

**AMENDED AND RESTATED
GUARANTY OF POWER PURCHASE AGREEMENT**

THIS AMENDED AND RESTATED GUARANTY OF POWER PURCHASE AGREEMENT ("Amended Guaranty") dated as of _____, 2021 is executed by the City of Temecula, a California municipal corporation ("Guarantor") in favor of the SMER Research 1, LLC, a California limited liability company ("Power Provider"), with reference to the following:

A. Power Provider and the Southwest Riverside County Energy Authority ("SRCEA"), a California joint powers authority (as "Purchaser") have entered into that certain Solar Power Purchase Agreement dated as of May 9, 2018 (the "Original PPA"), as amended by the First Amendment to Power Purchase Agreement dated _____, 2021 (the "PPA Amendment") (as amended, the "Amended PPA").

B. As a condition to entering into the Original PPA, Power Provider required that Guarantor execute and deliver to Power Provider the Guaranty of Power Purchase Agreement dated May __, 2018 (the "Original Guaranty"), which Original Guaranty was to be effective as of the "Initial PPA Term" and terminate upon the expiration of the "Initial PPA Term" or, if exercised, the termination of the "Extension PPA Term" (as such terms were defined in the Original PPA).

C. In connection with entering into the PPA Amendment, Power Provider has requested that Guarantor execute and deliver to Power Provider this Amended and Restated Guaranty of Power Purchase Agreement ("Amended Guaranty"), which is to be effective as of the "PPA Term" as such term is defined in the Amended PPA and terminate upon the expiration of such "PPA Term" (the "Guaranty Termination Date"), with such period to constitute the "Guaranty Period".

NOW THEREFORE, in consideration of Power Provider entering into the Amended PPA with SRCEA, Guarantor covenants and agrees as follows:

Section 1. Guaranty. During the Guaranty Period, Guarantor absolutely and unconditionally guarantees to Power Provider the timely payment of all amounts that SRCEA may owe under the Amended PPA, or any extensions, renewals, or modifications of the Amended PPA. During the Guaranty Period, Guarantor further guarantees to Power Provider the full, faithful, and timely performance by SRCEA of the Amended PPA, or any extensions, renewals, or modifications of the Amended PPA. If SRCEA shall default in the payment of any sums, costs, or charges, or in the performance of any covenant or obligation under the Amended PPA during the Guaranty Period, then Guarantor, at Guarantor's expense, shall on demand by Power Provider fully and promptly pay all sums, costs, and charges to be paid and perform all other covenants and obligations to be performed by SRCEA pursuant to the Amended PPA. In addition, Guarantor shall on demand by Power Provider pay to Power Provider all sums due to Power Provider, including, without limitation, all interest on past due obligations of SRCEA, costs advanced by Power Provider, damages, and all expenses (including, without limitation, court costs and reasonable attorneys' fees) that may arise in consequence of SRCEA's default.

Section 2. Waivers. Guarantor authorizes Power Provider, without notice or demand and without affecting Guarantor's liability under this Amended Guaranty, to:

(a) consent to any extensions, accelerations, or other changes in the time for any payment provided for in the Amended PPA, or consent to any other alteration of any

covenant, term, or condition of the Amended PPA in any respect, and to consent to any assignment, subletting, or reassignment of the Amended PPA;

(b) take and hold security for any payment provided for in the Amended PPA or for the performance of any covenant, term, or condition of the Amended PPA, or exchange, waive, or release any security; and

(c) apply this security and direct the order or manner of its sale as Power Provider may determine.

Section 3. Independent Obligations. The obligations of Guarantor under this Amended Guaranty are independent of, and may exceed, the obligations of SRCEA. A separate action may, at Power Provider's option, be brought and prosecuted against Guarantor, whether or not any action is first or subsequently brought against SRCEA, or whether or not SRCEA is joined in any action, and Guarantor may be joined in any action or proceeding commenced by Power Provider against SRCEA arising out of, in connection with, or based upon the Amended PPA. Guarantor waives any right to:

(a) require Power Provider to proceed against SRCEA or any other person or entity or pursue any other remedy in Power Provider's power;

(b) complain of delay in the enforcement of Power Provider's rights under the Amended PPA; and

(c) require Power Provider to proceed against or exhaust any security held from SRCEA or Guarantor. Guarantor waives any defense arising by reason of any disability or other defense of SRCEA or by reason of the cessation from any cause of the liability of SRCEA. Guarantor waives all demands upon and notices to SRCEA and to Guarantor, including, without limitation, demands for performance, notices of nonperformance, notices of non-payment, and notices of acceptance of this Amended Guaranty.

Section 4. No Reporting Duty. Guarantor assumes full responsibility for keeping fully informed of the financial condition of SRCEA and all other circumstances affecting SRCEA's ability to perform SRCEA's obligations under the Amended PPA, and agrees that Power Provider will have no duty to report to Guarantor any information that Power Provider receives about SRCEA's financial condition or any circumstances bearing on SRCEA's ability to perform such obligations.

Section 5. Continuing Guaranty. During the Guaranty Period, this Amended Guaranty shall remain in full force notwithstanding the appointment of a receiver to take possession of all or substantially all of the assets of SRCEA, or an assignment by SRCEA for the benefit of creditors, or any action taken or suffered by SRCEA under any insolvency, bankruptcy, reorganization, moratorium, or other debtor relief act or statute, whether now existing or later amended or enacted, or the disaffirmance of the Amended PPA in any action or otherwise.

Section 6. Joint and Several Obligations. If this Amended Guaranty is signed, or if the obligations of SRCEA are otherwise guaranteed, by more than one party, their obligations shall be joint and several, and the release or limitation of liability of any one or more of the guarantors shall not release or limit the liability of any other guarantors.

Section 7. Successors and Assigns. This Guaranty shall be binding upon Guarantor and Guarantor's heirs, administrators, personal and legal representatives, successors, and assigns, and shall inure to the benefit of Power Provider and Power Provider's successors and assigns. Power Provider may, without notice, assign this Amended Guaranty, the Amended PPA, or the sums payable under the Amended PPA, in whole or in part.

Section 8. Guaranty of Costs and Fees. In addition to the amounts guaranteed, Guarantor agrees to pay reasonable attorney's fees and all other costs and expenses incurred by Power Provider in enforcing this Amended Guaranty or in any action or proceeding arising out of, or relating to, this Amended Guaranty.

Section 9. Governing Law. This Guaranty shall be deemed to be made under and shall be governed by California law in all respects, including matters of construction, validity, and performance, and the terms and provisions of this Amended Guaranty may not be waived, altered, modified, or amended except in a writing signed by an authorized officer of Power Provider and by Guarantor.

Section 10. Severance. If any of the provisions of this Amended Guaranty shall contravene or be held invalid under the laws of any jurisdiction, this Amended Guaranty shall be construed as if it did not contain those provisions, and the rights and obligations of the parties shall be construed and enforced accordingly.

Section 11. Counterparts. This Guaranty may be executed in any number of counterparts, each of which shall be a valid and binding original, but all of which together shall constitute one and the same instrument.

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Section 12. Restatement. This Amended Guaranty is an amendment and restatement of the Original Guaranty, and shall, upon the full execution of the PPA Amendment by the parties thereto, replace and supersede the Original Guaranty in its entirety.

Guarantor has executed this Amended Guaranty as of the date first written above.

“GUARANTOR”

CITY OF TEMECULA, a municipal corporation

Aaron Adams, City Manager

ATTEST:

Randi Johl, City Clerk

APPROVED AS TO FORM:

Peter Thorson, City Attorney