actions specified under this Section 3.4(b) shall be at the sole discretion of the City. If the City decides to rescind its support on or after the Final Shutdown Date, then the City may, in its sole discretion, take such action as it deems appropriate to oppose or condition the continued operation of the Encina Power Station or any portion of the Encina Power Station, including, but not limited to, opposing the extension or renewal of any operating permits and/or the imposition by governmental regulatory authorities of air and water quality mitigation measures or other operating requirements or limitations.

### **3.5 Fossil Fuel Deed Restriction**

NRG agrees to limit fossil fuel generation on the Encina Site to the generating capacity proposed in the current project description (e.g., six LMS100s) to be proposed in the Petition to Amend and any black start equipment potentially required by the ISO. NRG agrees that no future modifications to the CECP shall be undertaken that exceed the environmental envelope, profile or footprint of CECP as presented in the Amendment. Within ten (10) business days after the Shut Down, NRG shall record a restrictive covenant for the benefit of the City in the Official Records, in the form attached to this Agreement as Exhibit I, which provides that no portion of the Encina Site, with the exception of the CECP Site, may be used to generate electricity with equipment or machinery that is powered by the combustion of fossil fuels (except the following used on the Encina Site: ancillary equipment or machinery; back-up generators; or distributed energy sources approved by the City in a redevelopment plan), all as more particularly set forth in such exhibit (the "Fossil Fuel Restriction"). Except with respect to the Existing Secured Loan Parties as provided in Section 2.2 of this Agreement, the Fossil Fuel Restriction shall constitute covenants running with the land, binding on successors and assigns of NRG. In the event that an Existing Secured Loan Party, or its successor or assignee, takes ownership or possession of the Site and fails to assume NRG's obligations and rights under this Agreement under Section 2.2 of this Agreement, and the Agreement terminates after the Fossil Fuel Restriction has been recorded, then following any such termination the City shall, at the written request of NRG or the Existing Secured Loan Party (or its successor or assignee), execute and cause a quitclaim deed to be recorded in the Official Records evidencing the termination of the Fossil Fuel Restriction; this obligation of the City shall survive any such termination of this Agreement. Notwithstanding the foregoing, and also as provided in Section 2.2 of this Agreement, the Parties understand and agree that, in the event of a refinancing of the Existing Secured Loan that provides for full repayment, NRG shall ensure – supported by written evidence reasonably satisfactory to the City – that this Agreement, including the Fossil Fuel Restriction, has priority over the deed of trust securing the refinanced loan and, accordingly, that the Fossil Fuel Restriction shall thereafter be binding on all successors and assigns of NRG without exception.

## **ARTICLE 4**

### **AMENDMENTS TO THE CECP PERMITS**

#### **4.1 City Support of CECP Permits Amendment Applications**

(a) Provided that NRG is not in default under any obligations to the City under the Agreement and in substantial compliance with the provisions of the Amendment agreed to by the

City, the City agrees not to oppose permits or authorities accommodating the continued operation of the Encina Power Station through the Final Shutdown Date.

(b) The City shall support the Amendment; provided that the City has a reasonable and meaningful opportunity to review and comment on the Amendment prior to filing with the Commission to confirm that the Amendment is consistent with Exhibit G and the Amendment is filed with the Commission consistent with the provisions of Exhibit G. The City will issue the City Support letter, a form of which is set forth in Exhibit E, in connection with the Amendment and to government agencies as requested by NRG. Upon reasonable prior notice provided by NRG, the City shall also participate in a reasonable number of meetings with the relevant governmental agencies, provided that the City's participation under this subsection shall consist of verbally affirming City's support for the Amendment.

(c) As per the request of the City, NRG will incorporate a provision in the Petition to Amend to be filed with the Commission in connection with the Amendment and in any power purchase agreement for CECP that CECP will not operate between the hours of midnight and 6 am, except to the extent reasonably required for reliability-related purposes or as otherwise required by the ISO Tariff. A decision by the Commission declining to apply this limitation to the CECP shall not absolve the City of its support obligation set forth in Section 4.1(b).

#### **4.2 Services for CECP**

(a) NRG agrees to work with the Carlsbad Fire Department in good faith to address those fire safety concerns that were previously raised in connection with the Application in the Amendment and any other reasonable fire safety concerns during the Amendment process.

(b) NRG agrees to reimburse the City for costs incurred in accordance with actual services performed by the City as contemplated by currently adopted fee and permit schedules, including applicable and appropriate impact fees, which are not expected to exceed \$1 MM.

(c) The City, CMWD and NRG will work together to establish related services to CECP, including recycled water supply, potable water supply, sanitary sewer service and fire response.

(d) The City will work with NRG to accommodate gas line service to CECP on the east side of the railroad tracks.

### **ARTICLE 5**

#### **SDG&E PROVISIONS**

##### **5.1 Relocation of the North Coast Service Center**

(a) SDG&E has advised the City that with the early retirement of SONGS and future closures of plants that use once-through cooling technology, the SDG&E area will be deficient of electricity generating capacity by 2018. SDG&E has requested that the City support the Amendment for the development of CECP as set forth in this Agreement

(b) In addition and subject to regulatory approvals and other conditions and agreements specified here, SDG&E has agreed to the relocation of SDG&E's North Coast Service Center, currently located at the corner of Cannon Road and Carlsbad Boulevard ("North Coast Service Center Site"), with the North Coast Service Center Site and certain other properties to be transferred to the City upon completion and occupancy of the newly relocated North Coast Service Center ("New Service Center").

(c) The New Service Center is to be built at NRG's sole cost, subject to the NSC Cost Cap (defined below), and to SDG&E's specifications and conditions. NRG will build the New Service Center, or will cause it to be built, in accordance with such specifications; provided, however, that the City, in its sole discretion, may elect to build the New Service Center, or to cause it to be built. The Parties acknowledge and agree that the cost of the relocation and the construction of the New Service Center, and the structure of the transaction, will be at no cost to the City or to SDG&E, and in a manner that is cost-neutral to SDG&E and its ratepayers.

(d) If the City and SDG&E do not proceed with the proposed relocation of the New Service Center, then NRG shall make the payment to the City in accordance with Section 5.6(b) below.

## **5.2 Identification of Property for the New Service Center Location**

(a) The City and SDG&E will work together to identify a mutually acceptable alternative location for the New Service Center to be located ("New Service Center Location"). Currently SDG&E and the City may review: (i) the land currently owned by SDG&E north of Cannon Road known as Parcel 11 (a legal description of Parcel 11 is attached hereto as Exhibit L, a map of Parcel 11 is attached hereto as Exhibit M) or (ii) another site mutually acceptable to both the City and SDG&E, as determined by each in its respective and sole discretion, provided that such site shall be made available at no cost to SDG&E. The City shall cooperate on community outreach and education on the New Service Center Location.

(b) In the event that SDG&E and the City cannot agree on a mutually acceptable New Service Center Location by March 1, 2016, then either the City or SDG&E may provide the Termination Notice as set forth in Section 5.6 below.

## **5.3 Feasibility Studies and Ongoing Coordination Regarding SDG&E Specifications and Conditions for the New Service Center**

(a) Within sixty (60) days after the Effective Date, SDG&E will meet with the City to identify and cause the environmental, land use, traffic and nodal analysis studies associated with studying the feasibility of the New Service Center ("Feasibility Studies") to be prepared. SDG&E shall pay for the Feasibility Studies subject to reimbursement for such studies as provided for below.

(b) As soon as reasonably possible, but by no later than March 31<sup>st</sup>, 2015, SDG&E will provide all required specifications and conditions for the New Service Center to NRG and the City. In connection with this SDG&E will provide a budget and cost statement representing its budget for the NSC Costs (defined below), including, to the extent available, (i) any available budget or cost estimates for the construction of the New Service Center; and (ii) a statement or

budget of all other costs for the relocation (including the Feasibility Studies) of the North Coast Service Center. Such budget will not exceed the NSC Cost Cap as provided in Section 5.4 and will be prepared such that the New Service Center can be reasonably and prudently constructed for an amount that will not exceed the NSC Cost Cap.

#### **5.4 New Service Center Relocation and Construction Cost Cap: NRG Funding and Conditions**

(a) NRG agrees to fund up to \$22.5 million (\$22,500,000) (the “NSC Cost Cap”) toward the “all-in” cost of the relocation of the North Coast Service Center according to SDG&E’s specifications and conditions, including the cost of construction, furniture, fixtures, equipment, IT infrastructure, architectural, engineering and consulting costs, all relocation costs, reasonable contingencies and the reimbursements for the Feasibility Studies under Section 5.3(a) (collectively, the “NSC Costs”).

(b) NRG’s obligation to fund the NSC Costs is conditioned upon NRG’s issuance of a final notice to proceed under its engineering, procurement and construction contract for CECP (the “EPC Contract Notice to Proceed”).

(c) Upon NRG’s issuance of the EPC Contract Notice to Proceed, NRG, SDG&E and the City shall meet within thirty (30) days of such final notice to review the projected NSC Costs in relation to the NSC Cost Cap and construction of the New Service Center.

(i) If the projected NSC Costs are less than or equal to the NSC Cost Cap, and a Termination Notice has not been issued under Section 5.6, NRG will build the New Service Center, or will cause it to be built, in accordance with SDG&E’s specifications and conditions; provided, however, that the City, in its sole discretion, may elect to build the New Service Center, or to cause it to be built. Subject to the NSC Cost Cap and the conditions and provisions stated herein, NRG agrees to fund the NSC Costs. Subject to the NSC Cost Cap, SDG&E will be reimbursed by NRG for costs associated with the Feasibility Studies and such reimbursement shall be made as agreed by NRG and SDG&E; provided, however, that any amounts reimbursed for Feasibility Studies will reduce the NSC Cost Cap on a dollar-for-dollar basis.

(ii) If the projected NSC Costs exceed the NSC Cost Cap, SDG&E, NRG and the City shall meet in good faith to consider potential modifications to this Article 5, including, without reservation, changes to the New Service Center specifications and conditions, the NSC Cost Cap, or agreements to fund the costs in excess of the NSC Cost Cap; provided, however, that any subsequent modifications will be strictly subject to execution of future binding definitive agreements and obtaining any required regulatory approvals.

#### **5.5 Conditions to SDG&E’s Obligation to Relocate the North Coast Service Center**

SDG&E's Relocation of the North Coast Service Center is subject to the following conditions:

- (a) Identification of the New Service Center Location in accordance with Section 5.2.
- (b) SDG&E obtaining any required regulatory approvals with the understanding that SDG&E will diligently and in good faith seek all regulatory approvals needed for the relocation of the North Coast Service Center as contemplated in this Agreement.
- (c) A Private Letter Ruling, if necessary, satisfactory to SDG&E, issued by the Internal Revenue Service confirming the tax treatment of the transactions outlined herein.
- (d) Construction of the New Service Center and turnover of the completed and operational New Service Center to SDG&E.

**5.6 Termination of Proposed Relocation of the North Coast Service Center; NRG Payment**

(a) Either the City or SDG&E may issue a notice terminating the obligations and agreement to relocate the North Coast Service Center (the "Termination Notice") under the following circumstances:

(i) if the City and SDG&E cannot agree upon a mutually acceptable New Service Center Location;

(ii) if construction of the New Service Center does not commence before the third (3rd) anniversary of the commercial operation date for CECP;

(iii) if the projected cost of relocation of the North Coast Service Center cannot be accomplished within the NSC Cost Cap, and SDG&E, NRG and the City are unable to agree upon subsequent modifications pursuant to Section 5.4(c)(ii); or

(iv) if SDG&E and the City jointly elect not to proceed with the relocation of the North Coast Service Center.

(b) Within 30 days of receipt of the Termination Notice, NRG shall pay the City of Carlsbad the sum of \$10 million (\$10,000,000); provided, however, that NRG will owe this amount only if CECP achieves commercial operation, in which case NRG shall make the payment within 30 days of commercial operation or the Termination Notice, whichever is later. Thus, if the New Service Center does not proceed and NRG does not fund the costs of the New Service Center, NRG shall be responsible for the payment as provided in this Section 5.6(b).

(c) Notwithstanding any other provision in this Agreement, the City's issuance of a Termination Notice will not affect NRG's remaining obligations under this Agreement, except to the extent expressly set forth in this Article 5.

**5.7 Transfer of SDG&E Property upon the Relocation of the North Coast Service Center**

Upon the completion and occupancy of the New Service Center, SDG&E shall transfer (i) the existing North Coast Services Center Site and buildings, (ii) Cannon Park (a legal description of Cannon Park is attached hereto as Exhibit N, a map of Cannon Park is attached hereto as Exhibit O), and (iii) the Agua Hedionda North Shore Bluff Parcel (APN 206-070-16) (a legal description of the Agua Hedionda North Shore Bluff Parcel is attached hereto as Exhibit P, a map of the Agua Hedionda North Shore Bluff Parcel is attached hereto as Exhibit Q), to the City in fee simple, free and clear of all financial liabilities and financial liens, simultaneously with SDG&E receiving title to the New Service Center. SDG&E will be responsible for remediating preexisting environmental conditions to applicable industrial standards pursuant to applicable law. The City and SDG&E will determine if such remediation shall be conducted before or after the transfer of title. If the site is to be remediated prior to the transfer, SDG&E shall commence the remediation within sixty (60) days after occupancy of the New Service Center, shall proceed in a diligent and timely manner to remediate the site and shall then transfer the properties under this Section 5.7 upon completion of the remediation. If the remediation is to occur following the transfer, the City will provide at least one-hundred twenty (120) days notice that SDG&E is to commence remediation of the site and the remediation shall proceed in a diligent and timely manner to completion.

## **5.8 Long-Term Plan for Substation Improvements and Expansions**

The Parties acknowledge that SDG&E has recently undertaken certain improvements and upgrades of the Encina Power Station substation. The City has asked SDG&E to consider relocating the Encina Power Station substation away from the Encina Site. SDG&E has agreed that as part of a long-term plan, and contingent upon execution and regulatory approval of the Proposed PPA, and subject to any other required regulatory approvals, it will work in good faith with the City to identify and ultimately permit a site, such that any future material improvements or expansions to the transmission system, beyond those needed for the CECP, be made at the alternate site in lieu of the existing Encina Power Station. SDG&E will update the City at least annually on the status of the long-term plan as it relates to the identification and permitting of such a site. The City acknowledges and agrees that the substation design at the alternate site and any associated transmission design will be based on SDG&E design standards and specifications. The alternate site will be subject to a feasibility review by SDG&E to ensure a constructible site. Any design enhancements requested by the City that are not part of SDG&E's customary design standard and specifications will be paid for by the City unless SDG&E and City otherwise agree.

## **ARTICLE 6**

### **REDEVELOPMENT PROCESS**

#### **6.1 Demolition and Removal of Above-Ground Structures**

(a) Provided that (i) the California Public Utilities Commission has issued a final decision approving a power purchase agreement for CECP and (ii) the Commission has issued a final decision approving the Amendment, NRG agrees to fund at its sole cost the physical demolition and removal of the above-ground structures of the Encina Power Station in accordance with Laws and the milestones set forth below. Notwithstanding the foregoing, if NRG issues a final notice to proceed with construction of CECP without having received



California Public Utilities Commission approval, such condition shall be deemed satisfied. Details regarding the demolition and removal of the Encina Power Station will be incorporated into the petition to amend (“Petition to Amend”) the Commission-issued license for CECP in which NRG seeks authority to construct CECP as reflected in Exhibit G, and following the issuance of a decision by the Commission approving such Petition to Amend, NRG will obtain all additional permits, if any, consistent with the schedule outlined below.

(b) Provided that (i) the California Public Utilities Commission has issued a final decision approving a power purchase agreement for CECP and (ii) the Commission has issued a final decision approving the Amendment, NRG shall commence physical demolition and removal of the above-ground structures of the Encina Power Station within one (1) year after Shut Down. NRG will also use good faith efforts to identify opportunities to begin and implement decommissioning prior to such date, including the removal of unused tanks. Notwithstanding the foregoing, if NRG issues a final notice to proceed with construction of CECP without having received California Public Utilities Commission approval, such condition shall be deemed satisfied.

(c) Provided that (i) the California Public Utilities Commission has issued a final decision approving a power purchase agreement for CECP and (ii) the Commission has issued a final decision approving the Amendment, NRG agrees to complete physical demolition and removal of the above-ground structures of the Encina Power Station within two (2) years of the commencement of demolition activities. Notwithstanding the foregoing, if NRG issues a final notice to proceed with construction of CECP without having received California Public Utilities Commission approval, such condition shall be deemed satisfied.

## **6.2 Redevelopment and Remediation**

(a) The City and NRG acknowledge that they have a mutual interest in the productive reuse of the Encina Redevelopment Site. The City staff and NRG will work in good faith to address the redevelopment of the Encina Redevelopment Site in the pending General Plan update.

(b) If the City takes fee title to the North Coast Service Center Site, as contemplated by Article 5 of this Agreement, the City and NRG work in good faith to consider a joint development strategy for the Encina Redevelopment Site and the North Coast Service Center Redevelopment Site, comprising basic principles to be identified in a subsequent binding agreement.

(c) NRG shall present an initial proposed strategy for redevelopment of the Encina Redevelopment Site to City of Carlsbad staff within one-hundred eighty (180) days of the Effective Date of this Agreement.

(d) With the exception of any remediation required under a Commission decision approving the Amendment or applicable law, remediation of the Encina Redevelopment Site shall be undertaken in conjunction with redevelopment of the Encina Redevelopment Site.

(e) The City and NRG shall work in good faith to determine a mutually acceptable and appropriate alignment for the Coastal Rail Trail; provided, however, that failure to reach

agreement on the alignment for the Coastal Rail Trail shall not impact performance of the obligations established in this Agreement.

## ARTICLE 7

### EVENTS OF DEFAULT

#### 7.1 Defaults by NRG

Each of the following shall constitute an “Event of Default” by NRG under this Agreement:

(a) NRG fails to perform any of its obligations set forth in this Agreement, which failure is not a separate Event of Default, and which continues without cure for a period of thirty (30) days following the date the City provides written notice specifying the nature of such failure; provided, however, if a longer period of time than thirty (30) days is reasonably necessary to effect such cure, then no Event of Default shall exist as long as NRG commences such cure within such thirty (30) day period and then proceeds diligently in the prosecution of such cure to completion.

(b) NRG fails to perform its obligation to permanently Shut Down the Encina Power Station by the Final Shutdown Date (except solely as expressly provided in Section 3.1(a)).

(c) NRG fails to (i) timely perform its obligations under Section 6.1, or (ii) fails to make payment under Section 5.6(b), provided such failure to pay is not cured within five business days.

(d) Any representation made by NRG to the City contained in this Agreement proves to be false or misleading in any material respect at the time that such representation was made.

(e) NRG files a petition for relief, or an order for relief is entered against NRG in any case under applicable bankruptcy or insolvency law that is now or later in effect, whether for liquidation or reorganization, and this Agreement has been rejected or deemed rejected by the debtor in such case.

(f) NRG attempts to Transfer this Agreement, any portion of the Encina Site, or both, to a Transferee without the prior written consent of the City.

(g) A Transferee, not including an Existing Secured Loan Party, fails to execute an Assumption of Obligations and does not comply with the Shutdown Obligation.

#### 7.2 Defaults by the City

The following shall constitute an Event of Default by the City under this Agreement:

(a) The City fails to perform any of its obligations set forth in this Agreement, which failure continues without cure for a period of thirty (30) days following the date NRG provides written notice specifying the nature of such failure; provided, however, if a longer period of time

than thirty (30) days is reasonably necessary to effect such cure, then no Event of Default shall exist as long as the City commences such cure within such thirty (30) day period and then proceeds diligently in the prosecution of such cure to completion.

(b) Any representation made by the City to NRG contained in this Agreement proves to be false or misleading in any material respect at the time that such representation was made.

## ARTICLE 8

### REMEDIES

#### 8.1 Remedies of the City

(a) **Specific Performance.**

(i) If an Event of Default by NRG occurs, then the City shall have the right to bring an action for specific performance or other equitable relief, or any other remedy authorized by applicable law.

(ii) In the event that a Transferee, with the exception of an Existing Secured Loan Party, fails to execute an Assumption of Obligations and does not comply with the Shutdown Obligation, the City shall have the right of specific performance against the Transferee to require it to comply with the Shutdown Obligation.

(b) **Suspension of Performance.** Notwithstanding anything to the contrary in this Agreement, if at any time an Event of Default by NRG occurs before the Shutdown, then the City shall, in addition to its other remedies under this Section 8.1, have the right to suspend performance of its obligations under this Agreement until such Event of Default is cured by NRG.

(c) **NRG's Consent to Specific Performance and Waiver of Rights.**

(i) In any action by the City for specific performance or injunctive relief under Article 3, Article 4, and Section 6.1 and Section 6.2 of this Agreement, NRG hereby consents to the City's right to seek specific performance of the Agreement. Further, NRG agrees that the City is fully entitled to seek a preliminary or permanent injunction to prevent further breach of the Agreement; to compel performance in aid of a decree of specific performance; or where the further breach may render specific performance meaningless or otherwise impair the City's ability to obtain performance of the Agreement. In connection with such requests for specific performance or injunctive relief, NRG acknowledges and agrees that:

a. Specific performance may be compelled to compel performance of the following provisions of this Agreement: Article 3, Article 4, and Article 6;

b. Monetary damages are not an adequate remedy at law for the breach of these provisions. Further and notwithstanding the liquidated damages provided for under Section 3.1(a)(vi) and the fact that this liquidated damage provision is

damages do not constitute an adequate remedy at law such as to deny entry of a decree of specific performance of the Agreement or either a preliminary or permanent injunction;

c. The Agreement is fair and reasonable to NRG and the failure to specifically enforce the Agreement would effectively deny the City the rights bargained for under this Agreement;

d. NRG's breach of the Agreement, as well as the continued or threatened breach of the Agreement, will cause great and irreparable injury to the City that can only be remedied by specific performance of the Agreement and issuance of a preliminary and/or permanent injunction;

e. Specific performance and issuance of a preliminary and/or permanent injunction cannot be denied based on the argument that there is a need for continuous supervision by the court or lack of mutuality or any other equitable defense or objection;

f. In connection with the request for a preliminary and/or permanent injunction which constitutes a mandatory injunction compelling NRG's performance under the Agreement, NRG acknowledges that this extraordinary form of relief is appropriate and proper under the unique circumstances of this Agreement and that a mandatory injunction should issue if the City demonstrates that it will incur irreparable injury if performance is not compelled. NRG further agrees that in the event of a mandatory injunction compelling performance that such injunction shall not be stayed by any appeal of the injunctive order;

g. NRG waives any other equitable defense to the entry of the injunction;

h. NRG waives any requirement that the city post a bond or any other security in connection with such injunctive relief; and

i. The remedies here shall be in addition to any and all other legal or equitable remedies that maybe available to the City under this agreement.

Initials of NRG

J.C.

## 8.2 Remedies of NRG

(a) **Specific Performance.** If an Event of Default by the City occurs, then NRG shall have the right to bring an action for specific performance or other equitable relief, or any other remedy authorized by applicable law, subject to the limitation set forth in Section 8.3.

(b) **Suspension of Performance.** Notwithstanding anything to the contrary in this Agreement, if at any time an Event of Default by the City occurs before the Shutdown, then NRG shall, in addition to its other remedies under this Section 8.2, have the right to suspend

(a) **Specific Performance.** If an Event of Default by the City occurs, then NRG shall have the right to bring an action for specific performance or other equitable relief, or any other remedy authorized by applicable law, subject to the limitation set forth in Section 8.3.

(b) **Suspension of Performance.** Notwithstanding anything to the contrary in this Agreement, if at any time an Event of Default by the City occurs before the Shutdown, then NRG shall, in addition to its other remedies under this Section 8.2, have the right to suspend performance of its obligations under this Agreement until such Event of Default is cured by the City.

(c) **Consent to Specific Performance and Waiver of Rights by the City.** In any action by NRG for specific performance or injunctive relief under this Agreement, City hereby consents to NRG's right to seek specific performance of the Agreement. Further, City agrees that NRG is fully entitled to seek a preliminary or permanent injunction to prevent further breach of the Agreement; to compel performance in aid of a decree of specific performance; or where the further breach may render specific performance meaningless or otherwise impair NRG's ability to obtain performance of the Agreement. In connection with such requests for specific performance or injunctive relief, City acknowledges and agrees that:

(i) Specific performance may be compelled to compel performance of the provisions of this Agreement;

(ii) Monetary damages are not an adequate remedy at law for the breach of these provisions;

(iii) The Agreement is fair and reasonable to City and the failure to specifically enforce the Agreement would effectively deny NRG the rights bargained for under this Agreement;

(iv) City's breach of the Agreement, as well as the continued or threatened breach of the Agreement, will cause great and irreparable injury to NRG that can only be remedied by specific performance of the Agreement and issuance of a preliminary and/or permanent injunction;

(v) Specific performance and issuance of a preliminary and/or permanent injunction cannot be denied based on the argument that there is a need for continuous supervision by the court or lack of mutuality or any other equitable defense or objection;

(vi) In connection with the request for a preliminary and/or permanent injunction which constitutes a mandatory injunction compelling City's performance under the Agreement, City acknowledges that this extraordinary form of relief is appropriate and proper under the unique circumstances of this Agreement and that a mandatory injunction should issue if NRG demonstrates that it will incur irreparable injury if performance is not compelled. City further agrees that in the event of a mandatory injunction compelling performance that such injunction shall not be stayed by any appeal of the injunctive order;

(vii) City waives any other equitable defense to the entry of the injunction;

(viii) City waives any requirement that NRG post a bond or any other security in connection with such injunctive relief; and

(ix) The remedies here shall be in addition to any and all other legal or equitable remedies that maybe available to NRG under this agreement.

Initials of City

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### 8.3 Limitations of Liability

(a) **Direct Monetary Damages: No Consequential or Incidental Damages.** The City and NRG agree that they may be held liable for any monetary or liquidated damages arising directly out of a breach of the obligations of this Agreement or any Event of Default. Notwithstanding this, neither the City nor NRG shall be liable for, and the City and NRG each waive any claim for, any incidental or consequential damages, arising out of any Event of Default on the part of NRG or the City.

(b) **No Individual Liability.** NRG agrees that no member, commissioner, official, advisor, agent or employee of the City will be personally liable to NRG, or any successor in interest, due to an Event of Default by the City. The City agrees that no directors, officers, shareholders, members, employees, advisers or agents of NRG or of its Affiliates will be personally liable to the City, due to an Event of Default by NRG.

### 8.4 LIQUIDATED DAMAGES

(a) IN THE EVENT THAT CECP BECOMES COMMERCIALY OPERABLE AND THE ENCINA POWER STATION CONTINUES TO OPERATE, NRG HAS AGREED TO MAKE THE LIQUIDATED DAMAGE PAYMENT AS PROVIDED BY SECTION 3.1(A) (VI).

(b) NRG AND THE CITY HAVE AGREED TO THE DAMAGE PROVISION SET FORTH IN SECTION 3.1(A) (VI). NRG AND THE CITY ACKNOWLEDGE AND AGREE THAT THIS PROVISION APPLIES SOLELY TO CONTINUED OPERATION OF THE ENCINA POWER PLANT AS SET FORTH IN SECTION 3.1(A) (VI) AND FURTHER ACKNOWLEDGE THAT THIS PROVISION IS REASONABLE AT THE TIME OF THE AGREEMENT AS THAT TERM IS USED IN CALIFORNIA CIVIL CODE SECTION 1671. TO THE EXTENT NECESSARY TO SUPPORT THE STATEMENT THAT THIS PROVISION IS REASONABLE AT THE TIME OF THE AGREEMENT: (I) NRG ACKNOWLEDGES, AGREES AND UNDERSTANDS THAT THE CITY WOULD INCUR DAMAGES IN THE EVENT THAT ENCINA POWER STATION CONTINUED TO OPERATE AFTER THE DATE THAT CECP BECAME COMMERCIALY OPERABLE BUT THAT THOSE DAMAGES AND COMPENSATION TO THE CITY WILL BE EXTREMELY DIFFICULT AND IMPRACTICAL TO ASCERTAIN IN PART DUE TO THE FACT THAT THE CONTINUED OPERATION HAS AN IMPACT ON THE CITY AND ITS RESIDENTS AND THE QUANTIFICATION OF THOSE POTENTIAL DAMAGES CANNOT BE DONE AT THIS TIME; (II) NRG ADMITS THAT THIS IS A REASONABLE PROVISION GIVEN THE DIFFICULTY OF QUANTIFYING THESE DAMAGES AND THE

AMOUNT OF REASONABLE COMPENSATION TO THE CITY IN THE EVENT THAT THE ENCINA POWER PLANT CONTINUES IN OPERATION.

(c) THE LIQUIDATED DAMAGES SO IMPOSED ARE NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT ARE INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO THE CITY AS PROVIDED BY CALIFORNIA CIVIL CODE SECTIONS 1671(b). NRG AGREES, ACKNOWLEDGES AND REPRESENTS THAT THE LIQUIDATED DAMAGES SET FORTH HEREIN ARE REASONABLE AT THE TIME OF THIS AGREEMENT AND ARE NOT A PENALTY OR FORFEITURE AND NRG IS ESTOPPED FROM ARGUING THAT THE LIQUIDATED DAMAGE PROVISION IS UNENFORCEABLE OR CONSTITUTES A PENALTY.

(d) NOTWITHSTANDING THE IMPOSITION AND PAYMENT OF SUCH LIQUIDATED DAMAGES, NRG ACKNOWLEDGES AND AGREES THAT THE CITY MAINTAINS ITS RIGHTS TO SEEK SPECIFIC PERFORMANCE OF THE AGREEMENT AS PROVIDED FOR IN SECTION 8.1(C), ACKNOWLEDGES THAT THE LIQUIDATED DAMAGES DO NOT CONSTITUTE AN ADEQUATE REMEDY AT LAW AND AGREES THAT SUCH LIQUIDATED DAMAGES DO NOT IMPAIR OR PREVENT THE CITY FROM SEEKING SPECIFIC PERFORMANCE OF ARTICLE 3 (OR ANY OTHER PROVISION OF THIS AGREEMENT) OR INJUNCTIVE RELIEF IN CONNECTION WITH THE ENFORCEMENT OF THIS AGREEMENT.

Initials of NRG

gc.

Initials of City

MP

## ARTICLE 9

### INDEMNITY

#### 9.1 Indemnification of the City

Subject to the terms, conditions and limitations set forth below and to the extent permitted by law, NRG agrees to and shall Indemnify the Indemnified Parties from and against any and all Losses (including, without limitation, any judgments, settlements, consent decrees, stipulated judgments or other partial or complete terminations of any actions or proceedings that require any of the Indemnified Parties to take any action) imposed upon, incurred by or asserted against any of the Indemnified Parties in connection with the occurrence or existence of any of the following arising as a result of this Agreement: (i) any accident, injury to or death of any Person or loss or damage to property occurring on the Encina Site; (ii) any accident, injury to or death of any person or loss or damage to property occurring near or around the Encina Site and that shall be directly or indirectly caused by the negligent act or omission or willful misconduct of NRG or its agents, tenants or invitees; (iii) any development, construction, operation, use, occupation, management, marketing, leasing, condition, financing or refinancing, sale or Transfer of the Encina Site; (iv) non-compliance with applicable Laws, including, but not limited to, Laws relating to hazardous materials, disabled access (including, without limitation, the

American with Disabilities Act) and unreinforced masonry buildings; (v) any third-party contracts entered into by or on behalf of NRG with respect to the Encina Site; (vi) any civil rights actions or other legal actions or suits initiated by any occupant or invitee of the Encina Site; and (vii) any claim that NRG and the City are joint venturers. Notwithstanding the foregoing, NRG shall not be required to Indemnify the Indemnified Parties against Losses if such Losses are caused by the negligence or willful misconduct of the City or the Agency or their respective directors, officers, employees, agents, successors and assigns, including the negligence or willful misconduct of the Indemnified Parties (or failing to act) or in the City's regulatory capacity in the exercise of its police powers.

## 9.2 Terms and Conditions

The foregoing indemnity is subject to the following terms and conditions.

**(a) Immediate Obligation to Defend.** NRG specifically acknowledges that it has an immediate and independent obligation to defend the Indemnified Parties from any claim that is actually or potentially within the scope of the indemnity provisions of Section 9.1, even if such claim is or may be groundless, fraudulent or false. Such obligation arises at the time such claim is tendered to NRG by an Indemnified Party and continues at all times after such tender.

**(b) Notice.** The Indemnified Parties agree to give notice to NRG with respect to any suit or claim initiated against the Indemnified Parties. Such notice shall be given at the address for notices of NRG set forth in this Agreement, and in no event later than the earlier of (i) ten (10) days after valid service of process as to any suit or (ii) fifteen (15) days after receiving written notification of the filing of such suit or the assertion of such claim, which the City has reason to believe is likely to give rise to a claim for indemnity under this Article. If notice is not given to NRG in a timely manner as provided in this Article, then, except as provided below, NRG's liability shall terminate as to the matter for which such notice is not given, provided that failure to notify NRG shall not affect the rights of the Indemnified Parties or the obligations of NRG under this Article unless NRG is materially prejudiced by such failure, and then only to the extent of such prejudice.

**(c) Defense.** NRG shall, at its option but subject to the reasonable consent and approval of the Indemnified Parties, be entitled to control the defense, compromise or settlement of any such matter through counsel of NRG's own choice; provided, however, in all cases the Indemnified Parties shall be entitled to participate in such defense, compromise, or settlement at their respective expense. If NRG shall fail, however, in the Indemnified Party's reasonable judgment, within a reasonable time following notice from the Indemnified Parties alleging such failure, to take reasonable and appropriate action to defend, compromise or settle such suit or claim, the Indemnified Parties shall have the right promptly to hire counsel at NRG's sole expense to carry out such defense, compromise or settlement, which expense shall be immediately due and payable to the Indemnified Parties upon receipt by NRG of a properly detailed invoice; provided that NRG must consent in writing to any proposed compromise or settlement, which consent shall not be unreasonably withheld.

**(d) Insurance.** The indemnity contained in Section 9.1 shall not be limited by any insurance carried by NRG.



(e) **Survival.** The indemnity contained in this Section shall survive any termination of this Agreement as to matters or Losses that arise during the term of this Agreement.

(f) **No Limitation on Other Obligations.** The agreement to Indemnify set forth above is in addition to, and in no way shall be construed to limit or replace, any other obligations or liabilities that NRG may have to the City under any other permits, approvals or agreements with the City, at common law or otherwise.

(g) **Limitation.** NRG has no duty under Section 9.1 regarding any claim against any Indemnified Parties directly related to the existence, interpretation and/or enforcement of this Agreement.

## ARTICLE 10

### SETTLEMENT

#### 10.1 Negotiated Settlement

The discussions that have produced this Agreement have been conducted with the explicit understanding that they are privileged under California Evidence Code section 1152 and Federal Rule of Evidence 408, and that such discussions shall be without prejudice to the position of any party and may not be used in any manner in any proceeding or otherwise, except as may be necessary to enforce this Agreement or as otherwise required by law.

## ARTICLE 11

### RESERVED

#### 11.1 Reserved

## ARTICLE 12

### GENERAL

#### 12.1 Notices

Except as otherwise expressly provided in this Agreement, all notices, demands, approvals, consents and other formal communications between the Parties required or permitted under this Agreement shall be in writing and shall be deemed given and effective upon the date of receipt (i) if given by personal delivery on a business day (or the next business day if delivered personally on a day that is not a business day), (ii) if sent for next-business-day delivery (with all expenses prepaid) by a reliable overnight delivery service, with receipt of delivery, or (iii) if mailed by United States registered or certified mail, first class postage prepaid, to the Party at their respective addresses for notice designated below. For convenience of the Parties, copies of notices may also be given by facsimile to the facsimile number set forth below or such other number as may be provided from time to time by notice given in the manner required under this Agreement; however, neither Party may give official or binding notice by

facsimile. The effective time of a notice shall not be affected by the receipt, before receipt of the original, of a facsimile copy of the notice.

- (a) In the case of a notice or communication to the City:

Celia A. Brewer, Esq.  
City Attorney for City of Carlsbad  
General Counsel for Carlsbad Municipal Water District  
1200 Carlsbad Village Drive  
Carlsbad, CA 92008  
Celia.Brewer@carlsbadca.gov

Stephen C. Hall, Esq.  
Troutman Sanders LLP  
805 SW Broadway, Suite 1560  
Portland, OR 97205  
stephen.hall@troutmansanders.com

Fletcher W. Paddison, Esq.  
Troutman Sanders LLP  
11682 El Camino Real  
Suite 400  
San Diego, CA 92130-2092  
fletcher.paddison@troutmansanders.com

- (b) And in the case of a notice or communication sent to NRG or NRG:

Sean Beatty  
West Region General Counsel  
NRG Energy, Inc.  
P.O. Box 192  
Pittsburg, CA 94565  
sean.beatty@nrgenergy.com

- (c) And in the case of a notice or communication sent to SDG&E:

Diana Day  
Assistant General Counsel  
SDG&E  
101 Ash Street,  
HQ11  
San Diego, CA 92101  
dday@semprautilities.com

Every notice given to a Party to this Agreement, under the terms of this Agreement, must state (or must be accompanied by a cover letter that states) substantially the following:

- (i) the Section of this Agreement under which the notice is given and the action or response required, if any;
- (ii) if applicable, the period of time within which the recipient of the notice must respond;
- (iii) if approval is being requested, shall be clearly marked "Request for Approval under the Settlement Agreement";
- (iv) if a notice of a disapproval or an objection that is subject to a reasonableness standard, shall specify with particularity the reasons for the disapproval or objection; and
- (v) if applicable, that the failure to object to the notice within the stated time period will be deemed to be the equivalent of the recipient's approval of or consent to the request for approval that is the subject matter of the notice.

If a request for approval states a period of time for approval that is less than the time period provided for in this Agreement for such approval, the time period stated in this Agreement shall be the controlling time period.

In no event shall a recipient's approval of or consent to the subject matter of a notice be deemed to have been given by its failure to object to such notice if such notice (or the accompanying cover letter) does not comply with the requirements of this Section.

Any mailing address or facsimile number may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days before the effective date of the change.

## **12.2 Relationship of Parties: No Joint Venture or Partnership**

The subject of this Agreement is an agreement for the Shutdown of the Encina Power Station and for a private development, with neither Party acting as the agent of the other Party in any respect. None of the provisions in this Agreement is intended to or shall be construed or deemed to render the City or SDG&E a partner in NRG's business, or joint venturer or member in any development or joint enterprise with NRG, including, but not limited to, the development or reuse of the Encina Site. NRG shall Indemnify the City against any Losses relating to any claim of any such joint venture as provided in Section 9.1. Nothing in this Agreement is intended to or shall be construed to create any principal-agent relationship between SDG&E, NRG and the City. Nothing in this Agreement is intended or shall be construed as to create any obligation between SDG&E and NRG to enter into the Proposed PPA.

## **12.3 Conflict of Interest**

No member, official or employee of the City may have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement that affects her or his personal interest or the interests of any corporation, partnership or association in which she or he is interested directly or indirectly.

## 12.4 Time of Performance

(a) **Expiration.** All performance dates (including cure dates) expire at 5:00 p.m., Carlsbad, California time, on the performance or cure date, unless otherwise provided in this Agreement.

(b) **Weekends and Holidays.** A performance date that falls on a Saturday, Sunday or City holiday (or official City furlough day) is deemed extended to the next City working day.

(c) **Days for Performance.** All periods for performance specified in this Agreement in terms of days shall be calendar days, and not business days, unless otherwise expressly provided in this Agreement.

(d) **Time of the Essence.** Time is of the essence for each and every provision of this Agreement.

## 12.5 Interpretation of Agreement

(a) **Words of Inclusion.** The use of the terms “including,” “such as” or words of similar import when following any general term, statement or matter shall not be construed to limit such term, statement or matter to the specific items or matters set forth, whether or not language of non-limitation is used with reference to such items or matters. Rather, such terms shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter.

(b) **No Presumption Against Drafter.** This Agreement has been negotiated at arm’s length and between Persons sophisticated and knowledgeable in the matters dealt with in this Agreement. In addition, experienced and knowledgeable legal counsel has represented each Party. Accordingly, this Agreement shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Agreement.

(c) **Costs and Expenses.** The Party on which any obligation is imposed in this Agreement shall be solely responsible for paying all costs and expenses incurred in the performance of such obligation, unless the provision imposing such obligation specifically provides to the contrary.

(d) **Agreement References.** A reference to any provision, term or matter “in this Agreement,” “herein” or “hereof,” or words of similar import shall be deemed to refer to any and all provisions of this Agreement reasonably related in the context of such reference, unless such reference refers solely to a specific numbered or lettered Article, Section or paragraph of this Agreement or any specific subdivision of this Agreement.

(e) **Approvals and Consents.** Unless this Agreement otherwise expressly provides, all approvals, consents or determinations to be made by or on behalf of the City under this Agreement shall be made by the City Attorney, or his or her designee. Unless otherwise provided in this Agreement, whenever approval, consent or satisfaction is required of a Party under this Agreement, it shall not be unreasonably withheld or delayed. Except with respect to matters that

a Party is expressly entitled to determine in its sole and absolute discretion, the reasons for disapproval shall be stated in reasonable detail in writing. Approval by NRG or the City to or of any act or request by the other shall not be deemed to waive or render unnecessary approval to or of any similar or subsequent acts or requests.

**(f) Recitals.** The Recitals in this Agreement are included for convenience of reference only and are not intended to create or imply covenants under this Agreement. In the event of any conflict or inconsistency between the Recitals and the terms and conditions of this Agreement, the terms and conditions of this Agreement shall control.

**(g) Captions.** The captions preceding the articles and Sections of this Agreement have been inserted for convenience of reference only. Such captions shall not define or limit the scope or intent of any provision of this Agreement.

**(h) Exhibits.** Whenever an "Exhibit" is referenced, it means an attachment to this Agreement unless otherwise specifically identified. All such Exhibits are incorporated in this Agreement by reference.

#### **12.6 Successors and Assigns**

This Agreement is binding upon and will inure to the benefit of the successors and assigns of the City and NRG, except as expressly provided in this Agreement.

#### **12.7 No Third Party Beneficiaries**

This Agreement is made and entered into for the sole protection and benefit of the Parties and their successors and assigns, except as expressly provided in this Agreement.

#### **12.8 Counterparts**

This Agreement may be executed in counterparts and by facsimile or e-mailed signatures, each of which is deemed to be an original, and all such counterparts shall constitute one and the same instrument.

#### **12.9 Entire Agreement**

This Agreement, including the attached Exhibits, constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes all negotiations or previous conditions mentioned in or incidental to this Agreement (including, but not limited to, any term sheets relating to any of the subject matters of this Agreement). No parol evidence of any prior draft of this Agreement or any other agreement shall be permitted to contradict or vary the terms of this Agreement.

#### **12.10 Governing Law**

The laws of the State of California shall govern the interpretation and enforcement of this Agreement. As part of the consideration for the City's entering into this Agreement, all Parties agree that all actions or proceedings arising directly or indirectly under this Agreement may, at the sole option of the City, be litigated in courts located within the State of California, in the City of Carlsbad, County of San Diego, and the Parties expressly consent to the jurisdiction of any such local, state or federal court, and consents that any service of process in such action or proceeding may be made by personal service upon the Parties wherever the Parties may then be located, or by certified or registered mail directed to the Parties at the address set forth in this Agreement for the delivery of notices.

#### **12.11 Extensions by the City**

Upon the request of NRG or SDG&E, the City Attorney or his or her designee may, by written instrument and in the City Attorney's sole and absolute discretion, extend the time for NRG's or SDG&E's performance of any term, covenant or condition of this Agreement or permit the curing of any default upon such terms and conditions as he or she determines appropriate, including but not limited to, the time within which NRG or SDG&E shall agree to such terms or conditions, provided, however, any such extension for more than thirty (30) days or the permissive curing of any particular material default will be subject to approval of the City Council by resolution and in no event will operate to release any of NRG's or SDG&E's obligations nor constitute a waiver of the City's rights regarding any other term, covenant or condition of this Agreement or any other default in, or breach by NRG or SDG&E of, this Agreement or otherwise affect compliance with the other dates for performance under this Agreement.

#### **12.12 Further Assurances**

The Parties agree to execute and acknowledge such other and further documents as may be necessary or reasonably required to effectuate the terms of this Agreement. The City Attorney is authorized to execute on behalf of the City any closing or similar documents and any contracts, agreements, memoranda or similar documents with State, regional or local entities or other Persons that are necessary or proper to achieve the purposes and objectives of this Agreement and do not materially increase the obligations of the City under this Agreement, if the City Attorney determines that the document is necessary or proper, consistent with the purposes of this Agreement and in the City's best interests. The City Attorney's signature of any such document shall conclusively evidence such a determination by him or her.

#### **12.13 Severability**

If any provision of this Agreement, or its application to any Person or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision shall not affect any other provision of this Agreement or the application of such provision to any other Person or circumstance, and the remaining portions of this Agreement shall continue in full force and effect, unless enforcement of this Agreement as so modified by and in response to such invalidation would be grossly inequitable under all of the circumstances, or would frustrate the fundamental purposes of this Agreement.

## **12.14 Amendments; Corrections of Technical Errors**

Neither this Agreement nor any of its terms may be terminated, amended or modified except by a written instrument executed by the Parties. Any material amendment of this Agreement shall be subject to approval of the City Council by resolution. If by reason of inadvertence, and contrary to the intention of the Parties, errors are made in this Agreement in the legal description or the reference to or within any Exhibit with respect to a legal description, in the boundaries of any parcel in any map or drawing that is an Exhibit, or in the typing of this Agreement or any of its Exhibits, the Parties by mutual agreement may correct such error by written memorandum executed by them without the necessity of amendment of this Agreement. The City Attorney may execute any such written memorandum on behalf of the City.

## **12.15 Representations, Warranties and Covenants**

(a) **NRG Representation, Warranties and Covenants.** NRG represents, warrants, and covenants to the City that as of the Effective Date, each of the following statements is accurate and complete:

(i) **Valid Existence; Good Standing.** NRG represents that both Cabrillo Power I LLC and Carlsbad Energy Center LLC are Delaware limited liability companies duly organized, validly existing and in good standing under the laws of the State of California. NRG represents that each entity has all requisite power and authority to own its property and conduct its business as presently conducted.

(ii) **Authority.** NRG represents that each of Cabrillo Power I LLC and Carlsbad Energy Center LLC has all requisite power and authority to execute and deliver this Agreement and to carry out and perform all of its duties and obligations under this Agreement. Without limiting the foregoing, NRG has obtained any and all required approvals. NRG will provide as a condition of the City's obligations under this Agreement (x) written resolutions from Cabrillo Power I LLC and Carlsbad Energy Center LLC authorizing the execution of and performance their obligations under this Agreement and (y) a written resolution from NRG Energy, Inc., in its role at Guarantor, authorizing NRG Energy, Inc. to guarantee the prompt and complete performance of NRG's obligations under this Agreement.

(iii) **No Limitation on Ability to Perform.** Neither limited liability company agreements, nor any other agreement or Law prohibits or materially limits or otherwise affects the right or power of NRG to enter into and perform all of the terms and covenants of this Agreement. Neither NRG nor any of its members are party to or bound by any contract, agreement, indenture, trust agreement, note, obligation or other instrument that prohibits or materially limits or otherwise affects the same. Except as expressly stated in this Agreement, no consent, authorization or approval of, or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other Person is required for the due execution, delivery and performance by NRG of this Agreement or any of the terms and covenants contained in this Agreement (or if required, any such consent, authorization or approval has been obtained, any such action has occurred, and any such notice has been given). There are no pending or threatened

suits or proceedings or undischarged judgments affecting NRG before any court, governmental agency, or arbitrator that, if determined adversely to NRG, might materially adversely affect the enforceability of this Agreement or the ability of NRG to perform its obligations under this Agreement.

(iv) **Valid Execution.** The execution and delivery of this Agreement (and the agreements contemplated in this Agreement) by NRG have been duly and validly authorized by all necessary action on the part of NRG. Upon its execution and delivery by all Parties and City Council approval under Section 2.3(b), this Agreement will be a legal, valid, binding and enforceable obligation of NRG.

(v) **Business Licenses.** To NRG's knowledge, NRG has obtained all licenses required to conduct business in City and it is not in default of any fees or taxes due to the City.

(vi) **Financial Matters.** (1) NRG is not in default under, and has not received notice asserting that it is in default under, any agreement for borrowed money, (2) NRG has not filed a petition for relief under any chapter of the U.S. Bankruptcy Code and has no present intention to petition for relief under any chapter of the U.S. Bankruptcy Code, (3) to NRG's knowledge, no involuntary petition naming NRG as debtor has been filed under any chapter of the U.S. Bankruptcy Code, and (4) NRG has the financial wherewithal to perform all of its financial and other obligations under this Agreement.

For purposes of the foregoing representations and warranties, whenever a statement is qualified by reference to NRG's knowledge or lack of knowledge, such reference is intended to refer to, and be limited to, matters within the actual knowledge of, or which should be discovered upon a reasonably diligent inquiry by, those officers of NRG who are most knowledgeable with NRG's business dealings with the Encina Site.

(b) **City Representations, Warranties, and Covenants.** The City represents, warrants, and covenants to NRG that as of the Effective Date, each of the following statements is accurate and complete:

(i) **Authority.** The City has all requisite power and authority to execute and deliver this Agreement and to carry out and perform all of its duties and obligations under this Agreement.

(ii) **Valid Execution.** The execution and delivery of this Agreement (and the agreements contemplated in this Agreement) by the City have been duly and validly authorized by all necessary action on the part of the City. Upon its execution and delivery by all Parties and City Council approval under Section 2.3(b), this Agreement will be a legal, valid, binding and enforceable obligation of the City. The City has provided (or upon written request will provide) to NRG a written resolution of the City authorizing the execution of and performance by the City of its obligations under this Agreement.

(iii) **Defaults.** The execution, delivery and performance of this Agreement do not and will not violate or result in a violation of, contravene or conflict with, or



constitute a default under (A) any agreement, document or instrument to which the City is a party or (B) any applicable law, statute, ordinance or regulation.

For purposes of the foregoing representations and warranties, whenever a statement is qualified by reference to the City's knowledge or lack of knowledge, such reference is intended to refer to, and be limited to, matters within the actual knowledge of, or which should be discovered upon a reasonably diligent inquiry by employees of the City Attorney who are most knowledgeable with this Agreement.

#### **12.16 Cooperation and Non-Interference**

In connection with this Agreement, the Parties shall reasonably cooperate with one another to achieve the objectives and purposes of this Agreement. In so doing, the Parties shall each refrain from doing anything that would render its performance under this Agreement impossible and each shall do everything that this Agreement contemplates that the Party shall do to accomplish the objectives and purposes of this Agreement. In all situations arising out of this Agreement, the Parties shall each attempt to avoid and minimize the damages resulting from the conduct of the other and shall take all reasonably necessary measures to achieve the provisions of this Agreement.

#### **12.17 Attorneys' Fees and Costs**

NRG shall pay to City on demand any and all Attorneys' Fees and Costs incurred or paid by City in enforcing NRG's obligations under this Agreement. City shall pay to NRG on demand any and all Attorneys' Fees and Costs incurred or paid by NRG in enforcing City's obligations under this Agreement.

#### **12.18 Transfer**

NRG acknowledges and agrees that during the term of the Agreement any Transfer of the Agreement, any portion of the Encina Site, or both, requires the prior written consent of the City, which will not be unreasonably withheld, conditioned, or delayed, provided that the Transferee (i) has the financial capability of performing NRG's obligations under this Agreement, as reasonably determined by the City in its sole discretion; provided, however, that a Transferee with a credit rating equal to or higher than NRG Energy, Inc. from a nationally-recognized credit rating agency shall be deemed to meet this condition, and (ii) enters into an Assumption of Obligations Agreement set forth in Exhibit F.

#### **12.19 Survival**

Notwithstanding anything to the contrary in this Agreement, the following provisions shall survive the expiration of the Term or any other termination of this Agreement: (i) any obligation that arises and was not satisfied before termination shall survive any termination of this Agreement except to the extent otherwise provided in this Agreement; (ii) the releases and indemnities set forth in Article 9 and Article 10 of this Agreement shall continue as set forth in those articles, and (iii) any provision expressly stated in this Agreement to survive in whole or in part following a termination of this Agreement.

**12.20 Exhibits**

The attached Exhibits A-T are made a part of this Agreement.

IN WITNESS WHEREOF, the City of Carlsbad, Carlsbad Municipal Water District, Cabrillo Power I LLC, Carlsbad Energy Center LLC, and San Diego Gas & Electric Company have caused this Agreement to be executed on the date first written above.

**CABRILLO POWER I LLC**

By: John Chilton  
Title: PRESIDENT

**CARLSBAD ENERGY CENTER LLC**

By: John Chilton  
Title: PRESIDENT

**CITY OF CARLSBAD  
AND  
CARLSBAD MUNICIPAL WATER  
DISTRICT**

By: Mark Parkland  
Title: Mayor Pro Tem

*Solely with respect to Article 5 and  
Article 12*

**SAN DIEGO GAS & ELECTRIC**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

IN WITNESS WHEREOF, the City of Carlsbad, Carlsbad Municipal Water District, Cabrillo Power I LLC, Carlsbad Energy Center LLC, and San Diego Gas & Electric Company have caused this Agreement to be executed on the date first written above.

**CABRILLO POWER I LLC**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**CARLSBAD ENERGY CENTER LLC**

By: \_\_\_\_\_

Title: \_\_\_\_\_

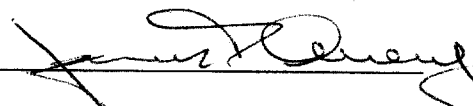
**CITY OF CARLSBAD  
AND  
CARLSBAD MUNICIPAL WATER  
DISTRICT**

By: \_\_\_\_\_

Title: \_\_\_\_\_

*Solely with respect to Article 5 and  
Article 12*

**SAN DIEGO GAS & ELECTRIC**

By: 

Title: SVP Power Supply

**EXHIBIT A**

**Legal Description of the Encina Site**

[INSERTED ON THE FOLLOWING PAGE]

**LEGAL DESCRIPTION**

(Exceptions Not Noted)

**The land referred to herein is situated in the State of California, County of San Diego, City of Carlsbad, and described as follows:**

That portion of Lot "H" of Rancho Agua Hedionda, in the City of Carlsbad, County of San Diego, State of California, according to Partition Map thereof No. 823, filed in the Office of the County Recorder of San Diego County, November 16, 1896; being Parcel No. 4 of that certain Certificate of Compliance recorded October 30, 2001 as file no. 2001-0789068 of Official Records, and more particularly described as:

Commencing at the intersection of the easterly line of the 100.00 foot wide right-of-way of the Atchison Topeka and Santa Fe Railroad with the northerly line of Canon Road (60.00 feet wide); thence long said easterly line north 22°30'13" west, 1564.78 feet to the TRUE POINT OF BEGINNING; thence continuing along said easterly line north 22°30'13" west, 1990.35 feet to the beginning of a non-tangent curve concave to the northwest having a radius of 1005.37 feet, a radial to said beginning bears south 85°54'14" east; thence northeasterly 36.76 feet along said curve through a central angle of 02°05'42"; thence non-tangent to said curve north 22°30'13" west, 302.87 feet; thence leaving said easterly line north 61°25'37" east, 14.19 feet; thence north 30°30'37" east, 34.90 feet; thence south 40°47'43" east, 63.50 feet; thence south 69°10'23" east, 38.00 feet; thence north 79°19'37" east, 285.00 feet; thence north 88°07'37" east, 333.14 feet; thence north 81°53'37" east, 13.68 feet to the westerly right-of-way lline of California State Highway XI-SD-2B (I-5); thence along said right-of-way line south 17°57'05" east, 204.93 feet; thence south 12°34'11" east, 424.72 feet; thence south 22°07'51" east, 239.68 feet; thence south 22°30'37" east, 1210.91 feet; thence leaving said right-of-way line south 67°37'25" west, 492.66 feet; thence south 62°25'13" west, 126.26 feet to the TRUE POINT OF BEGINNING,

Together with that portion of said Lot H described as follows:

Commencing at the northeasterly corner of Record of Survey No. 14621, in the City of Carlsbad, County of San Diego, State of California, recorded in the Office of the County Recorder of Sand Diego County, August 14, 1994 as file no. 1994-500086, said corner being on the westerly line of the right-of-way of the Atchison Topeka and Santa Fe Railroad; thence along said westerly line and easterly line of Record of Survey 14621 south 28°40'19" east, 656.70 feet to the most southerly corner of said Record of Survey No. 14621; thence continuing south 28°40'19" east, 275.00 feet to the TRUE POINT OF BEGINNING; thence leaving said westerly line south 56°25'30" west, 61.30 feet; thence south 04°59'18" west, 27.61 feet; thence south 39°37'42" east, 61.38 feet; thence south 77°21'22" east, 49.55 feet; thence south 26°45'53" east, 232.92 feet; thence south 17°52'19" east, 115.92 feet; thence south 02°16'37" east, 55.06 feet; thence south 24°00'58" west, 44.47 feet; thence south 40°45'14" west, 126.60 feet; thence south 29°41'50" west, 83.42 feet; thence south 27°27'35" west, 90.04 feet; thence south 35°18'30" west, 212.59 feet; thence south 19°22'01" east, 108.34 feet; thence south 30°56'56" east, 304.06 feet; thence south 14°30'21" west, 175.27 feet; thence south 00°09'57" east, 123.11 feet; thence south 26°53'37" east, 119.99 feet; thence south 34°46'51" west, 23.60 feet; thence north 61°27'21" west, 142.77 feet; thence north 22°47'32" west, 47.01 feet; thence south 67°12'28" west, 16.03 feet; thence south 22°47'32" east, 22.23 feet; thence south 58°37'31" west, 97.99 feet; thence south 41°35'28" west, 110.44 feet; thence north 74°44'52" west, 164.81 feet; thence north 05°57'51" west, 202.95 feet; thence north 30°14'20" west, 64.23 feet; thence north 64°31'22" west, 293.59 feet to the easterly line of the 100.00 foot wide Carlsbad Boulevard; thence along said easterly line of Carlsbad

Boulevard south 24°07'36" east, 913.18 feet to the beginning of a curve concave southwesterly having a radius of 4050.00 feet; thence southeasterly 348.89 feet along said curve through a central angle of 04°56'09"; thence south 19°11'27" east, 15.63 feet to the beginning of a curve concave northeasterly having a radius of 5216.55 feet; thence southeasterly 900.29 feet along said curve through a central angle of 09°53'18"; thence leaving said easterly line of Carlsbad Boulevard north 60°43'42" east, 103.71 feet; thence north 71°53'50" east, 49.05 feet; thence north 88°29'46" east, 149.63 feet; thence north 77°06'32" east, 80.00 feet; thence north 68°28'15" east, 121.97 feet; thence north 63°21'54" east, 220.51 feet; thence north 67°56'35" east, 167.57 feet; thence north 76°27'03" east, 60.33 feet; thence south 77°37'36" east, 172.85 feet; thence south 60°55'41" east, 66.30 feet; thence south 45°30'57" east, 47.42 feet; thence south 82°40'44" east, 84.31 feet; thence south 44°29'52" east, 52.55 feet to said westerly right-of-way line of said Atchison Topeka and Santa Fe Railroad; thence along said westerly line north 22°30'13" west, 2664.53 feet; thence north 28°40'19" west, 835.14 feet to the TRUE POINT OF BEGINNING.

The above described parcel of land contains 95.08 acres more or less.

Assessor's Parcel Numbers: 210-010-43, and 210-010-43 (with other property).

(End of Legal Description)

# EXHIBIT B

## Map of the Encina Site





# EXHIBIT C

## Area Map of the Encina Site



**EXHIBIT D**

**Form of NRG Support Letter**

**Re: Cabrillo Power I LLC's Support of the Shutdown of the Encina Power Station**

Dear \_\_\_\_\_:

In response to longstanding concerns and disputes related to the operation of the Encina Power Station, Cabrillo Power I LLC (NRG) and the City of Carlsbad (City) have entered into a Settlement Agreement dated as of January 14, 2014, to permanently shut down the Encina Power Station on the earlier of the commercial operation of the Carlsbad Energy Center or December 31, 2017, provided that the Encina Power Station is no longer needed for electric reliability as set forth in the Settlement Agreement.

NRG fully supports the shutdown of the Encina Power Station as soon as it is not needed for reliability. More particularly, NRG does not intend to operate the Encina Power Station after commercial operation of the Carlsbad Energy Center or December 31, 2017, whichever is earlier, and accordingly is committed to working with the California Independent System Operator and the City to achieve the permanent shutdown of the Encina Power Station by the earlier of those milestones.

Very truly yours,  
CABRILLO POWER I LLC

[signed by authorized officer or officers]

**EXHIBIT E**

**Form of City Support Letter**

**Re: City's Support of the Approvals Needed for Licensing and Operation of the Carlsbad Energy Center and Interim Operation of the Encina Power Station**

Dear \_\_\_\_\_:

Consistent with the terms of the Settlement Agreement dated as of January 14, 2014, among multiple parties, including Carlsbad Energy Center LLC, Cabrillo Power I LLC and the City of Carlsbad (City), I write this letter to indicate the support of the City for the issuance of the permit or license for the operation of the Carlsbad Energy Center.

City further supports renewal of any permits or licenses necessary for the interim operation of the Encina Power Station. Under the Settlement Agreement, Cabrillo Power I LLC has agreed to shut down the Encina Power Station on the earlier of commercial operation of the Carlsbad Energy Center or December 31, 2017, provided it is released from reliability requirements by the California Independent System Operator (ISO). Accordingly, the City supports the renewal of the permits for the Encina Power Station until the earlier of commercial operation of the Carlsbad Energy Center or December 31, 2017.

A representative of the City is authorized to meet in person with your agency to communicate the support referenced in this letter.

Very truly yours,

City Attorney  
City of Carlsbad

**EXHIBIT F**

**Form of Assumption of Obligations Agreement**

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:



*(Space above this line for Recorder's use only)*

**ASSUMPTION OF OBLIGATIONS AGREEMENT**

This Assumption of Obligations (this "Assumption") dated as of \_\_\_\_\_, 2014, is by **Cabrillo Power I LLC** and **Carlsbad Energy Center LLC** (collectively the "Assignor"), \_\_\_\_\_, a \_\_\_\_\_ (the "Assignee"), and the **City of Carlsbad**, a charter city located in San Diego County (the "City").

**Factual Background**

A. The Assignor owns real property located in the City, in the County of San Diego, California, bounded generally by Cannon Road to the south, Interstate 5 to the east, the Agua Hedionda Lagoon to the north, and Carlsbad Boulevard to the west (the "Site").

B. The Assignor and the City entered into that certain Settlement Agreement dated for reference purposes as of January 14, 2014 (the "Agreement"). Capitalized terms not defined in this Assumption have the meanings given them in the Agreement.

C. The Assignor wishes to convey to the Assignee its entire right, title and interest in and to that portion of the Site, as more particularly described in Exhibit A attached to the Agreement (the "Transferred Property") and its rights under the Agreement to the extent pertaining to the Transferred Property. In connection therewith, Assignee has agreed to assume [certain/all] of Assignor's unfulfilled and/or continuing obligations under the Agreement, all as set forth in this Assignment.

## Agreement

Therefore, the City, the Assignor and the Assignee agree as follows:

(1) Reaffirmation of Obligations. The Assignor reaffirms all of its obligations under the Agreement (to the extent such obligations remain unfulfilled as of the date this instrument is executed), and the Assignor acknowledges that to its knowledge, [except for \_\_\_\_\_] the City is presently not in default of any of its obligations under the Agreement. The City reaffirms all of its obligations under the Agreement (to the extent such obligations remain unfulfilled as of the date this instrument is executed), and the City acknowledges that to its knowledge, [except for \_\_\_\_\_] the Assignor is presently not in default of any of its obligations under the Agreement.

(2) Effective Date. Effective as of \_\_\_\_\_ (the “Effective Date”) Assignor assigns to Assignee all of its right, title and interest in and to the Agreement [to the extent pertaining to the Transferred Property].

(3) Assumption. The Assignee assumes and agrees to faithfully perform for the benefit of the City all obligations of the Assignor under, and to be bound by all of the provisions of, the Agreement that remain unfulfilled as of the Effective Date; provided, however, the Assignee shall not assume the following obligations: \_\_\_\_\_.  
Upon this Assumption becoming effective, the Assignor shall have no further obligations to the City, and the City shall have no further obligations to the Assignor, with respect to the obligations of the Assignor under the Agreement assumed by and the rights of the Owner under the Agreement assigned to the Assignee.

(4) Representations and Warranties of Assignor. The Assignor represents and warrants to the City as follows:

(A) No Event of Default on the part of Assignor, or to Assignor’s knowledge, no event or condition that, with notice or lapse of time or both, would constitute an Event of Default on the part of Assignor, exists under the Agreement.

(B) The execution, delivery, and performance by the Assignor of this Assignment (x) will not contravene any legal requirements applicable to the Assignor or the Transferred Property, and (y) will not conflict with, breach or contravene any other agreement binding upon the Assignor or the Transferred Property.

(5) Representations and Warranties of Assignee: The Assignee represents and warrants to the Agency and the City as follows:

(A) The Assignee has reviewed the Agreement and is familiar with its terms and provisions.

(B) The Assignee makes for itself all representations, agreements and warranties of the Assignor set forth in Section 12.15(a) of the Agreement, effective as of the date hereof [to the extent applicable to the Transferred Property], subject to the following modifications: \_\_\_\_\_.

(C) The Assignee has obtained all consents in connection with its assumption of the obligations provided in this Assumption and for its acquisition of the Transferred Property that may be required by any agreement to which it is a party. Other than the consents so obtained, no consent to the acquisition of the Transferred Property is required under any agreement to which Assignee is a party.

(D) The execution, delivery, and performance by the Assignee of this Assumption and any other documents required under this Assumption (x) will not contravene any legal requirements applicable to the Assignee, and (y) will not conflict with, breach or contravene any other agreement binding upon the Assignee.

(E) To the knowledge of Assignee, there are no actions, suits or proceedings at law or in equity or by or before any governmental authority now pending against the Assignee, or threatened against or affecting the Assignee, in which there is a reasonable possibility of an adverse determination and that are reasonably likely individually or in the aggregate, if adversely determined, have a material adverse effect on the ability of the Assignee to perform such obligations under the Agreement as are being assumed by the Assignee.

(6) Address for Notices. All notices to the Assignee shall be sent to the following addresses:

Attention: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Telephone: \_\_\_\_\_

(7) No Prejudice. This Agreement shall not prejudice any rights or remedies of the City under the Agreement.

(8) Integration. This Assumption contains the entire agreement of the parties with respect to the matters contemplated in this Assumption and supersedes all prior negotiations.

(9) Modification. This Assumption may be amended or modified only in a writing signed by the parties.

(10) Counterparts. This Assumption may be executed in any number of counterparts which together shall be deemed the same instrument.

(11) Unenforceability. If any provision of this Assumption shall be determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, then that portion shall be deemed severed and the remaining parts shall remain in full force as though the invalid, illegal, or unenforceable portion had not been a part of this Assumption.

(12) Governing Law. The parties agree that this Assumption shall be construed and interpreted in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the Assignor, the Assignee and the City have caused this Agreement to be duly executed.

ASSIGNOR: CABRILLO POWER I LLC AND  
CARLSBAD ENERGY CENTER LLC

By: \_\_\_\_\_

CITY: CITY OF CARLSBAD

By: \_\_\_\_\_

ASSIGNEE:

By: \_\_\_\_\_

## **EXHIBIT G**

### **Form of Amendment**

#### **Carlsbad Energy Center Project Amendment**

In accordance with Section 4.1(b) of the Agreement, this Exhibit G sets forth certain provisions of NRG's proposed Petition to Amend (defined below) and Amendment (defined below), which provisions are a material part of the City's consideration for entering into the Agreement; provided, however, that the Commission's failure to adopt the midnight to 6:00 a.m. operating limitation shall not absolve the City of its support obligation set forth in the Agreement. Unless otherwise defined in this Exhibit G, initially capitalized terms used in this Exhibit G shall have the meaning given them in Article I of the Agreement. In the event of any conflict or inconsistency between Exhibit G and the terms and conditions of the Agreement, the terms and conditions of the Agreement shall prevail.

Carlsbad Energy Center LLC ("NRG") intends to modify the Carlsbad Energy Center Project ("CECP") to replace the currently licensed combined-cycle configuration with a peaker configuration. To accomplish this modification, NRG will submit a Petition to Amend ("PTA") to the California Energy Commission ("Commission") requesting that the Commission amend its May 2012 Final Decision in Docket 07-AFC-06 in which it granted the Application for Certification of the CECP (the "Final Decision" and such Commission amendment, the "Amendment"). The CECP PTA will demonstrate the extraordinary circumstances that have arisen, including those associated with the premature closure of the San Onofre Nuclear Generating Station, and that necessitate changes to the Final Decision. The PTA will also include certain NRG obligations from the Agreement relating to the Final Shutdown, decommissioning, demolition, and removal of the Encina Power Station, which are set forth below.

#### **The Project Description for the CECP PTA will address the following:**

1. Site Preparation and Tank Farm Demolition. NRG will demolish the following existing facilities to enable construction of the amended CECP as well as creation of associated laydown areas:
  - a. Aboveground Fuel Oil Storage Tanks 4-7 located east of the railroad tracks and west of Interstate 5. The footprint of the amended CECP will occupy the current location of Tanks 4-7.
  - b. Aboveground Fuel Oil Storage Tanks 1 and 2 located west of the railroad tracks. The footprint of those tanks will be used for construction laydown.
  - c. Site grading including removal of internal berms within the tank farm basin and preparation of ingress/egress routes.
  
2. Construction of Supporting Facilities.
  - a. Industrial water supply interconnection from City supplied reclaim water source at Cannon Road, if available (preferred) or from Ocean Water Purification System (small desalination plant if needed).



- b. Ocean Water Purification System (if needed).
  - c. Natural gas line interconnection from Cannon Road (preferred, if feasible; interconnect with existing infrastructure, if not) and gas metering and compression systems.
  - d. Fire Prevention Systems and hydrants east of the railroad tracks; commission/test associated back up diesel power pump to support Fire Prevention Systems.
  - e. Water and Aqueous Ammonia Storage Tanks.
  - f. Administration Building/Control Room.
  - g. Operations and Maintenance Building.
  - h. Stormwater management systems.
  - i. Industrial waste discharge interconnections.
3. Construction of no more than six General Electric LMS100s.
- a. Construction of no more than six General Electric LMS100s and supporting equipment (transformers, air cooled condensers, lubricating systems, selective catalytic reduction (“SCR”) for emissions control, etc).
  - b. Construction of the LMS100s will be below grade to minimize the visual profile of the units, stacks, and associated equipment.
  - c. Construction of black start, diesel powered generation equipment (anticipated to be 1-2 MWs) to be located on east side of railroad tracks (if needed by the ISO).
  - d. Interconnect into the 138 and 230 kV switchyards located on west side of the railroad tracks and appurtenant to SDG&E utilities and structures supporting the transmission of electricity to and from the switchyards.
  - e. Interconnect with constructed reclaimed or CECP desalination water supplies and natural gas supply, including associated gas metering and gas compression equipment.
  - f. Conduct commissioning of units, including installation and testing of SCR and continuous emissions monitoring systems (“CEMS”) for the respective units.
  - g. Conduct commissioning of black start unit (if needed by the ISO).
4. Environmental Characteristics. Environmental characteristics will include the following:
- a. Reduced criteria air pollutants compared to the permitted CECP.
  - b. Reduced greenhouse gas emissions compared to the permitted CECP.
  - c. Elimination of the use of ocean water for plant use (unless the City is not able to provide reclaimed water).
  - d. Reduced noise levels compared to the permitted CECP.
  - e. No operation between midnight and 6:00 am, except to the extent reasonably required for reliability-related purposes or as otherwise required by the ISO Tariff.
  - f. Lower plant profile and visibility.

- g. Removal of all aboveground oil storage tanks (see 1 a and b).
  - h. Demolition and removal of the Encina Power Station in a time certain unless required by the ISO or other agency for system reliability (see 5 below).
  - i. Revised vegetation and screening plan developed in cooperation with the City
  - j. Resolution of City fire safety concerns.
  - k. Development of the Coastal Rail Trail in a manner agreed to with the City.
5. Final Shutdown Date, Shut Down, decommissioning, demolition and removal. The PTA and the Amendment will incorporate the following requirements from the Agreement relating to the Final Shutdown Date, Shut Down, decommissioning, demolition and removal of the Encina Power Station, all of which requirements are expressly subject to the terms and conditions of the Agreement:
- a. NRG will permanently Shut Down the Encina Power Station on the earlier of the commercial operation date of CECP or December 31, 2017 (i.e., the Final Shutdown Date).
  - b. Within ninety (90) days of the Shutdown of the Encina Power Station, NRG shall ensure that the Encina Power Station facilities and improvements are in a secure, inoperable condition and do not pose a physical or environmental safety hazard to members of the public or visitors of the Encina Site, consistent with Prudent Utility Practices and all applicable regulatory requirements and approvals.
  - c. NRG shall commence physical demolition and removal of the above-ground structures of the Encina Power Station within one (1) year after Shut Down.
  - d. NRG and its contractor(s) will use commercially reasonable efforts to sequence the work to complete demolition and removal in the most timely and efficient manner, taking into consideration any hourly fieldwork restrictions/constraints at the site. The demolition scope of work will include the following:
    - i. Demolition to existing grade of Encina Power Station power block building and stack, including removal of steam boilers and associated equipment and removal of the combustion turbine (e.g., the black start unit). Removal of buildings, structures, equipment, and remaining storage tanks at the Encina Power Station (i.e., administrative building, operations/maintenance/warehouse buildings, industrial wastewater management system, intake/discharge structures not otherwise assumed by Poseidon).
    - ii. The overall project objective is to decontaminate and demolish the Site in a safe, cost-effective and environmentally safe manner, and in compliance with all applicable laws.
    - iii. NRG's contractor will prepare an updated hazardous materials survey. NRG's contractor shall properly handle, manage or remove and dispose of

- all hazardous materials and wastes in accordance with all local, state and federal regulations.
- iv. NRG and its contractors will develop, implement and maintain a storm water pollution prevention and sediment and soil erosion control plan in accordance with all local, state and federal regulations.
  - v. Site restoration activities after demolition: grading/backfilling to match existing surrounding grade. Surrounding grade may include existing concrete/asphalt surfaces. Clean, suitable fill material reused from the site or from offsite will be utilized to support back filling operation.
  - vi. Site grading and drainage will match the current site contours. Existing stormwater management systems would be utilized west of the railroad tracks. Erosion controls shall be installed and maintained during demolition site activities.
- e. NRG agrees to complete physical demolition and removal of the above-ground structures of the Encina Power Station within two (2) years of the commencement of demolition activities.
  - f. NRG agrees to limit fossil fuel generation on the Encina Site to the generating capacity proposed in the current project description (e.g., six LMS100s) proposed in the Amendment and any black start equipment potentially required by the ISO.
  - g. NRG agrees that no future modifications to the CECP shall be undertaken that exceed the environmental envelope, profile or footprint of CECP as presented in the PTA and Amendment.

### **Anticipated Amendment Approval Schedule**

Subject to processing and approval by applicable regulatory agencies (e.g., CEC, California Public Utilities Commission, San Diego County Air Pollution Control District, U.S. Environmental Protection Agency, San Diego Regional Water Quality Control Board), the following is the anticipated permitting/approval schedule for the Amendment:

1. March 2014 - File CECP PTA with the Commission.
2. March 2014 – File Air Permit Applications with San Diego County Air Pollution Control District (“SDAPCD”).
3. June 2014 – Commission Site Informational Work Shop and Initial Data Requests.
4. October 2014 – SDAPCD Preliminary Determination of Compliance.
5. December 2014 – Commission Preliminary Staff Assessment and Workshop.
6. April 2015 – Commission Final Staff Assessment Report.
7. June 2015 – Commission Evidentiary Hearings
8. August 2015 – Commission Presiding Member’s Proposed Decision on CECP PTA.
9. September 2015 – Commission Decision on CECP PTA.

**EXHIBIT H**

**Form of Memorandum of Agreement**

RECORDING REQUESTED BY AND)  
WHEN RECORDED MAIL TO: )  
)  
City Clerk )  
CITY OF CARLSBAD )  
1200 Carlsbad Village Drive )  
Carlsbad, California 92008-1989 )

Space above this line for Recorder's use

Assessor's Parcel Number [CLICK HERE](#)

Project Number and Name [CLICK HERE](#)

**NOTICE OF RESTRICTION ON SALE OR CONVEYANCE OF REAL PROPERTY**

The real property located in the City of Carlsbad, County of San Diego, State of California which is described on Exhibit "A" attached hereto (the "Property").

Pursuant to Government Code Section 27281.5(a), Notice is hereby given that the owner of the Property as set forth below is hereby restricted from conveying, transferring or granting the Property to any other party, except as provided under the Settlement Agreement (described below) and this restriction is imposed by the City of Carlsbad on the Property.

This Notice shall be recorded in the County Recorder's Office for the County of San Diego which recordation is permitted pursuant to the provisions of Government Code Section 27281.5(a). Upon recordation, this Notice provides constructive notice of the restriction on the conveyance or transfer of the Property.

This Notice is provided pursuant to that certain Settlement Agreement, Dated as of January 14, 2014, Between and Among the City of Carlsbad, Carlsbad Municipal Water District, Cabrillo Power I LLC, Carlsbad Energy Center LLC and San Diego Gas & Electric Company, approved by the City of Carlsbad pursuant to City Of Carlsbad Resolution No. 2014-010, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA, APPROVING AN AGREEMENT BETWEEN AND AMONG THE CITY OF CARLSBAD (CITY)

AND THE CARLSBAD MUNICIPAL WATER DISTRICT (CMWD), NRG ENERGY, INC. (NRG), AND SAN DIEGO GAS & ELECTRIC (SDG&E), ADDRESSING CITY AND CMWD SUPPORT FOR A CHANGE IN THE PROPOSED TECHNOLOGY OF THE APPROVED CARLSBAD ENERGY CENTER PROJECT (CECP) PLANT AND THE SUBMITTAL OF A PETITION TO AMEND (PTA) APPLICATION TO THE CALIFORNIA ENERGY COMMISSION (CEC) FOR APPROVAL OF THIS TECHNOLOGY CHANGE, CONDITIONED UPON THE DECOMMISSIONING, DEMOLITION, REMOVAL AND REMEDIATION OF THE CURRENT ENCINA POWER STATION (EPS) SITE, AS WELL AS OTHER CHANGES IN CECP PLANT DESIGN, ENERGY INFRASTRUCTURE AND PROPERTY CONSIDERATIONS BENEFICIAL TO THE RESIDENTS OF CARLSBAD, approved by the City of Carlsbad on January 14, 2014. A copy is on file at the City of Carlsbad Planning Division.

OWNER:

\_\_\_\_\_  
Owner's Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print name and title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print name and title

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

CITY OF CARLSBAD

\_\_\_\_\_  
DON NEU,  
City Planner

\_\_\_\_\_  
Date

\_\_\_\_\_  
CELIA A. BREWER, City Attorney  
City Attorney

\_\_\_\_\_  
By:  
Assistant City Attorney

\_\_\_\_\_  
Date

*(Proper notarial acknowledgment of execution by Contractor must be attached.)*

*(Chairman, president or vice-president and secretary, assistant secretary, CFO or assistant treasurer must sign for corporations. Otherwise, the corporation must attach a resolution certified by the secretary or assistant secretary under corporate seal empowering the officer(s) signing to bind the corporation.)*

*(If signed by an individual partner, the partnership must attach a statement of partnership authorizing the partner to execute this instrument).*



**EXHIBIT I**

**Form of Fossil Fuel Deed Restriction**

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

---

*(Space above this line for Recorder's use only)*

**DECLARATION OF ENVIRONMENTAL RESTRICTION REGARDING USE**

This Declaration Of Environmental Restriction Regarding Use (this "Declaration") is made as of \_\_\_\_\_, \_\_\_\_\_, by **NRG Cabrillo Power I LLC** and **Carlsbad Energy Center LLC** (collectively "NRG"), in favor of the **City of Carlsbad**, a charter city, located in San Diego County (the "City"). NRG and the City are sometimes collectively referred to below as the "Parties."

**Recitals**

THIS DECLARATION is made with reference to the following facts and circumstances:

- A. NRG owns real property located in the City, in the County of San Diego, California, bounded generally by Cannon Road to the south, Interstate 5 to the east, the Agua Hedionda Lagoon to the north, and Carlsbad Boulevard to the west (the "Site"). A legal description of the Site is attached to this Declaration as Exhibit A. If there is any conflict or inconsistency between the general description of the Site and the attached legal description, the attached legal description shall control.
- B. At the Site, NRG previously operated facilities known as Units 1-5 (individually a "Unit" and collectively the "Units," the "Encina Power Station") for the purpose of generating and selling electric power.
- C. On or about January 14, 2014, NRG and the City entered into a Settlement Agreement (the "Settlement Agreement"), under which the Parties agreed to resolve certain outstanding disputes. All capitalized terms in this Declaration not defined in this Declaration shall have the meaning given to them in the Settlement Agreement.



- D. Before the date of this Declaration, NRG permanently shut down the operation of the Encina Power Station in accordance with requirements and procedures described in the Settlement Agreement. The final shutdown date of the Encina Power Station was \_\_\_\_\_, 20\_\_.
- E. In accordance with NRG's obligations under into the Settlement Agreement, NRG now wishes to record this Declaration describing certain permanent restrictions on the use of the Site following the shutdown of the Plant. The Parties intend that this Declaration have priority over any mortgage, deed of trust or similar instrument now or later encumbering any or all of the Site.

### **Agreement**

ACCORDINGLY, NRG, on behalf of itself and its successors and assigns, its and their licensees and invitees, and all persons claiming by and through them, covenants to and agrees with the City, for the benefit of the City and the City's Property, as follows:

1. **Restriction Regarding Use of Fossil Fuels.** From and after the date this Declaration is recorded in the Official Records of San Diego County, California, and except solely for the limited purposes provided in section 2 below, the Site shall not be used for the generation of electricity by any plant, facility, machinery or other equipment that is powered by the combustion of Fossil Fuels. "**Fossil Fuels**" means petroleum or any petroleum product, coal or any coal-based product, natural gas, or other hydrocarbon-based fuel. The Parties intend that this restriction run with the Site in perpetuity. The purpose of this restriction is to protect human health and safety and the environment.
2. **Exceptions.** The restriction set forth in section 1 above shall not apply to: (i) the operation of the Carlsbad Energy Center Project ("CECP") in the configuration described in Exhibit G to the Settlement Agreement which is located on the Site; provided that changes to the configuration of the CECP that do not exceed the environmental envelope, profile or footprint of CECP as reflected in Exhibit G are permitted; (ii) ancillary equipment or machinery; (iii) back-up generators; (iv) distributed energy sources approved by the City in a redevelopment plan; or (v) any Existing Secured Loan Party, as set forth in Section 2.2 of the Settlement Agreement.
3. **Enforcement.** The City may, in its sole discretion, rely on this Declaration to enforce any of its covenants or restrictions. The City, but not the general public, shall have all rights and remedies available at law or in equity to enforce the covenants and restrictions set forth in this Declaration. All rights and remedies available to the City under this Declaration or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other available right or remedy. In the event of any breach of the covenants or restrictions by NRG under this Declaration, the City shall be entitled to recover all attorneys' fees and costs in connection with City's enforcement activities and actions.

4. Notice and Cure Rights. Before taking enforcement actions under section 3 above, the City shall provide written notice to NRG of any actual or alleged violation of the covenants or restrictions set forth in this Declaration. Such notices shall be given to NRG at the address last furnished by NRG in writing to the City. NRG shall have a period of ten (10) days after receipt of such notice to cure such violation; provided, however, if the violation is not capable of cure within such ten (10) day period, NRG shall have such additional time as shall be reasonably required to complete a cure so long as NRG promptly undertakes action to commence the cure within the ten (10) day period and then diligently prosecutes the same to completion. The time in which NRG may cure is referred to in this Declaration as the "Cure Period," and the City shall not exercise any legal or equitable remedies during the Cure Period so long as NRG is diligently pursuing such cure. Notwithstanding anything to the contrary in this section, in no event shall the Cure Period exceed six (6) months.
5. Covenants Running with the Land; Binding on Successors. This Declaration, including the covenants set forth above, constitute covenants running with the land in perpetuity and shall bind and burden NRG and any successor owner or occupier.
6. Constructive Notice and Acceptance. Every person or entity who now or later owns or acquires any right, title or interest in or to all or any portion of the Site is, and shall be, conclusively deemed to have consented to and agreed to every covenant, condition, restriction contained in this Declaration, whether or not any reference to this Declaration is contained in the instrument by which such person or entity acquired such interest.
7. Injunctive Relief. Notwithstanding anything to the contrary contained in this Declaration, and without limiting section 3 above, the City may seek and obtain injunctive relief in any court of competent jurisdiction to restrain NRG from any conduct in breach of this Declaration that causes or threatens to cause immediate and irreparable harm to the extent such equitable relief is otherwise available.
8. No Waiver. No waiver by the City (including, without limitation, any of its boards, commissions, officers, employees or agents) of any violation under this Declaration shall be effective or binding unless and to the extent expressly made in writing by the City, and no such waiver may be implied from any failure by the City to take action with respect to such violation. No express written waiver of any violation shall constitute a waiver of any subsequent violation in the performance of the same or any other provision of this Declaration.
9. Severability. Should any provision or portion of this Declaration be declared invalid or in conflict with any law, the validity of all remaining provisions shall remain unaffected and in full force and effect.
10. Governing Law; Venue. The laws of the State of California shall govern the interpretation and enforcement of this Declaration. As part of the consideration for the City's entering into Settlement Agreement and this Declaration, NRG agrees that all actions or proceedings arising directly or indirectly under this Declaration may, at the sole option of the City, be litigated in courts located within the State of California, in the County of San Diego, and

NRG expressly consents to the jurisdiction of any such local, state or federal court, and consents that any service of process in such action or proceeding may be made by personal service upon NRG wherever NRG may then be located, or by certified or registered mail directed to NRG at the address set forth in this Declaration for the delivery of notices.

11. Notices. Except as otherwise expressly provided in this Declaration, all notices, demands, approvals, consents and other formal communications between the Parties required or permitted under this Declaration shall be in writing and shall be deemed given and effective upon the date of receipt (i) if given by personal delivery on a business day (or the next business day if delivered personally on a day that is not a business day), (ii) if sent for next-business-day delivery (with all expenses prepaid) by a reliable overnight delivery service, with receipt of delivery, or (iii) if mailed by United States registered or certified mail, first class postage prepaid, to the Party at their respective addresses for notice designated below. For convenience of the Parties, copies of notices may also be given by facsimile to the facsimile number set forth below or such other number as may be provided from time to time by notice given in the manner required under this Declaration; however, neither Party may give official or binding notice by facsimile. The effective time of a notice shall not be affected by the receipt, before receipt of the original, of a telefacsimile copy of the notice.

- (a) In the case of a notice or communication by NRG to the City:

Celia A. Brewer, Esq.  
City Attorney for City of Carlsbad  
General Counsel for Carlsbad Municipal Water District  
1200 Carlsbad Village Drive  
Carlsbad, CA 92008  
Celia.Brewer@carlsbadca.gov

- (b) And in the case of a notice or communication sent by the City to NRG:

Sean Beatty  
West Region General Counsel  
NRG Energy, Inc.  
P.O. Box 192  
Pittsburg, CA 94565  
sean.beatty@nrgenergy.com

Every notice given to a Party to this Declaration, under the terms of this Declaration, must state (or must be accompanied by a cover letter that states) substantially the following: the section of this Declaration under which the notice is given and the action or response required, if any; and if applicable, the period of time within which the recipient of the notice must respond.

In no event shall a recipient's approval of or consent to the subject matter of a notice be deemed to have been given by its failure to object to such notice if such notice (or the accompanying cover letter) does not comply with the requirements of this Section.

Any mailing address or number may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days before the effective date of the change.

IN WITNESS WHEREOF, NRG has duly executed this Declaration as of the date first written above.

NRG ENERGY, INC. ON BEHALF OF ITSELF  
AND ITS SUBSIDIARIES, INCLUDING  
CABRILLO POWER I LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A  
TO  
DECLARATION OF ENVIRONMENTAL RESTRICTION REGARDING  
USE**

**Legal Description of the Site**

[INSERTED ON THE FOLLOWING PAGE]

**LEGAL DESCRIPTION**  
(Exceptions Not Noted)

The land referred to herein is situated in the State of California, County of San Diego, City of Carlsbad, and described as follows:

That portion of Lot "H" of Rancho Agua Hedionda, in the City of Carlsbad, County of San Diego, State of California, according to Partition Map thereof No. 823, filed in the Office of the County Recorder of San Diego County, November 16, 1896; being Parcel No. 4 of that certain Certificate of Compliance recorded October 30, 2001 as file no. 2001-0789068 of Official Records, and more particularly described as:

Commencing at the intersection of the easterly line of the 100.00 foot wide right-of-way of the Atchison Topeka and Santa Fe Railroad with the northerly line of Canon Road (60.00 feet wide); thence long said easterly line north 22°30'13" west, 1564.78 feet to the TRUE POINT OF BEGINNING; thence continuing along said easterly line north 22°30'13" west, 1990.35 feet to the beginning of a non-tangent curve concave to the northwest having a radius of 1005.37 feet, a radial to said beginning bears south 85°54'14" east; thence northeasterly 36.76 feet along said curve through a central angle of 02°05'42"; thence non-tangent to said curve north 22°30'13" west, 302.87 feet; thence leaving said easterly line north 61°25'37" east, 14.19 feet; thence north 30°30'37" east, 34.90 feet; thence south 40°47'43" east, 63.50 feet; thence south 69°10'23" east, 38.00 feet; thence north 79°19'37" east, 285.00 feet; thence north 88°07'37" east, 333.14 feet; thence north 81°53'37" east, 13.68 feet to the westerly right-of-way lline of California State Highway XI-SD-2B (I-5); thence along said right-of-way line south 17°57'05" east, 204.93 feet; thence south 12°34'11" east, 424.72 feet; thence south 22°07'51" east, 239.68 feet; thence south 22°30'37" east, 1210.91 feet; thence leaving said right-of-way line south 67°37'25" west, 492.66 feet; thence south 62°25'13" west, 126.26 feet to the TRUE POINT OF BEGINNING,

Together with that portion of said Lot H described as follows:

Commencing at the northeasterly corner of Record of Survey No. 14621, in the City of Carlsbad, County of San Diego, State of California, recorded in the Office of the County Recorder of Sand Diego County, August 14, 1994 as file no. 1994-500086, said corner being on the westerly line of the right-of-way of the Atchison Topeka and Santa Fe Railroad; thence along said westerly line and easterly line of Record of Survey 14621 south 28°40'19" east, 656.70 feet to the most southerly corner of said Record of Survey No. 14621; thence continuing south 28°40'19" east, 275.00 feet to the TRUE POINT OF BEGINNING; thence leaving said westerly line south 56°25'30" west, 61.30 feet; thence south 04°59'18" west, 27.61 feet; thence south 39°37'42" east, 61.38 feet; thence south 77°21'22" east, 49.55 feet; thence south 26°45'53" east, 232.92 feet; thence south 17°52'19" east, 115.92 feet; thence south 02°16'37" east, 55.06 feet; thence south 24°00'58" west, 44.47 feet; thence south 40°45'14" west, 126.60 feet; thence south 29°41'50" west, 83.42 feet; thence south 27°27'35" west, 90.04 feet; thence south 35°18'30" west, 212.59 feet; thence south 19°22'01" east, 108.34 feet; thence south 30°56'56" east, 304.06 feet; thence south 14°30'21" west, 175.27 feet; thence south 00°09'57" east, 123.11 feet; thence south 26°53'37" east, 119.99 feet; thence south 34°46'51" west, 23.60 feet; thence north 61°27'21" west, 142.77 feet; thence north 22°47'32" west, 47.01 feet; thence south 67°12'28" west, 16.03 feet; thence south 22°47'32" east, 22.23 feet; thence south 58°37'31" west, 97.99 feet; thence south 41°35'28" west, 110.44 feet; thence north 74°44'52" west, 164.81 feet; thence north 05°57'51" west, 202.95 feet; thence north 30°14'20" west, 64.23 feet; thence north 64°31'22" west, 293.59 feet to the easterly line of the 100.00 foot wide Carlsbad Boulevard; thence along said easterly line of Carlsbad

Boulevard south 24°07'36" east, 913.18 feet to the beginning of a curve concave southwesterly having a radius of 4050.00 feet; thence southeasterly 348.89 feet along said curve through a central angle of 04°56'09"; thence south 19°11'27" east, 15.63 feet to the beginning of a curve concave northeasterly having a radius of 5216.55 feet; thence southeasterly 900.29 feet along said curve through a central angle of 09°53'18"; thence leaving said easterly line of Carlsbad Boulevard north 60°43'42" east, 103.71 feet; thence north 71°53'50" east, 49.05 feet; thence north 88°29'46" east, 149.63 feet; thence north 77°06'32" east, 80.00 feet; thence north 68°28'15" east, 121.97 feet; thence north 63°21'54" east, 220.51 feet; thence north 67°56'35" east, 167.57 feet; thence north 76°27'03" east, 60.33 feet; thence south 77°37'36" east, 172.85 feet; thence south 60°55'41" east, 66.30 feet; thence south 45°30'57" east, 47.42 feet; thence south 82°40'44" east, 84.31 feet; thence south 44°29'52" east, 52.55 feet to said westerly right-of-way line of said Atchison Topeka and Santa Fe Railroad; thence along said westerly line north 22°30'13" west, 2664.53 feet; thence north 28°40'19" west, 835.14 feet to the TRUE POINT OF BEGINNING.

The above described parcel of land contains 95.08 acres more or less.

Assessor's Parcel Numbers: 210-010-43, and 210-010-43 (with other property).

(End of Legal Description)

**EXHIBIT J**

**Legal Description of North Coast Services Center Site**

[INSERTED ON NEXT PAGE]



LEGAL DESCRIPTION  
EXHIBIT J

That certain parcel of land situated in the City of Carlsbad, County of San Diego, State of California, being more particularly described as follows:

Parcel 5 as described in the Certificate of Compliance recorded on October 30, 2001 as Document No. 2001-0789069 of Official Records of said San Diego County also as shown as Parcel 5 on Record of Survey No. 17350 filed in the Office of the County Recorder of said San Diego County on April 12, 2002 as File No. 2002-0308512.

Containing 16.37 acres more or less.

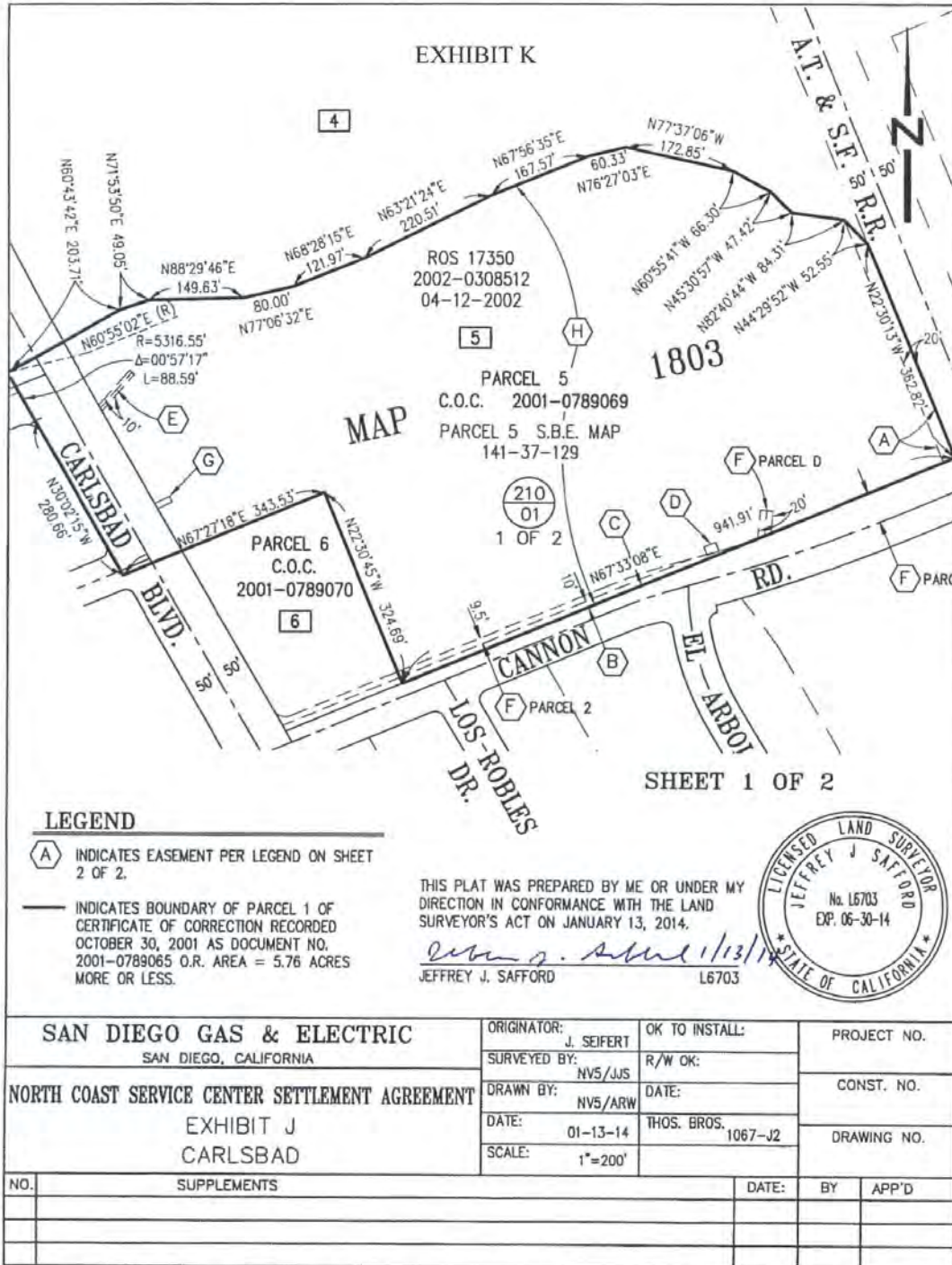
Prepared By:

Jeffrey J. Safford 1/13/14  
Jeffrey J. Safford, L.6703 Date



# EXHIBIT K

## Map of North Coast Services Center Site



NV5: G:\weirich\NV5 Job Storage Pre-Number\North Coast Service Center Settlement Agreement\NCSCSA EXHIBIT.dwg POINTS FILE: N/A

EXHIBIT K

**EASEMENT LEGEND**

- (A) EASEMENT FOR ROAD PURPOSES GRANTED TO W.D. CANNON RECORDED ON JANUARY 21, 1953 IN BOOK 4722, PAGE 361, O.R.  
  
ALSO, AN EASEMENT AND RIGHT OF WAY FOR WATER PIPELINE PURPOSES.  
  
ALSO, AN EASEMENT AND RIGHT OF WAY FOR ROAD AND FOR WATER PIPELINE PURPOSES OVER THE EASTERLY 20 FEET OF THE SOUTHERLY 576.45 FEET OF THE PARCEL OF LAND CONVEYED TO SAN DIEGO GAS AND ELECTRIC COMPANY BY DEED RECORDED IN BOOK 2974, PAGE 493, O.R.  
  
ALSO, THE RIGHT, TITLE AND INTEREST OF GRANTOR IN ANY PIPE IN THE GROUND WITHIN SAID WATER PIPELINE RIGHTS OF WAY GRANTED HEREIN, GRANTEE, HOWEVER, TO REMOVE THE SAME OR SUCH PORTION THEREOF AS MAY CEASE TO BE USED WITHIN TWELVE MONTHS FROM DATE OF CESSATION OF USE, OTHERWISE TITLE TO SUCH PIPE TO REVERT TO THE GRANTOR, ITS SUCCESSORS OR ASSIGNS.
- (B) EASEMENT FOR A PUBLIC STREET GRANTED TO THE CITY OF CARLSBAD RECORDED ON APRIL 7, 1964 AS FILE NO. 62682, O.R.
- (C) EASEMENT FOR A PUBLIC STREET GRANTED TO THE CITY OF CARLSBAD RECORDED ON JUNE 24, 1964 AS FILE NO. 111718, O.R.
- (D) EASEMENT FOR A SEWER PUMPING STATION GRANTED TO THE CITY OF CARLSBAD RECORDED ON APRIL 14, 1965 AS FILE NO. 66049, O.R.
- (E) EASEMENT FOR A SEWER PIPELINE GRANTED TO THE CITY OF CARLSBAD RECORDED ON APRIL 14, 1965 AS FILE NO. 66050, O.R.
- (F) EASEMENT FOR ROAD AND PUBLIC UTILITY GRANTED TO THE CITY OF CARLSBAD RECORDED ON NOVEMBER 13, 1972 AS FILE NO. 303347, O.R.
- (G) EASEMENT FOR WATER PIPELINES, METERS, AND METER VAULT GRANTED TO THE CITY OF CARLSBAD RECORDED ON FEBRUARY 27, 1974 AS FILE NO. 74-049416, O.R.
- (H) INDICATES COVENANTS AND CONDITIONS CONTAINED IN AN AGREEMENT BY AND BETWEEN SAN DIEGO GAS AND ELECTRIC COMPANY AND CABRILLO POWER I LLC, A DELAWARE LIMITED LIABILITY COMPANY DATED MAY 20 1999 AND RECORDED MAY 21, 1999 AS FILE NO. 1999-0347270, O.R. REGARDING STAGING, MAINTENANCE AND OPERATION FACILITIES RELATED TO LICENSEE'S ELECTRICAL TRANSMISSION AND DISTRIBUTION SERVICES.

SHEET 2 OF 2

<b>SAN DIEGO GAS &amp; ELECTRIC</b> SAN DIEGO, CALIFORNIA		ORIGINATOR: J. SEIFERT	OK TO INSTALL:	PROJECT NO.
		SURVEYED BY: NV5/JJS	R/W OK:	CONST. NO.
<b>NORTH COAST SERVICE CENTER SETTLEMENT AGREEMENT</b> EXHIBIT J CARLSBAD		DRAWN BY: NV5/ARW	DATE:	
		DATE: 01-13-14	THOS. BROS. 1067-J2	
		SCALE: 1"=200'		
NO.	SUPPLEMENTS	DATE:	BY	APP'D

NV5: G:\Weirich\NV5 Job Storage Pre-Number\North Coast Service Center Settlement Agreement\NCSCSA EXHIBIT.dwg

POINTS FILE: N/A



Parcel 5  
DOC # 2001-0789069

OCT 30, 2001 4:59 PM

RECORDING  
REQUESTED BY  
**STEWART TITLE OF CALIFORNIA**  
AND WHEN  
RECORDED MAIL TO:

OFFICIAL RECORDS  
SAN DIEGO COUNTY RECORDER'S OFFICE  
GREGORY J. SMITH, COUNTY RECORDER  
FEES: 20.00

025097

City Clerk  
CITY OF CARLSBAD  
1200 Carlsbad Village Dr.  
Carlsbad, CA 92008



SPACE ABOVE THIS LINE FOR RECORDER'S USE

ASSESSOR'S PARCEL NO. 210-010-39-00 (portion)  
PROJECT NO. & NAME: ADJ 00-10, Parcel 5  
Enclra Adjustment  
Case No. CE 01-40

**CERTIFICATE OF COMPLIANCE  
FOR ADJUSTMENT PLAT**  
(Section 86499.35 of the Government Code)

The City Engineer has determined that the real property described below, has been divided or has resulted from a division or combining of lots in compliance with the Subdivision Map Act and with the provisions of the Carlsbad Municipal Code pursuant thereto.

OWNER(S): Cabrillo Power I LLC, a Delaware Limited Liability Company

DESCRIPTION: (See Exhibit "A" attached. Exhibit "B" is attached for clarity only.)

NOTE: The description in Exhibit "A" attached has been provided by the owner of the property and neither the City of Carlsbad nor any of its officers or employees assume responsibility for the accuracy of said description.

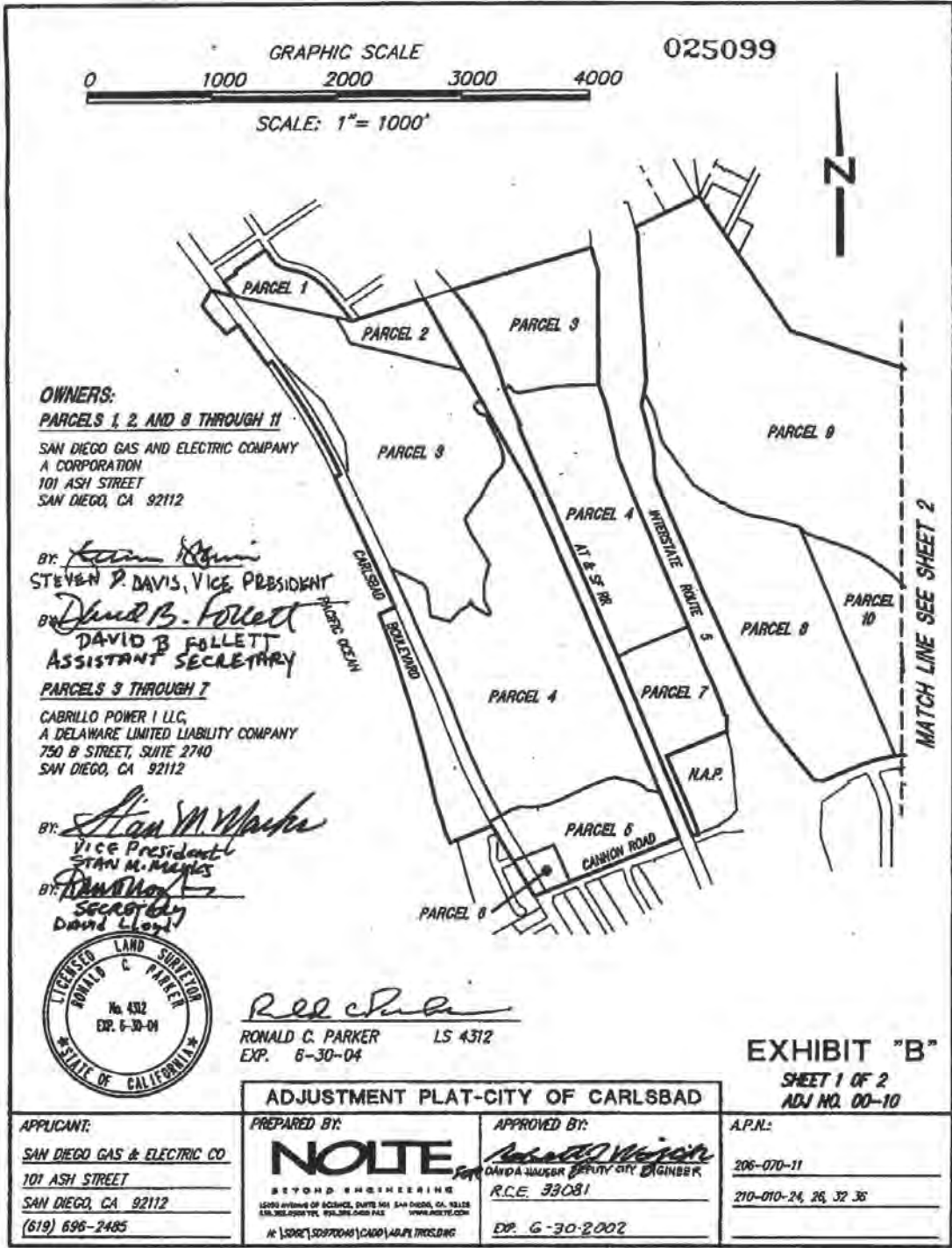
This Certificate of Compliance shall have no force and effect if the above owners or any subsequent transferee or assignee acquires any contiguous property other than a lot or lots shown on a recorded subdivision map, parcel map or record of survey map filed pursuant to and prior to repeal (Stats. 1955, Ch. 1593) of Section 11575 of the Business and Professions Code;

This Certificate of Compliance shall in no way affect the requirements of any other County, State or Federal agency that regulates development of real property.

DATE: 10/29/01

BY: [Signature]  
Deputy City Engineer  
RCE 33061 EXP. 8/30/02  
33698





**OWNERS:**  
**PARCELS 1, 2, AND 8 THROUGH 11**  
 SAN DIEGO GAS AND ELECTRIC COMPANY  
 A CORPORATION  
 101 ASH STREET  
 SAN DIEGO, CA 92112

BY: *Steven P. Davis*  
 STEVEN P. DAVIS, VICE PRESIDENT

BY: *David B. Follett*  
 DAVID B. FOLLETT  
 ASSISTANT SECRETARY

**PARCELS 3 THROUGH 7**  
 CABRILLO POWER I LLC,  
 A DELAWARE LIMITED LIABILITY COMPANY  
 750 B STREET, SUITE 2740  
 SAN DIEGO, CA 92112

BY: *Stan M. Marks*  
 Vice President  
 STAN M. MARKS

BY: *David Lloyd*  
 Secretary  
 DAVID LLOYD



*Ronald C. Parker*  
 RONALD C. PARKER LS 4312  
 EXP. 6-30-04

**EXHIBIT "B"**  
 SHEET 1 OF 2  
 ADJ. NO. 00-10

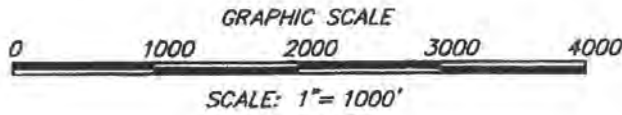
**ADJUSTMENT PLAT-CITY OF CARLSBAD**

**APPLICANT:**  
 SAN DIEGO GAS & ELECTRIC CO.  
 101 ASH STREET  
 SAN DIEGO, CA 92112  
 (619) 698-2485

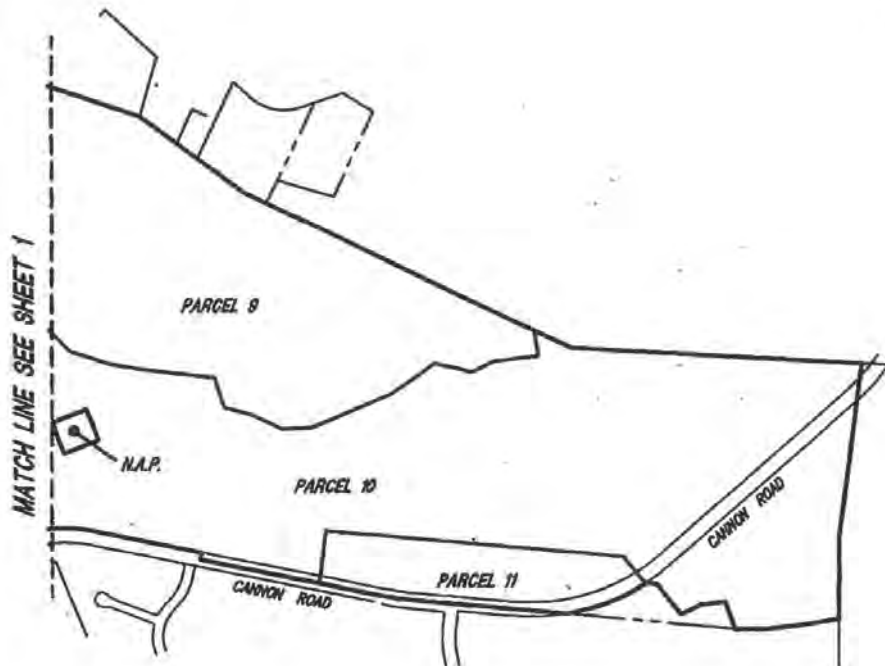
**PREPARED BY:**  
**NOLTE**  
 BEYOND ENGINEERING  
 1200 AVENUE OF SCIENCE, SUITE 101 SAN DIEGO, CA 92128  
 619.382.2000 TEL. 619.382.0400 FAX WWW.NOLTE.COM  
 M:\SPR\SD97004\CAD\ADJPLAT.DWG

**APPROVED BY:**  
*Wanda Hauser*  
 WANDA HAUSER DEPUTY CITY ENGINEER  
 R.C.E. 33081  
 EXP. 6-30-2002

**A.P.N.:**  
 206-070-11  
 210-010-24, 26, 32, 36



025100



**EXHIBIT "B"**

SHEET 2 OF 2  
ADJ NO. 00-10

**ADJUSTMENT PLAT-CITY OF CARLSBAD**

APPLICANT:  
SAN DIEGO GAS & ELECTRIC CO  
101 ASH STREET  
SAN DIEGO, CA 92112  
(619) 696-2485

PREPARED BY:  
**NOLTE**  
BEYOND ENGINEERING  
13070 AVENUE OF SCIENCE, SUITE 241 SAN DIEGO, CA 92126  
858.249.0020 TEL. 858.249.0020 FAX WWW.NOLTE.COM  
A [SDGE] [SDG&E] [CAG] [ADPL] [RCS] [RWD]

APPROVED BY:  
*David N. Hausler*  
DAVID N. HAUSLER DEPUTY CHIEF ENGINEER  
R.C.E. 33081  
EXP. 6-30-2002

A.P.N.:  
206-070-11  
210-010-24, 26, 32, 35



State of California }  
County of San Diego }

025101

On October 29, 2001 before me, Kelly Murphy  
(Date) (Name, Title of Officer)

personally appeared Robert J. Wojcik  
(Name[s] of Signer[s])

\_\_\_\_\_,  personally known to me  
- OR -  (or proved to me on the basis of satisfactory evidence) to be the person(s) whose  
name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they  
executed the same in his/her/their authorized capacity(ies), and that by his/her/their  
signature(s) on the instrument the person(s), or entity upon behalf of which the person(s) acted,  
executed the instrument.

WITNESS my hand and official seal



Kelly Murphy  
Signature of Notary

(This area for official  
notary seal)

Title or Type of Document	<u>Certificate of Compliance for Adjustment Plat ADJ 00-10, Parcel 5</u>		
Date of Document	<u>10/29/01</u>	No. of Pages	<u>4</u>
Signer(s) other than named above			
_____			
_____			

**EXHIBIT L**

**Legal Description of Parcel 11**

[INSERTED ON NEXT PAGE]

LEGAL DESCRIPTION

EXHIBIT L

That certain parcel of land situated in the City of Carlsbad, County of San Diego, State of California, being more particularly described as follows:

Parcel 11 as described in the Certificate of Compliance recorded on October 30, 2001 as Document No. 2001-0789075 of Official Records of said San Diego County also as shown as Parcel 11 on Record of Survey No. 17350 filed in the Office of the County Recorder of said San Diego County on April 12, 2002 as File No. 2002-0308512.

Containing 20.55 acres more or less.

Prepared By:

*Jeffrey J. Safford* 1/14/14  
Jeffrey J. Safford, L6703 Date

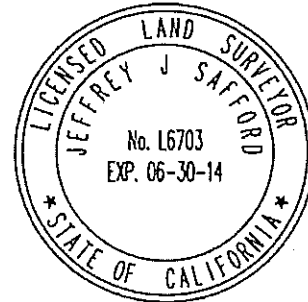


EXHIBIT M

211  
01

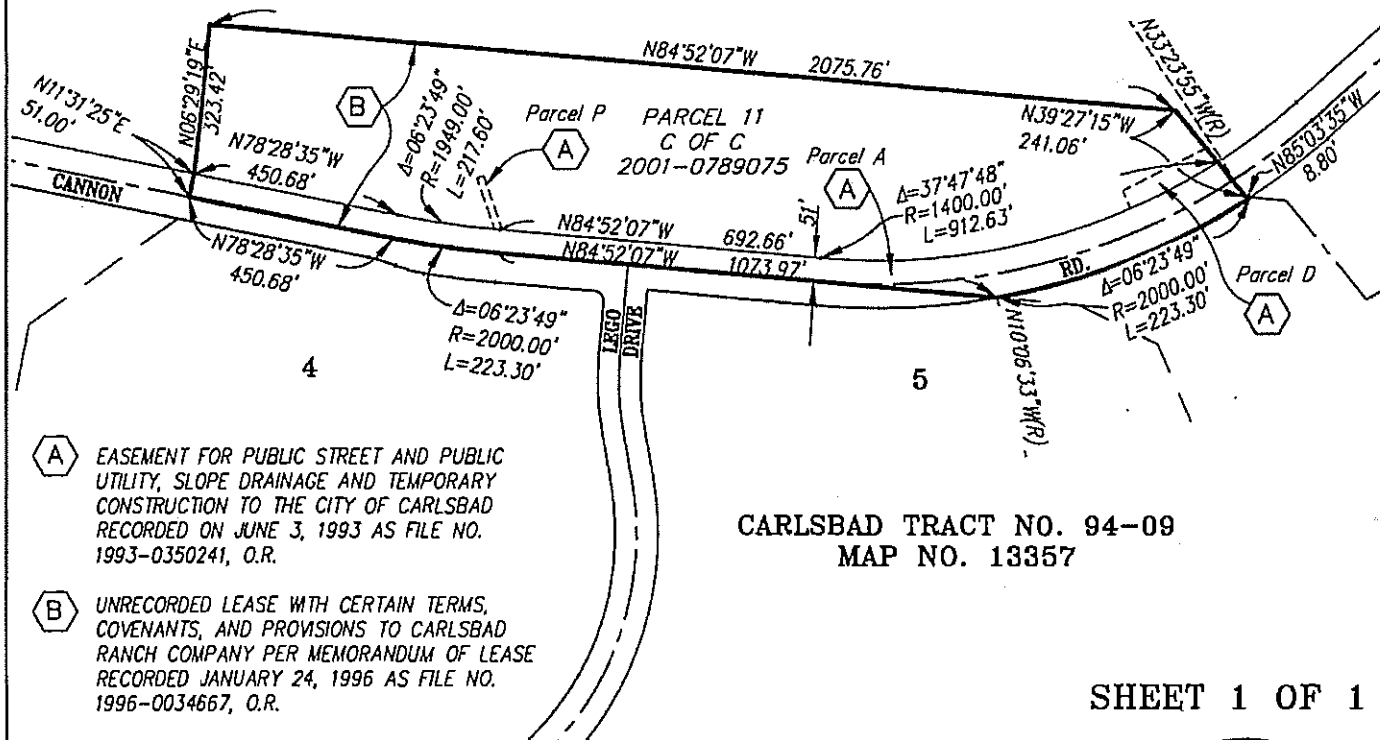
PARCEL 10  
C OF C  
2001-0789074

ROS 17350  
2002-0308512  
04-12-2002



POR. PAR. 7  
S.B.E. MAP  
141-37-73J

POR. LOT H,  
RANCHO AGUA HEDIONDA,  
MM 209



- (A) EASEMENT FOR PUBLIC STREET AND PUBLIC UTILITY, SLOPE DRAINAGE AND TEMPORARY CONSTRUCTION TO THE CITY OF CARLSBAD RECORDED ON JUNE 3, 1993 AS FILE NO. 1993-0350241, O.R.
- (B) UNRECORDED LEASE WITH CERTAIN TERMS, COVENANTS, AND PROVISIONS TO CARLSBAD RANCH COMPANY PER MEMORANDUM OF LEASE RECORDED JANUARY 24, 1996 AS FILE NO. 1996-0034667, O.R.

CARLSBAD TRACT NO. 94-09  
MAP NO. 13357

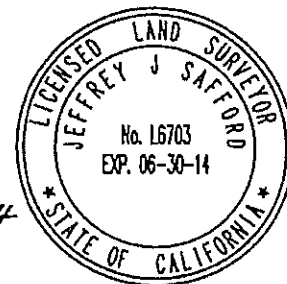
SHEET 1 OF 1

LEGEND

- (A) INDICATES EASEMENT AS NOTED HEREON.
- INDICATES BOUNDARY OF PARCEL 11 OF CERTIFICATE OF CORRECTION RECORDED OCTOBER 30, 2001 AS DOCUMENT NO. 2001-0789075 O.R. AREA = 20.55 ACRES (NET), MORE OR LESS.

THIS PLAT WAS PREPARED BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE LAND SURVEYOR'S ACT ON JANUARY 14, 2014.

*Jeffrey J. Safford* 1/14/14  
JEFFREY J. SAFFORD L6703



SAN DIEGO GAS & ELECTRIC SAN DIEGO, CALIFORNIA		ORIGINATOR: J. SEIFERT	OK TO INSTALL:	PROJECT NO.	
		SURVEYED BY: NV5/JJS	R/W OK:	CONST. NO.	
NORTH COAST SERVICE CENTER SETTLEMENT AGREEMENT EXHIBIT M CARLSBAD		DRAWN BY: NV5/ARW	DATE:	DRAWING NO.	
		DATE: 01-13-14	THOS. BROS. 1067-J2		
		SCALE: 1"=400'			
NO.	SUPPLEMENTS	DATE:	BY	APP'D	

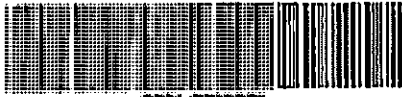
DOC # 2001-0789075

OCT 30, 2001 4:59 PM

RECORDING  
REQUESTED BY  
STEWART TITLE OF CALIFORNIA  
AND WHEN  
RECORDED MAIL TO:

OFFICIAL RECORDS  
SAN DIEGO COUNTY RECORDER'S OFFICE  
GREGORY J. SMITH, COUNTY RECORDER  
FEES: 20.00

025128



PRO  
31  
16M

City Clerk  
CITY OF CARLSBAD  
1200 Carlsbad Village Dr.  
Carlsbad, CA 92008

SPACE ABOVE THIS LINE FOR RECORDER'S USE

ASSESSOR'S PARCEL NO. 211-010-28-00  
PROJECT NO. & NAME: ADJ 00-10, Parcel 11  
Encina Adjustment  
Case No. CE 01-46

**CERTIFICATE OF COMPLIANCE  
FOR ADJUSTMENT PLAT**  
(Section 66499.35 of the Government Code)

The City Engineer has determined that the real property described below, has been divided or has resulted from a division or combining of lots in compliance with the Subdivision Map Act and with the provisions of the Carlsbad Municipal Code pursuant thereto.

OWNER(S): San Diego Gas & Electric Company, a Corporation

DESCRIPTION: (See Exhibit "A" attached. Exhibit "B" is attached for clarity only.)

NOTE: The description in Exhibit "A" attached has been provided by the owner of the property and neither the City of Carlsbad nor any of its officers or employees assume responsibility for the accuracy of said description.

This Certificate of Compliance shall have no force and effect if the above owners or any subsequent transferee or assignee acquires any contiguous property other than a lot or lots shown on a recorded subdivision map, parcel map or record of survey map filed pursuant to and prior to repeal (Stats. 1955, Ch. 1593) of Section 11575 of the Business and Professions Code;

This Certificate of Compliance shall in no way affect the requirements of any other County, State or Federal agency that regulates development of real property.

DATE: 10/29/01

BY: Robert J. Wajed  
Deputy City Engineer  
RCE 33084-EXP. 8/30/02  
7369B

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**  
**ADJ 00-10 - ENCINA**

025129

**PARCEL 11**

Parcel B of Certificate of Compliance recorded November 22, 1995 as File No. 1995-0532901 of Official Records, in the City of Carlsbad, County of San Diego, State of California.

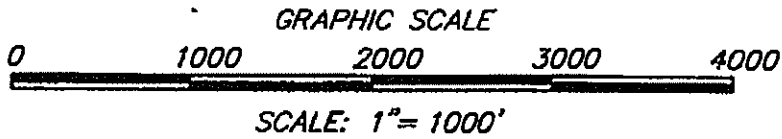
The hereinabove described parcel of land contains 20.55 acres more or less.

Prepared By:

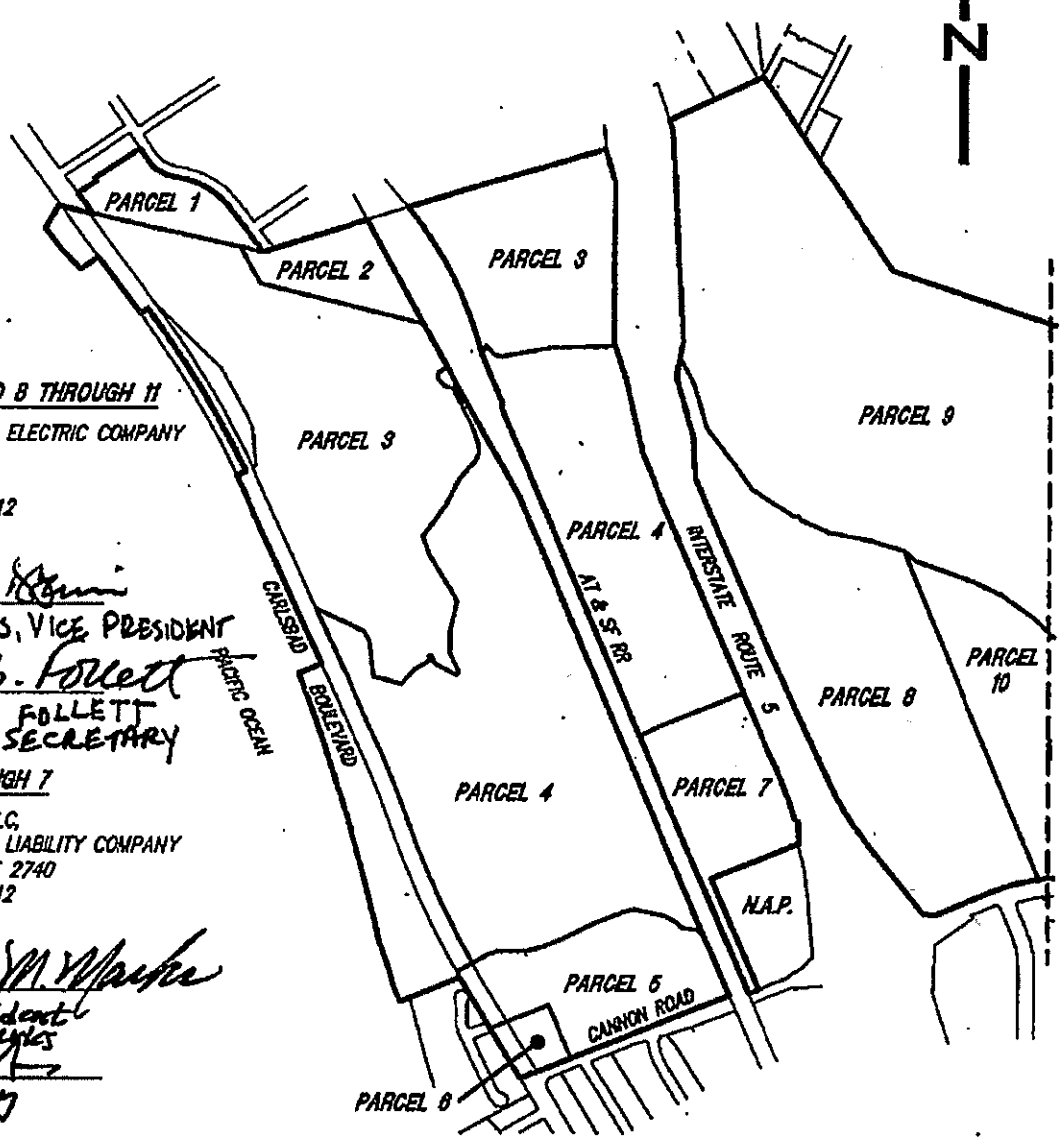
Nolte Associates, Inc.

*Ronald C. Parker*      *10/22/01*  
Ronald C. Parker                      Date  
Director of Survey





025130



**OWNERS:**

**PARCELS 1, 2, AND 8 THROUGH 11**  
 SAN DIEGO GAS AND ELECTRIC COMPANY  
 A CORPORATION  
 101 ASH STREET  
 SAN DIEGO, CA 92112

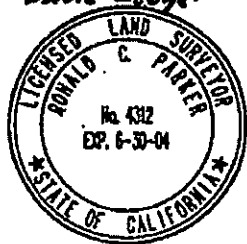
BY: *Steven P. Davis*  
 STEVEN P. DAVIS, VICE PRESIDENT

BY: *David B. Follett*  
 DAVID B. FOLLETT  
 ASSISTANT SECRETARY

**PARCELS 3 THROUGH 7**  
 CABRILLO POWER I LLC,  
 A DELAWARE LIMITED LIABILITY COMPANY  
 750 B STREET, SUITE 2740  
 SAN DIEGO, CA 92112

BY: *Stan M. Markes*  
 VICE PRESIDENT  
 STAN M. MARKES

BY: *David Lyon*  
 SECRETARY  
 DAVID LYON

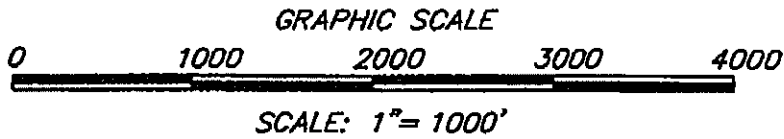


*Ronald C. Parker*  
 RONALD C. PARKER LS 4312  
 EXP. 6-30-04

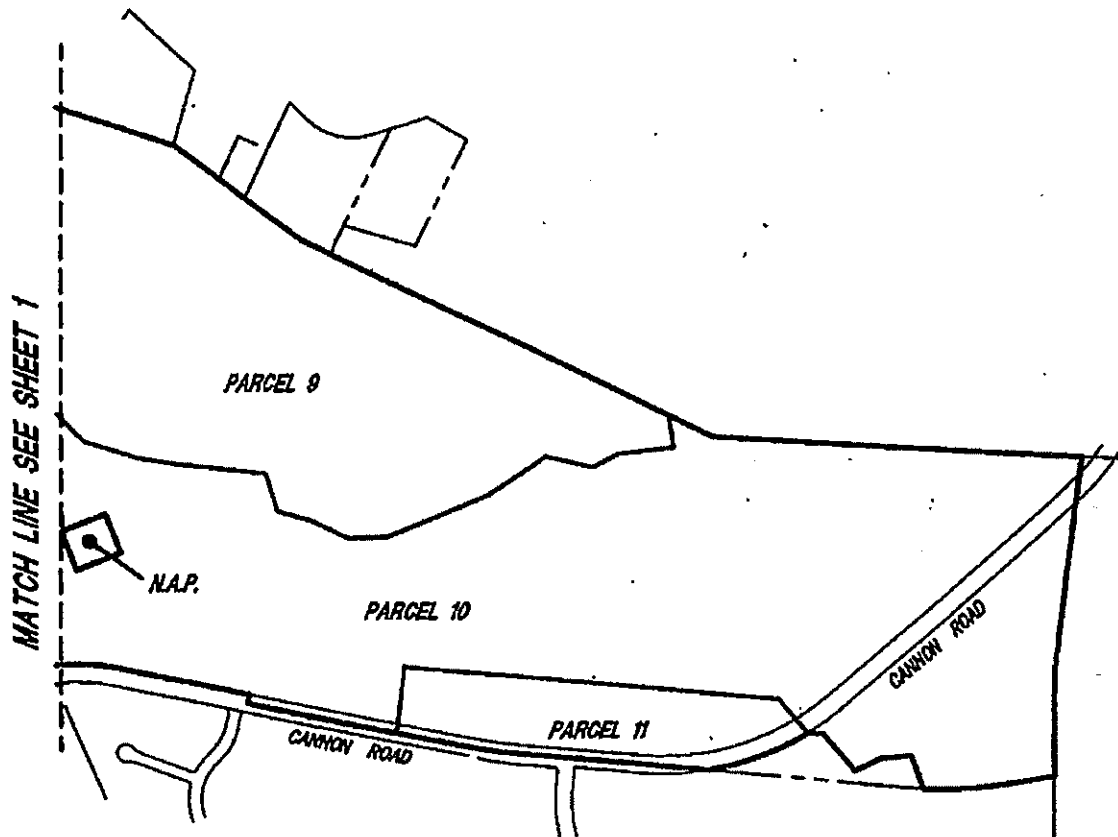
**EXHIBIT "B"**

SHEET 1 OF 2  
 ADJ NO. 00-10

ADJUSTMENT PLAT-CITY OF CARLSBAD			
<b>APPLICANT:</b> SAN DIEGO GAS & ELECTRIC CO 101 ASH STREET SAN DIEGO, CA 92112 (619) 696-2485	<b>PREPARED BY:</b> <b>NOLTE</b> BEYOND ENGINEERING <small>15070 AVENUE OF SCIENCE, SUITE 101 SAN DIEGO, CA 92128            619.362.0300 TEL. 619.322.0400 FAX WWW.NOLTE.COM</small> <small>#\SDGE\52870046\CAUD\ADJ.PETROS.DWG</small>	<b>APPROVED BY:</b> <i>David A. Waiser</i> DAVID A. WASER DEPUTY CITY ENGINEER R.C.E. 33081 EXP. 6-30-2002	<b>A.P.N.:</b> 205-070-11 210-010-24, 26, 32, 36



025131



**EXHIBIT "B"**  
 SHEET 2 OF 2  
 ADJ NO. 00-10

<b>ADJUSTMENT PLAT-CITY OF CARLSBAD</b>		
<b>APPLICANT:</b> SAN DIEGO GAS & ELECTRIC CO. 101 ASH STREET SAN DIEGO, CA 92112 (619) 696-2485	<b>PREPARED BY:</b> <b>NOLTE</b> BEYOND ENGINEERING <small>13020 AVENUE OF SCIENCE, SUITE 101 SAN DIEGO, CA 92126          619.594.0000 TEL. 619.594.0400 FAX WWW.NOLTE.COM</small> <small># [SDGE] 50970046 [CADD] ADJ PLAT PROJ.DWG</small>	<b>APPROVED BY:</b>  DAVID A. HAUSER, DEPUTY CITY ENGINEER <b>R.C.E. 33081</b> EXP. 6-30-2002
		<b>A.P.N.:</b> 206-070-11 210-010-24, 26, 32, 36



State of California }  
County of San Diego }

025132

On October 29, 2001 before me, Kelly Murphy,  
(Date) (Name, Title of Officer)

personally appeared Robert J. Wojcik  
(Name[s] of Signer[s])

\_\_\_\_\_,  personally known to me  
- OR -  (or proved to me on the basis of satisfactory evidence) to be the person(s) whose  
name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they  
executed the same in his/her/their authorized capacity(ies), and that by his/her/their  
signature(s) on the instrument the person(s), or entity upon behalf of which the person(s) acted,  
executed the instrument.

WITNESS my hand and official seal



Kelly Murphy  
Signature of Notary

(This area for official  
notary seal)

Title or Type of Document	<u>Certificate of Compliance for Adjustment Plat ADJ 00-10, Parcel 11</u>		
Date of Document	<u>10/29/01</u>	No. of Pages	<u>4</u>
Signer(s) other than named above	_____		
	_____		

**EXHIBIT N**

**Legal Description of Cannon Park**

[INSERTED ON NEXT PAGE]

LEGAL DESCRIPTION

EXHIBIT N

That certain parcel of land situated in the City of Carlsbad, County of San Diego, State of California, being more particularly described as follows:

Parcel 6 as described in the Certificate of Compliance recorded on October 30, 2001 as Document No. 2001-0789070 of Official Records of said San Diego County also as shown as Parcel 6 on Record of Survey No. 17350 filed in the Office of the County Recorder of said San Diego County on April 12, 2002 as File No. 2002-0308512.

Containing 2.40 acres more or less.

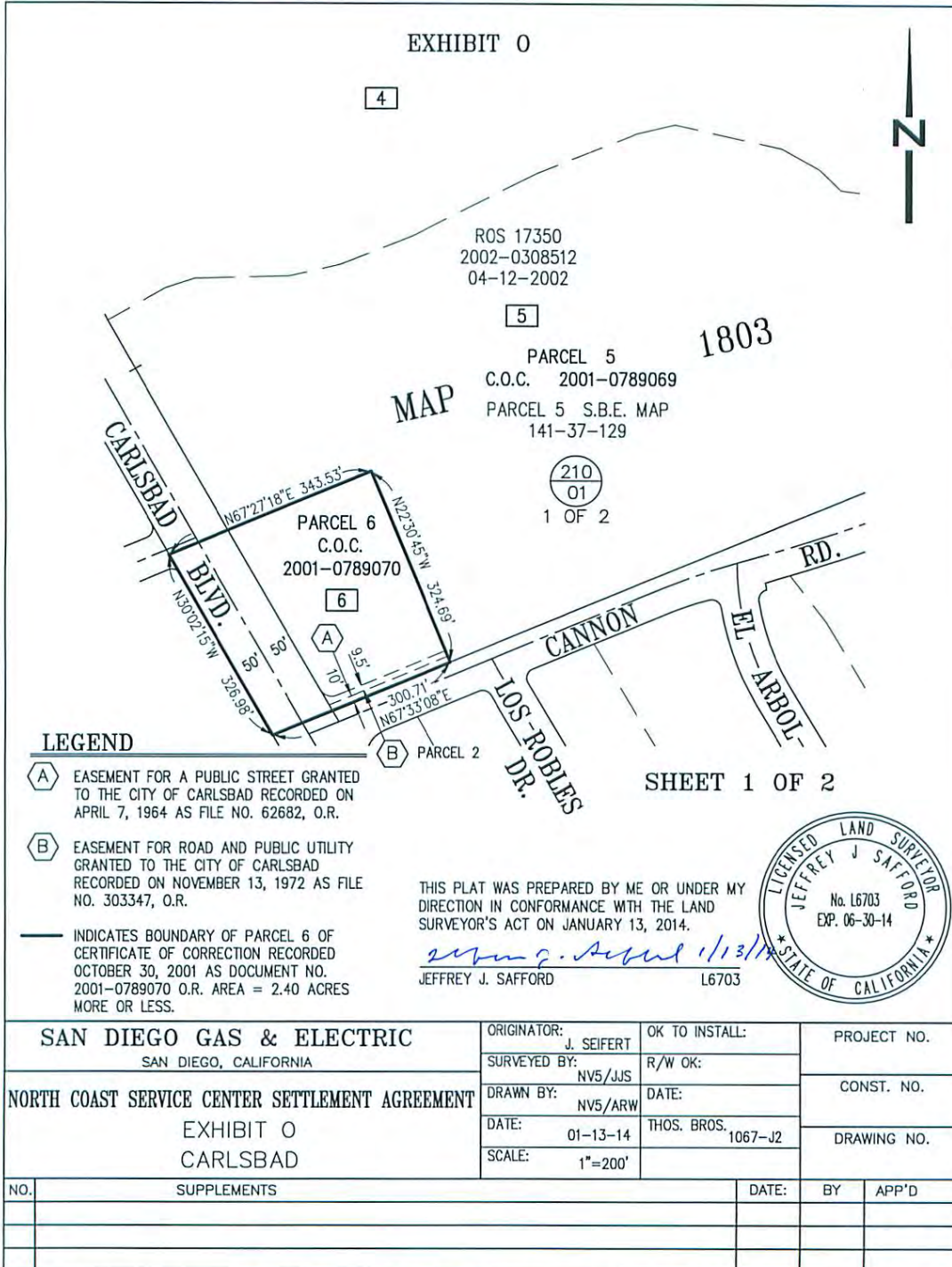
Prepared By:

Jeffrey J. Safford 1/13/14  
Jeffrey J. Safford, L6703 Date

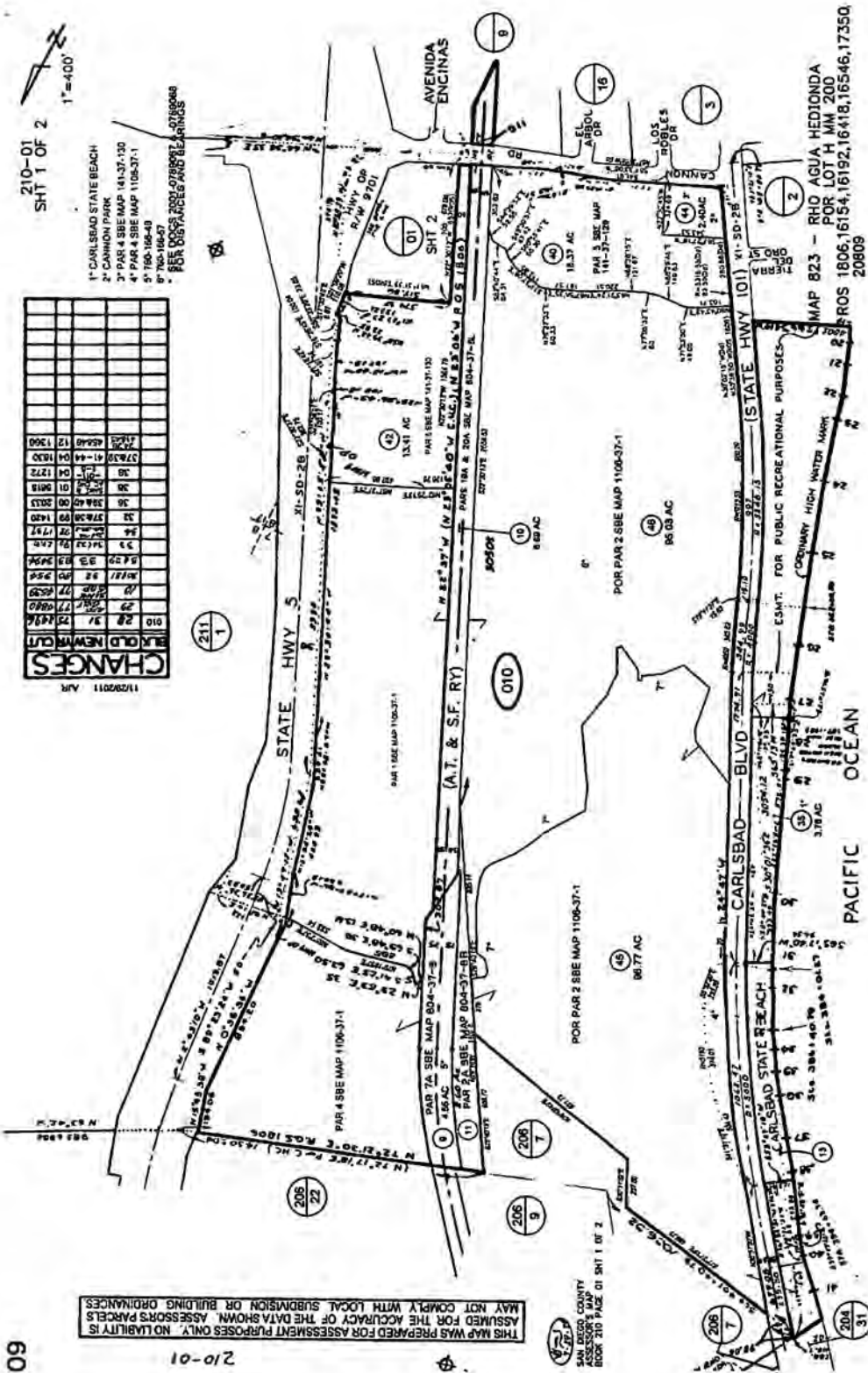


# EXHIBIT O

## Map of Cannon Park



NV5: G:\Weirich\NV5 Job Storage Pre-Number\North Coast Service Center Settlement Agreement\NCSCSA EXHIBIT.dwg POINTS FILE: N/A



210-01  
SHT 1 OF 2  
1"=400'

CHANGES	11/29/2011	AMR
010	29	17
011	29	17
012	29	17
013	29	17
014	29	17
015	29	17
016	29	17
017	29	17
018	29	17
019	29	17
020	29	17
021	29	17
022	29	17
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024	29	17
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026	29	17
027	29	17
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030	29	17
031	29	17
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093	29	17
094	29	17
095	29	17
096	29	17
097	29	17
098	29	17
099	29	17
100	29	17

THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY. NO LIABILITY IS ASSUMED FOR THE ACCURACY OF THE DATA SHOWN. ASSESSORS' PARCELS MAY NOT COMPLY WITH LOCAL SUBDIVISION OR BUILDING ORDINANCES.

Parcel 6

DOC # 2001-0789070

OCT 30, 2001 4:59 PM

RECORDING REQUESTED BY STEWART TITLE OF CALIFORNIA AND WHEN RECORDED MAIL TO:

025102

OFFICIAL RECORDS SAN DIEGO COUNTY RECORDER'S OFFICE GREGORY J. SMITH, COUNTY RECORDER FEES: 20.00

FD 5/1601

City Clerk CITY OF CARLSBAD 1200 Carlsbad Village Dr. Carlsbad, CA 92008



SPACE ABOVE THIS LINE FOR RECORDER'S USE

ASSESSOR'S PARCEL NO. 210-010-24-00 PROJECT NO. & NAME: ADJ 00-10, Parcel 6 Encina Adjustment Case No. CE 01-41

CERTIFICATE OF COMPLIANCE FOR ADJUSTMENT PLAT (Section 66499.35 of the Government Code)

The City Engineer has determined that the real property described below, has been divided or has resulted from a division or combining of lots in compliance with the Subdivision Map Act and with the provisions of the Carlsbad Municipal Code pursuant thereto.

OWNER(S): Cabrillo Power I LLC, a Delaware Limited Liability Company DESCRIPTION: (See Exhibit "A" attached. Exhibit "B" is attached for clarity only.) NOTE: The description in Exhibit "A" attached has been provided by the owner of the property and neither the City of Carlsbad nor any of its officers or employees assume responsibility for the accuracy of said description.

This Certificate of Compliance shall have no force and effect if the above owners or any subsequent transferee or assignee acquires any contiguous property other than a lot or lots shown on a recorded subdivision map, parcel map or record of survey map filed pursuant to and prior to repeal (Stats. 1955, Ch. 1593) of Section 11575 of the Business and Professions Code;

This Certificate of Compliance shall in no way affect the requirements of any other County, State or Federal agency that regulates development of real property.

DATE: 10/29/01

BY: [Signature] Deputy City Engineer RCE 38861 EXP. 8/30/02 39698

025103

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**  
**ADJ 00-10 - ENCINA**

**PARCEL 6**

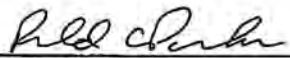
That portion of Rancho Agua Hedionda, in the City of Carlsbad, County of San Diego, State of California, according to Partition Map thereof No. 823, filed in the Office of the County Recorder of said County, November 16, 1896, described as follows:

Commencing at the Northeasterly corner of Record of Survey No. 14621, in the City of Carlsbad, County of San Diego, State of California, recorded in the Office of the County Recorder of San Diego County, August 14, 1994 as File No. 1994-500086, said corner being on the Westerly line of the Right-of-Way of the Atchison Topeka and Santa Fe Railroad; thence along said Westerly line and Easterly line of said Record of Survey 14621 South 28°40'19" East, 656.70 feet to the most Southerly corner of said Record of Survey No. 14621; thence continuing South 28°40'19" East, 1110.14 feet; thence South 22°30'13" East, 2664.53 feet; thence continuing South 22°30'13" East, 362.82 feet to the Southeast corner of Parcel 1 described in Document No. 78-430841, recorded October 10, 1978, Official Records; thence leaving said Westerly line of Railroad and along the Southerly line of said Parcel 1, North 67°33'08" West, 941.91 feet TO THE TRUE POINT OF BEGINNING; thence leaving said Southerly line North 22°30'45" West, 324.69 feet; thence South 67°27'18" West, 343.53 feet to the Westerly line of the 100 foot wide Carlsbad Boulevard; thence along said Westerly line South 30°02'15" East, 326.98 feet to a line that bears South 67°33'08" West from the TRUE POINT OF BEGINNING; thence North 67°33'08" East, 300.71 feet to the TRUE POINT OF BEGINNING.

The hereinabove describe parcel of land contain 2.40 acres more or less.

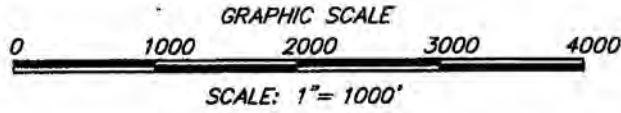
Prepared By:

Nolte Associates, Inc.

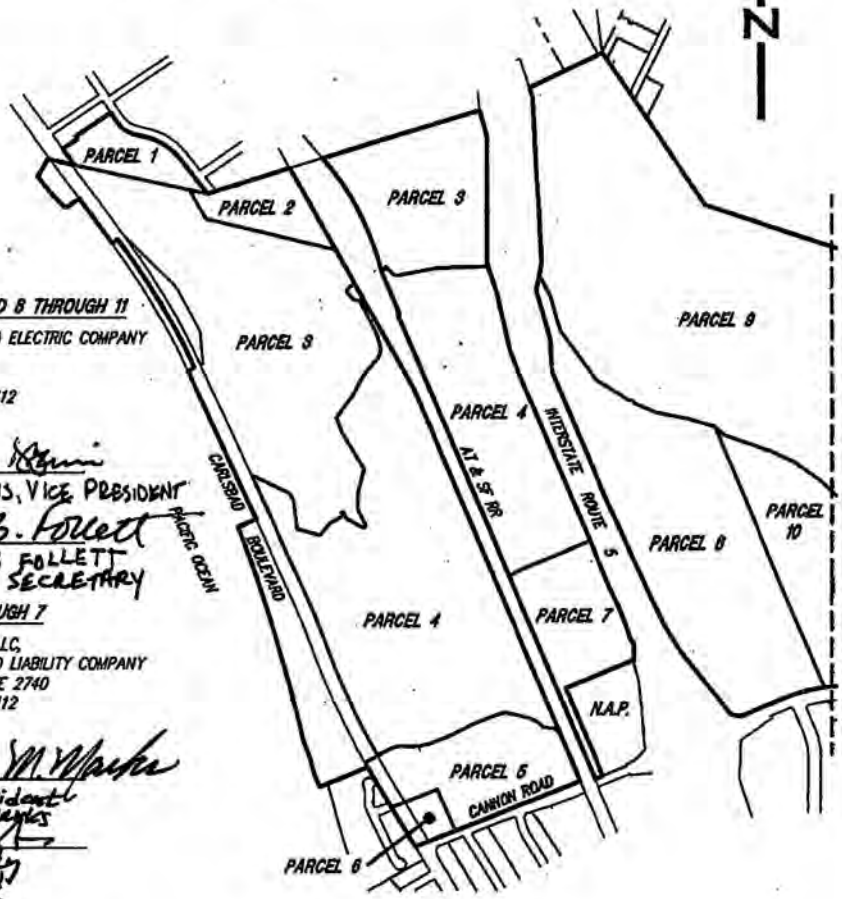
  
Ronald C. Parker                      10/22/01  
Director of Survey                      Date



n:\sd1947\legal description parcel 6.doc



025104



**OWNERS:**  
**PARCELS 1, 2, AND 8 THROUGH 11**  
 SAN DIEGO GAS AND ELECTRIC COMPANY  
 A CORPORATION  
 101 ASH STREET  
 SAN DIEGO, CA 92112

BY: *Steven P. Davis*  
 STEVEN P. DAVIS, VICE PRESIDENT  
 BY: *David B. Follett*  
 DAVID B. FOLLETT  
 ASSISTANT SECRETARY

**PARCELS 3 THROUGH 7**  
 CABRILLO POWER I LLC,  
 A DELAWARE LIMITED LIABILITY COMPANY  
 750 B STREET, SUITE 2740  
 SAN DIEGO, CA 92112

BY: *Stan M. Marks*  
 VICE PRESIDENT  
 STAN M. MARKS  
 BY: *David Lloyd*  
 SECRETARY  
 DAVID LLOYD



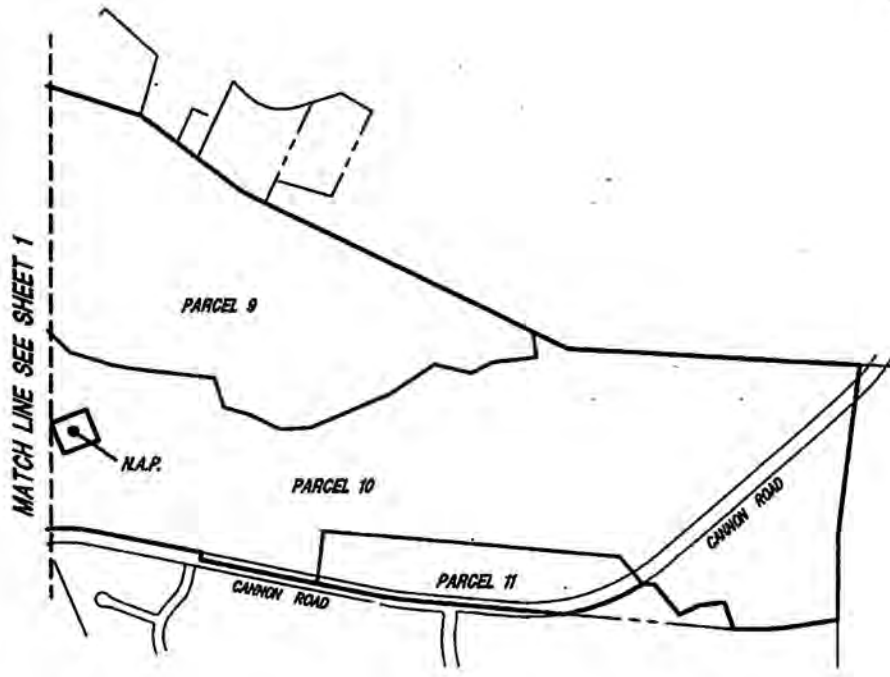
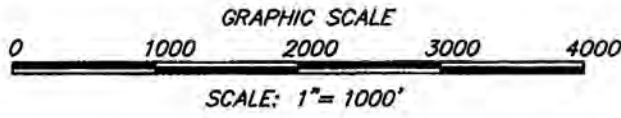
*Ronald C. Parker*  
 RONALD C. PARKER LS 4312  
 EXP. 6-30-04

**EXHIBIT "B"**  
 SHEET 1 OF 2  
 ADJ NO. 00-10

<b>ADJUSTMENT PLAT-CITY OF CARLSBAD</b>			
<b>APPLICANT:</b> SAN DIEGO GAS & ELECTRIC CO 101 ASH STREET SAN DIEGO, CA 92112 (619) 696-2485	<b>PREPARED BY:</b> <b>NOLTE</b> BEYOND ENGINEERING <small>10890 AVENUE OF SOURCES, SUITE 101 SAN DIEGO, CA 92188          619.365.0090 TEL 619.365.0400 FAX WWW.NOLTE.COM</small> <small>N:\SPR\SPR7040\CA00\ADJ.PLOTS.DWG</small>	<b>APPROVED BY:</b> <i>David A. Jauson</i> DAVID A. JAUSON DEPUTY CITY ENGINEER R.C.E. 33081 EXP. 6-30-2002	<b>A.P.N.:</b> 206-070-11 210-010-24, 26, 32, 36



025105



**EXHIBIT "B"**  
 SHEET 2 OF 2  
 ADJ NO. 00-10

ADJUSTMENT PLAT-CITY OF CARLSBAD		
<b>APPLICANT:</b> SAN DIEGO GAS & ELECTRIC CO 101 ASH STREET SAN DIEGO, CA 92112 (619) 696-2485	<b>PREPARED BY:</b> <b>NOLTE</b> <small>BEYOND ENGINEERING</small> <small>1500 AVENUE OF SCIENCE, SUITE 101 SAN DIEGO, CA 92161</small> <small>TEL: 319.0500 TEL: 619.443.0000 FAX: WWW.NOLTE.COM</small> <small>N   SDGE   SDG&amp;E   CAD   ADJ PLAT   RECORDING</small>	<b>APPROVED BY:</b>  <small>DAVID A. HAUSER, DEPUTY CITY ENGINEER</small> R.C.E. 33081 EXP. 6-30-2002
		<b>A.P.N.:</b> 206-070-11 210-010-24, 26, 32, 38

State of California }  
County of San Diego }

025106

On October 29, 2001 before me, Kelly Murphy  
(Date) (Name, Title of Officer)

personally appeared Robert J. Wojcik  
(Name[s] of Signer[s])

\_\_\_\_\_,  personally known to me  
- OR -  (or proved to me on the basis of satisfactory evidence) to be the person(s) whose  
name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they  
executed the same in his/her/their authorized capacity(ies), and that by his/her/their  
signature(s) on the instrument the person(s), or entity upon behalf of which the person(s) acted,  
executed the instrument.

WITNESS my hand and official seal



Kelly Murphy  
Signature of Notary

(This area for official  
notary seal)

Title or Type of Document <u>Certificate of Compliance for Adjustment Plat ADJ 00-10, Parcel 6</u>	
Date of Document <u>10/29/01</u>	No. of Pages <u>4</u>
Signer(s) other than named above _____	
_____	

**EXHIBIT P**

**Legal Description of Agua Hedionda North Shore Bluff Parcel**

[INSERTED ON NEXT PAGE]

LEGAL DESCRIPTION

EXHIBIT P

That certain parcel of land situated in the City of Carlsbad, County of San Diego, State of California, being more particularly described as follows:

Parcel 1 as described in the Certificate of Compliance recorded on October 30, 2001 as Document No. 2001-0789065 of Official Records of said San Diego County also as shown as Parcel 1 on Record of Survey No. 17350 filed in the Office of the County Recorder of said San Diego County on April 12, 2002 as File No. 2002-0308512.

Containing 5.76 acres more or less.

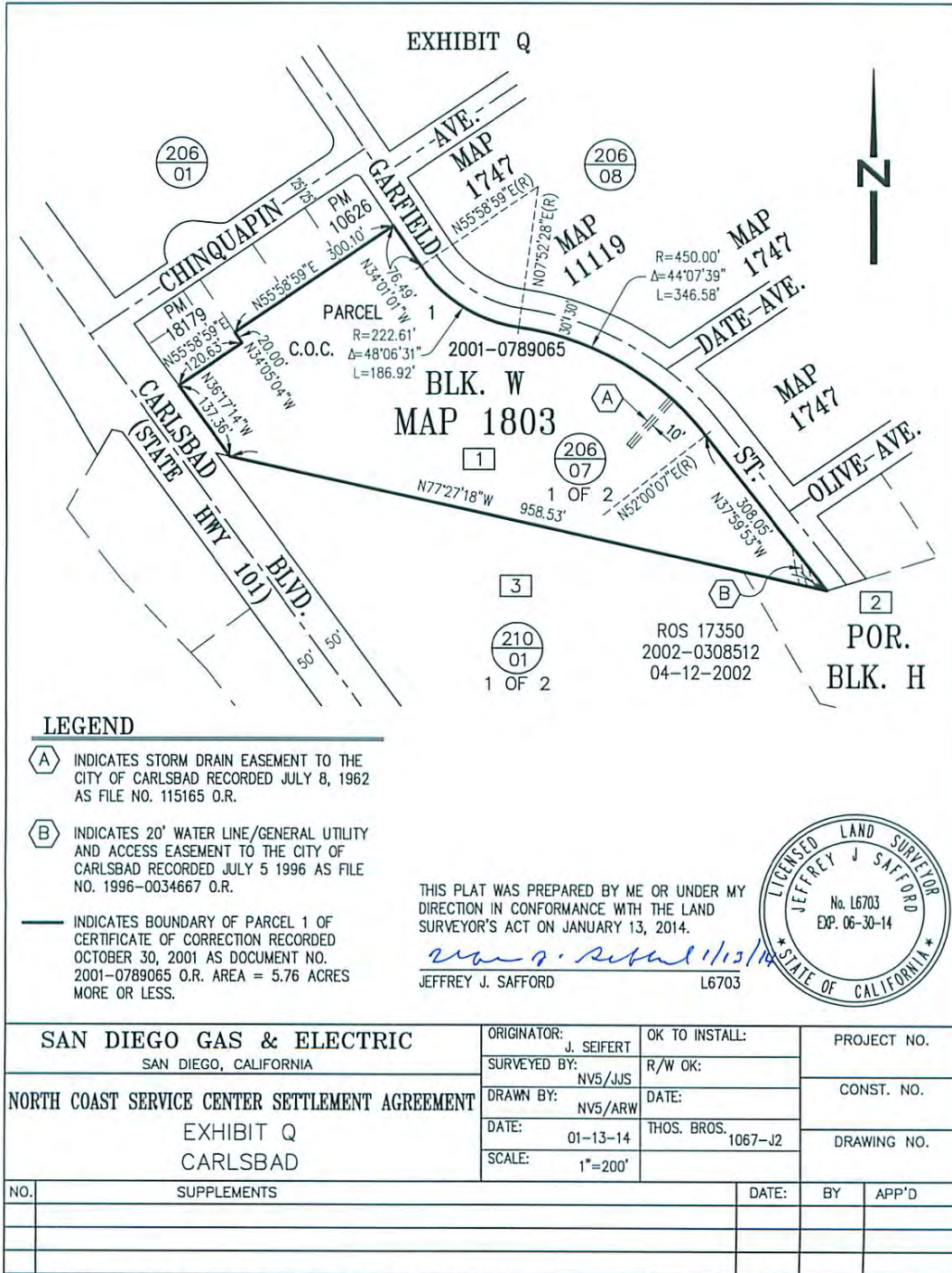
Prepared By:

Jeffrey J. Safford 11/13/14  
Jeffrey J. Safford, L6703 Date



# EXHIBIT Q

## Map of Agua Hedionda North Shore Bluff Parcel



NV5: G:\Weirich\NV5 Job Storage Pre-Number\North Coast Service Center Settlement Agreement\NCSCSA EXHIBIT.dwg POINTS FILE: N/A

09

206-07

206-07  
SHT 1 OF 2  
1" = 100'  
N

CHANGES	
1	7/11/2003 SA
2	7/11/2003 SA
3	7/11/2003 SA
4	7/11/2003 SA
5	7/11/2003 SA
6	7/11/2003 SA
7	7/11/2003 SA
8	7/11/2003 SA
9	7/11/2003 SA
10	7/11/2003 SA
11	7/11/2003 SA
12	7/11/2003 SA
13	7/11/2003 SA
14	7/11/2003 SA
15	7/11/2003 SA
16	7/11/2003 SA
17	7/11/2003 SA
18	7/11/2003 SA
19	7/11/2003 SA
20	7/11/2003 SA
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25	7/11/2003 SA
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28	7/11/2003 SA
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30	7/11/2003 SA
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32	7/11/2003 SA
33	7/11/2003 SA
34	7/11/2003 SA
35	7/11/2003 SA
36	7/11/2003 SA
37	7/11/2003 SA
38	7/11/2003 SA
39	7/11/2003 SA
40	7/11/2003 SA
41	7/11/2003 SA
42	7/11/2003 SA
43	7/11/2003 SA
44	7/11/2003 SA
45	7/11/2003 SA
46	7/11/2003 SA
47	7/11/2003 SA
48	7/11/2003 SA
49	7/11/2003 SA
50	7/11/2003 SA

1" CONDOMINIUM TERRACE  
206-03-03-004  
(SEE SHIT 2)

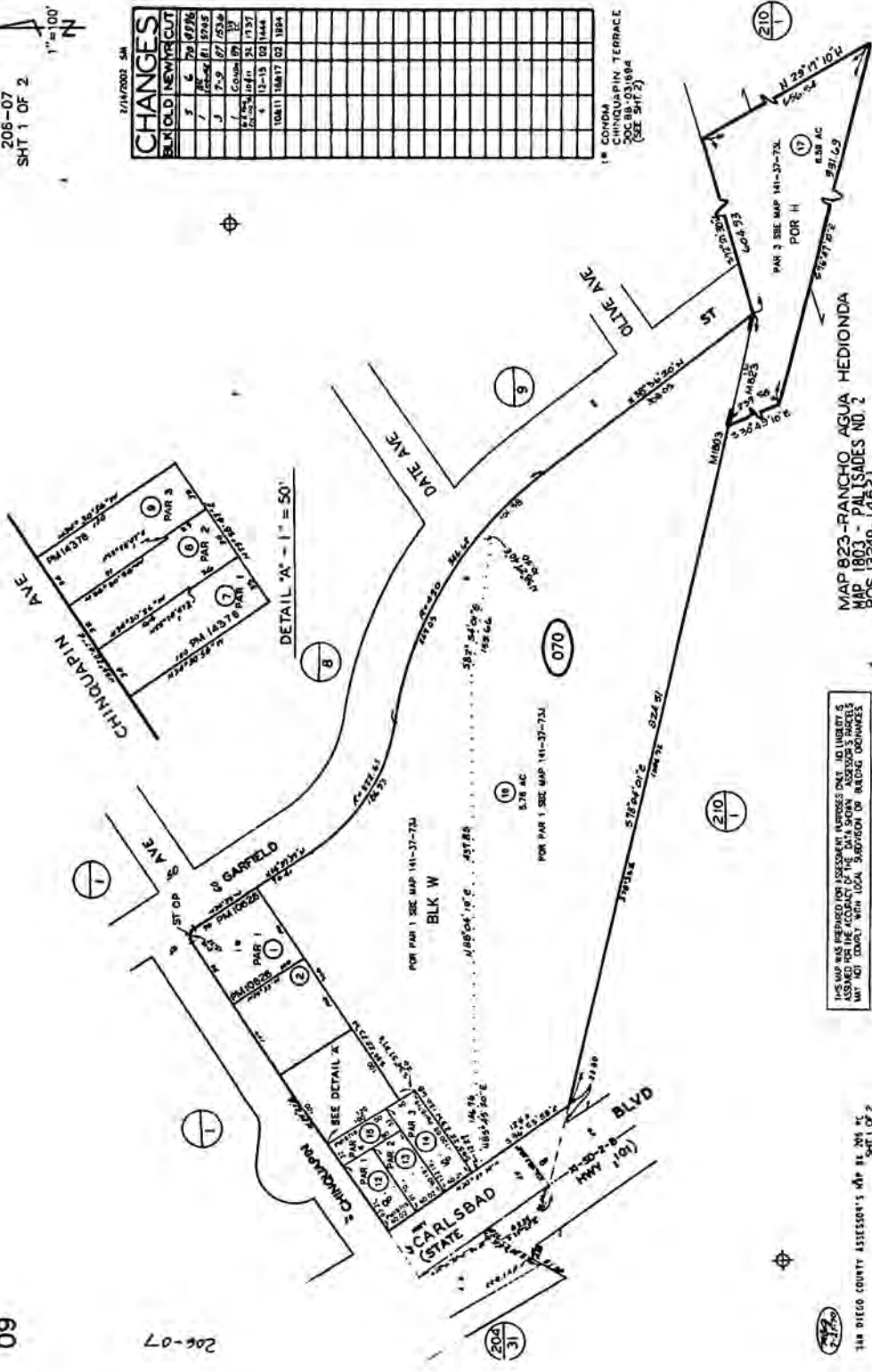
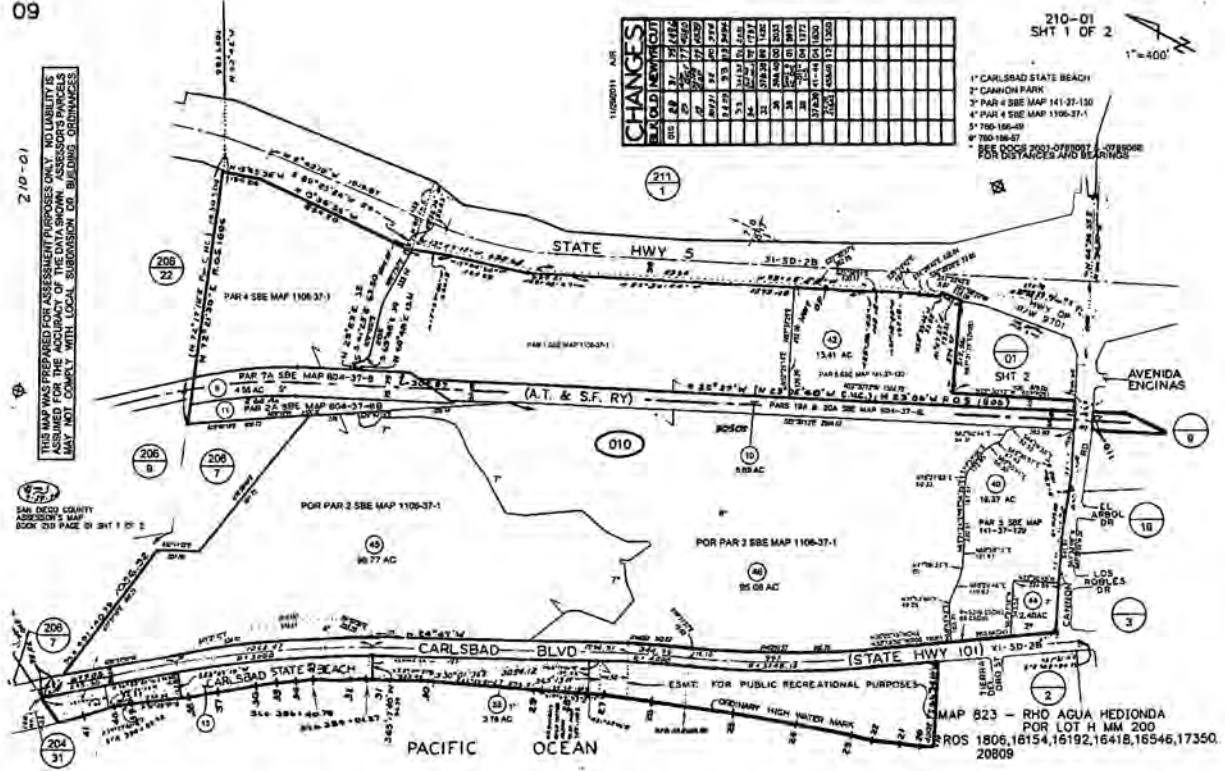


Exhibit Q - 2

210-01  
THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY. NO LIABILITY IS ASSURED FOR THE ACCURACY OF THE DATA SHOWN. ASSASSOR'S PARCELS MAY NOT COMPLY WITH LOCAL SUBDIVISION OR BUILDING ORDINANCES.

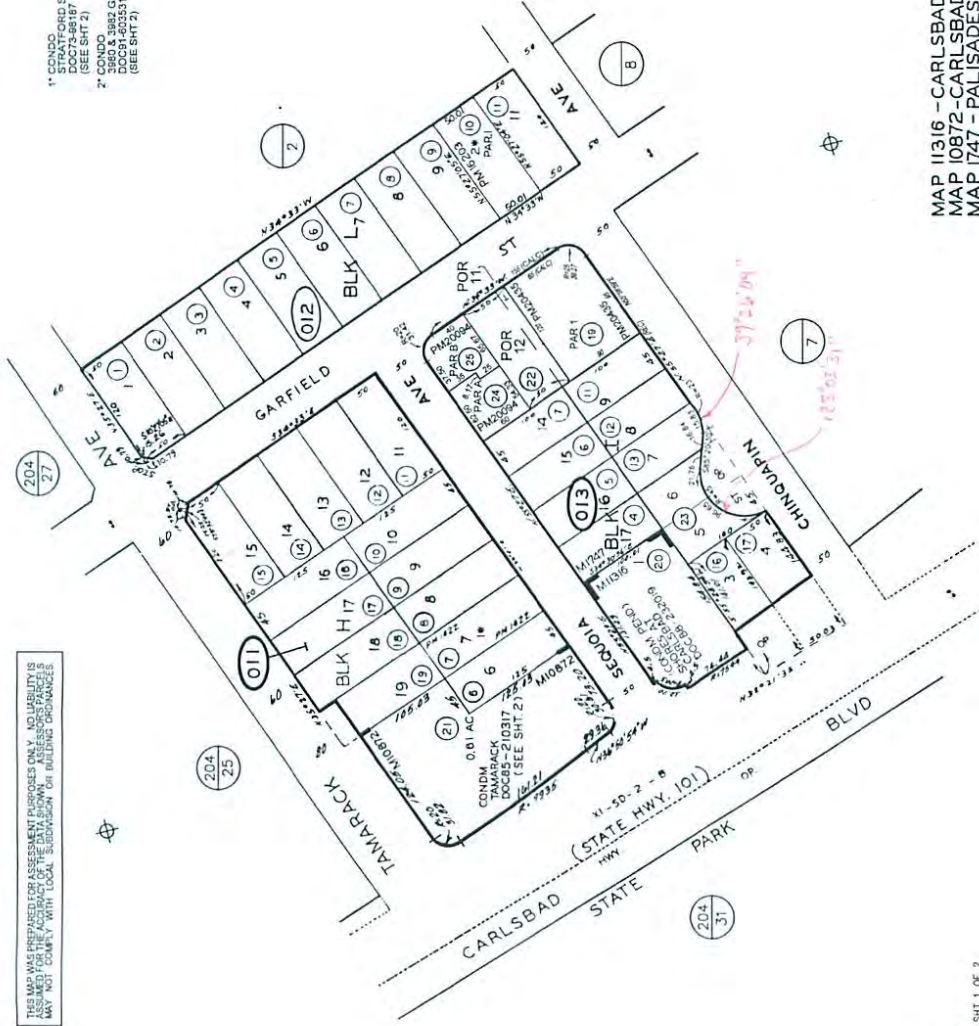


THIS MAP WAS PREPARED FOR THE CITY OF CARLSBAD AND IS NOT GUARANTEED OR ASSURED FOR THE ACCURACY OF THE DATA SHOWN. UNLESS OTHERWISE SPECIFIED, THIS MAP MAY NOT COMPLY WITH LOCAL SUBDIVISION OR BUILDING ORDINANCES.

- 1\* CONDO. 300 SQ. FT. GARFIELD SQUARE (SEE SHT 2)
- 2\* CONDO. 300 SQ. FT. GARFIELD ST (SEE SHT 2)



206-01  
SHT 1 OF 2

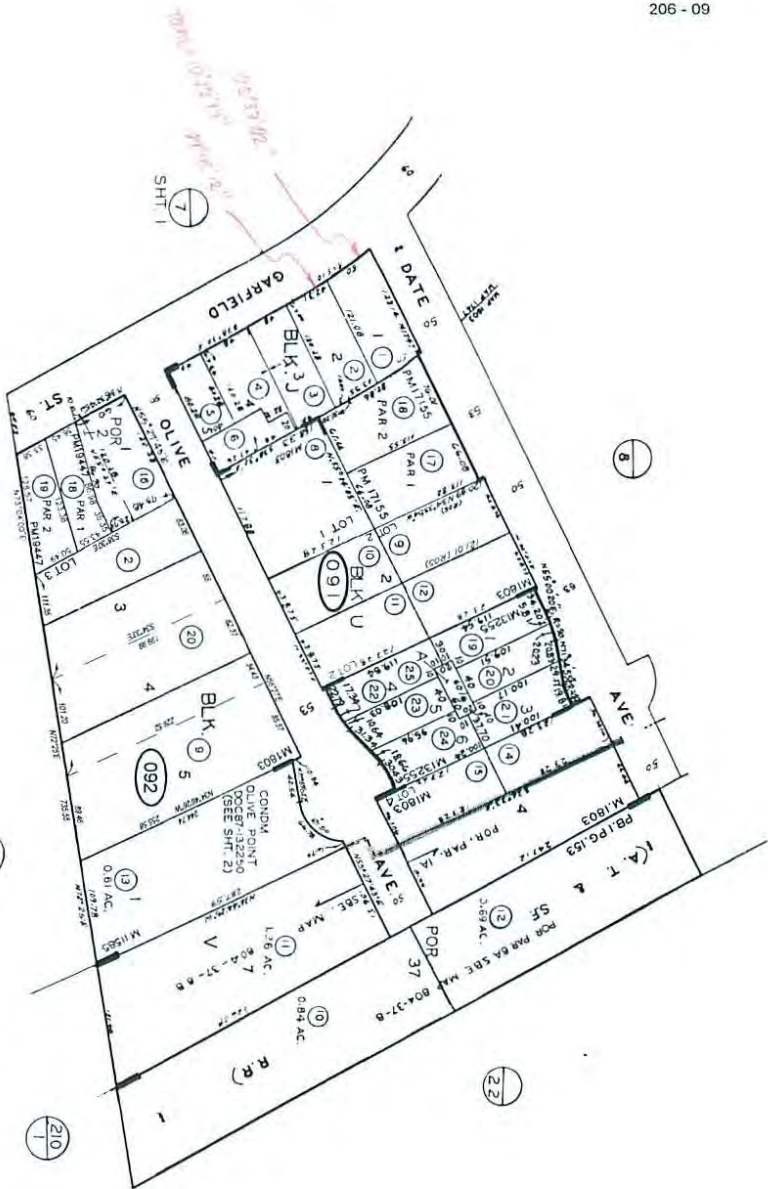


CHANGES	BLK	OLD	NEW	CUT
	009	9110	18179	67 5972
	011	7	6404	213 14
	011	19	7415	175 4979
	011	20	21	84 2065
	011	21	CONV	81 004
	012	1	5404	28 5622
	013	1-3	20	28 147
	013	40	CONV	50 663
	012	1	3104	92 4688
	011	15	5404	92 4789
	012	10	CONV	81 608
	012	21	21	20 2052
	013	14	21	89 1044
	013	13	23	81 00 4631
	013	21	24825	07 1371
	013	18	5016	06 4622

MAP 11316 - CARLSBAD TCT 84-18 (CONDM)  
 MAP 10872 - CARLSBAD TCT 81-44 (CONDM)  
 MAP 1747 - PALISADES

SAN DIEGO COUNTY  
 ASSASSOR'S MAP  
 BOOK 206 PAGE 01 SHT 1 OF 2





206-09  
 SAN DIEGO COUNTY  
 SUPERVISOR  
 BOARD 206 PAGE 09 SH 1 OF 2

THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY. NO LIABILITY IS ASSUMED FOR THE CORRECTNESS OF THE DATA SHOWN. INTERESTED PARTIES ARE ADVISED TO OBTAIN A CURRENT SURVEY OR RECORD DRAWING FOR THE PROPERTY.

MAP 13255-CITY OF CARLSBAD TCT 94-02  
 MAP 1326-CARLSBAD TCT 84-13 (CONDOM)  
 MAP 1809-CARLSBAD NO.2  
 MAP 1747-FALL SADES  
 PBI PG153-RHO AGUA HEDIIONDA  
 ROS 12989, 13486

206-09  
 SH 1 OF 2



CHANGES		ACR	
BLK	OLD	NEW	CUT
097	16	975.277	44.15
092	6	7.3	77.116
092	13	CONDM	881 657
092	1	14115 790	1151
092	1	14115 790	1151
091	7	19.25 941	63
091	13	18419 001	1232
092	17	18419 001	1232
092	388	20	14 1200
* OPEN SPACE			

Parcel 1

DOC # 2001-0789065

OCT 30, 2001 4:59 PM

RECORDING  
REQUESTED BY  
STEWART TITLE OF CALIFORNIA  
AND WHEN  
RECORDED MAIL TO:

025074

OFFICIAL RECORDS  
SAN DIEGO COUNTY RECORDER'S OFFICE  
GREGORY J. SMITH, COUNTY RECORDER  
FEES: 20.00

Flp  
SP  
10/29

City Clerk  
CITY OF CARLSBAD  
1200 Carlsbad Village Dr.  
Carlsbad, CA 92008



SPACE ABOVE THIS LINE FOR RECORDER'S USE

ASSESSOR'S PARCEL NO. 206-070-10-00 and  
206-070-11-00 (portion)  
PROJECT NO. & NAME: ADJ 00-10, Parcel 1  
Encina Adjustment  
Case No. CE 01-36

**CERTIFICATE OF COMPLIANCE  
FOR ADJUSTMENT PLAT**  
(Section 66499.35 of the Government Code)

The City Engineer has determined that the real property described below, has been divided or has resulted from a division or combining of lots in compliance with the Subdivision Map Act and with the provisions of the Carlsbad Municipal Code pursuant thereto.

OWNER(S): San Diego Gas & Electric Company, a Corporation

DESCRIPTION: (See Exhibit "A" attached. Exhibit "B" is attached for clarity only.)

NOTE: The description in Exhibit "A" attached has been provided by the owner of the property and neither the City of Carlsbad nor any of its officers or employees assume responsibility for the accuracy of said description.

This Certificate of Compliance shall have no force and effect if the above owners or any subsequent transferee or assignee acquires any contiguous property other than a lot or lots shown on a recorded subdivision map, parcel map or record of survey map filed pursuant to and prior to repeal (Stats. 1955, Ch. 1593) of Section 11575 of the Business and Professions Code;

This Certificate of Compliance shall in no way affect the requirements of any other County, State or Federal agency that regulates development of real property.

DATE: 10/29/01

BY: Robert A. Wojcik  
Deputy City Engineer  
RCE 32084 EXP. 8/30/02  
33698

025075

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**  
**ADJ 00-10 - ENCINA**

**PARCEL 1**

All of Block "W" of Palisades Unit No. 2, according to Map thereof No. 1803, filed in the office of the County Recorder of said San Diego County, August 25, 1924; EXCEPTING therefrom, the Northeasterly 300 feet of the Northwesterly 100 feet thereof; ALSO EXCEPTING the Northwesterly 120 feet of said Block "W" lying Southwesterly of the Southwesterly line of said Northeasterly 300 feet, and the Southeasterly prolongation of said Southwesterly line.

The hereinabove described parcel of land contains 5.76 acres more or less.

Prepared By:

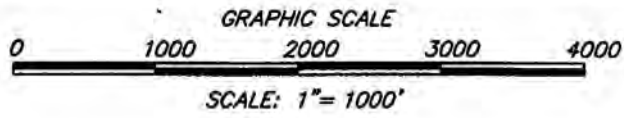
Nolte Associates, Inc.

*Ronald C. Parker* 10-22-01  
Ronald C. Parker Date  
Director of Survey



n:\sd1947\legal description parcel 1.doc

025076



**OWNERS:**  
**PARCELS 1, 2, AND 8 THROUGH 11**  
SAN DIEGO GAS AND ELECTRIC COMPANY  
A CORPORATION  
101 ASH STREET  
SAN DIEGO, CA 92112

BY: *Steven P. Davis*  
STEVEN P. DAVIS, VICE PRESIDENT

BY: *David B. Follett*  
DAVID B. FOLLETT  
ASSISTANT SECRETARY

**PARCELS 3 THROUGH 7**  
CABRILLO POWER I LLC,  
A DELAWARE LIMITED LIABILITY COMPANY  
750 B STREET, SUITE 2740  
SAN DIEGO, CA 92112

BY: *Stan M. Marks*  
VICE PRESIDENT  
STAN M. MARKS

BY: *David Lloyd*  
SECRETARY  
DAVID LLOYD

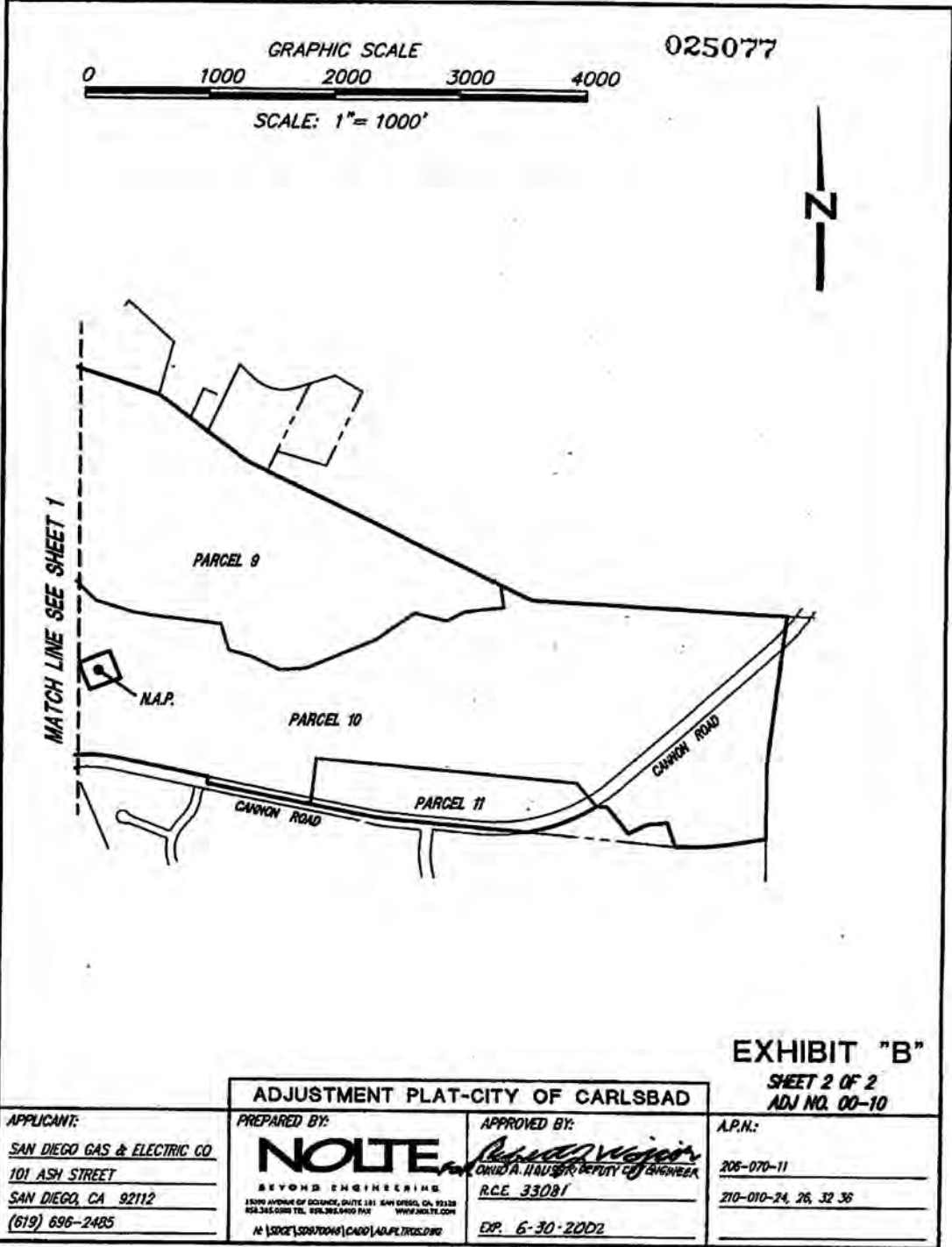
MATCH LINE SEE SHEET 2



*Ronald C. Parker*  
RONALD C. PARKER LS 4312  
EXP. 6-30-04

**EXHIBIT "B"**  
SHEET 1 OF 2  
ADJ. NO. 00-10

<b>ADJUSTMENT PLAT-CITY OF CARLSBAD</b>			
<b>APPLICANT:</b> SAN DIEGO GAS & ELECTRIC CO 101 ASH STREET SAN DIEGO, CA 92112 (619) 696-2485	<b>PREPARED BY:</b> <b>NOLTE</b> BEYOND ENGINEERING 1900 AVENUE OF SOURCE, SUITE 341 SAN DIEGO, CA 92128 PIA.785.0500 TEL. 619.383.6400 FAX WWW.NOLTE.COM # [5202] 520970048 CARL WOLFE TRUSLING	<b>APPROVED BY:</b> <i>Roberta Weisgar</i> DAVIDA HAUSER DEPUTY CITY ENGINEER R.C.E. 33081 EXP. 6-30-2002	<b>A.P.N.:</b> 206-070-11 210-010-24, 26, 32, 36



025078

State of California }  
County of San Diego }

On October 29, 2001 before me, Kelly Murphy  
(Date) (Name, Title of Officer)

personally appeared Robert J. Wojcik  
(Name[s] of Signer[s])

\_\_\_\_\_,  personally known to me  
- OR -  (or proved to me on the basis of satisfactory evidence) to be the person(s) whose  
name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they  
executed the same in his/her/their authorized capacity(ies), and that by his/her/their  
signature(s) on the instrument the person(s), or entity upon behalf of which the person(s) acted,  
executed the instrument.

WITNESS my hand and official seal



Kelly Murphy  
Signature of Notary

(This area for official  
notary seal)

Title or Type of Document <u>Certificate of Compliance for Adjustment Plat ADJ 00-10, Parcel 1</u>	
Date of Document <u>10/29/01</u>	No. of Pages <u>4</u>
Signer(s) other than named above _____	
_____	

**EXHIBIT R**  
**FORM OF GUARANTY**

## **Independent Guaranty Amount**

This Guaranty is executed and delivered as of this \_\_\_\_\_ day of -----, 2014 by NRG Energy, Inc., a Delaware corporation (“Guarantor”), in favor of the City of Carlsbad, a charter city, located in San Diego County (“City”), in connection with the performance by Cabrillo Power I LLC, a limited liability company, and Carlsbad Energy Center LLC, a limited liability company (collectively (“Owner”) of a Settlement Agreement dated January 14, 2014 between Owner and City (the “Settlement”).

### **- RECITALS -**

A. WHEREAS, the Owner operates facilities known as Units 1-5 (individually a “Unit” and collectively the “Units,” the “Encina Power Station” or the “Station”) for the purpose of generating and selling electric power;

B. WHEREAS, the Owner intends to build and operate new facilities known as the Carlsbad Energy Center Project (“CECP”) for the purpose of generating and selling electric power, and the City has historically opposed such project;

C. WHEREAS, the Parties have entered the Settlement to fully and finally resolve disputes involving the CECP and the retirement and removal of the Encina Power Station, by providing for, among other things: (i) the retirement, decommissioning, and removal of the Encina Power Station, (ii) the remediation and redevelopment of the Encina Power Station site, (iii) the provisions of the Amendment and the construction and development of the CECP, (iv) the relocation and construction of the new North Coast Service Center, and (v) other changes in energy infrastructure and property considerations beneficial to the residents of Carlsbad.

D. WHEREAS, Owner is controlled by Guarantor. Guarantor expects to derive material benefits from the performance of the Settlement by Owner and City. To induce City to enter into the Settlement and undertake the obligations as set out in the Settlement, Guarantor has agreed to guarantee the obligations of Owner as provided in this Guaranty.

NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

### **- AGREEMENT -**

1. Guaranty. Subject to the provisions of this Guaranty, Guarantor hereby absolutely, irrevocably, unconditionally, and fully guarantees to City the due, prompt, and complete observance, performance, and discharge of each and every obligation, including without limitation obligations that are financial or that require specific performance, of Owner under the Settlement, whether incurred before or after the date of delivery of this Guaranty (the “Obligations”). This is a guaranty of payment, not of collection, and as such, City shall not be required to institute, pursue, or exhaust any remedies against Owner before instituting suit, obtaining judgment, and executing thereon against Guarantor under this Guaranty.

2. Rights of City. Guarantor hereby grants to City, in City’s discretion and without the need to notify or obtain any consent from Guarantor, and without termination, impairment, or any other effect upon Guarantor’s duties hereunder, the power and authority from time to time:



(a) to renew, compromise, extend, accelerate, or otherwise change, substitute, supersede, or terminate the terms of performance of any of the Obligations, in each case in accordance with the Settlement;

(b) to grant any indulgences, forbearances, and waivers, on one or more occasions, for any length of time, with respect to Owner's performance of any of the Obligations; and

(c) to accept collateral, further guaranties, and/or other security for the Obligations, and, if so accepted, then to impair, exhaust, exchange, enforce, waive, or release any such security.

3. Performance. If any of the Obligations are not performed according to the tenor thereof, and any applicable notice and cure period provided by the Settlement has expired ("Default"), Guarantor shall immediately upon receipt of written demand by City (a) perform or cause Owner to perform the Obligation in Default, and (b) pay, reimburse, and indemnify City against any liabilities, damages, and related costs (including attorneys' fees) incurred by City as a result thereof up to but not to exceed a maximum cumulative amount of five million dollars (\$5,000,000), all in such manner and at such times as City may reasonably direct.

4. Satisfaction. Satisfaction by Guarantor of any duty hereunder incident to a particular Default or the occurrence of any other Default shall not discharge Guarantor except with respect to the Default satisfied, it being the intent of Guarantor that this Guaranty be continuing until twenty (20) years after the execution date of this Guaranty or such time as all of the Obligations have irrevocably been discharged in full, whichever is sooner, at which time this Guaranty shall automatically terminate. If at any time the performance of any Obligation by Owner or Guarantor is rescinded or voided under the federal Bankruptcy Code or otherwise, then Guarantor's duties hereunder shall continue and be deemed to have been automatically reinstated, restored, and continued with respect to that Obligation, as though the performance of that Obligation had never occurred, regardless of whether this Guaranty otherwise had terminated or would have been terminated following or as a result of that performance.

5. Notice of Acceptance. Guarantor waives and acknowledges notice of acceptance of this Guaranty by City.

6. Waivers by Guarantor. Guarantor hereby waives and agrees not to assert or take advantage of:

(a) all set-offs, counterclaims, and, subject to Section 3 above, all presentments, demands for performance, notices of non-performance, protests, and notices of every kind that may be required by Applicable Laws;

(b) any right to require City to proceed against Owner or any other person, or to require City first to exhaust any remedies against Owner or any other person, before proceeding against Guarantor hereunder;

(c) any defense based upon an election of remedies by City;

- (d) any duty of City to protect or not impair any security for the Obligations;
- (e) the benefit of any laws limiting the liability of a surety;

(f) any duty of City to disclose to Guarantor any facts concerning Owner, the Settlement, or any other circumstances, that would or allegedly would increase the risk to Guarantor under this Guaranty, whether now known or hereafter learned by City, it being understood that Guarantor is capable of and assumes the responsibility for being and remaining informed as to all such facts and circumstances; and

(g) until all Obligations in Default have been fully paid and/or performed, any rights of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery for any payment or performance by it hereunder. For the avoidance of doubt, if any amount is paid to Guarantor in violation of this provision, such amount shall be held by Guarantor for the benefit of, and promptly paid to, City.

7. Cumulative Remedies. The rights and remedies of City hereunder shall be cumulative and not alternative to any other rights, powers, and remedies that City may have at law, in equity, or under the Settlement. The obligations of Guarantor hereunder are independent of those of Owner and shall survive unaffected by the bankruptcy of Owner. City need not join Owner in any action against Guarantor to preserve its rights set forth herein.

8. Representations and Warranties. Guarantor represents and warrants to City as follows:

(a) Guarantor is a corporation, duly organized, validly existing, and in good standing under the laws of the state of its incorporation. Owner is a direct or indirect wholly-owned subsidiary of Guarantor. Guarantor has all necessary corporate power and authority to execute and deliver this Guaranty and to perform its obligations hereunder.

(b) The execution, delivery and performance of this Guaranty has been duly and validly authorized by all corporate proceedings of Guarantor and is not in violation of any law, judgment of court or government agency. This Guaranty has been duly and validly executed and delivered by Guarantor and constitutes a legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms.

9. Collection Costs. Guarantor hereby agrees to pay to City, upon demand, all reasonable attorneys' fees and other expenses which City may expend or incur in enforcing the Obligations against Owner and/or enforcing this Guaranty against Guarantor, whether or not suit is filed, including, without limitation, all attorneys' fees, and other expenses incurred by City in connection with any insolvency, bankruptcy, reorganization, arrangement, or other similar proceedings involving Owner that in any way affect the exercise by City of its rights and remedies hereunder.

10. Severability. Should any one or more provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions nevertheless shall be effective.

11. Waiver or Amendment. No provision of this Guaranty or right of City hereunder can be waived, nor can Guarantor be released from Guarantor's duties hereunder, except by a

writing duly executed by City. This Guaranty may not be modified, amended, revised, revoked, terminated, changed, or varied in any way whatsoever except by the express terms of a writing duly executed by City.

12. Successors and Assigns. This Guaranty shall inure to the benefit of and bind the successors and assigns of City and Guarantor.

13. Governing Law. This Guaranty shall be governed by and construed in accordance with the laws of the State of California without regard to the principles of conflicts of law thereof.

14. Notices. All notices, requests, claims, demands, and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt) by delivery in the manner contemplated by the Settlement, addressed as follows:

- (a) if to City as provided in the Settlement
- (b) if to Guarantor:

Sean Beatty  
West Region General Counsel  
NRG Energy, Inc.  
P.O. Box 192  
Pittsburg, CA 94565  
sean.beatty@nrgenergy.com

or to such other address(es) as the person to whom notice is given may have previously furnished to the others in writing in the manner set forth above.

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be duly executed and delivered to City as of the day written above.

**NRG Energy, Inc.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF

By: \_\_\_\_\_

Name:

Title:

)

) ss.

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_.

Notary Public: \_\_\_\_\_

(S E A L)

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(space above reserved for recording information)

## **Shut Down Guaranty Amount**

This Guaranty is executed and delivered as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by NRG Energy, Inc., a Delaware corporation (“Guarantor”), in favor of the City of Carlsbad, a charter city, located in San Diego County (“City”), in connection with the performance by Cabrillo Power I LLC, a limited liability company, and Carlsbad Energy Center LLC, a limited liability company (collectively (“Owner”) of a Settlement Agreement dated January 14, 2014 between Owner and City (the “Settlement”).

### **- RECITALS -**

- A. WHEREAS, the Owner operates facilities known as Units 1-5 (individually a “Unit” and collectively the “Units,” the “Encina Power Station” or the “Station”) for the purpose of generating and selling electric power;
- B. WHEREAS, the Owner intends to build and operate new facilities known as the Carlsbad Energy Center Project (“CECP”) for the purpose of generating and selling electric power and the City has historically opposed such project;
- C. WHEREAS, the Parties have entered the Settlement to fully and finally resolve disputes involving the CECP and the retirement and removal of the Encina Power Station, by providing for, among other things: (i) the retirement, decommissioning, and removal of the Encina Power Station, (ii) the remediation and redevelopment of the Encina Power Station site, (iii) the provisions of the Amendment and the construction and development of the CECP, (iv) the relocation and construction of the new North Coast Service Center, and (v) other changes in energy infrastructure and property considerations beneficial to the residents of Carlsbad.
- D. WHEREAS, Owner is controlled by Guarantor. Guarantor expects to derive material benefits from the performance of the Settlement by Owner and City. To induce City to enter into the Settlement and undertake the obligations as set out in the Settlement, Guarantor has agreed to guarantee the obligations of Owner as provided in this Guaranty.

NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

### **- AGREEMENT -**

1. Guaranty. Subject to the provisions of this Guaranty, Guarantor hereby absolutely, irrevocably, unconditionally, and fully guarantees to City the due, prompt, and complete observance, performance, and discharge of each and every obligation under Section 6.1 of the Settlement, including without limitation obligations that are financial or that require specific performance, of Owner, whether incurred before or after the date of delivery of this Guaranty (the “Obligations”). This is a guaranty of payment, not of collection, and as such, City shall not be required to institute, pursue, or exhaust any remedies against Owner before instituting suit, obtaining judgment, and executing thereon against Guarantor under this Guaranty.
2. Rights of City. Guarantor hereby grants to City, in City’s discretion and without the need to notify or obtain any consent from Guarantor, and without termination, impairment, or any other effect upon Guarantor’s duties hereunder, the power and authority from time to time:

(a) to renew, compromise, extend, accelerate, or otherwise change, substitute, supersede, or terminate the terms of performance of any of the Obligations, in each case in accordance with the Settlement;

(b) to grant any indulgences, forbearances, and waivers, on one or more occasions, for any length of time, with respect to Owner's performance of any of the Obligations; and

(c) to accept collateral, further guaranties, and/or other security for the Obligations, and, if so accepted, then to impair, exhaust, exchange, enforce, waive, or release any such security.

3. Performance. If any of the Obligations are not performed according to the tenor thereof, and any applicable notice and cure period provided by the Settlement has expired ("Default"), Guarantor shall immediately upon receipt of written demand by City (a) perform or cause Owner to perform the Obligation in Default, and (b) pay, reimburse, and indemnify City against any liabilities, damages, and related costs (including attorneys' fees) incurred by City as a result thereof up to but not to exceed a maximum cumulative amount of twenty million dollars (\$20,000,000), which is in addition to the Independent Guaranty Amount, all in such manner and at such times as City may reasonably direct.

4. Satisfaction. Satisfaction by Guarantor of any duty hereunder incident to a particular Default or the occurrence of any other Default shall not discharge Guarantor except with respect to the Default satisfied, it being the intent of Guarantor that this Guaranty be continuing until such time as all of the Obligations have irrevocably been discharged in full, at which time this Guaranty shall automatically terminate. If at any time the performance of any Obligation by Owner or Guarantor is rescinded or voided under the federal Bankruptcy Code or otherwise, then Guarantor's duties hereunder shall continue and be deemed to have been automatically reinstated, restored, and continued with respect to that Obligation, as though the performance of that Obligation had never occurred, regardless of whether this Guaranty otherwise had terminated or would have been terminated following or as a result of that performance.

5. Notice of Acceptance. Guarantor waives and acknowledges notice of acceptance of this Guaranty by City.

6. Waivers by Guarantor. Guarantor hereby waives and agrees not to assert or take advantage of:

(a) all set-offs, counterclaims, and, subject to Section 3 above, all presentments, demands for performance, notices of non-performance, protests, and notices of every kind that may be required by Applicable Laws;

(b) any right to require City to proceed against Owner or any other person, or to require City first to exhaust any remedies against Owner or any other person, before proceeding against Guarantor hereunder;

(c) any defense based upon an election of remedies by City;

- (d) any duty of City to protect or not impair any security for the Obligations;
- (e) the benefit of any laws limiting the liability of a surety;

(f) any duty of City to disclose to Guarantor any facts concerning Owner, the Settlement, or any other circumstances, that would or allegedly would increase the risk to Guarantor under this Guaranty, whether now known or hereafter learned by City, it being understood that Guarantor is capable of and assumes the responsibility for being and remaining informed as to all such facts and circumstances; and

(g) until all Obligations in Default have been fully paid and/or performed, any rights of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery for any payment or performance by it hereunder. For the avoidance of doubt, if any amount is paid to Guarantor in violation of this provision, such amount shall be held by Guarantor for the benefit of, and promptly paid to, City.

7. Cumulative Remedies. The rights and remedies of City hereunder shall be cumulative and not alternative to any other rights, powers, and remedies that City may have at law, in equity, or under the Settlement. The obligations of Guarantor hereunder are independent of those of Owner and shall survive unaffected by the bankruptcy of Owner. City need not join Owner in any action against Guarantor to preserve its rights set forth herein.

8. Representations and Warranties. Guarantor represents and warrants to City as follows:

(a) Guarantor is a corporation, duly organized, validly existing, and in good standing under the laws of the state of its incorporation. Owner is a direct or indirect wholly-owned subsidiary of Guarantor. Guarantor has all necessary corporate power and authority to execute and deliver this Guaranty and to perform its obligations hereunder.

(b) The execution, delivery and performance of this Guaranty has been duly and validly authorized by all corporate proceedings of Guarantor and is not in violation of any law, judgment of court or government agency. This Guaranty has been duly and validly executed and delivered by Guarantor and constitutes a legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms.

9. Collection Costs. Guarantor hereby agrees to pay to City, upon demand, all reasonable attorneys' fees and other expenses which City may expend or incur in enforcing the Obligations against Owner and/or enforcing this Guaranty against Guarantor, whether or not suit is filed, including, without limitation, all attorneys' fees, and other expenses incurred by City in connection with any insolvency, bankruptcy, reorganization, arrangement, or other similar proceedings involving Owner that in any way affect the exercise by City of its rights and remedies hereunder.

10. Severability. Should any one or more provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions nevertheless shall be effective.

11. Waiver or Amendment. No provision of this Guaranty or right of City hereunder can be waived, nor can Guarantor be released from Guarantor's duties hereunder, except by a

writing duly executed by City. This Guaranty may not be modified, amended, revised, revoked, terminated, changed, or varied in any way whatsoever except by the express terms of a writing duly executed by City.

12. Successors and Assigns. This Guaranty shall inure to the benefit of and bind the successors and assigns of City and Guarantor.

13. Governing Law. This Guaranty shall be governed by and construed in accordance with the laws of the State of California without regard to the principles of conflicts of law thereof.

14. Notices. All notices, requests, claims, demands, and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt) by delivery in the manner contemplated by the Settlement, addressed as follows:

- (a) if to City as provided in the Settlement
- (b) if to Guarantor:

Sean Beatty  
West Region General Counsel  
NRG Energy, Inc.  
P.O. Box 192  
Pittsburg, CA 94565  
sean.beatty@nrgenergy.com

or to such other address(es) as the person to whom notice is given may have previously furnished to the others in writing in the manner set forth above.

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be duly executed and delivered to City as of the day written above.

**NRG Energy, Inc.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



STATE OF

By: \_\_\_\_\_

Name:

Title:

)

) ss.

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_.

Notary Public: \_\_\_\_\_

(S E A L)

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(space above reserved for recording information)

## Relocation Guaranty Amount

This Guaranty is executed and delivered as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by NRG Energy, Inc., a Delaware corporation (“Guarantor”), in favor of the City of Carlsbad, a charter city, located in San Diego County (“City”), in connection with the performance by Cabrillo Power I LLC, a limited liability company, and Carlsbad Energy Center LLC, a limited liability company (collectively (“Owner”) of a Settlement Agreement dated January 14, 2014 between Owner and City (the “Settlement”).

### - RECITALS -

- A. WHEREAS, the Owner operates facilities known as Units 1-5 (individually a “Unit” and collectively the “Units,” the “Encina Power Station” or the “Station”) for the purpose of generating and selling electric power;
- B. WHEREAS, the Owner intends to build and operate new facilities known as the Carlsbad Energy Center Project (“CECP”) for the purpose of generating and selling electric power and the City has historically opposed such project;
- C. WHEREAS, the Parties have entered the Settlement to fully and finally resolve disputes involving the CECP and the retirement and removal of the Encina Power Station, by providing for, among other things: (i) the retirement, decommissioning, and removal of the Encina Power Station, (ii) the remediation and redevelopment of the Encina Power Station site, (iii) the provisions of the Amendment and the construction and development of the CECP, (iv) the relocation and construction of the new North Coast Service Center, and (v) other changes in energy infrastructure and property considerations beneficial to the residents of Carlsbad.
- D. WHEREAS, Owner is controlled by Guarantor. Guarantor expects to derive material benefits from the performance of the Settlement by Owner and City. To induce City to enter into the Settlement and undertake the obligations as set out in the Settlement, Guarantor has agreed to guarantee the obligations of Owner as provided in this Guaranty.

NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

### - AGREEMENT -

1. Guaranty. Subject to the provisions of this Guaranty, Guarantor hereby absolutely, irrevocably, unconditionally, and fully guarantees to City the due, prompt, and complete observance, performance, and discharge of each and every obligation under Article 5 of the Settlement, including without limitation obligations that are financial or that require specific performance, of Owner, whether incurred before or after the date of delivery of this Guaranty (the “Obligations”). This is a guaranty of payment, not of collection, and as such, City shall not be required to institute, pursue, or exhaust any remedies against Owner before instituting suit, obtaining judgment, and executing thereon against Guarantor under this Guaranty.
2. Rights of City. Guarantor hereby grants to City, in City’s discretion and without the need to notify or obtain any consent from Guarantor, and without termination, impairment, or any other effect upon Guarantor’s duties hereunder, the power and authority from time to time:

(a) to renew, compromise, extend, accelerate, or otherwise change, substitute, supersede, or terminate the terms of performance of any of the Obligations, in each case in accordance with the Settlement;

(b) to grant any indulgences, forbearances, and waivers, on one or more occasions, for any length of time, with respect to Owner's performance of any of the Obligations; and

(c) to accept collateral, further guaranties, and/or other security for the Obligations, and, if so accepted, then to impair, exhaust, exchange, enforce, waive, or release any such security.

3. Performance. If any of the Obligations are not performed according to the tenor thereof, and any applicable notice and cure period provided by the Settlement has expired ("Default"), Guarantor shall immediately upon receipt of written demand by City (a) perform or cause Owner to perform the Obligation in Default, and (b) pay, reimburse, and indemnify City against any liabilities, damages, and related costs (including attorneys' fees) incurred by City as a result thereof up to but not to exceed a maximum cumulative amount of twenty-two million five hundred thousand dollars (\$22,500,000), all in such manner and at such times as City may reasonably direct; provided that such maximum cumulative amount shall be reduced in proportion to Owner's payments made in accordance with Article 5.

4. Satisfaction. Satisfaction by Guarantor of any duty hereunder incident to a particular Default or the occurrence of any other Default shall not discharge Guarantor except with respect to the Default satisfied, it being the intent of Guarantor that this Guaranty be continuing until such time as all of the Obligations have irrevocably been discharged in full, at which time this Guaranty shall automatically terminate. If at any time the performance of any Obligation by Owner or Guarantor is rescinded or voided under the federal Bankruptcy Code or otherwise, then Guarantor's duties hereunder shall continue and be deemed to have been automatically reinstated, restored, and continued with respect to that Obligation, as though the performance of that Obligation had never occurred, regardless of whether this Guaranty otherwise had terminated or would have been terminated following or as a result of that performance.

5. Notice of Acceptance. Guarantor waives and acknowledges notice of acceptance of this Guaranty by City.

6. Waivers by Guarantor. Guarantor hereby waives and agrees not to assert or take advantage of:

(a) all set-offs, counterclaims, and, subject to Section 3 above, all presentments, demands for performance, notices of non-performance, protests, and notices of every kind that may be required by Applicable Laws;

(b) any right to require City to proceed against Owner or any other person, or to require City first to exhaust any remedies against Owner or any other person, before proceeding against Guarantor hereunder;

- (c) any defense based upon an election of remedies by City;
- (d) any duty of City to protect or not impair any security for the Obligations;
- (e) the benefit of any laws limiting the liability of a surety;
- (f) any duty of City to disclose to Guarantor any facts concerning Owner, the Settlement, or any other circumstances, that would or allegedly would increase the risk to Guarantor under this Guaranty, whether now known or hereafter learned by City, it being understood that Guarantor is capable of and assumes the responsibility for being and remaining informed as to all such facts and circumstances; and
- (g) until all Obligations in Default have been fully paid and/or performed, any rights of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery for any payment or performance by it hereunder. For the avoidance of doubt, if any amount is paid to Guarantor in violation of this provision, such amount shall be held by Guarantor for the benefit of, and promptly paid to, City.

7. Cumulative Remedies. The rights and remedies of City hereunder shall be cumulative and not alternative to any other rights, powers, and remedies that City may have at law, in equity, or under the Settlement. The obligations of Guarantor hereunder are independent of those of Owner and shall survive unaffected by the bankruptcy of Owner. City need not join Owner in any action against Guarantor to preserve its rights set forth herein.

8. Representations and Warranties. Guarantor represents and warrants to City as follows:

(a) Guarantor is a corporation, duly organized, validly existing, and in good standing under the laws of the state of its incorporation. Owner is a direct or indirect wholly-owned subsidiary of Guarantor. Guarantor has all necessary corporate power and authority to execute and deliver this Guaranty and to perform its obligations hereunder.

(b) The execution, delivery and performance of this Guaranty has been duly and validly authorized by all corporate proceedings of Guarantor and is not in violation of any law, judgment of court or government agency. This Guaranty has been duly and validly executed and delivered by Guarantor and constitutes a legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms.

9. Collection Costs. Guarantor hereby agrees to pay to City, upon demand, all reasonable attorneys' fees and other expenses which City may expend or incur in enforcing the Obligations against Owner and/or enforcing this Guaranty against Guarantor, whether or not suit is filed, including, without limitation, all attorneys' fees, and other expenses incurred by City in connection with any insolvency, bankruptcy, reorganization, arrangement, or other similar proceedings involving Owner that in any way affect the exercise by City of its rights and remedies hereunder.

10. Severability. Should any one or more provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions nevertheless shall be effective.

11. Waiver or Amendment. No provision of this Guaranty or right of City hereunder can be waived, nor can Guarantor be released from Guarantor's duties hereunder, except by a writing duly executed by City. This Guaranty may not be modified, amended, revised, revoked, terminated, changed, or varied in any way whatsoever except by the express terms of a writing duly executed by City.

12. Successors and Assigns. This Guaranty shall inure to the benefit of and bind the successors and assigns of City and Guarantor.

13. Governing Law. This Guaranty shall be governed by and construed in accordance with the laws of the State of California without regard to the principles of conflicts of law thereof.

14. Notices. All notices, requests, claims, demands, and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt) by delivery in the manner contemplated by the Settlement, addressed as follows:

- (a) if to City as provided in the Settlement
- (b) if to Guarantor:

Sean Beatty  
West Region General Counsel  
NRG Energy, Inc.  
P.O. Box 192  
Pittsburg, CA 94565  
sean.beatty@nrgenergy.com

or to such other address(es) as the person to whom notice is given may have previously furnished to the others in writing in the manner set forth above.

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be duly executed and delivered to City as of the day written above.

**NRG Energy, Inc.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF

By: \_\_\_\_\_

Name:

Title:

)

) ss.

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_.

Notary Public: \_\_\_\_\_

(S E A L)

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(space above reserved for recording information)

# EXHIBIT S

## Map of Encina Redevelopment Site



**EXHIBIT T**  
**Map of CECP Site**





**RESOLUTION NO. 2013-288****A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
CARLSBAD, CALIFORNIA, DIRECTING STAFF TO  
PARTICIPATE IN NEGOTIATIONS WITH SDG&E AND  
NRG ENERGY**

WHEREAS, on May 31, 2012 the California Energy Commission ("CEC") approved NRG Energy's application for certification of the Carlsbad Energy Center Project ("CECP"); and

WHEREAS, the approval was for a 558 Megawatt combined cycle power plant to be located in the City of Carlsbad, east of the existing plant along the I-5 corridor; and

WHEREAS, the City of Carlsbad unsuccessfully opposed the project and its motion for reconsideration was denied; and

WHEREAS, the City subsequently appealed to the California Supreme Court and its Petition for Review of the CEC proceedings was also denied; and

WHEREAS, San Onofre Nuclear Generation Station ("SONGS") ceased operations in January 2012; and

WHEREAS, in June 2013, SDG&E and Southern California Edison determined that they would not recommence power generation at SONGS; and

WHEREAS, the early closure of SONGS has caused an increase and accelerated need for power generation facilities in Southern California and Caiso (California Independent System Operator) has determined that an additional 600 Megawatts is currently needed in the San Diego Region; and

WHEREAS, SDG&E is interested in entering into a Power Purchase Agreement ("PPA") with NRG, but only if NRG amends its application to change the proposed power plant's technology; and

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WHEREAS, NRG will only amend its application if the City were supportive of such an amendment.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Carlsbad, California, as follows:

1. That the above recitations are true and correct.

2. That the City Council does hereby direct staff to negotiate with SDG&E and NRG in an attempt to reach a mutually beneficial agreement acceptable to all three parties, supporting a change in the proposed CECP technology conditioned upon the decommissioning, demolition, and remediation of the current Encina Power Station site, as well as other changes in energy infrastructure and property considerations beneficial to the residents of Carlsbad.

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PASSED, APPROVED AND ADOPTED at a Regular Meeting of the City Council of the City of Carlsbad on the 3<sup>rd</sup> day of December 2013, by the following vote to wit:


AYES: Council Members Hall, Packard, Wood, Blackburn, Douglas.

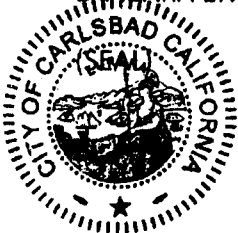
NOES: None.

ABSENT: None.

  
MATT HALL, Mayor

ATTEST:

  
BARBARA ENGLESON, City Clerk



## MEMORANDUM OF UNDERSTANDING

This MEMORANDUM OF UNDERSTANDING ("Agreement") is entered into as of December 20, 2013 ("Effective Date") by and among the City of Carlsbad (the "City"), Carlsbad Municipal Water District ("CMWD"), NRG Energy, Inc. on behalf of itself and its subsidiaries (collectively, "NRG"), and San Diego Gas & Electric Company ("SDG&E"). The City, NRG and SDG&E are each a "Party" and, collectively, the "Parties."

### RECITALS

**WHEREAS**, NRG filed an application for the construction and development of the Carlsbad Energy Center Project ("CECP" or the "Project") with the California Energy Commission (the "Commission") on or about September 2007 (Docket No. 07-AFC-06) (the "Application");

**WHEREAS**, the City conditionally opposed this Application;

**WHEREAS**, from 2007 through 2012 the Commission processed this Application and, in May of 2012, issued its Order (Order No. 12-0531-06) and Decision approving the construction and development of the Project subject to the conditions stated therein;

**WHEREAS**, NRG and SDG&E have represented to the City that they are interested in entering into a tolling or power purchase agreement ("Proposed PPA") for the Project but only if NRG amends its application for the Project, and NRG has represented that it would amend its application only if the City would be supportive of such an amendment;

**WHEREAS**, the proposed amendment would request approval of a redesigned electrical generating facility that would have a smaller environmental footprint, lower profile, and lower stack heights, and would facilitate the retirement and removal of the Encina Power Station;

**WHEREAS**, on December 3, 2013, the City adopted a resolution that provides:

"That the City Council does hereby direct staff to negotiate with SDG&E and NRG in an attempt to reach a mutually beneficial agreement acceptable to all three parties, supporting a change in the proposed CECP technology conditioned upon the decommissioning, demolition, and remediation of the current Encina Power Station site, as well as other changes in energy infrastructure and property considerations beneficial to the residents of Carlsbad."

**WHEREAS**, the Parties wish to enter into negotiations for such an agreement (the "Proposed Agreement") to establish the Parties' respective obligations regarding the retirement, decommissioning, removal, remediation and redevelopment of the Encina Power Station site, the permitting, construction and development of the CECP, other changes in energy infrastructure and property considerations beneficial to the residents of Carlsbad, and to settle prior disputes between the City and NRG regarding the CECP;

**WHEREAS**, the Parties intend that the cost of the proposed relocation and construction of the new North Coast Service Center is done in a manner which is cost-neutral to SDG&E and its ratepayers; and

**WHEREAS**, the Parties would like to set forth certain non-binding terms that will be the subject of the Proposed Agreement and establish a basis for negotiations of that agreement.

**NOW, THEREFORE**, the Parties hereby agree that:

1) **Purpose:** The purpose of this Agreement is to clarify the intentions and obligations of the Parties with respect to negotiation of the Proposed Agreement.

2) **Binding Provisions:** Subject to sections 1, 2, 3, 4, 5, 6, 7, 8, and 9, which are intended to be, and upon full execution hereof by the Parties shall be, binding on the Parties (the "Binding Provisions"), this Agreement is not intended to be a legally enforceable agreement and will not bind any of the Parties.

3) **No Obligation to Enter Into the Proposed Agreement:** No Party is under any obligation to negotiate, continue negotiating, or enter into the Proposed Agreement, and no agreement (oral or written) shall be enforceable against any Party, until the Proposed Agreement has been approved by a resolution duly adopted by the City of Carlsbad City Council and the Board of Directors of CMWD and executed by the Parties.

4) **Non-Binding Provisions:** Exhibit A sets forth certain nonbinding terms to be discussed in the context of the Proposed Agreement by and among City, NRG and SDG&E with respect to the retirement, decommissioning, removal, remediation and redevelopment of the Encina Power Station site, the permitting, construction and development of the CECP, and other changes in energy infrastructure and property considerations beneficial to the residents of Carlsbad (the "Non-Binding Provisions"). The Parties intend that the Non-Binding Provisions shall form the basis of the Proposed Agreement.

5) **Term:** The term of this Agreement shall commence on the Effective Date and shall remain in effect until terminated by any Party upon thirty days' prior written notice (sent by U.S. Mail and by email) to the counsel for the other Parties as listed below. Notwithstanding such termination, the Binding Provisions shall survive termination of this Agreement.

6) **Notices:**

**Counsel for the City of Carlsbad**

Celia A. Brewer, Esq.  
City Attorney for City of Carlsbad  
General Counsel for Carlsbad Municipal Water District  
1200 Carlsbad Village Drive  
Carlsbad, CA 92008  
Celia.Brewer@carlsbadca.gov

Stephen C. Hall, Esq.  
Troutman Sanders LLP  
805 SW Broadway, Suite 1560  
Portland, OR 97205  
[stephen.hall@troutmansanders.com](mailto:stephen.hall@troutmansanders.com)

Fletcher W. Paddison, Esq.  
Troutman Sanders LLP  
11682 El Camino Real  
Suite 400  
San Diego, CA 92130-2092  
[fletcher.paddison@troutmansanders.com](mailto:fletcher.paddison@troutmansanders.com)

**Counsel for NRG:**

Sean Beatty  
West Region General Counsel  
NRG Energy, Inc.  
P.O. Box 192  
Pittsburg, CA 94565  
[sean.beatty@nrgenergy.com](mailto:sean.beatty@nrgenergy.com)

**Counsel for SDG&E:**

Diana Day  
Assistant General Counsel  
SDG&E  
101 Ash Street,  
HQ11  
San Diego, CA 92101  
[dday@semprautilities.com](mailto:dday@semprautilities.com)

7) **Each Party to Bear its Own Expenses:** Each Party shall bear its own expenses in connection with this Agreement and the negotiation of the Proposed Agreement.

8) **Construction:** This Agreement shall be construed in accordance with the laws of the State of California, without regard to conflicts of laws.

9) **Counterparts:** This Agreement may be executed in counterparts, and all such counterparts together shall constitute one agreement.

[SIGNATURES ON NEXT PAGE]



## Exhibit A

1. NRG shall initiate within 30 days of the execution of the Proposed Agreement measures to retire Units 1-5 of the Encina Power Station (“Encina Power Station”).
2. NRG agrees to retire the Encina Power Station no later than midnight of December 31, 2017 or the commercial operation date of CECP, subject to standard conditions and qualifications (e.g., CAISO, California State Water Resources Control Board, San Diego County Air Pollution Control District).
3. NRG will covenant to take no further actions to extend the useful life of the Encina Power Station beyond December 31, 2017 following execution of the Proposed Agreement.
4. If for reasons outside of NRG’s control, the Encina Power Station is required to continue commercial operations beyond the commercial operation date of CECP, NRG will pay the City of Carlsbad a daily liquidated damages payment based on \$1/kW-mo. multiplied by the greater of 300 MW or the actual capacity that remains online.
5. The City of Carlsbad will support the CECP permit amendment applications, provided that the CECP permit applications are developed consistent with the proposed permit amendment and that the City of Carlsbad has a reasonable and meaningful opportunity to review and comment on the amendment prior to filing to confirm that the permit amendment is consistent with the Proposed Agreement. NRG and the City will develop a form letter of support, which the City shall issue in connection with the CECP permit amendment applications and as reasonably requested by NRG.
6. Provided that NRG is not in default under any obligations to the City under the Proposed Agreement and in substantial compliance with the provisions of the CECP permit amendment agreed to by the City, the City of Carlsbad agrees not to oppose permits or authorities accommodating the continued operation of the Encina Power Station until the earlier of the commercial operation date of CECP or January 1, 2018.
7. NRG agrees to fund at its sole cost the demolition and removal of all above-ground structures of the Encina Power Station in accordance with applicable law. Details regarding the demolition and removal of the Encina Power Station will be incorporated into the CEC permit amendment, and following the issuance of the amendment, NRG will obtain all additional permits, if any, as soon as possible.
8. NRG shall commence physical demolition of the Encina Power Station within one (1) year after retirement. NRG will also use good faith efforts to identify opportunities to begin and implement decommissioning prior to such date, including the removal of unused tanks.
9. NRG agrees to complete demolition of the Encina Power Station within two (2) years of the commencement of demolition activities.



10. NRG shall present an initial proposed strategy for redevelopment of the Encina Power Station site to City of Carlsbad staff within one-hundred eighty (180) days of execution of the Proposed Agreement.
11. With the exception of any remediation required under the CEC license, remediation of the Encina Power Station site shall be undertaken in conjunction with redevelopment of the site.
12. Improvements:
  - a. Easements for Agua Hedionda Lift Station and the Vista-Carlsbad Interceptor Sewer Pipeline: City of Carlsbad agrees to provide project description; NRG to submit application to CEC within 60 days after receipt of project description (coordinate with Poseidon easement); and NRG will execute easements within 10 days of CEC approval.
  - b. PDP Land Transfers (Bluff, etc.): NRG agrees to grant IODs, but reserves certain rights; subject to other existing rights and safety and operational concerns.
13. NRG agrees to fund up to \$22.5 million for the SDG&E North Coast Service Center relocation (as described in more detail in paragraph 26), as funds are needed, beginning at the time that NRG issues its final notice to proceed under its EPC contract for CECP.
14. NRG agrees to cause the new North Coast Service Center to be built in the future, or provide funding to the City and City will cause North Coast Service Center to be built.
15. If NTP for construction of the North Coast Service Center is not issued by the third (3<sup>rd</sup>) anniversary of the commercial operation date for CECP, NRG shall pay the City of Carlsbad \$10 million, and NRG is not obligated to make any further payments or to cause the North Coast Service Center to be built.
16. NRG agrees to limit fossil fuel generation on the Encina Power Station site to the current project description (e.g., six LMS100s) proposed in the CEC permit amendment and any black start equipment potentially required by the CAISO. NRG agrees that no future modifications to the CECP shall be undertaken that exceed the environmental envelope, profile or footprint of CECP as presented in CEC permit amendment.
17. NRG agrees to work with the Fire Department in good faith to address any fire safety concerns in the permit amendment filing and during the permit amendment process.
18. NRG agrees to reimburse the City of Carlsbad for costs incurred in accordance with actual services performed by the City of Carlsbad, including applicable and appropriate impact fees, which are not expected to exceed \$1 MM.
19. The City of Carlsbad and NRG shall work cooperatively to determine a mutually acceptable and appropriate alignment for the Coastal Rail Trail.

20. Redevelopment.
  - a. The City of Carlsbad and NRG acknowledge that they have a mutual interest in the productive reuse of NRG's property west of the railroad tracks, as well as the existing SDG&E North Coast Services Center site. The City of Carlsbad staff and NRG will work in good faith to address the site in the pending General Plan update.
  - b. If the City of Carlsbad takes fee title to the existing North Coast Service Center site, as contemplated by this MOU, the City and NRG will work in good faith to consider a joint development strategy for the North Coast Service Center site comprising basic principles to be identified in the subsequent binding agreement.
21. The City of Carlsbad, CMWD and NRG will work together to establish related services to CECP, including recycled water supply, potable water supply, sanitary sewer service and fire response.
22. NRG will identify any ordinances that may conflict with the revised CECP project and the City of Carlsbad and CMWD will review such ordinances and consider recommending revisions to the City Council and Board of Directors based upon new information, including the revised project's improved environmental profile, and removal of the Encina Power Station.
23. The City of Carlsbad will work with NRG to accommodate gas line service to CECP on the east side of the railroad tracks.
24. The Parties acknowledge that SDG&E has recently undertaken certain improvements and upgrades of the Encina Power Station substation. The City of Carlsbad has asked SDG&E to consider relocating the Encina Power Station substation away from the coastal site. SDG&E has agreed that as part of a long-term plan, and contingent upon execution and regulatory approval of the Proposed PPA, and subject to any other required regulatory approvals, it will work with the City of Carlsbad to identify and ultimately permit a site, such that any future material improvements or expansions to the transmission system, beyond those needed for the CECP, be made at the alternate site in lieu of the existing Encina Power Station substation.
25. NRG will incorporate a provision in its CECP permit amendment that CECP will not operate between the hours of midnight and 6 am, subject to dispatch by the CAISO for reliability purposes.
26. SDG&E will enter into good faith efforts to cooperate with the City of Carlsbad to relocate its North Coast Service Center from its current location at the corner of Cannon Road and Carlsbad Boulevard to (a) the land currently owned by SDGE north of Cannon Road known as Parcel 11 or (b) another site mutually acceptable to the City and SDG&E, and at no cost to SDG&E ("Alternate Site"), provided that each of the following conditions are met:
  - a. The City of Carlsbad and SDG&E agree to collaborate on the structure of the Proposed Agreement such that the cost of the relocation and the construction of

the new North Coast Service Center will be done in a manner which is cost-neutral to SDG&E and its ratepayers.

- b. The “all-in” cost of relocation of such Service Center, including the cost of construction and furniture, fixtures, equipment, and IT infrastructure of such Service Center, plus Feasibility Studies (defined below), shall not exceed \$22.5 million (\$22,500,000) (“NCSC Cost Cap”) so long as the new Service Center is in operation by December 31, 2017.
- c. The new Service Center is to be built to SDG&E’s specifications, and it shall be constructed and transferred to SDG&E at no cost to SDG&E except as specified herein.
- d. SDG&E will pay and will be reimbursed by NRG for costs associated with environmental and land use studies associated with studying the feasibility of a new North Coast Services Center (“Feasibility Studies”), and such reimbursement shall be made as agreed by NRG and SDG&E; provided, however, that any amounts reimbursed for Feasibility Studies will reduce the NCSC Cost Cap on a dollar-for-dollar basis.
- e. Any relocation of the Service Center is subject to the following conditions:
  - i. execution of binding agreements memorializing the relocation of the North Coast Service Center along with the other provisions of this Agreement on terms acceptable to SDG&E and consistent with the terms outlined above;
  - ii. a Private Letter Ruling, satisfactory to SDG&E in its sole discretion, issued by the Internal Revenue Service confirming the tax treatment of the transactions outlined above;
  - iii. obtaining all required regulatory approvals; and
  - iv. SDG&E to transfer such site and buildings, along with (i) Cannon Park and (ii) the Agua Hedionda North Shore Bluff Parcel (APN 206-070-16), to the City of Carlsbad in fee simple, free and clear of all financial liabilities and financial liens, simultaneously with SDG&E receiving title to the new North Coast Service Center. SDG&E will be responsible for remediating preexisting environmental conditions to applicable industrial standards pursuant to applicable law.

## **Summary of Specific Provisions of the Agreement**

### **Amended CECP**

Cabrillo Power I LLC and Carlsbad Energy Center LLC (collectively, NRG), the City and the CMWD commit to the following associated with Amended CECP:

- NRG agrees that the CECP site is limited to no more than approximately 600 megawatts of fossil fuel power generation utilizing a peaker configuration (6 GE LMS100s and a 1-2 mw black start unit);
- NRG agrees that the CECP will be located east of the railroad tracks and west of Interstate 5, occupying the current location of the aboveground fuel oil storage tanks 4-7;
- NRG agrees that the CECP will not operate between the hours of midnight to 6:00 a.m., unless directed to do so by CAISO;
- NRG agrees that the CECP will be designed to address all Carlsbad Fire Department safety concerns;
- The City and the CMWD will work cooperatively with NRG to establish related services to CECP including recycled water supply, potable water supply, sanitary sewer service, fire response, and natural gas line service;
- The City and NRG will work cooperatively to identify and provide easements necessary for the Agua Hedionda Lift Station and the Vista-Carlsbad Interceptor Sewer Pipeline projects;
- The City and NRG will work cooperatively to determine a mutually acceptable alignment for the Coastal Rail Trail.

### **Encina Power Station**

NRG commits to the following related to the Encina Power Station:

- Within 30 days of the Agreement execution, NRG will initiate measures to shut down Units 1-5 of the EPS;
- If NRG proceeds with CECP, NRG agrees to shut down EPS (Units 1-5) the earlier of (a) midnight on December 31, 2017, or (b) the commercial operation date of CECP, subject to obtaining necessary approvals for the shut down;
  - If the EPS continues to operate after CECP becomes operational, NRG will pay the City (on a monthly basis), a liquidated damages payment equal to \$1/kW-mo. multiplied by the greater of (a) the generating capacity of the Unit or Units (in MW) remaining online or (b) 300 MW (estimated at approximately \$3.6 to \$12 million annually).
- If NRG proceeds with CECP, NRG will start and will fully fund the above-ground demolition and remediation of all EPS structures within 1 year following the shut down and will complete within 2 years of the start of demolition;
- NRG will remediate the environmental concerns that are not associated with the above-ground demolition in conjunction with redevelopment of the EPS site;
- NRG will present to the City an initial proposed strategy for the redevelopment of the

- EPS site within 180 days of the Council's approval of the Agreement;
- NRG will grant the City Irrevocable Offers of Dedication (IODs), in addition to the easements already agreed to as a part of the Poseidon Desalination Plant (PDP) project, over those properties identified in the PDP approval (Bluff Area Parcel, Fishing Beach Parcel, Hubbs Site Parcel, and South Power Plant Parcel).

### **SDG&E North Coast Service Center and SDG&E Encina Power Station substation**

NRG, SDG&E and the City commit to the following related to the SDG&E North Coast Service Center (Service Center) and the SDG&E Encina Power Station substation:

#### **Service Center**

- SDG&E and the City agree to work in good faith to relocate the Service Center from its current location to (a) land SDG&E currently owns on the north side of Cannon Road east of I-5 known as Parcel 11, or (b) another site mutually acceptable to the City and SDG&E, provided that:
  - The cost of the new Service Center is done in a manner which is cost neutral to SDG&E and its ratepayers;
  - The "all in" cost of the Service Center relocation shall not exceed \$22.5 million;
  - The new Service Center is built to SDG&E specifications and is constructed and transferred to SDG&E at no cost to SDG&E;
  - SDG&E will pay and NRG will reimburse the costs of feasibility studies needed for the new Service Center location;
  - Relocation of the Service Center is also subject to the following:
    - Execution of binding agreements on terms acceptable to SDG&E and consistent with the above terms;
    - A Private Letter Ruling from the IRS, satisfactory to SDG&E, confirming the tax treatment of the Service Center relocation;
    - Obtaining all required regulatory approvals;
    - SDG&E will transfer ownership of the existing Service Center buildings and site, along with the Cannon Park site, and the Agua Hedionda North Shore Bluff Parcel (APN 206-070-16) to the City upon SDG&E receiving title to the new Ops Center.
- NRG agrees to fund up to \$22.5 million to relocate the Service Center, as funds are needed beginning when NRG issues the final notice to proceed for the CECP;
- If the notice to proceed for construction of the new Service Center is not issued by the 3<sup>rd</sup> anniversary of the operation date for the CECP, NRG agrees to pay the City \$10 million, and NRG would then have no further obligations;
- If the City takes title to the existing Service Center site, the City and NRG agree to consider a joint development strategy for the EPS site and the Service Center site;
- The City and NRG will work cooperatively in addressing the EPS site and the existing Service Center site in the pending citywide General Plan update.

#### **SDG&E Encina Power Station substation**

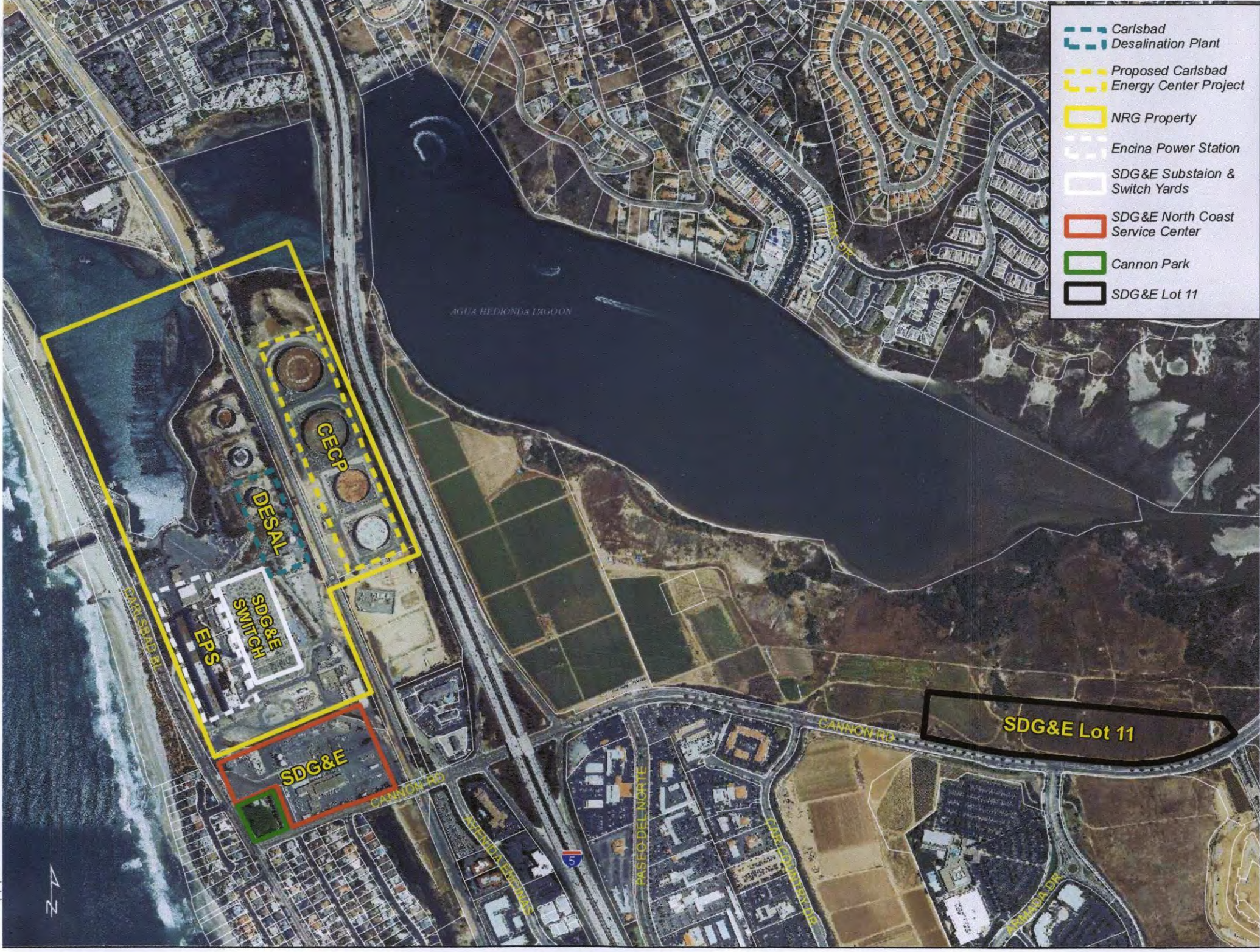
- SDG&E agrees that, as a part of a long-term plan and contingent upon the successful execution of a Power Purchase Agreement (PPA) with NRG for the Amended CECP, it will work cooperatively with the City to identify and permit a new substation site, such that any future material improvements or expansions to the transmission system,





beyond the needs of CECP, would be made at the new site.

### **City and CMWD Obligations**

The City commits to the following within the Agreement:

- The City will support NRG's Petition to Amend (PTA) application to the California Energy Commission (CEC) for the proposed changes to the CECP approval;
- City agrees to not oppose the continued operation of EPS until the earlier of January 1, 2018 or the commercial operation date of Amended CECP;
- The City and CMWD, along with NRG, will review all city ordinances, resolutions, policies, regulatory documents, etc. that may conflict with the Amended CECP project and the City will consider recommending revisions to such documents to the City Council and the CMWD Board of Directors.



-  Carlsbad Desalination Plant
-  Proposed Carlsbad Energy Center Project
-  NRG Property
-  Encina Power Station
-  SDG&E Substaion & Switch Yards
-  SDG&E North Coast Service Center
-  Cannon Park
-  SDG&E Lot 11

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**Owner**

- NRG
- SDG&E

- 1 - Aqua No Shore Parcel
- 2 - Fishing Beach
- 3 - Hubbs Site
- 4 - Bluff Area
- 5 - South Power Plant
- 6 - SDG&E Service Center
- 7 - Cannon Park



AB # 21,482

# CARLSBAD CHAMBER OF COMMERCE

January 14, 2014



Mayor and City Council  
City of Carlsbad

Good evening Council, my name is Ted Owen and I am the President and CEO of the Carlsbad Chamber of Commerce.

For over 90 years the Carlsbad Chamber of Commerce has worked to promote a favorable business climate for the 1,400 member businesses and more than 75,000 employees in and around the City of Carlsbad. This is why we pay close attention to issues in Carlsbad that could impact not only the ability of local businesses to thrive but also matters that could impact the quality of life in our community.

We had followed developments at the San Onofre plant and continue to be concerned about its closure affecting the reliability of our power supply. We are all dependent on electricity for health, safety and commerce. A few years ago we were painfully reminded of that fact during the blackout affecting our region.

On behalf of the Carlsbad Chamber of Commerce I would like to express our strong support for the agreement with NRG and SDG&E. This agreement will help ensure local businesses will have a reliable power supply while accelerating redevelopment of the property owned by NRG and SDG&E.

The proposed Carlsbad Energy Center will generate hundreds of construction jobs and pump millions of dollars into the local economy. The Carlsbad Chamber has supported this project for many years and we are excited that it may finally become a reality. We also look forward to hearing about NRG's vision for redevelopment.

I'd like congratulate the City staff, NRG and SDG&E on reaching this compromise and I urge its adoption. Thank you.

A handwritten signature in black ink, appearing to read 'Ted Owen', with a long horizontal line extending to the right.

# San Diego Gas & Electric

*Meeting the energy needs of our customers*

Jim Avery

Senior Vice President, Power Supply



# Future System Reliability and Needs: Post SONGS Shutdown

- SDG&E is diligent in its resource planning efforts to ensure a reliable supply of energy to the customers we serve
- The early retirement of SONGS created a major resource adequacy gap and an equally important voltage support gap for the region
- SDG&E had plans in place to allow the timely shutdown of the old coastal power plants that use Once Through Cooling (OTC), and had been planning for the future retirement of SONGS, but statewide planning was not prepared for the nearly 10 year-early retirement
- Examples of planning to accommodate the retirement of older plants include:
  - New power producing facilities scattered throughout the region, like the Palomar Energy Center in Escondido and proposed power producing facilities like Pio Pico
- Upgraded transmission infrastructure, like the Sunrise Powerlink, which also acts as a catalyst for several large, SDG&E-contracted renewable energy projects in the Imperial Valley
  - However, the Sunrise Powerlink alone is not capable of supplementing all losses from SONGS
- While it is our goal to use renewable energy resources whenever possible, the needed capacity during peak demands requires use of peaker facilities
- With the closure of SONGS, and the future closure of power plants that use (OTC) technology, the CAISO has found that the SDG&E area is resource deficient
- Without SONGS, state regulators and government officials are now assessing the options to make sure utilities have adequate power generating resources on hand to meet demand, and utilities need to make sure they contract with the right kind of generating facilities to serve that demand



# SDG&E's Role in the Agreement: North Coast Service Center

- We are proud of our productive and mutually beneficial relationship with the City of Carlsbad
- To support the City of Carlsbad's goal of returning its coastal land to non-industrial uses, SDG&E has agreed to relocate the "North Coast Service Center" site, pending regulatory approval, at no cost to the City or SDG&E ratepayers, and SDG&E will transfer ownership of the property to the City
- NRG has agreed to provide the funding to cover the cost to relocate the SDG&E North Coast Service Center to a new site





January 14, 2014

# Carlsbad Energy Center Project

Proposed Agreement with the City of Carlsbad  
and San Diego Gas & Electric Company

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**John Chillemi**  
Regional President



# NRG Commitments

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- Retirement of the Encina Power Station by December 31, 2017
- Above-ground demolition within 3 years of Encina's retirement at NRG's expense
- Relocation of SDG&E's Service Center inland at NRG's expense, freeing parcel for conveyance to the City
- Development of initial redevelopment plan for Encina within 180 days of adoption of this agreement
- Recreational land dedications and land use allowances, including Coastal Rail Trail
- NRG will not build additional natural gas generation at the site after construction of the Carlsbad Energy Center

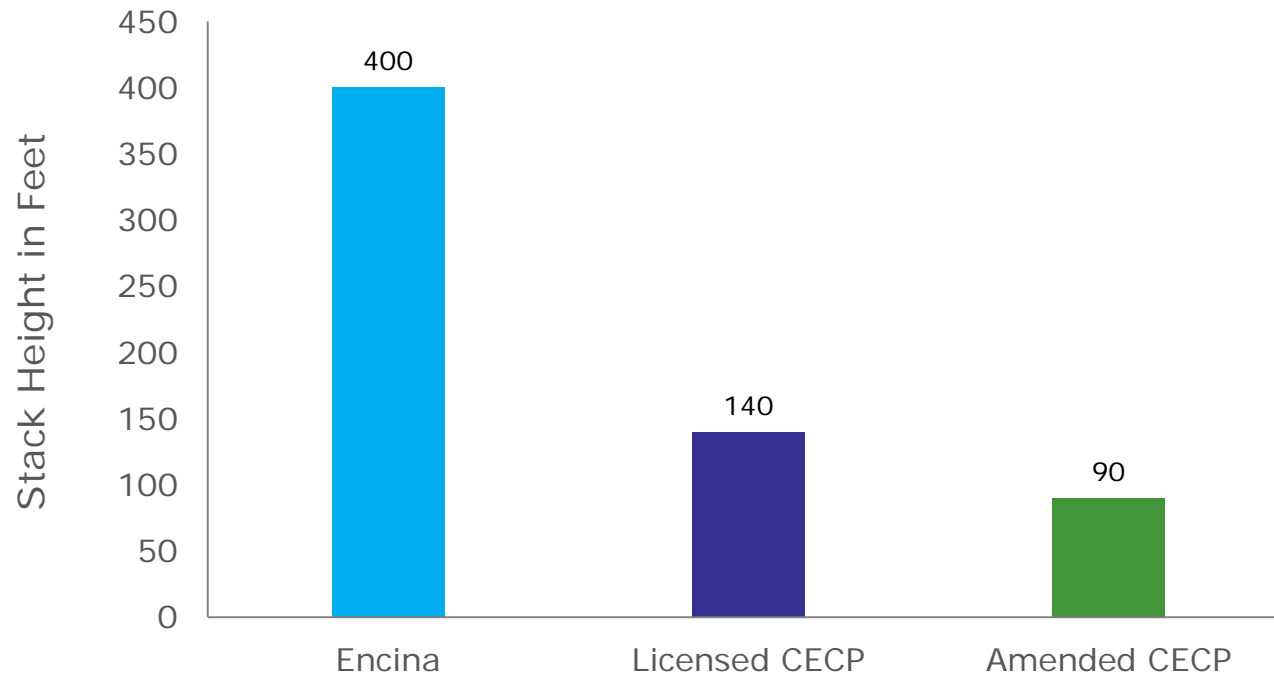


# Amended Carlsbad Energy Center Project

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- The amended Carlsbad Energy Center Project will provide roughly 600MW of flexible, fast-start peaking generation to the grid by 2017.
- As compared to the project currently licensed, the amended Carlsbad Energy Center Project offers significant environmental benefits including:
  - Lower Visual Profile
  - Improved Air Quality
  - Reduced Water Usage
  - Improved Noise Profile
  - Improved Safety

# Lower Visual Profile



- Because the amended Carlsbad Energy Center Project would be located in the tank farm “bowl” 30 feet below the surrounding grade, the stack would appear to be approximately 60 feet high.





 Proposed Carlsbad Energy Center Project



## Simulation 1A: Adams Street - Present





## Simulation 1B: Adams Street - Encina + Licensed CECP





## Simulation 1C: Adams Street - Amended CECP





## Simulation 2A: Carlsbad Blvd - Present





## Simulation 2B: Carlsbad Blvd – Encina + Licensed CECP





## Simulation 2C: Carlsbad Blvd - Amended CECP





## Simulation 3A: Cannon Park – Present

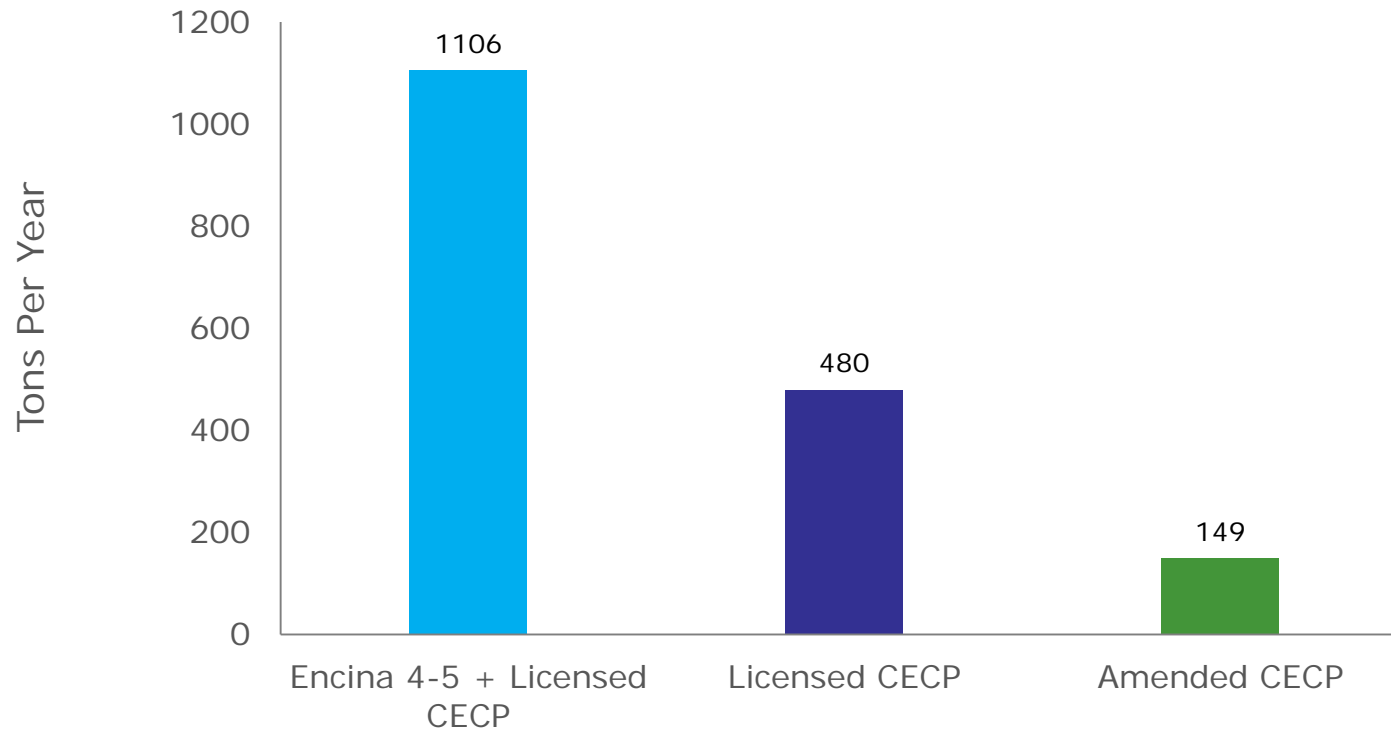




## Simulation 3C: Cannon Park - Amended CECP

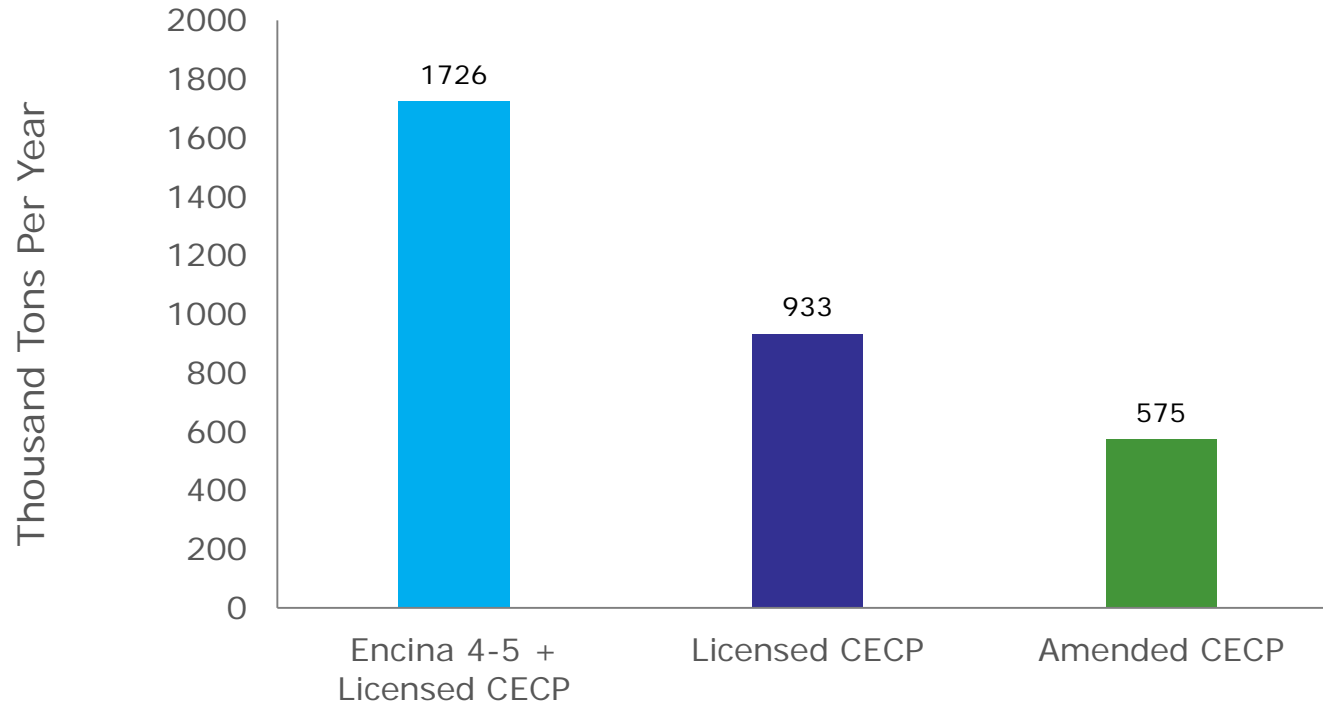


# Improved Air Quality – Emissions



- Emissions include NO<sub>x</sub>, CO, VOC, SO<sub>x</sub> and PM<sub>10</sub>.
- The amended Carlsbad Energy Center Project features state-of-art (BACT) emission controls and meets local and national air quality health standards.

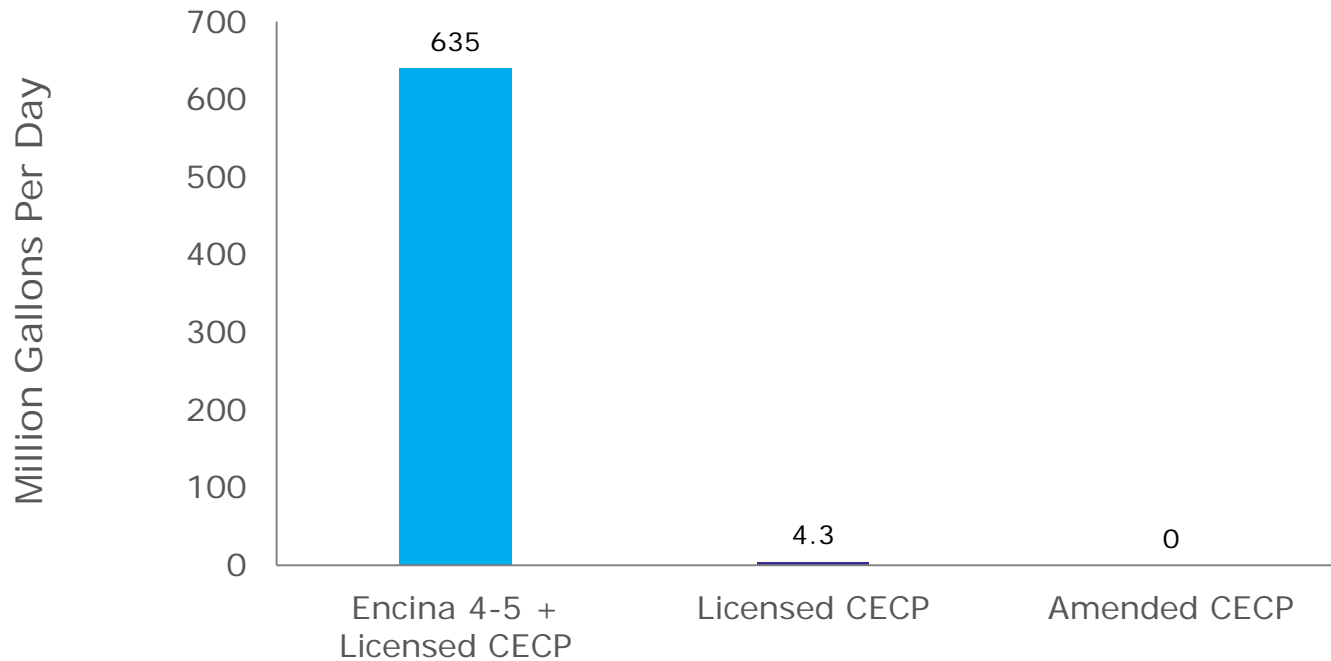
# Improved Air Quality – CO<sub>2</sub>e



- The amended Carlsbad Energy Center Project reduces CO<sub>2</sub> emissions by 66% vs. Encina 4-5 + the licensed Carlsbad Energy Center Project and 38% vs. the licensed Carlsbad Energy Center Project.
- Fast-start peaking generation supports renewables integration further complementing the State's greenhouse gas reduction goals.

*Emissions estimates based on peaking units operating ~50% of licensed CECP*

# Elimination of Ocean Water Usage



- The retirement of Encina eliminates the use of 860 million gallons of ocean water per day for cooling, about 635 million gallons of which are used to cool Encina Units 4 and 5.
- Unlike the licensed Carlsbad Energy Center Project which would use 4.3 million gallons per day of ocean water for industrial purposes, the amended Carlsbad Energy Center Project will not use ocean water.



# Improved Noise Profile

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- The amended Carlsbad Energy Center Project will meet all City noise ordinances.
- Peaking units typically run about 50% less than the units currently permitted and only during periods of peak demand.
- NRG will not operate the units between the hours of midnight and 6 am, except in response to emergency or grid reliability needs.
- The amended Carlsbad Energy Center Project eliminates steam blows that would occur from the project currently designed.



# Improved Safety

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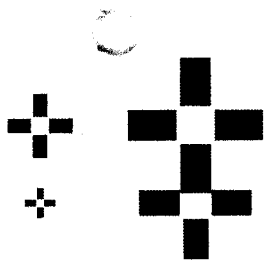
- The plant design will incorporate improved access for emergency response, both into the “bowl” as well as around the generating units.
- The amended Carlsbad Energy Center Project eliminates high-pressure / high-temperature piping that is present in the design currently licensed.
- NRG is actively working with the Carlsbad Fire Department on means of further improving safety.



# Conclusion

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- NRG would like to thank City of Carlsbad staff and SDG&E for their work on this agreement.
- This agreement allows the City of Carlsbad and NRG to achieve key shared objectives:
  - Grid reliability through an amended Carlsbad Energy Center with a lower visual profile and reduced environmental impacts
  - Retirement, demolition and removal of the Encina Power Station
  - Relocation of the SDG&E North Coast Service Center
  - Redevelopment of the Encina and Service Center sites



NRG Energy, Inc.  
P.O. Box 192  
Pittsburg, CA 94565

January 24, 2014

**By FedEx**

Celia Brewer, Esq., City Attorney  
City of Carlsbad  
1200 Carlsbad Village Drive  
Carlsbad, CA 92008

Re: Settlement Agreement Dated as of January 14, 2014

Dear Ms. Brewer:

Pursuant to Paragraph 2.5(a) of the above-referenced agreement, please find enclosed a guaranty issued by NRG Energy, Inc. The enclosed document contains the original signature.

Should you have any questions regarding the foregoing, do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink that reads "Sean P. Beatty". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Sean P. Beatty  
Regional General Counsel - West  
NRG Energy, Inc.

Enclosure



## **Independent Guaranty Amount**

This Guaranty is executed and delivered as of this 22 day of January, 2014 by NRG Energy, Inc., a Delaware corporation (“Guarantor”), in favor of the City of Carlsbad, a charter city, located in San Diego County (“City”), in connection with the performance by Cabrillo Power I LLC, a limited liability company, and Carlsbad Energy Center LLC, a limited liability company (collectively (“Owner”) of a Settlement Agreement dated January 14, 2014 between Owner and City (the “Settlement”).

### **- RECITALS -**

A. WHEREAS, the Owner operates facilities known as Units 1-5 (individually a “Unit” and collectively the “Units,” the “Encina Power Station” or the “Station”) for the purpose of generating and selling electric power;

B. WHEREAS, the Owner intends to build and operate new facilities known as the Carlsbad Energy Center Project (“CECP”) for the purpose of generating and selling electric power, and the City has historically opposed such project;

C. WHEREAS, the Parties have entered the Settlement to fully and finally resolve disputes involving the CECP and the retirement and removal of the Encina Power Station, by providing for, among other things: (i) the retirement, decommissioning, and removal of the Encina Power Station, (ii) the remediation and redevelopment of the Encina Power Station site, (iii) the provisions of the Amendment and the construction and development of the CECP, (iv) the relocation and construction of the new North Coast Service Center, and (v) other changes in energy infrastructure and property considerations beneficial to the residents of Carlsbad.

D. WHEREAS, Owner is controlled by Guarantor. Guarantor expects to derive material benefits from the performance of the Settlement by Owner and City. To induce City to enter into the Settlement and undertake the obligations as set out in the Settlement, Guarantor has agreed to guarantee the obligations of Owner as provided in this Guaranty.

NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

### **- AGREEMENT -**

1. Guaranty. Subject to the provisions of this Guaranty, Guarantor hereby absolutely, irrevocably, unconditionally, and fully guarantees to City the due, prompt, and complete observance, performance, and discharge of each and every obligation, including without limitation obligations that are financial or that require specific performance, of Owner under the Settlement, whether incurred before or after the date of delivery of this Guaranty (the “Obligations”). This is a guaranty of payment, not of collection, and as such, City shall not be required to institute, pursue, or exhaust any remedies against Owner before instituting suit, obtaining judgment, and executing thereon against Guarantor under this Guaranty.

2. Rights of City. Guarantor hereby grants to City, in City's discretion and without the need to notify or obtain any consent from Guarantor, and without termination, impairment, or any other effect upon Guarantor's duties hereunder, the power and authority from time to time:

(a) to renew, compromise, extend, accelerate, or otherwise change, substitute, supersede, or terminate the terms of performance of any of the Obligations, in each case in accordance with the Settlement;

(b) to grant any indulgences, forbearances, and waivers, on one or more occasions, for any length of time, with respect to Owner's performance of any of the Obligations; and

(c) to accept collateral, further guaranties, and/or other security for the Obligations, and, if so accepted, then to impair, exhaust, exchange, enforce, waive, or release any such security.

3. Performance. If any of the Obligations are not performed according to the tenor thereof, and any applicable notice and cure period provided by the Settlement has expired ("Default"), Guarantor shall immediately upon receipt of written demand by City (a) perform or cause Owner to perform the Obligation in Default, and (b) pay, reimburse, and indemnify City against any liabilities, damages, and related costs (including attorneys' fees) incurred by City as a result thereof up to but not to exceed a maximum cumulative amount of five million dollars (\$5,000,000), all in such manner and at such times as City may reasonably direct.

4. Satisfaction. Satisfaction by Guarantor of any duty hereunder incident to a particular Default or the occurrence of any other Default shall not discharge Guarantor except with respect to the Default satisfied, it being the intent of Guarantor that this Guaranty be continuing until twenty (20) years after the execution date of this Guaranty or such time as all of the Obligations have irrevocably been discharged in full, whichever is sooner, at which time this Guaranty shall automatically terminate. If at any time the performance of any Obligation by Owner or Guarantor is rescinded or voided under the federal Bankruptcy Code or otherwise, then Guarantor's duties hereunder shall continue and be deemed to have been automatically reinstated, restored, and continued with respect to that Obligation, as though the performance of that Obligation had never occurred, regardless of whether this Guaranty otherwise had terminated or would have been terminated following or as a result of that performance.

5. Notice of Acceptance. Guarantor waives and acknowledges notice of acceptance of this Guaranty by City.

6. Waivers by Guarantor. Guarantor hereby waives and agrees not to assert or take advantage of:

(a) all set-offs, counterclaims, and, subject to Section 3 above, all presentments, demands for performance, notices of non-performance, protests, and notices of every kind that may be required by Applicable Laws;

(b) any right to require City to proceed against Owner or any other person, or to require City first to exhaust any remedies against Owner or any other person, before proceeding against Guarantor hereunder;

(c) any defense based upon an election of remedies by City;

(d) any duty of City to protect or not impair any security for the Obligations;

(e) the benefit of any laws limiting the liability of a surety;

(f) any duty of City to disclose to Guarantor any facts concerning Owner, the Settlement, or any other circumstances, that would or allegedly would increase the risk to Guarantor under this Guaranty, whether now known or hereafter learned by City, it being understood that Guarantor is capable of and assumes the responsibility for being and remaining informed as to all such facts and circumstances; and

(g) until all Obligations in Default have been fully paid and/or performed, any rights of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery for any payment or performance by it hereunder. For the avoidance of doubt, if any amount is paid to Guarantor in violation of this provision, such amount shall be held by Guarantor for the benefit of, and promptly paid to, City.

7. Cumulative Remedies. The rights and remedies of City hereunder shall be cumulative and not alternative to any other rights, powers, and remedies that City may have at law, in equity, or under the Settlement. The obligations of Guarantor hereunder are independent of those of Owner and shall survive unaffected by the bankruptcy of Owner. City need not join Owner in any action against Guarantor to preserve its rights set forth herein.

8. Representations and Warranties. Guarantor represents and warrants to City as follows:

(a) Guarantor is a corporation, duly organized, validly existing, and in good standing under the laws of the state of its incorporation. Owner is a direct or indirect wholly-owned subsidiary of Guarantor. Guarantor has all necessary corporate power and authority to execute and deliver this Guaranty and to perform its obligations hereunder.

(b) The execution, delivery and performance of this Guaranty has been duly and validly authorized by all corporate proceedings of Guarantor and is not in violation of any law, judgment of court or government agency. This Guaranty has been duly and validly executed and delivered by Guarantor and constitutes a legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms.

9. Collection Costs. Guarantor hereby agrees to pay to City, upon demand, all reasonable attorneys' fees and other expenses which City may expend or incur in enforcing the Obligations against Owner and/or enforcing this Guaranty against Guarantor, whether or not suit is filed, including, without limitation, all attorneys' fees, and other expenses incurred by City in

connection with any insolvency, bankruptcy, reorganization, arrangement, or other similar proceedings involving Owner that in any way affect the exercise by City of its rights and remedies hereunder.

10. Severability. Should any one or more provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions nevertheless shall be effective.

11. Waiver or Amendment. No provision of this Guaranty or right of City hereunder can be waived, nor can Guarantor be released from Guarantor's duties hereunder, except by a writing duly executed by City. This Guaranty may not be modified, amended, revised, revoked, terminated, changed, or varied in any way whatsoever except by the express terms of a writing duly executed by City.

12. Successors and Assigns. This Guaranty shall inure to the benefit of and bind the successors and assigns of City and Guarantor.

13. Governing Law. This Guaranty shall be governed by and construed in accordance with the laws of the State of California without regard to the principles of conflicts of law thereof.

14. Notices. All notices, requests, claims, demands, and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt) by delivery in the manner contemplated by the Settlement, addressed as follows:

(a) if to City as provided in the Settlement

(b) if to Guarantor:

General Counsel  
NRG Energy, Inc.  
211 Carnegie Center  
Princeton, NJ 08540

or to such other address(es) as the person to whom notice is given may have previously furnished to the others in writing in the manner set forth above.

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be duly executed and delivered to City as of the day written above.

**NRG Energy, Inc.**

By: 

Name: John Chilleani

Title: Senior Vice President

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

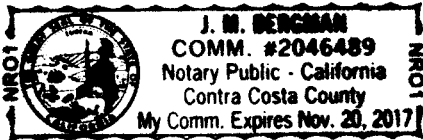
State of California

County of Contra Costa

On January 22, 2014 before me, J.M. Bergman, Notary Public

personally appeared John Chillemi

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature J.M. Bergman  
Signature of Notary Public

**OPTIONAL**

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

**Description of Attached Document**

Title or Type of Document: Independent Guaranty Amount

Document Date: January 22, 2014 Number of Pages: 5

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

RIGHT THUMBPRINT OF SIGNER  
Top of thumb here

Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

RIGHT THUMBPRINT OF SIGNER  
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Signer Is Representing: \_\_\_\_\_

# NRG/ SDG&E/ Carlsbad

## Agreement Compliance Table

Effective Date: January 14, 2013

Item	Sub-Item	Topic	Description	Agreement Section	Timing	Status/Issues/Comments	Lead
1		Memorandum of Agreement	City and NRG to execute recordation of Memorandum of Agreement (Exhibit H).	2.2(a)	As soon as possible following Effective Date.		City- G. Barberio, C. Brewer NRG-
2	a.	AH Lift Station & V-C Interceptor Sewer Easements	City to provide project description to NRG regarding easements for AH Lift Station and V-C Interceptor Sewer Pipeline that coordinates with Poseidon easement.	2.4(a)	As soon as possible.	Completed – City provided project description to NRG via email on 01/14/14.	City- T. Smith, G. Barberio, C. Brewer
	b.		NRG to submit application to the CEC (for amendment to allow for easements) within 60 days after receipt of project description.	2.4(a)	Within 60 days after 01/14/14 – by 03/15/14.		City- T. Smith, G. Barberio, C. Brewer NRG-
	c.		NRG to execute easements within 10 days of CEC approval.	2.4(a)	Within 10 days of CEC approval.		City- T. Smith, G. Barberio, C. Brewer NRG-
3		IODs –Land Transfers (NRG)	NRG to grant IODs for the Hubbs Site Parcel, Bluff Area Parcel, South Power Plant Parcel, and Fishing Beach, as described in PC Reso. 6632.	2.4(B)	Within 90 days of the Effective Date – by 04/14/14.		City- G. Barberio, G. Van Peski, C. Hazeltine, C. Brewer

Item	Sub-Item	Topic	Description	Agreement Section	Timing	Status/Issues/Comments	Lead
							NRG-
4	a.	NRG's Independent Guaranty	NRG to deliver to City a Guaranty from NRG Energy, Inc., in the form of Exhibit R, in the amount of \$5,000,000.	2.5(a)	Within 10 business days of Effective Date – by 01/29/14.	Completed – Received by the City via FedEx on 01/27/14.	City- G. Barberio, C. Brewer NRG-
	b.		City to release this Guaranty once all obligations under Agreement have been satisfied; or	2.5(a)	Upon satisfaction of all NRG obligations under the Agreement.		City- G. Barberio, C. Brewer NRG-
	c.		If the CEC does not approve CECP Amended and NRG notifies City in writing that NRG is ending further development of CECP Amended, and provided NRG does not have any outstanding liabilities or obligations to the City under the Agreement, the City's consent to release the \$5,000,000 Guaranty will not be unreasonably withheld.	2.5(a)	Upon notice to City from NRG.		City- G. Barberio, C. Brewer NRG-
5	a.	NRG's EPS Shutdown Guaranty	Within 10 business days after the Final Shutdown Date, NRG to increase the amount of the Guaranty by \$20,000,000, bringing total to \$25,000,000.	2.5(b)	Within 10 business days after the Final Shutdown Date – the earlier of (a) midnight December 31, 2017, or (b) commercial operation date of CECP Amended.		City- G. Barberio, C. Brewer NRG-
	b.		Upon NRG's request, the City shall release the \$20,000,000 (Shut Down	2.5(b)	Upon NRG's request, after		City- G. Barberio, C.



Item	Sub-Item	Topic	Description	Agreement Section	Timing	Status/Issues/Comments	Lead
			Guaranty Amount) following NRG's satisfaction of all obligations under Agreement Section 6.1 – EPS Demolition and Removal of Above-Ground Structures.		satisfaction of all obligations under Section 6.1 of the Agreement (EPS Demolition and Removal of Above-Ground Structures).		Brewer NRG-
	c.		Following commencement of EPS demolition and removal of above-ground structures, and provided NRG does not have any outstanding liabilities or obligations to the City under the Agreement, NRG may request, and the City may reasonably consider, a proportionate reduction in the Shut Down Guaranty Amount upon the completion of certain key milestones, with such milestones and reductions to be established by NRG and the City at such time.	2.5(b)	Upon NRG's request, following commencement of EPS demolition and removal of above-ground structures.		City- G. Barberio, C. Brewer NRG-
6	a.	NRG's SDG&E Service Center Relocation Guaranty	Within 10 business days after the EPC Contract Notice to Proceed is issued, NRG to increase the Guaranty amount by an additional \$22,500,000 (Relocation Guaranty Amount), for total Guaranty amount of \$47,500,000.	2.5(c)	Within 10 business days after the EPC Contract Notice to Proceed for New Service Center is issued.		City- G. Barberio, C. Brewer NRG-
	b.		If the credit rating for Carlsbad Energy Center is equal to or exceeds NRG Energy, Inc.'s credit rating as of the Effective Date, with the consent of the	2.5(c)	Prior to when the Relocation Guaranty Amount is due,		City- G. Barberio, C. Brewer NRG-

Item	Sub-Item	Topic	Description	Agreement Section	Timing	Status/Issues/Comments	Lead
			City, which shall not be unreasonably withheld, NRG may elect to substitute a Guaranty from Carlsbad Energy Center LLC for the Relocation Guaranty Amount.		which is within 10 business days after the EPC Contract Notice to Proceed is issued.		
	c.		Upon NRG's request, the City shall release the Relocation Guaranty Amount following NRG's satisfaction of all obligations under Article 5 of the Agreement (Relocation of Service Center).	2.5(c)	Upon NRG's request, after satisfaction of all obligations under Article 5 of the Agreement (Relocation of Service Center).		City- G. Barberio, C. Brewer NRG-
	d.		At NRG's request, the City will reduce the Relocation Guaranty Amount in proportion to NRG's payments made in accordance with Article 5 of the Agreement (Relocation of Service Center).	2.5(c)	Upon NRG making payments in accordance with Article 5 of the Agreement and at NRG's request.		City- G. Barberio, C. Brewer NRG-
	e.		If NRG makes the \$10,000,000 payment under Section 5.6(b) of the Agreement, following the issuance of the Termination Notice, the City shall release the entire Relocation Guaranty Amount.	2.5(c)	Upon NRG making the \$10,000,000 payment under Section 5.6(b) of the Agreement, following the issuance of the Termination Notice.		City- G. Barberio, C. Brewer NRG-
7	a.	NRG's EPS Shutdown	NRG shall initiate measure to Shut	3.1(a)(i)	Within 30 days of		City- G.

Item	Sub-Item	Topic	Description	Agreement Section	Timing	Status/Issues/Comments	Lead
		Obligations	Down Units 1-5 of EPS, to include, but not be limited to, amending the compliance plan for the EPS in connection with the CA St WRCB's regulation addressing the use of once-through cooling by coastal power plants.		the Effective Date.		Barberio, C. Brewer NRG-
	b.		Subject to the Electric Reliability Removal Conditions and provided that (x) the CPUC has issued a final decision approving a PPA for CECP and (y) the CEC has issued a final decision approving the Amendment, NRG agrees to Shut Down EPS no later than the Final Shutdown Date (the "Shutdown Obligation").	3.1(a)(ii)	The earlier of (a) midnight December 31, 2017, or (b) commercial operation date of CECP Amended.		City- G. Barberio, C. Brewer NRG-
	c.		If NRG issues a final notice to proceed with construction of CECP without having received CPUC approval, such condition shall be deemed satisfied.	3.1(a)(ii)	On-going		City- G. Barberio, C. Brewer NRG-
	d.		Subject to the provisions of Section 3.3 of the Agreement, NRG will diligently apply for and exercise its best efforts to obtain any regulatory approvals and permits needed to Shut Down Units 1-5 and to ensure that the Electric Reliability Removal Conditions are satisfied as soon as reasonably possible. NRG will not, directly or indirectly, request that any regulatory agency with jurisdiction over the Shut Down of EPS deny or delay the	3.1(a)(iii)	On-going		City- G. Barberio, C. Brewer NRG-

Item	Sub-Item	Topic	Description	Agreement Section	Timing	Status/Issues/Comments	Lead
			approvals needed for the Shut Down. Further, NRG will take no action which is cause for the regulatory agency to deny or delay any approvals or other matters needed to satisfy the Electric Reliability Removal Conditions.				
	e.		The Electric Reliability Removal Conditions are solely for the benefit of NRG. If some, but not all, of the Electric Reliability Removal Conditions are not satisfied for reasons other than an Event of Default by NRG or NRG's failure to timely obtain a needed approval for the Shut Down, then NRG, in its sole and absolute discretion, may upon not less than ten (10) days' written notice to the City describing in reasonable detail the unsatisfied condition(s) either: (x) suspend performance of its obligation to Shut Down the applicable Unit or EPS only until such condition is satisfied, or (y) waive the satisfaction of such conditions as NRG may set forth in its sole and absolute discretion in a written notice to the City.	3.1(a)(iv)	Upon not less than ten (10) days' written notice to the City describing in reasonable detail the unsatisfied condition(s).		City- G. Barberio, C. Brewer NRG-
	f.		Notwithstanding anything in this Agreement to the contrary, if the US Dept of Energy ("DOE"), ISO or other entity having jurisdiction over NRG or EPS orders or decrees it necessary for	3.1(a)(v)	On-going		City- G. Barberio, C. Brewer NRG-

Item	Sub-Item	Topic	Description	Agreement Section	Timing	Status/Issues/Comments	Lead
			any Unit or Units to continue to operate past the Final Shutdown Date, then NRG shall be permitted to operate the applicable Unit or Units in accordance with such order or decree. Nothing in this subsection 5 shall relieve either Party from its support obligations under Section 3.4 of the Agreement or prevent either Party from challenging the effectiveness or legality of such order, provided, however, each Party shall provide the other Party copies of any such order and any legal challenges to such order. In the event NRG receives an order under Section 3.1(a)(v) of the Agreement, NRG and City shall comply with Section 3.4 of the Agreement until such time as the Unit or Units is/are released from such order.				
	g.	NRG's EPS Liquidated Damages	Notwithstanding any provision in this Agreement to the contrary, in the event that CECP becomes commercially operable and EPS continues to operate, NRG will pay the City (on a monthly basis), a liquidated damages payment equal to \$1/kW-mo. multiplied by the greater of (a) the generating capacity of the Unit or Units (in MW) remaining online past the Final Shutdown Date or (b) 300 MW. If the Shutdown occurs during a	3.1(a)(vi)	After the commercial operation date of CECP Amended.		City- G. Barberio, C. Brewer NRG-

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			portion of a calendar month, then the monthly payment shall be pro-rated based on the number of days during which the Unit or Units were operational and the number of days in that calendar month. Such liquidated damages shall continue until the Shutdown of EPS.				
8		Accelerated EPS Shut Down	Nothing in the Agreement prohibits NRG from an accelerated Shutdown of a Unit or Units, in advance of the Final Shutdown Date.	3.1(b)	On-going		City- G. Barberio, C. Brewer NRG-
9		EPS Post-Shut Down Activities	Within ninety (90) days of the Shutdown of EPS, NRG (i) shall ensure that the EPS facilities and improvements are in a secure, inoperable condition and do not pose a physical or environmental safety hazard to members of the public or visitors of the Encina Site, consistent with Prudent Utility Practices and all applicable regulatory requirements and approvals; (ii) shall seek to terminate applicable permits and registrations that are no longer needed after the Shutdown of EPS, (iii) shall request termination of the ISO Participating Generator Agreement and FERC market-based rate tariff as applicable to EPS, and (iv) shall take appropriate actions in support of those requests, consistent with all	3.1(c)	Within ninety (90) days of the Shutdown of EPS.		City- G. Barberio, C. Brewer NRG-

Item	Sub-Item	Topic	Description	Agreement Section	Timing	Status/Issues/Comments	Lead
			applicable legal requirements.				
10		Notices Regarding Electric Reliability Removal Conditions	NRG shall promptly provide the City with copies of any and all notices, correspondence or other documents to or from the ISO, FERC or other agency relating to the Electric Reliability Removal Conditions; provided, however, that failure to provide copies of such notices shall not constitute an event of default under Section 7.1 of the Agreement.	3.2	On-going		NRG- City- G. Barberio, C. Brewer
11		Limitation on Future Contracts on the EPS site	With the exception of any contractual arrangements required to be entered into in connection with Electric Reliability Removal Conditions, NRG represents, warrants and covenants that its obligation to Shut Down EPS under the Agreement shall not be limited by any existing contracts it has or may in the future have to operate any or all of the Units on the Encina Site.	3.3	On-going		NRG- City- G. Barberio, C. Brewer
12	a.	No Actions to Prolong Need for EPS	NRG agrees not to take any actions that may prolong the need for EPS to continue operating for electric reliability or any other purposes inconsistent with the terms and conditions of this Agreement	3.3	On-going, until the Final Shutdown Date.		City- G. Barberio, C. Brewer NRG-
	b.		City acknowledges that NRG has the right, in its sole and absolute discretion so long as consistent with the terms and conditions of the	3.3	On-going, until the Final Shutdown Date.		City- G. Barberio, C. Brewer NRG-

Item	Sub-Item	Topic	Description	Agreement Section	Timing	Status/Issues/Comments	Lead
			Agreement, to continue to operate, maintain, repair, replace and improve EPS, in accordance with all applicable laws, regulations, and permits, until the Final Shutdown Date;				
	c.		NRG may be required to operate, maintain and repair EPS beyond the Final Shutdown Date if the Electric Reliability Removal Conditions have not been met.	3.3	On-going		City- G. Barberio, C. Brewer NRG-
13	a.	NRG's Support for EPS Shutdown Efforts	NRG shall submit to the ISO a written notice of intent to retire the Encina Power Station as of Final Shutdown Date.	3.4(a)(i)	No later than fifteen (15) business days after approval of the Amendment by the CEC.		City- G. Barberio, C. Brewer NRG-
	b.		NRG shall deliver a letter (the " <u>NRG Support Letter</u> "), in the form attached as <u>Exhibit D</u> to the Agreement, to other governmental agencies or third parties.	3.4(a)(ii)	Within five (5) business days of the City's request.		City- G. Barberio, C. Brewer NRG-
14	a.	City's Support of NRG's Regulatory Compliance Pending EPS Shutdown	As long as there is not an Event of Default by NRG under this Agreement, for period beginning with the Effective Date and ending on the Final Shutdown Date, the City agrees to support any and all regulatory approvals required for the continued operation of any of the Units before Shutdown.	3.4(b)	On-going, until the Final Shutdown Date.		City- G. Barberio, C. Brewer NRG-
	b.		The City shall submit a letter from the City Attorney (" <u>City Support Letter</u> "),	3.4(b)(i)	Within five (5) business days of		City- C. Brewer, G.



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			to the relevant governmental agency, in the form attached to the Agreement as <u>Exhibit E</u> .		NRG's request.		Barberio NRG-
	c.		The City shall participate in a reasonable number of meetings with the relevant governmental agencies, provided that the City's participation under subsection 3.4b)(ii) of the Agreement shall consist of verbally affirming City's support for the renewal or issuance of the relevant regulatory approval for EPS, as stated in the City Support Letter.	3.4(b)(ii)	Upon reasonable prior notice provided by NRG.		City- G. Barberio, C. Brewer
	d.		In the event of a dispute between the Parties regarding the City's compliance with its obligations under Sections 3.4(b)(i)-(ii) of the Agreement, and before NRG delivers any Notice of Default under Article 7 of the Agreement for noncompliance with these obligations, both Parties shall, upon request of either Party, meet and confer in good faith to attempt to resolve such dispute over a period of ten (10) business days.	3.4(b)	On-going – Upon request of either Party.		City- G. Barberio, C. Brewer NRG-
	e.		NRG shall not deliver a Notice of Default under Article 7 of the Agreement for City's alleged non-compliance with its obligations under Sections 3.4(b)(i)-(ii) of the Agreement before the expiration of the ten (10) business day period following delivery	3.4(b)	On-going		City- G. Barberio, C. Brewer NRG-

Item	Sub-Item	Topic	Description	Agreement Section	Timing	Status/Issues/Comments	Lead
			to the City of written notice of such dispute.				
	f.		Any other actions by the City in support of NRG's regulatory compliance pending Shutdown in addition to the actions specified under Section 3.4(b) of the Agreement shall be at the sole discretion of the City.	3.4(b)	On-going		City- G. Barberio, C. Brewer
	g.		If the City decides to rescind its support on or after the Final Shutdown Date, then the City may, in its sole discretion, take such action as it deems appropriate to oppose or condition the continued operation of EPS or any portion of EPS, including, but not limited to, opposing the extension or renewal of any operating permits and/or the imposition by governmental regulatory authorities of air and water quality mitigation measures or other operating requirements or limitations	3.4(b)	On or after the Final Shutdown Date.		City- G. Barberio, C. Brewer
15	a.	Encina Site Fossil Fuel Generation Limitation	NRG agrees to limit fossil fuel generation on the Encina Site to the generating capacity proposed in the current project description (e.g., six LMS100s) to be proposed in the Petition to Amend and any black start equipment potentially required by the ISO.	3.5	On-going		City- G. Barberio, C. Brewer NRG-
	b.		NRG agrees that no future modifications to the CECP shall be	3.5	On-going		City- G. Barberio, C.

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			undertaken that exceed the environmental envelope, profile or footprint of CECP as presented in the Amendment.				Brewer NRG-
	c.	Encina Site Fossil Fuel Deed Restriction	NRG shall record a restrictive covenant for the benefit of the City in the Official Records, in the form attached to the Agreement as <u>Exhibit J</u> , which provides that no portion of the Encina Site, with the exception of the CECP Site, may be used to generate electricity with equipment or machinery that is powered by the combustion of fossil fuels (except the following used on the Encina Site: ancillary equipment or machinery; back-up generators; or distributed energy sources approved by the City in a redevelopment plan), all as more particularly set forth in such exhibit (the " <u>Fossil Fuel Restriction</u> "). Except with respect to the Existing Secured Loan Parties as provided in Section 2.2 of this Agreement, the Fossil Fuel Restriction shall constitute covenants running with the land, binding on successors and assigns of NRG.	3.5	Within ten (10) business days after the Shut Down.		City- G. Barberio, C. Brewer NRG-
	d.		In the event that an Existing Secured Loan Party, or its successor or assignee, takes ownership or possession of the Site and fails to assume NRG's obligations and rights	3.5	On-going		City- G. Barberio, C. Brewer NRG-

Item	Sub-Item	Topic	Description	Agreement Section	Timing	Status/Issues/Comments	Lead
			<p>under the Agreement under Section 2.2 of the Agreement, and the Agreement terminates after the Fossil Fuel Restriction has been recorded, then following any such termination the City shall, at the written request of NRG or the Existing Secured Loan Party (or its successor or assignee), execute and cause a quitclaim deed to be recorded in the Official Records evidencing the termination of the Fossil Fuel Restriction; this obligation of the City shall survive any such termination of the Agreement. Notwithstanding the foregoing, and also as provided in Section 2.2 of the Agreement, the Parties understand and agree that, in the event of a refinancing of the Existing Secured Loan that provides for full repayment, NRG shall ensure – supported by written evidence reasonably satisfactory to the City – that the Agreement, including the Fossil Fuel Restriction, has priority over the deed of trust securing the refinanced loan and, accordingly, that the Fossil Fuel Restriction shall thereafter be binding on all successors and assigns of NRG without exception.</p>				
16		City Support for Continued EPS	Provided that NRG is not in default under any obligations to the City	4.1(a)	On-going, through the Final		City- G. Barberio, C.

Item	Sub-Item	Topic	Description	Agreement Section	Timing	Status/Issues/Comments	Lead
		Operation	under the Agreement and in substantial compliance with the provisions of the Amendment agreed to by the City, the City agrees not to oppose permits or authorities accommodating the continued operation of the EPS through the Final Shutdown Date.		Shutdown Date.		Brewer NRG-
17	a.	City Support for CECP Amended CEC Application	The City shall support the CECP Amendment application to the CEC.	4.1(b)	On-going		City- G. Barberio, C. Brewer NRG-
	b.		The City has a reasonable and meaningful opportunity to review and comment on the CECP Amendment application prior to filing with the CEC to confirm that the Amendment is consistent with <u>Exhibit G</u> and the Amendment is filed with the CEC consistent with the provisions of <u>Exhibit G</u> .	4.1(b)	Prior to the CECP Amended application being filed with the CEC.		City- G. Barberio, C. Brewer NRG-
	c.		The City will issue the City Support letter, a form of which is set forth in <u>Exhibit E</u> , in connection with the CECP Amendment application and to government agencies as requested by NRG.	4.1(b)	Concurrent with the CECP Amended application to the CEC.		City- G. Barberio, C. Brewer NRG-
	d.		The City shall also participate in a reasonable number of meetings with the relevant governmental agencies, provided that the City's participation under this subsection shall consist of	4.1(b)	Upon reasonable prior notice provided by NRG.		City- G. Barberio, C. Brewer NRG-

Item	Sub-Item	Topic	Description	Agreement Section	Timing	Status/Issues/Comments	Lead
			verbally affirming City's support for the CECP Amendment application.				
18	a.	CECP Amended Hours of Operation Limitation	As per the request of the City, NRG will incorporate a provision in the Petition to Amend to be filed with the Commission in connection with the Amendment and in any power purchase agreement for CECP that CECP will not operate between the hours of midnight and 6 am, except to the extent reasonably required for reliability-related purposes or as otherwise required by the ISO Tariff.	4.1(c)	Concurrent with and included in the CECP Amended application to the CEC.		City- G. Barberio, C. Brewer NRG-
	b.		A decision by the CEC declining to apply the midnight to 6 am hours of operation limitation to the CECP shall not absolve the City of its support obligation set forth in Section 4.1(b).	4.1(c)	On-going		City- G. Barberio, C. Brewer NRG-
19		Fire Safety Concerns	NRG agrees to work with the Carlsbad Fire Department in good faith to address in the CECP Amended application those fire safety concerns that were previously raised in connection with the original Application and any other reasonable fire safety concerns raised during the Amendment process.	4.2(a)	On-going		City- M. Lopez, G. Barberio NRG-
20		NRG Payment of City Costs	NRG agrees to reimburse the City for costs incurred in accordance with actual services performed by the City as contemplated by currently adopted fee and permit schedules, including	4.2(b)	On-going		City- M. Peterson, G. Barberio NRG-

Item	Sub-Item	Topic	Description	Agreement Section	Timing	Status/Issues/Comments	Lead
			applicable and appropriate impact fees, which are not expected to exceed \$1 MM.				
21		Provision of City Services to CECP Amended Site	The City, CMWD and NRG will work together to establish related services to CECP, including recycled water supply, potable water supply, sanitary sewer service and fire response.	4.2(c)	On-going		City- T. Smith, M. Lopez, G. Barberio NRG-
22		Provision of SDG&E Gas Line Service to CECP Amended Site	The City will work with NRG to accommodate gas line service to CECP on the east side of the railroad tracks.	4.2(d)	On-going		City- M. Peterson, CED/LDE, G. Barberio NRG-
23			SDG&E has advised the City that with the early retirement of SONGS and future closures of plants that use once-through cooling technology, the SDG&E area will be deficient of electricity generating capacity by 2018. SDG&E has requested that the City support the Amendment for the development of CECP as set forth in this Agreement	5.1(a)	On-going		City- G. Barberio, C. Brewer SDG&E-
24		SDG&E Agreement to Relocate Service Center	Subject to regulatory approvals and other conditions and agreements specified here, SDG&E has agreed to the relocation of SDG&E's North Coast Service Center, currently located at the corner of Cannon Road and Carlsbad Boulevard (" <u>North Coast Service Center Site</u> "), with the North Coast Service Center Site and certain	5.1(b)	On-going		City- G. Barberio, C. Brewer SDG&E-

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			other properties to be transferred to the City upon completion and occupancy of the newly relocated North Coast Service Center (" <u>New Service Center</u> ").				
25	a.	New Service Center Basic Cost Principles	The New Service Center is to be built at NRG's sole cost, subject to the NSC Cost Cap (defined in Agreement), and to SDG&E's specifications and conditions. NRG will build the New Service Center, or will cause it to be built, in accordance with such specifications;	5.1(c)	On-going		City- G. Barberio, C. Brewer SDG&E-
	b.		The City, in its sole discretion, may elect to build the New Service Center, or to cause it to be built.	5.1(c)	On-going		City- G. Barberio, C. Brewer
	c.		The Parties acknowledge and agree that the cost of the relocation and the construction of the New Service Center, and the structure of the transaction, will be at no cost to the City or to SDG&E, and in a manner that is cost-neutral to SDG&E and its ratepayers.	5.1(c)	On-going		City- G. Barberio, C. Brewer SDG&E- NRG-
26		NRG Agreement to Make Payment to City if Service Center is not Relocated	If the City and SDG&E do not proceed with the proposed relocation of the New Service Center, then NRG shall make the payment to the City in	5.1(d)	On-going		City- G. Barberio, C. Brewer SDG&E-



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			accordance with Section 5.6(b) of the Agreement.				
27	a.	Identification of Property for New Service Center	The City and SDG&E will work together to identify a mutually acceptable alternative location for the New Service Center to be located (" <u>New Service Center Location</u> ").	5.2(a)	On-going		City- G. Barberio, C. Brewer SDG&E- NRG-
	b.		SDG&E and the City may review: (i) the land currently owned by SDG&E north of Cannon Road known as Parcel 11 (a legal description of Parcel 11 is attached to the Agreement as <u>Exhibit L</u> , a map of Parcel 11 is attached to the Agreement as <u>Exhibit M</u> ) as an alternative location for the New Service Center.	5.2(a)	On-going		City- G. Barberio, C. Brewer SDG&E- NRG-
	c.		SDG&E and the City may review: (ii) another site as an alternative location for the New Service Center that is mutually acceptable to both the City and SDG&E, as determined by each in its respective and sole discretion, provided that such site shall be made available at no cost to SDG&E.	5.2(a)	On-going		City- G. Barberio, C. Brewer SDG&E- NRG-
	d.		The City shall cooperate on community outreach and education on the New Service Center Location.	5.2(a)	On-going		City- G. Barberio, C. Brewer SDG&E- NRG-

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28		Termination of Process to Identify Property for New Service Center	In the event that SDG&E and the City cannot agree on a mutually acceptable New Service Center Location by March 1, 2016, then either the City or SDG&E may provide the Termination Notice as set forth in Section 5.6 of the Agreement.	5.2(b)	After March 1, 2016.		City- G. Barberio, C. Brewer SDG&E- NRG-
29	a.	New Service Center Feasibility Studies	SDG&E will meet with the City to identify and cause the environmental, land use, traffic and nodal analysis studies associated with studying the feasibility of the New Service Center (" <u>Feasibility Studies</u> ") to be prepared.	5.3(a)	Within sixty (60) days after the Effective Date.		City- G. Barberio, C. Brewer SDG&E- NRG-
	b.		SDG&E shall pay for the Feasibility Studies subject to reimbursement for such studies as provided for in the agreement.	5.3(a)	On-going		City- G. Barberio, C. Brewer SDG&E- NRG-
30	a.	New Service Center Specifications and Budget/Cost Estimate	SDG&E will provide all required specifications and conditions for the New Service Center to NRG and the City.	5.3(b)	As soon as reasonably possible, but by no later than March 31 <sup>st</sup> , 2015.		City- G. Barberio, C. Brewer SDG&E- NRG-
	b.		SDG&E will provide a budget and cost statement representing its budget for the NSC Costs (defined in the Agreement), including, to the extent available, (i) any available budget or cost estimates for the construction of the New Service Center; and (ii) a	5.3(b)	As soon as reasonably possible, but by no later than March 31 <sup>st</sup> , 2015.		City- G. Barberio, C. Brewer SDG&E- NRG-

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			statement or budget of all other costs for the relocation (including the Feasibility Studies) of the North Coast Service Center.				
	c.		Such budget will not exceed the NSC Cost Cap as provided in Section 5.4 of the Agreement and will be prepared such that the New Service Center can be reasonably and prudently constructed for an amount that will not exceed the NSC Cost Cap.	5.3(b)	As soon as reasonably possible, but by no later than March 31 <sup>st</sup> , 2015.		City- G. Barberio, C. Brewer SDG&E- NRG-
31	a.	New Service Center Construction Cost Cap and NRG's Funding Commitment	NRG agrees to fund up to \$22.5 million (\$22,500,000) (the " <u>NSC Cost Cap</u> ") toward the "all-in" cost of the relocation of the North Coast Service Center according to SDG&E's specifications and conditions, including the cost of construction, furniture, fixtures, equipment, IT infrastructure, architectural, engineering and consulting costs, all relocation costs, reasonable contingencies and the reimbursements for the Feasibility Studies under Section 5.3(a) of the Agreement (collectively, the " <u>NSC Costs</u> ").	5.4(a)	On-going		City- G. Barberio, C. Brewer SDG&E- NRG-
	b.		NRG's obligation to fund the NSC Costs is conditioned upon NRG's	5.4(b)	On-going		City- G. Barberio, C.

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			issuance of a final notice to proceed under its engineering, procurement and construction contract for CECP (the " <u>EPC Contract Notice to Proceed</u> ").				Brewer SDG&E- NRG-
32	a.	Review of NSC Cost Cap	Upon NRG's issuance of the EPC Contract Notice to Proceed, NRG, SDG&E and the City shall meet to review the projected NSC Costs in relation to the NSC Cost Cap and construction of the New Service Center.	5.4(c)	Within thirty (30) days of the issuance of the EPC Contract Notice to Proceed by NRG.		City- G. Barberio, C. Brewer SDG&E- NRG-
	b.		If the projected NSC Costs are less than or equal to the NSC Cost Cap, and a Termination Notice has not been issued under Section 5.6 of the Agreement, NRG will build the New Service Center, or will cause it to be built, in accordance with SDG&E's specifications and conditions.	5.4(c)(i)	On-going		City- G. Barberio, C. Brewer SDG&E- NRG-
	c.		The City, in its sole discretion, may elect to build the New Service Center, or to cause it to be built. Subject to the NSC Cost Cap and the conditions and provisions stated in the Agreement.	5.4(c)(i)	On-going		City- G. Barberio, C. Brewer SDG&E- NRG-
	d.		Subject to the NSC Cost Cap, SDG&E will be reimbursed by NRG for costs associated with the Feasibility Studies	5.4(c)(i)	On-going		City- G. Barberio, C. Brewer

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			and such reimbursement shall be made as agreed by NRG and SDG&E. Any amounts reimbursed for Feasibility Studies will reduce the NSC Cost Cap on a dollar-for-dollar basis.				SDG&E- NRG-
33	a.	NSC Costs In Excess of NSC Cost Cap	If the projected NSC Costs exceed the NSC Cost Cap, SDG&E, NRG and the City shall meet in good faith to consider potential modifications to Article 5 of the Agreement, including, without reservation, changes to the New Service Center specifications and conditions, the NSC Cost Cap, or agreements to fund the costs in excess of the NSC Cost Cap.	5.4(c)(ii)	On-going		City- G. Barberio, C. Brewer SDG&E- NRG-
	b.		Any subsequent modifications will be strictly subject to execution of future binding definitive agreements and obtaining any required regulatory approvals.	5.4(c)(ii)	On-going		City- G. Barberio, C. Brewer SDG&E- NRG-
34	a.	SDG&E Conditions for Relocation of North Coast Service Center	SDG&E's Relocation of the North Coast Service Center is subject to the following conditions:  Identification of the New Service Center Location in accordance with Section 5.2 of the Agreement.	5.5(a)	On-going		SDG&E- City- G. Barberio, C. Brewer NRG-
	b.		SDG&E obtaining any required regulatory approvals with the	5.5(b)	On-going		SDG&E- City- G.

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			understanding that SDG&E will diligently and in good faith seek all regulatory approvals needed for the relocation of the North Coast Service Center as contemplated in the Agreement.				Barberio, C. Brewer NRG
	c.		A Private Letter Ruling, if necessary, satisfactory to SDG&E, issued by the Internal Revenue Service confirming the tax treatment of the transactions outlined in the Agreement.	5.5(c)	On-going		SDG&E- City- G. Barberio, C. Brewer NRG
	d.		Construction of the New Service Center and turnover of the completed and operational New Service Center to SDG&E.	5.5(d)	On-going		SDG&E- City- G. Barberio, C. Brewer NRG
35	a.	Termination of Proposed Relocation of North Coast Service Center	Either the City or SDG&E may issue a notice terminating the obligations and agreement to relocate the North Coast Service Center (the " <u>Termination Notice</u> ") under the following circumstances:	5.6(a)	On-going		City- G. Barberio, C. Brewer SDG&E- NRG-
	b.		If the City and SDG&E cannot agree upon a mutually acceptable New Service Center Location.	5.6(a)(i)	On-going		City- G. Barberio, C. Brewer SDG&E- NRG-
	c.		If construction of the New Service Center does not commence before	5.6(a)(ii)	On-going		City- G. Barberio, C.

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			the third (3rd) anniversary of the commercial operation date for CECP Amended.				Brewer SDG&E- NRG-
	d.		If the projected cost of relocation of the North Coast Service Center cannot be accomplished within the NSC Cost Cap, and SDG&E, NRG and the City are unable to agree upon subsequent modifications pursuant to Section 5.4(c)(ii) of the Agreement.	5.6(a)(iii)	On-going		City- G. Barberio, C. Brewer SDG&E- NRG-
	e.		If SDG&E and the City jointly elect not to proceed with the relocation of the North Coast Service Center.	5.6(a)(iv)	On-going		City- G. Barberio, C. Brewer SDG&E- NRG-
36	a.	NRG Payment if North Coast Service Center is not Relocated	If the New Service Center does not proceed and NRG does not fund the costs of the New Service Center, NRG shall be responsible for a payment as provided in this <u>Section 5.6(b)</u> of the Agreement.	5.6(b)	On-going		City- G. Barberio, C. Brewer NRG- SDG&E-
	b.		NRG shall pay the City of Carlsbad the sum of \$10 million (\$10,000,000).	5.6(b)	Within 30 days of receipt of the Termination Notice issued by either the City or SDG&E.		City- G. Barberio, C. Brewer NRG- SDG&E-
	c.		NRG will owe the \$10 million amount only if CECP Amended achieves	5.6(b)	Within 30 days of commercial		City- G. Barberio, C.

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			commercial operation. , in which case NRG shall make the payment		operation of CECP Amended or the Termination Notice, whichever is later.		Brewer NRG-SDG&E-
37		Termination Notice and NRG's Ongoing Obligations	Notwithstanding any other provision in the Agreement, the City's issuance of a Termination Notice will not affect NRG's remaining obligations under the Agreement, except to the extent expressly set forth in this Article 5 of the Agreement.	5.6(c)	On-going		City- G. Barberio, C. Brewer NRG-SDG&E-
38		SDG&E Transfer of Property to the City	SDG&E shall transfer: (i) the existing North Coast Services Center Site and buildings; (ii) Cannon Park (a legal description of Cannon Park is attached to the Agreement as <u>Exhibit N</u> , a map of Cannon Park is attached to the Agreement as <u>Exhibit O</u> ); and, (iii) the Agua Hedionda North Shore Bluff Parcel (APN 206-070-16) (a legal description of the Agua Hedionda North Shore Bluff Parcel is attached to the Agreement as <u>Exhibit P</u> , a map of the Agua Hedionda North Shore Bluff Parcel is attached to the	5.7	Upon the completion and occupancy of the New Service Center and simultaneously with SDG&E receiving title to the New Service Center.		City- G. Barberio, C. Brewer SDG&E-NRG-



Item	Sub-Item	Topic	Description	Agreement Section	Timing	Status/Issues/Comments	Lead
			Agreement as <u>Exhibit Q</u> ), to the City in fee simple, free and clear of all financial liabilities and financial liens.				
39	a.	SDG&E Remediation of North Coast Service Center Site	SDG&E will be responsible for remediating preexisting environmental conditions to applicable industrial standards pursuant to applicable law. The City and SDG&E will determine if such remediation shall be conducted before or after the transfer of title.	5.7	On-going		City- G. Barberio, C. Brewer SDG&E- NRG-
	b.		If the site is to be remediated prior to the transfer, SDG&E shall commence the remediation within sixty (60) days after occupancy of the New Service Center, shall proceed in a diligent and timely manner to remediate the site and shall then transfer the properties under Section 5.7 of the Agreement upon completion of the remediation.	5.7	Within sixty (60) days after occupancy of the New Service Center.		City- G. Barberio, C. Brewer SDG&E- NRG-
	c.		If the remediation is to occur following the transfer, the City will provide at least a one-hundred twenty (120) day notice that SDG&E is to commence remediation of the site and the remediation shall proceed in a diligent and timely manner to completion.	5.7	Following the City providing at least a one-hundred twenty (120) day notice that SDG&E is to commence remediation of the site.		City- G. Barberio, C. Brewer SDG&E- NRG-

Item	Sub-Item	Topic	Description	Agreement Section	Timing	Status/Issues/Comments	Lead
40	a.	SDG&E Long-Term Plan for Alternate EPS Substation Site	As part of a long-term plan, and contingent upon execution and regulatory approval of the Proposed PPA, and subject to any other required regulatory approvals, SDG&E will work in good faith with the City to identify and ultimately permit an alternate site for the EPS substation, such that any future material improvements or expansions to the transmission system, beyond those needed for CECP Amended, be made at the alternate site in lieu of the existing EPS substation.	5.8	On-going		City- G. Barberio, C. Brewer SDG&E- NRG-
	b.		SDG&E will update the City at least annually on the status of the long-term plan as it relates to the identification and permitting of such a site.	5.8	On-going; at least annually.		City- G. Barberio, C. Brewer SDG&E- NRG-
	c.		The City acknowledges and agrees that the substation design at the alternate site and any associated transmission design will be based on SDG&E design standards and specifications.	5.8	On-going		City- G. Barberio, C. Brewer SDG&E- NRG-
	d.		The alternate site will be subject to a feasibility review by SDG&E to ensure a constructible site.	5.8	On-going		City- G. Barberio, C. Brewer SDG&E-

Item	Sub-Item	Topic	Description	Agreement Section	Timing	Status/Issues/Comments	Lead
							NRG-
	e.		Any design enhancements requested by the City that are not part of SDG&E's customary design standard and specifications will be paid for by the City unless SDG&E and City otherwise agree.	5.8	On-going		City- G. Barberio, C. Brewer SDG&E- NRG-
41	a.	Demolition and Removal of EPS Above-Ground Structures	Provided that (i) the CPUC has issued a final decision approving a PPA for CECP Amended and (ii) the CEC has issued a final decision approving the Amendment, NRG agrees to fund at its sole cost the physical demolition and removal of the above-ground structures of EPS in accordance with Laws and the milestones set forth in the Agreement.	6.1(a)	Following CPUC approval of PPA and CEC approval of CECP Amended.		City- G. Barberio, C. Brewer NRG-
	b.		If NRG issues a final notice to proceed with construction of CECP Amended without having received CPUC approval, the above condition (i) shall be deemed satisfied.	6.1(a)	Following the issuance of a final Notice to Proceed with construction of CECP Amended.		City- G. Barberio, C. Brewer NRG-
	c.		NRG will obtain all additional permits, if any, consistent with the schedule outlined in the Agreement.	6.1(a)	Following the issuance of a decision by the CEC approving the PTA Application.		City- G. Barberio, C. Brewer NRG-
42		Demolition and	Details regarding the demolition and	6.1(a)	Prior to the		City- G.

Item	Sub-Item	Topic	Description	Agreement Section	Timing	Status/Issues/Comments	Lead
		Removal of EPS Above-Ground Structures Included in CEC Petition to Amend Application	removal of the EPS will be incorporated into the petition to amend (" <u>Petition to Amend</u> ") the CEC-issued license for CECP Amended in which NRG seeks authority to construct CECP Amended as reflected in <u>Exhibit G</u> of the Agreement.		submission of the PTA Application to the CEC.		Barberio, C. Brewer NRG-
43	a.	Timing of Commencement of Demolition and Removal of EPS Above-Ground Structures	Provided that (i) the CPUC has issued a final decision approving a PPA for CECP Amended and (ii) the CEC has issued a final decision approving the Amendment, NRG shall commence physical demolition and removal of the above-ground structures of EPS within one (1) year after Shut Down.	6.1(b)	Within one (1) year after Shut Down of EPS.		City- G. Barberio, C. Brewer NRG-
	b.		NRG will also use good faith efforts to identify opportunities to begin and implement decommissioning prior to such date, including the removal of unused tanks.	6.1(b)	On-going		City- G. Barberio, C. Brewer NRG-
	c.		If NRG issues a final notice to proceed with construction of CECP Amended without having received CPUC approval, the above condition (i) shall be deemed satisfied.	6.1(b)	Following the issuance of a final Notice to Proceed with construction of CECP Amended.		City- G. Barberio, C. Brewer NRG-
44	a.	Timing of Completion of Demolition and	Provided that (i) the CPUC has issued a final decision approving a PPA for CECP and (ii) the CEC has issued a final	6.1(c)	Within two (2) years of the commencement		City- G. Barberio, C. Brewer

Item	Sub-Item	Topic	Description	Agreement Section	Timing	Status/Issues/Comments	Lead
		Removal of EPS Above-Ground Structures	decision approving the Amendment, NRG agrees to complete physical demolition and removal of the above-ground structures of EPS within two (2) years of the commencement of demolition activities.		of demolition activities at EPS.		NRG-
	b.		If NRG issues a final notice to proceed with construction of CECP without having received CPU C approval, the above condition (i) shall be deemed satisfied.	6.2(c)	On-going		City- G. Barberio, C. Brewer NRG-
45	a.	Redevelopment and Remediation of EPS Site	The City and NRG acknowledge that they have a mutual interest in the productive reuse of the Encina Redevelopment Site. The City staff and NRG will work in good faith to address the redevelopment of the Encina Redevelopment Site in the pending General Plan update.	6.2(a)	On-going	Draft General Plan Land Use & Community Design Element text and a Draft Land Use map content agreement between NRG and City reached on 01/30/14.	City- G. Barberio, D. de Cordova, C. Brewer NRG-
	b.		If the City takes fee title to the North Coast Service Center Site, as contemplated by Article 5 of the Agreement, the City and NRG work in good faith to consider a joint development strategy for the Encina Redevelopment Site and the North Coast Service Center Redevelopment Site, comprising basic principles to be identified in a subsequent binding	6.2(b)	On-going		City- G. Barberio, C. Brewer NRG-

Item	Sub-Item	Topic	Description	Agreement Section	Timing	Status/Issues/Comments	Lead
			agreement.				
	c.		NRG shall present an initial proposed strategy for redevelopment of the Encina Redevelopment Site to City staff within one-hundred eighty (180) days of the Effective Date of this Agreement.	6.2(c)	Within one-hundred eighty (180) days of the Effective Date.		City- G. Barberio, C. Brewer NRG-
	d.		With the exception of any remediation required under a CEC decision approving the Amendment or applicable law, remediation of the Encina Redevelopment Site shall be undertaken in conjunction with redevelopment of the Encina Redevelopment Site.	6.2(d)	On-going		City- G. Barberio, C. Brewer NRG-
	e.		The City and NRG shall work in good faith to determine a mutually acceptable and appropriate alignment for the Coastal Rail Trail; provided, however, that failure to reach agreement on the alignment for the Coastal Rail Trail shall not impact performance of the obligations established in the Agreement.	6.2(e)	On-going		City- G. Barberio, C. Hazeltine, C. Brewer NRG-