

**RESOLUTION NO. 2021-\_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAKE ELSINORE, CALIFORNIA, ACTING AS THE LEGISLATIVE BODY OF CITY OF LAKE ELSINORE AND AS A MEMBER OF THE SOUTHWEST RIVERSIDE COUNTY ENERGY AUTHORITY (SRCEA), APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY BY RESPONSIBLE OFFICERS OF THE FIRST AMENDMENT TO SOLAR POWER PURCHASE AGREEMENT, FIRST AMENDMENT TO SUBLEASE AGREEMENT, AND FIRST AMENDMENT TO LICENSE AGREEMENT, AND APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AMENDED AND RESTATED GUARANTY OF POWER PURCHASE AGREEMENT**

**Whereas**, the City Council (the “Council”) of the City of Lake Elsinore (the “City”) has authorized the formation of the Southwest Riverside County Energy Authority (“SRCEA”), a joint exercise of powers authority duly organized and existing under and pursuant to that certain Joint Powers Agreement by and between the City of Lake Elsinore (the “City”) and the City of Temecula, under the provisions of Articles 1 through 4 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 (commencing with Section 6500) of the California Government Code (the “Act”); and

**Whereas**, the City of Lake Elsinore, acting through the SRCEA, desires to participate in the Local Government Renewable Self-Generation Program pursuant to Public Utilities Code Section 2830 wherein Southern California Edison (“SCE”) offer a tariff (commonly referred to as the “The Renewable Energy Self-Generation Bill Credit Transfer Program” or “RES-BCT” tariff) which allows a local government to generate electricity at one “generating account” and transfer any available bill credit to one or several “benefiting accounts”; and

**Whereas**, the City Council has, through its adoption of Resolution No. 2017-113 on October 10, 2017, previously authorized its representatives to the SRCEA to approve and authorize the execution and delivery of a Solar Purchase Agreement, Sublease Agreement, License Agreement and approved and authorized the City Manager to execute the guaranty of the Power Purchase Agreement; and

**Whereas**, SMER Research 1, LLC has constructed/installed an electricity grid-connected photovoltaic solar power plant on a portion of the Santa Margarita Ecological Reserve owned by San Diego State University and utilize such plant in connection with the RES-BCT; and

**Whereas**, the solar power plant for the benefit of the City account will have generating capacity of approximately 1.055MW (1,840,475 kilowatt hours) of electricity and an adjacent facility that is also proposed that will produce about 2.614MW (4,560,454 kilowatt hours) of electricity for the benefit of the City of Temecula account; and

**Whereas**, SMER Research 1, LLC and San Diego State University would also engage in research at the Santa Margarita Ecological Reserve that would benefit future renewable energy development and habitat restoration in Riverside County; and

**Whereas**, the City Council desires to authorize its representatives to the SRCEA to approve and authorize the execution and delivery of certain amendments to the previously approved agreements, namely the First Amendment to Solar Power Purchase Agreement, First Amendment to Sublease Agreement, First Amendment to License Agreement, (as such terms are defined below), the forms of which are on file in the Office of the City Clerk; and

**Whereas**, the City Council desires to approve and authorize execution and delivery of the Amended and Restated Guaranty of Solar Power Purchase Agreement.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKE ELSINORE DOES HEREBY FIND, DETERMINE AND ORDER AS FOLLOWS:**

**Section 1.** In accordance with the California Environmental Quality Act (CEQA), the approvals of the proposed First Amendment to Power Purchase Agreement, First Amendment to Sublease Agreement, First Amendment to License Agreement and Amended and Restated Guaranty do not require further CEQA review. SMER Research 1, LLC has constructed an electricity grid-connected photovoltaic solar power plant on a portion of the Santa Margarita Ecological Reserve owned by San Diego State University. Potential environmental impacts were analyzed as part of San Diego State University's approval of that construction and installation. The City did not approve any facilities for the generation of electricity and is not participating in the construction of any structures or facilities for the generation of electricity. The proposed amendments modify agreements which only provide for the purchase of electricity by the City of Lake Elsinore from SMER Research 1, LLC. The amendments to the Sublease Agreement and License Agreement with respect to the solar generating site are only pass-throughs of the obligations of and benefits to SMER Research 1, LLC of the existing Ground Lease between SMER Research 1, LLC and San Diego State University dated October 21, 2014 and do not provide for any new or modified structures or facilities or new or modified uses beyond those designated in the Ground Lease. CEQA Guideline section 13578(c) recognizes that an initial project approval includes future discretionary approvals and each subsequent discretionary approval for an approved project does not trigger a new requirement to comply with CEQA: "(c) The term 'project' refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term 'project' does not mean each separate governmental approval." Moreover, the City is only approving the terms and conditions for the purchase of electricity. Consequently, there is no possibility that the proposed amendments will have a significant effect on the environment.

**Section 2.** The form of the First Amendment to Solar Power Purchase Agreement between SMER Research 1 and SRCEA is hereby approved. The designated members of the City Council (and/or designated alternate) serving as the City's representatives on the SRCEA's Board of Directors (each, a "Responsible Officer"), are hereby authorized to approve and take such other actions as are necessary to execute and deliver the First Amendment to the Power Purchase Agreement in the form on file with the Office of the City Clerk with such changes, insertions and omissions as may be approved by the Responsible Officers, with the advice of the City Attorney, such approval to be conclusively evidenced by the execution and delivery thereof.

**Section 3.** The form of the First Amendment to Sublease Agreement between SMER Research 1, LLC and SRCEA is hereby approved. The Responsible Officers are hereby authorized to approve and take such other actions as are necessary to execute and deliver the First Amendment to Sublease Agreement in the form on file with the Office of the City Clerk with such changes, insertions and omissions as may be approved by the Responsible Officers, with the advice of the City Attorney, such approval to be conclusively evidenced by the execution and delivery thereof.

**Section 4.** The form of the First Amendment to License Agreement between SMER Research 1, LLC and SRCEA is hereby approved. The Responsible Officers are hereby authorized to approve and take such other actions as are necessary to execute and deliver the First Amendment to

License Agreement in the form on file with the Office of the City Clerk with such changes, insertions and omissions as may be approved by the Responsible Officers, with the advice of the City Attorney, such approval to be conclusively evidenced by the execution and delivery thereof.

**Section 5.** The form Amended and Restated Guaranty of Solar Power Purchase Agreement is hereby approved. The City Manager is hereby authorized to approve and take such other actions as are necessary to execute and deliver the Amended and Restated Guaranty of Solar Power Purchase Agreement in the form on file with the Office of the City Clerk with such changes, insertions and omissions as may be approved by the City Manager, with the advice of the City Attorney, such approval to be conclusively evidenced by the execution and delivery thereof.

**Section 6.** The Responsible Officers, and each of them, are authorized and directed, for and in the name and on behalf of the City and as the City's representatives serving on the SRCEA's Board of Directors, to take all actions necessary and convenient to implement the agreements described in this resolution and to enter into such additional agreements as may be necessary and convenient to implement the agreements, including but not limited to, executing estoppel certificates, operating memoranda and agreements, certifications, escrow and similar agreements and actions.

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**Section 7.** This Resolution shall take effect from immediately upon its adoption.

**Passed and Adopted** this 12<sup>th</sup> day of January, 2021.

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Robert E. Magee, Mayor

**Attest:**

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Candice Alvarez, MMC  
City Clerk

STATE OF CALIFORNIA     )  
COUNTY OF RIVERSIDE    ) ss.  
CITY OF LAKE ELSINORE    )

I, Candice Alvarez, MMC, City Clerk of the City of Lake Elsinore, California, hereby certify that Resolution No. 2021- \_\_\_\_ was adopted by the City Council of the City of Lake Elsinore, California, at the regular meeting of January 12, 2021, and that the same was adopted by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

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Candice Alvarez, MMC  
City Clerk