

WSPP RESOURCE ADEQUACY CONFIRMATION

This Confirmation under the WSPP Agreement confirms the transaction between AES Redondo Beach, L.L.C., a Delaware limited liability company (“Seller”) and City of San José, a California municipality (“Purchaser”), and each individually a “Party” and together the “Parties”, dated as of July 20, 2021 (the “Effective Date”), by which Seller agrees to sell and deliver, and Purchaser agrees to purchase and receive, the Product (the “Transaction”). This Transaction is governed by the WSPP Agreement dated July 28, 2020 (the “WSPP Agreement”). The WSPP Agreement and this Confirmation, including any applicable appendices, exhibits or amendments thereto, shall be collectively referred to herein as the “Agreement” and will constitute a single agreement between the Parties with respect to the Transaction. Capitalized terms not otherwise defined in this Confirmation or the WSPP Agreement are defined in the Tariff.

ARTICLE 1 **TRANSACTION TERMS**

Product, Delivery Period, Contract Quantity, Contract Price and other specifics of the Product are in Appendix B. Appendices A, B, and C are incorporated into this Confirmation.

Firm RA Product:

Seller shall provide Purchaser with the Product from the Unit in the amount of the Contract Quantity. If the Unit is not available to provide the full amount of the Contract Quantity for any reason, then Seller shall have the option to supply Alternate Capacity pursuant to Section 2.3 to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Contract Quantity and has failed to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period, then Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.

Contingent Firm RA Product:

Seller shall provide Purchaser with Product from the Unit in the amount of the Contract Quantity. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reduction of the Contract Quantity of the Unit in accordance with Section 2.2, Seller shall have the option to notify Purchaser that either (a) Seller will not provide the portion of the Contract Quantity attributable to such reduction during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period pursuant to Section 2.3. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reason other than as provided in Section 2.2, then Seller shall have the option to supply Alternate Capacity pursuant to Section 2.3 to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Expected Contract Quantity from the Unit and has failed to supply Alternate Capacity to fulfill the remainder of the Expected Contract Quantity during such period, then Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.

ARTICLE 2
DELIVERY OBLIGATIONS AND ADJUSTMENTS

2.1 Sale and Delivery of Product

- (a) For each Showing Month of the Delivery Period, Seller shall sell and deliver to Purchaser, and Purchaser shall purchase and receive from Seller, the Expected Contract Quantity of the Product from the Shown Unit(s). Seller's obligation to deliver the Expected Contract Quantity of Product for each day of the Delivery Period is firm and will not be excused for any reason, except for as provided for under Section 5.8.5 of this confirm and Section 10 of the WSPP Agreement.
- (b) Seller shall deliver the Expected Contract Quantity by submitting to CAISO in its Supply Plan the Shown Unit(s) and the characteristics of the Shown Unit(s) and Product for Purchaser, as further specified in Appendix B, all in compliance with this Confirmation.
- (c) Seller shall cause all Supply Plans to meet and be filed in conformance with the requirements of the CPUC and the Tariff. Seller shall submit, or cause the Shown Unit's SC to submit, on a timely basis with respect to each applicable Showing Month, Supply Plans in accordance with the Tariff and CPUC requirements to identify and confirm the Product delivered to Purchaser for each Showing Month of the Delivery Period. The total amount of Product identified and confirmed for each day of such Showing Month shall equal the Expected Contract Quantity.
- (d) Seller may sell and deliver Product from a Shown Unit that meets the requirements set forth in Appendix B. In no event shall a Shown Unit utilize coal or coal materials as a source of fuel or be a nuclear generating facility. A Shown Unit must be a specific resource that is connected directly to the CAISO controlled grid or be under the operational control of CAISO. A Shown Unit may not be an unspecified import. Seller shall identify the Shown Unit(s) and Expected Contract Quantity by providing Purchaser with the specific information contemplated in Appendix B no later than the Notification Deadline for the relevant Showing Month.
- (e) If CAISO rejects either the Supply Plan or the Resource Adequacy Plan with respect to any part of the Expected Contract Quantity for the Shown Unit(s) in any Showing Month, the Parties shall confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan or Resource Adequacy Plan for validation before the applicable deadline for the Showing Month.
- (f) The Product is delivered and received when the CIRA Tool shows that the Supply Plan submitted in compliance with Purchaser's instructions, including Purchaser's instructions to withhold all or part of the Expected Contract Quantity from Seller's Supply Plan for any Showing Month during the Delivery Period, has been accepted for the Product from the Shown Unit(s) by CAISO. Seller has failed to deliver the Product if (i) Purchaser has elected to submit the Product from the Shown Unit in

its Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool and are rejected by CAISO notwithstanding performance of Section 2.1(e) or (ii) Seller fails to submit the volume of Expected Contract Quantity for any Showing Month in such amount as instructed by Purchaser for the applicable Showing Month. Seller will not have failed to deliver the Expected Contract Quantity if Purchaser fails or chooses not to submit the Shown Unit(s) and the Product in its Resource Adequacy Plan with the CPUC or CAISO.

- (g) The Shown Unit(s) must not have characteristics that would trigger the need for Purchaser or Seller to file an advice letter or other request for authorization with the CPUC or for Purchaser to make a compliance filing pursuant to California Public Utilities Code Section 380.

2.2 Reductions in Contract Quantity

If Seller is providing Contingent Firm RA Product, Seller's obligation to deliver the Contract Quantity for each day of each Showing Month may be reduced at Seller's option by the amount of any Planned Outages which exist with respect to any portion of the Unit during the applicable Showing Month for the applicable days of such Planned Outages; provided, (i) Seller notifies Purchaser by the Notification Deadline applicable to that Showing Month of the amount of Product from the Unit that Purchaser may include in Purchaser's Compliance Showings applicable to that month as a result of such Planned Outage, (ii) such reduction is able to be reflected on the Supply Plans in accordance with the Tariff and (iii) that Seller does not initiate the Planned Outage in the months of July, August, and September.

In the event Seller is unable to provide the Contract Quantity for any portion of a Showing Month because of a Planned Outage of a Unit, Seller has the option, but not the obligation, to provide Product for such portions of such Showing Month from Replacement Units, provided Seller provides and identifies such Replacement Units in accordance with Section 2.3.

2.3 Seller's Option To Provide Alternate Capacity

If Seller is unable to provide the full Contract Quantity for each day of each Showing Month for any reason, including, without limitation, as provided in Section 2.2, or Seller desires to provide some or all of the Contract Quantity for any day of a Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Purchaser, provide Purchaser with replacement Product from one or more Replacement Units in an amount such that the total amount of Product provided to Purchaser from the Unit and any Replacement Unit(s) for each day of the Showing Month is not more than the Contract Quantity, provided that in each case:

- (a) Seller shall notify Purchaser in writing of its intent to provide Alternate Capacity and shall identify the Replacement Units from which such Alternate Capacity shall be provided before the Notification Deadline for Purchaser's Compliance Showings related to such Showing Month; and

- (b) The designation of any Replacement Unit(s) by Seller shall be subject to Purchaser's prior written approval, which shall not be unreasonably withheld.

Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 2.3 and Purchaser has approved such Replacement Units as consistent with this Confirmation, then any such Replacement Units shall be deemed a Unit for purposes of this Confirmation for that Showing Month. Purchaser's approval of a Replacement Unit as to a given Showing Month shall not be construed as approval of such Replacement Unit for any subsequent Showing Month.

2.4 Planned Outages

As of the Confirmation Effective Date, Seller and Purchaser have agreed to all Planned Outages as specified in Appendix D ("Planned Outage Schedule") for all relevant Showing Months for the following calendar year, or until the end of the Delivery Period, whichever is shorter. Seller may provide Purchaser with proposed changes to the Planned Outage Schedule from time to time. Within ten (10) Business Days after Purchaser's receipt of any Seller proposed changes, Purchaser shall notify Seller in writing of any reasonable requests for modifications to such Seller proposed changes, and Seller shall, to the extent consistent with Prudent Operating Practice, accommodate Purchaser's requests regarding the timing of any Seller proposed changes to the Planned Outage Schedule. Notwithstanding the foregoing in this Section 2.4, Seller shall have no obligation to propose a change in the Planned Outage Schedule and Purchaser shall have no rights with respect to such changes, if Seller is providing Alternate Capacity.

2.5 Purchaser's Remedies for Seller's Failure to Deliver Expected Contract Quantity

- (a) Except as provided in Section 5.8 of this Confirmation, if Seller fails to deliver any part of the Expected Contract Quantity as required herein for any Showing Month, Seller shall be liable for damages pursuant to Section 21.3 of the WSPP Agreement, without reference to the word "hourly" therein.
- (b) Except as provided in Section 5.8 of this Confirmation, Seller shall indemnify, defend and hold harmless Purchaser from any penalties, fines or costs, including Environmental Costs, assessed against Purchaser by the CPUC, CAISO or other Governmental Body resulting from Seller's failure to deliver the Product or a Shown Unit's SC's failure to timely or accurately submit Supply Plans in accordance with the Tariff and this Confirmation. The Parties shall use commercially reasonable efforts to minimize such penalties, fines or costs; provided, that in no event will Purchaser be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines or costs. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Purchaser for those penalties, fines or costs, then, without prejudice to its other rights and remedies, Purchaser may setoff and recoup those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation or the WSPP Agreement.

2.6 Purchaser's Re-Sale of Product

- (a) Purchaser may re-sell all or part of the Product; provided that any such re-sale must not increase Seller's obligations hereunder other than as set forth in this Section 2.6(a). For any such a resale, the Resource Adequacy Plan of Purchaser as used herein will refer to the Resource Adequacy Plan of Subsequent Purchaser. Seller shall, or shall cause the Shown Unit's SC, to follow Purchaser's instructions with respect to providing such resold Product to Subsequent Purchasers, to the extent such instructions are consistent with Seller's obligations under this Confirmation. Seller shall, and shall cause the Shown Unit's SC, to take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Purchasers to use such resold Product in a manner consistent with Purchaser's rights under this Confirmation. If Purchaser incurs any liability to a Subsequent Purchaser due to the failure of Seller or the Shown Unit's SC to comply with this Confirmation, Seller will be liable to Purchaser for the amounts Seller would have owed Purchaser under this Confirmation if Purchaser had not resold the Product.
- (b) Purchaser shall notify Seller in writing of any resale of Product and the Subsequent Purchaser no later than two (2) Business Days before the Notification Deadline for each Showing Month for which Purchaser has resold the Product. Purchaser shall notify Seller of any subsequent changes or further resales no later than two (2) Business Days before the Notification Deadline for the Showing Month.
- (c) If CAISO or CPUC develops a centralized capacity market, Purchaser will have exclusive rights to direct the Seller or the Unit's SC to offer, bid, or otherwise submit the Expected Contract Quantity of Product for re-sale in such market, Seller and the Unit's SC shall comply with Purchaser's direction and Purchaser shall retain and receive all revenues from such re-sale.

ARTICLE 3 **PAYMENTS**

3.1 Payment

Purchaser shall pay for the Product as provided in Article 9 of the WSPP Agreement and this Confirmation; except that under Section 9.4 of the WSPP Agreement, in case any portion of any bill is in dispute, then only the undisputed portion of the bill shall be paid when due. The disputed portion of the bill shall be adjusted or paid upon final resolution of the dispute. Purchaser shall make a monthly payment to Seller for each Unit by the later of (i) ten (10) Calendar Days after Purchaser's receipt of Seller's invoice (which may be given upon first day of the Showing Month) and (ii) the twentieth (20th) of the Showing Month, or if the twentieth (20th) is not a Business Day the next following Business Day ("Monthly RA Capacity Payment"). The Monthly RA Capacity Payment shall equal the product of (a) the applicable Contract Price for that Showing Month, (b) the Expected Contract Quantity for the Showing Month and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be

adjusted to reflect any portion of Expected Contract Quantity for the Showing Month that was not delivered in accordance with Section 2.1 for such Showing Month.

3.2 Allocation of Other Payments and Costs

- (a) Seller will receive any revenues from, and must pay all costs charged by, CAISO or any other third party with respect to the Shown Unit(s) for (i) start-up, shutdown, and minimum load costs, (ii) capacity for ancillary services, (iii) energy sales, (iv) flexible ramping product, or (v) black start or reactive power services. Purchaser must promptly report receipt of any such revenues to Seller. Purchaser must pay to Seller any such amounts described in this Section 3.2(a) received by Purchaser or a Subsequent Purchaser. Without prejudice to its other rights and remedies, Seller may setoff and recoup any such amounts that are not paid to it pursuant to this Section 3.2(a) against any amounts owed to Purchaser under the WSPP Agreement.
- (b) Purchaser is to receive and retain all revenues associated with the Expected Contract Quantity of Product during the Delivery Period, including any capacity and availability revenues from the Capacity Procurement Mechanism, or its successor, RUC Availability Payments, or its successor, but excluding payments described in Section 3.2(a)(i)-(v) or 3.2(d). Seller shall promptly report receipt of any such revenues to Purchaser. Seller shall pay to Purchaser within thirty (30) days of receipt any such amounts received by Seller, or a Shown Unit's SC, owner, or operator. Without prejudice to its other rights, Purchaser may set off and recoup any such amounts that are not paid to it against amounts owed to Seller under the WSPP Agreement.
- (c) If CAISO designates any part of the Contract Quantity as Capacity Procurement Mechanism Capacity, then Seller shall, or shall cause the Shown Unit's SC to, within one (1) Business Day of the time Seller receives notification from CAISO, notify Purchaser and not accept any such designation by CAISO unless and until Purchaser has agreed to accept such designation.
- (d) Any Availability Incentive Payments or Non-Availability Charges are for Seller to receive and pay.

ARTICLE 4 OTHER PURCHASER AND SELLER COVENANTS

4.1 CAISO Requirements

Seller shall schedule or cause the Shown Unit's SC to schedule or make available to CAISO the Expected Contract Quantity of the Product during the Delivery Period, in compliance with the Tariff, and perform all, or cause the Shown Unit's SC, owner, or operator to perform all, obligations under applicable law and the Tariff relating to the Product. Purchaser is not liable for, and Seller shall indemnify and hold Purchaser harmless from, the failure of Seller or the Shown

Unit's SC, owner, or operator to comply with the Tariff, and for any penalties, fines or costs imposed on Seller or the Shown Unit's SC, owner, or operator for noncompliance.

4.2 Seller's and Purchaser's Duties to Take Actions to Allow Product Utilization

Throughout the Delivery Period, Purchaser and Seller shall take all commercially reasonable actions and execute all documents or instruments reasonably necessary to ensure (a) Purchaser's rights to the Expected Contract Quantity for the sole benefit of Purchaser or any Subsequent Purchaser and (b) that Purchaser may use the Expected Contract Quantity to meet its Compliance Obligations. Such commercially reasonable actions shall include, without limitation cooperating with and providing, and causing each Shown Unit's SC, owner, or operator to cooperate with and provide, requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable Compliance Obligations, including to demonstrate that the Expected Contract Quantity can be delivered to the CAISO controlled grid for the minimum hours required to satisfy the Compliance Obligations, as applicable, pursuant to the "deliverability" standards established by the CAISO or other Governmental Body of competent jurisdiction.

If necessary, the Parties further agree to negotiate in good faith to amend this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by CAISO or an applicable Governmental Body to maintain the benefits of the Transaction.

4.3 Seller's Representations and Warranties

Seller represents and warrants to Purchaser throughout the Delivery Period that:

- (a) No part of the Contract Quantity during the Delivery Period has been committed by Seller to any third party to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets;
- (b) The Shown Unit(s) qualify to provide the Product under the Tariff, and the Shown Unit(s) and Seller are capable of delivering the Product;
- (c) the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned, or transferred for the Shown Unit(s) during the Delivery Period does not exceed the Shown Unit's Net Qualifying Capacity and, if applicable, the Effective Flexible Capacity for that Shown Unit;
- (d) if applicable, Seller has notified either the Shown Unit's SC or the entity from which Seller purchased the Product that Seller has transferred the Contract Quantity of Product for the Delivery Period to Purchaser; and
- (e) Seller has notified or will notify the Shown Unit's SC that Purchaser is entitled to the revenues set forth in Section 3.2(b), and such Shown Unit's SC is obligated to promptly deliver those revenues to Purchaser, along with appropriate documentation supporting the amount of those revenues.

4.4 Market Based Rate Authority

Upon Purchaser's written request, Seller shall, in accordance with FERC Order No. 697, submit a letter of concurrence in support of any affirmative statement by Purchaser that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Purchaser as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Purchaser.

ARTICLE 5

ADDITIONAL WSPP AGREEMENT AMENDMENTS; GENERAL PROVISIONS

5.1 Termination Payment

For this Transaction, the following is inserted as a penultimate paragraph in Section 22.2(b) of the WSPP Agreement:

"If Purchaser is the Non-Defaulting Party and Purchaser reasonably expects to incur or be liable for any penalties, fines or costs from CAISO, or any Governmental Body, because Purchaser or a Subsequent Purchaser is not able to include the applicable Expected Contract Quantity in a Compliance Showing due to Seller's Event of Default, then Purchaser may, in good faith, estimate the amount of those penalties, fines or costs and include the estimate in its determination of the Termination Payment, subject to accounting to Seller when those penalties, fines or costs are finally ascertained. If this accounting establishes that Purchaser's estimate exceeds the actual amount of penalties, fines or costs, Purchaser must promptly remit to Seller the excess amount with interest in accordance with Section 9.3 of the WSPP Agreement. The rights and obligations with respect to determining and paying any Termination Payment, and any dispute resolution provisions with respect thereto, survive the termination of this Transaction and continue until after those penalties, fines or costs are finally ascertained and are subject to Section 5.8 of this Confirmation."

5.2 Confidentiality

Notwithstanding Section 30.1 of the WSPP Agreement:

- (a) (i) Purchaser may disclose information as necessary in order to support its Compliance Showings or otherwise show it has met its Compliance Obligations;
- (ii) Seller may disclose as necessary to a Shown Unit's SC or as necessary for Supply Plans;
- (iii) each Party may disclose information as necessary to the independent evaluator or other administrator of any competitive solicitation process of Purchaser, which in turn may disclose such information as necessary to CAISO or any Governmental Body; and
- (iv) Purchaser may disclose information to any Subsequent Purchaser.

- (b) Seller acknowledges that Purchaser is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.) and that Purchaser may be required to make public this Confirmation (which may be partially redacted by Purchaser) in connection with the process of seeking approval from its board of directors for the execution of this Confirmation. Seller may submit information to Purchaser that Seller considers confidential, proprietary, or trade secret information pursuant to the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code sections 6254 and 6255). Seller acknowledges that Purchaser may submit to Seller information that Purchaser considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Confirmation (“Requestor”) pursuant to the California Public Records Act for production, inspection and/or copying of this Confirmation or any information designated by a disclosing Party as confidential, the receiving Party as soon as practical shall notify the disclosing Party that such request has been made, by telephone call, letter sent via electronic mail, and/or by overnight carrier to the address, or email address listed at the end of this Confirmation. The disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be confidential information and to prevent release of information to the Requestor by the receiving Party. If the disclosing Party takes no such action within ten (10) days, after receiving the foregoing notice from the receiving Party, the receiving Party shall be permitted to comply with the Requestor’s demand and is not required to defend against it. Notwithstanding the foregoing, Purchaser may release confidential information without notice to or over the objection of Seller if Purchaser’s legal counsel advises Purchaser that Purchaser is required by law to release such confidential information.
- (c) Seller and Purchaser acknowledge that this Confirmation has been negotiated and executed in conjunction with three other confirmations executed by Seller and three other purchasers, each of which has been entered into on substantially similar terms and conditions as this Confirmation and is being entered into concurrently herewith. Accordingly, the confidentiality provisions of this Section 5.2 shall not be deemed to preclude disclosures by Seller and/or Purchaser to and among such other purchasers.

5.3 Dodd-Frank Act

The Parties intend this Transaction to be a “customary commercial arrangement” as described in Section II.A.1 of Commodity Futures Trading Commission, *Proposed Guidance, Certain Natural Gas and Electric Power Contracts*, 81 Fed. Reg. 20583 at 20586 (Apr. 8, 2016) and a “Forward Capacity Transaction” within the meaning of Commodity Futures Trading Commission, *Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission*, 78 Fed. Reg. 19,880 (Apr. 2, 2013).

5.4 Change in Law

If any action by the CPUC, CAISO or any Governmental Body having jurisdiction, or any change in applicable law, occurring after the Confirmation Effective Date results in (i) material changes to Purchaser's or Seller's obligations with regard to the Products sold hereunder, (ii) has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the performance of this Confirmation becomes impracticable, or (iii) changes the Resource Adequacy Requirements such that the Product can no longer be counted towards Purchaser's Resource Adequacy Requirements (a "Change in Law"), the Parties shall work in good faith to revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of the Product sold hereunder in order to maintain the original intent.

5.5 Governing Law

Notwithstanding Section 24 of the WSPP Agreement, this Transaction and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law.

5.6 Collateral

As set forth in the WSPP Agreement; provided, however, that for purposes of calculating credit requirements pursuant to Section 27, the Parties further agree that the mark-to-market value for this Transaction is deemed to be zero. If at any time prior to the expiration of the Delivery Period, a liquid market for a resource adequacy requirements product develops wherein price quotes for such a product can be obtained, the Parties agree to amend the Confirmation to include a methodology for calculating the mark-to-market value for this Transaction.

5.7 Designated Fund and Limited Obligations

- (a) Designated Fund. Purchaser is a municipal corporation and is precluded under the California State Constitution and applicable law from entering into obligations that financially bind future governing bodies, and, therefore, nothing in the Agreement shall constitute an obligation of future legislative bodies of the City to appropriate funds for purposes of the Agreement; provided, however, that (i) Purchaser has created and set aside a designated fund (the "Designated Fund") for payment of its obligations under the Agreement and (ii) subject to the requirements and limitations of applicable law and taking into account other available money specifically authorized by the San José City Council and allocated and appropriated to the San José Clean Energy's obligations, Purchaser agrees to establish San José Clean Energy rates and charges that are sufficient to maintain revenues in the Designated Fund necessary to pay its obligations under this Agreement and all of Purchaser's payment obligations under its other contracts for the purchase of energy for San José Clean Energy. Purchaser shall provide Seller with reasonable access to account balance information with respect to the San José Clean Energy Designated Fund during the Term.

- (b) Limited Obligations. Purchaser’s payment obligations under the Agreement are special limited obligations of the Purchaser payable solely from the Designated Fund and are not a charge upon the revenues or general fund of the City of San José or upon any non- San José Clean Energy moneys or other property of the Community Energy Department or the City of San José.

5.8 Conditions Precedent

5.8.1. A continuous right of operation pursuant to an amendment to the Water Quality Control Policy on the use of Coastal and Estuarine Waters for Power Plant Cooling that allows Once Through Cooling (“OTC”) and a corresponding recognition of such amendment in all necessary permits is a condition precedent to the effectiveness of this Confirmation and is a continuing condition for any obligation to provide resource adequacy (“RA”) or any other product from the Redondo Beach facility (“RB”) Units 6 and/or 8 under this Confirmation.

5.8.2. Purchaser explicitly recognizes that, notwithstanding anything to the contrary herein, in order for Seller to provide RA or any other product under this Confirmation, the California State Water Resources Control Board (SWRCB) must approve an extension of the right for Seller to operate one or more Units of the Redondo Beach facility operation pursuant to an amendment to the Water Quality Control Policy on the use of Coastal and Estuarine Waters for Power Plant Cooling that allows OTC for periods extending beyond December 31, 2021 (an “Extension Order”). Except to the extent allowed to operate under an Extension Order, Section 4.3(b) (*Capability of delivering Product*) of the Confirmation is explicitly waived by Purchaser and Seller makes no such representations.

5.8.3. This Confirmation shall have force and effect only to the extent consistent with an Extension Order. Thus, if an Extension Order is issued only with respect either Redondo Beach Unit 6 or 8, this Confirmation shall be effective only with respect to the RB Unit or Units to the extent an Extension Order was granted. In such event, the Contract Quantity in Appendix B as set forth in this Confirmation shall be automatically adjusted for each Calendar Year for which an Extension Order was not received for RB Units 6 or 8 as follows:

$$\frac{\left(\begin{array}{c} \text{NQC of the RB Unit 6 and/or 8} \\ \text{For which an Extension Order} \\ \text{was received} \end{array} \right)}{\left(\begin{array}{c} \text{Total NQC of} \\ \text{RB Units 6 and 8} \end{array} \right)} \times \left(\begin{array}{c} \text{Contract Quantity in} \\ \text{Appendix B} \end{array} \right) = \text{Adjusted Contract Quantity}$$

Furthermore, the FCR Attributes in Appendix B shall be reduced in the same proportion as the Contract Quantity was reduced pursuant to the immediately preceding calculation. If an Extension Order applies with respect to calendar year 2022 but not to any future period, subject to Section 5.8.7, this Confirmation shall automatically terminate with respect to any period after December 31, 2022, which termination shall be with no liability or obligation of Seller under Section 5.1

(*Termination Payment*) or otherwise and shall be absolute and unaffected by any potential subsequent action that may be taken by the SWRCB on rehearing, in a subsequent proceeding or otherwise, and regardless of whether such subsequent action is taken prior to or after such scheduled termination date.

5.8.4. If the SWRCB has not issued an Extension Order on or before October 31, 2021, then either Party may terminate this Confirmation by providing written notice to the other Party (which may be via e-mail) at any time after October 31, 2021, and on or before December 1, 2021, without liability or obligation under Section 6.1 of this Confirmation (*Termination Payment*) or otherwise. Subject to Section 5.8.7, any such termination shall be absolute and unaffected by any potential subsequent action that may be taken by the SWRCB on rehearing, in a subsequent proceeding or otherwise.

5.8.5. Without limiting the rights of the Seller or Purchaser to terminate this Confirmation as set forth herein, performance by Seller under this Confirmation shall be excused by reason of Uncontrollable Forces (and otherwise subject to all provisions related to Uncontrollable Forces applicable to the Confirmation) if an Extension Order is issued by the SWRCB but is subsequently reversed or nullified by the SWRCB or by a lawful order of a court or by any other governmental authority having appropriate jurisdiction, or during any period of time where a court or other governmental entity had enjoined operations of an RB Unit or barred performance of such Unit or under this Confirmation for any reason related to the OTC compliance date or Extension Order. This provision explicitly modifies Section 6.4 of the Confirmation (*Change in Law*) and to the extent this provision applies, neither party shall have any obligation under Section 6.4 (*Change in Law*) to work to revise this Confirmation.

5.8.6. This Confirmation constitutes a compromise, settlement, and release of the Parties' disputed claims under that certain prior confirmation entered into between the Parties on or about May 2020 (the "Prior Confirmation"). Nothing in this Confirmation shall be construed as an admission by any Party of any contract breach, fact, finding, conclusion, issue of law, or violation of law with respect to the Prior Confirmation, nor shall compliance with this Confirmation constitute or be construed as an admission by any Party of any contract breach, fact, finding, conclusion, issue of law, or violation of law with respect to the Prior Confirmation. In consideration and inducement of the promises and obligations set forth herein, the Parties hereby irrevocably waive and release any right or any claim under the Prior Confirmation for any period after December 31, 2021. For the avoidance of doubt, any claims arising out of a default or a breach of this Confirmation shall be resolved pursuant to the terms of this Confirmation (including the terms of the WSPP Agreement incorporated herein) and without reference to the Prior Confirmation.

5.8.7. If (i) this Confirmation is terminated in accordance with Section 5.8.4, (ii) there is an action by the SWRCB subsequent to such termination and prior to January 1, 2023, that amends the Water Quality Control Policy on the use of Coastal and Estuarine Waters for Power Plant Cooling that allows an OTC extension for RB Units 6 and 8 ("Subsequent SWRCB Action"), and (iii) Seller elects, in its sole and absolute discretion, to sell RA from either RB Unit 6 or 8, then the following shall apply:

- (a) Seller shall have a put option, exercisable in its sole discretion (the “Put Option”), and Purchaser shall have a call option, exercisable in its sole discretion (the “Call Option” and, together with the Put Option, the “Options” and each, an “Option”), in each case, whereby Purchaser shall purchase from Seller, and Seller shall sell to Purchaser, such RA.
- (b) The Options may be exercised by the Party holding such Option giving written notice to the other Party within ten (10) Business Days (the “Option Period”) of notice by Seller to Purchaser that it intends to operate and sell RA capacity as a result of the Subsequent SWRCB Action. If a Party fails to exercise its Option during the Option Period, then such Option shall expire and such Party shall have no further right to exercise such Option. Unless the Option Period expires without either Party exercising its Option, Seller shall not take any action that would contravene or otherwise conflict with Purchaser’s rights under such Option, including, without limitation, entering into agreements with other third parties regarding the sale of RA to be sold hereunder.
- (c) The price of RA sold as a result of the exercise of an Option shall be the same price as set forth in Appendix B.
- (d) The quantity of RA sold as a result of the exercise of an Option shall be as set forth in Appendix B and adjusted as follows:

$$\frac{\left(\begin{array}{l} \text{NQC of the RB Unit 6 and/or 8} \\ \text{For which an Extension Order} \\ \text{was received} \end{array} \right)}{\left(\begin{array}{l} \text{Total NQC of} \\ \text{RB Units 6 and 8} \end{array} \right)} \times \left(\begin{array}{l} \text{Contract Quantity in} \\ \text{Appendix B} \end{array} \right) = \text{Adjusted Contract Quantity}$$

Furthermore, the FCR Attributes in Appendix B shall be reduced in the same proportion as the Contract Quantity was reduced pursuant to the immediately preceding calculation.

- (e) The obligations to purchase and sell RA as a result of the exercise of an Option shall commence no earlier than the first Showing Month beginning 30 days or more after the exercise of the option in accordance with Section 5.8.7(b) and shall terminate as of the earlier of (I) the end of the Delivery Period set forth in Appendix B or (II) the last day that the amendment to the Water Quality Control Policy on the use of Coastal and Estuarine Waters for Power Plant Cooling that allows an OTC extension is effective as specified in the Subsequent SWRCB Action.

- (f) The applicable provisions of this Confirmation, including without limitation, (I) all Delivery Obligations set forth in Article 2, (II) Purchaser and Seller Covenants set forth in Article 4, and (III) Section 5.8.5, will apply to the sales of RA as a result of the exercise of an Option.

5.9 City of San José Standard Provisions

- (a) Nondiscrimination/Non-Preference. Seller shall not, and shall not cause or allow its subcontractors to, discriminate against or grant preferential treatment to any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin. This prohibition applies to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, conditions, or privileges of employment, subcontracting and purchasing. Seller will inform all subcontractors of these obligations. This prohibition is subject to the following conditions: (i) the prohibition is not intended to preclude Seller from providing a reasonable accommodation to a person with a disability; (ii) the City's Compliance Officer may require Seller to file, and cause any Seller's subcontractor to file, reports demonstrating compliance with this section. Any such reports shall be filed in the form and at such times as the City's Compliance Officer designates. They shall contain such information, data and/or records as the City's Compliance Officer determines is needed to show compliance with this provision.
- (b) Conflict of Interest. Seller represents that it is familiar with the local and state conflict of interest laws, and agrees to comply with those laws in performing this Agreement. Seller certifies that, as of the Effective Date, it was unaware of any facts constituting a conflict of interest or creating an appearance of a conflict of interest. Seller shall avoid all conflicts of interest or appearances of conflicts of interest in performing this Agreement. Seller has the obligation of determining if the manner in which it performs any part of this Agreement results in a conflict of interest or an appearance of a conflict of interest, and shall immediately notify the Purchaser in writing if it becomes aware of any facts giving rise to a conflict of interest or the appearance of a conflict of interest. Seller's violation of this subsection (b) is a material breach.
- (c) Environmentally Preferable Procurement Policy. Seller shall perform its obligations under this Agreement in conformance with San José City Council Policy 1-19, entitled "Prohibition of City Funding for Purchase of Single serving Bottled Water," and San José City Council Policy 4-6, entitled "Environmentally Preferable Procurement Policy," as those policies may be amended from time to time. The Parties acknowledge and agree that in no event shall a breach of this subsection (c) be a material breach of this Agreement or otherwise give rise to an Event of Default or entitle Purchaser to terminate this Agreement.
- (d) Gifts Prohibited. Seller represents that it is familiar with Chapter 12.08 of the San José Municipal Code, which generally prohibits a City of San José officer or

designated employee from accepting any gift. Seller shall not offer any City of San José officer or designated employee any gift prohibited by Chapter 12.08. Seller's violation of this subsection (d) is a material breach.

- (e) Disqualification of Former Employees. Seller represents that it is familiar with Chapter 12.10 of the San José Municipal Code, which generally prohibits a former City of San José officer and former designated employee from providing services to the City of San José connected with his/her former duties or official responsibilities. Seller shall not use either directly or indirectly any officer, employee or agent to perform any services if doing so would violate Chapter 12.10.

5.10 Other WSPP Agreement Changes

For this Transaction, the WSPP Agreement shall be amended as follows:

- (a) Section 22.1 of the WSPP Agreement is modified by inserting the following new text at the end thereof:
 - “(f) the failure of the Defaulting Party to pay its debts generally as they become due or the Defaulting Party's admission in a writing that is unable to generally pay its debts as they become due;
 - (g) the institution, by the Defaulting Party, of a general assignment for the benefit of its creditors; or
 - (h) the application for, consent to, or acquiescence to, by the Defaulting Party, the appointment of a receiver, custodian, trustee, liquidator, or similar official for all or a substantial portion of its assets.”
- (b) Section 22.2(b) of the WSPP Agreement is amended by inserting in Section 22.2, “and is continuing” after “Event of Default occurs” in the first line thereof and deleting the second sentence therein.
- (c) Section 22.3(c) of the WSPP Agreement is amended by deleting the third sentence thereof and replacing it with the following: “If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement or a Confirmation, the Termination Payment for all such Terminated Transactions shall be zero, notwithstanding any provision in this Section or Agreement to the contrary.”
- (d) In Section 22.3(e), delete the entire provision (including subsections) and replace it with the following: “[Intentionally omitted]”
- (e) In Section 22.3(f), delete the entire provision and replace it with the following:
 - “If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, and provided that Defaulting Party has paid the undisputed part of the Termination Payment to the

Non-Defaulting Party as provided under Section 22.3(c), and that any amounts disputed by the Defaulting Party are disputed in good faith, then the Defaulting Party may submit the calculation issue to Dispute Resolution pursuant to Section 34.”

- (f) Section 28.1 of the WSPP Agreement shall be applicable and the Parties shall net monthly payments in accordance with Exhibit A of the WSPP. Both Parties intend for the netting provisions of Exhibit A to the WSPP Agreement to be effective on the Confirmation Effective Date.
- (g) Section 30.1 of the WSPP Agreement is amended by inserting “or requested” after the word “required” in Section 30.1(4) and by adding the following at the end of the first sentence: “; or (8) to the Party’s and such Party’s affiliates’ lenders, counsel, accountants, advisors and agents who have a need to know such information and have agreed to keep such terms confidential”.
- (h) Subsections 34.1 and 34.2 of the WSPP Agreement are hereby deleted and replaced with the following:

“34.1 INFORMAL DISPUTE RESOLUTION

IN THE EVENT OF ANY DISPUTE ARISING UNDER THIS TRANSACTION, WITHIN TEN (10) DAYS FOLLOWING THE RECEIPT OF A WRITTEN NOTICE FROM EITHER PARTY IDENTIFYING SUCH DISPUTE, THE PARTIES SHALL MEET, NEGOTIATE AND ATTEMPT, IN GOOD FAITH, TO RESOLVE THE DISPUTE QUICKLY, INFORMALLY AND INEXPENSIVELY. IF THE PARTIES ARE UNABLE TO RESOLVE A DISPUTE ARISING HEREUNDER WITHIN THIRTY (30) DAYS AFTER RECEIPT OF SUCH NOTICE, THEN EITHER PARTY MAY SEEK ANY AND ALL REMEDIES AVAILABLE TO IT AT LAW OR IN EQUITY, SUBJECT TO THE LIMITATIONS SET FORTH IN THIS TRANSACTION.”

“34.2 EXCLUSIVE JURISDICTION

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE OR FEDERAL COURTS LOCATED IN SAN FRANCISCO, CALIFORNIA, FOR ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY TRANSACTION, AND EXPRESSLY WAIVES ANY OBJECTION IT MAY HAVE TO SUCH JURISDICTION OR THE CONVENIENCE OF SUCH FORUM.”

- (i) The phrase “arbitration or” is hereby deleted from the first line of Section 34.4.
- (j) The following shall be inserted as a new Section 34.5:

“34.5 LIMITATION OF DAMAGES. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, FOR BREACH OF ANY PROVISION OF THIS CONFIRMATION AGREEMENT FOR WHICH AN EXPRESS REMEDY OR

MEASURE OF DAMAGES IS PROVIDED, THE EXPRESS REMEDY OR MEASURE OF DAMAGES PROVIDED IS THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT AND THE AGREEMENT FOR THE BREACH, LIABILITY FOR THE BREACH IS LIMITED AS SET FORTH IN THE PROVISION AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, IF NO EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT FOR A PARTICULAR BREACH, LIABILITY FOR THE BREACH IS LIMITED TO DIRECT DAMAGES ONLY, THE DIRECT DAMAGES ARE THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT FOR THE BREACH, AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, NEITHER PARTY IS LIABLE FOR ANY OTHER TYPE OF DAMAGE, INCLUDING INCIDENTAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES OF ANY NATURE (INCLUDING DAMAGES ASSOCIATED WITH LOST PROFITS, BUSINESS INTERRUPTION AND LOSS OF GOODWILL) ARISING AT ANY TIME, WHETHER IN TORT (INCLUDING THE SOLE OR CONTRIBUTORY NEGLIGENCE OF EITHER PARTY OR ANY RELATED PERSON), WARRANTY, STRICT LIABILITY, CONTRACT OR STATUTE, UNDER ANY INDEMNITY PROVISION, OR OTHERWISE.”

- (k) Section 37 of the WSPP Agreement is amended by inserting the following in the beginning of the section: “On the date of entering into this Confirmation,”.
- (l) Section 41 “Witness” of the WSPP Agreement shall become Section 42 and the following “Standard of Review” Section shall be substituted in its place:

“The Parties agree as follows:

From the date of entering into a Transaction under this Agreement and throughout the term of such Transaction, the Parties each warrant and covenant as follows:

- (i) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any section of this Agreement (including all Transactions and/or Confirmations) specifying the rate(s) or other material economic terms and conditions agreed to by the Parties herein, whether proposed by a Party, a non-party or FERC acting sua sponte, shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (the “Mobile-Sierra” doctrine) and clarified in *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish* 554 U.S. 527 (2008) and *NRG Power Marketing LLC v. Maine Pub. Util. Comm’n*, 558 U.S. 165 (2010).

- (ii) The Parties, for themselves and their successors and assigns, (i) agree that this “public interest” standard shall apply to any proposed changes in any other documents, instruments or other agreements executed or entered into by the Parties in connection with this Agreement and (ii) hereby expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the “just and reasonable” standard.”

5.11 Counterparts

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. The Parties may rely on facsimile or scanned signatures as originals under this Confirmation. Delivery of an executed signature page of this Confirmation by facsimile or electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

5.12 Entire Agreement; No Oral Agreements or Modifications

This Confirmation sets forth the terms of the Transaction into which the Parties have entered and shall constitute the entire agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Transaction may be confirmed only through a Documentary Writing executed by both Parties, and no amendment or modification to this Transaction shall be enforceable except through a Documentary Writing executed by both Parties.

[Signatures appear on the following page.]

AGREED AS OF THE EFFECTIVE DATE:

AES REDONDO BEACH, L.L.C.

By: *Mark E. Miller*

Name: Mark Miller

Title: Vice President

**CITY OF SAN JOSÉ, a California
municipality**

By: *Lori Mitchell*
Lori Mitchell (Jul 21, 2021 08:42 PDT)

Name: Lori Mitchell

Title: Director of Community Energy

Approved as to form:

By: *Luisa Elkins*

Name: Luisa Elkins

Title: Senior Deputy City Attorney

APPENDIX A DEFINED TERMS

“Alternate Capacity” means replacement Product which Seller has elected to provide to Purchaser in accordance with the terms of Section 2.3.

“CAISO” means the California ISO or the successor organization to the functions thereof.

“Call Option” has the meaning set forth in Section 5.8.7(a).

“Capacity Attributes” means attributes of the Shown Unit that may be counted toward Compliance Obligations, including: flexibility, dispatchability, physical location or point of electrical interconnection of the Shown Unit; Unit ability to generate at a given capacity level, provide ancillary services, or ramp up or down at a given rate; any current or future defined characteristics, certificates, tags, credits, or accounting constructs of the Shown Unit, howsoever entitled, identified from time to time by the CAISO or a Governmental Body having jurisdiction over Compliance Obligations.

“CIRA Tool” means the CAISO Customer Interface for Resource Adequacy.

“City’s Compliance Officer” has the meaning set forth in Section 4.08.020 of the San José Municipal Code.

“Compliance Obligations” means, as applicable, RAR, Local RAR and FCR.

“Compliance Showings” means the applicable LSE’s compliance with the resource adequacy requirements of the CPUC for an applicable Showing Month.

“Contingent Firm RA Product” has the meaning set forth in Article 1 herein.

“CPUC Decisions” means any currently effective or future decisions, resolutions, or rulings related to resource adequacy.

“Effective Flexible Capacity” has the meaning given in CAISO’s FERC-approved Tariff.

“Environmental Costs” means (i) costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, (ii) the Product’s compliance with all applicable environmental laws, rules, and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, (iii) all operating and maintenance costs for operation of pollution mitigation or control equipment, (iv) costs of permit maintenance fees and emission fees as applicable, (v) the costs of all emission reductions that have been authorized by a local air pollution control district or emissions trading credits or units pursuant to the California Health & Safety Code, market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, authorizations to emit sulfur dioxide and oxides of nitrogen by the Environmental Protection Agency, and any costs related to greenhouse gas emissions required by any applicable

environmental laws, rules, regulations, or permits to operate, and (vi) costs associated with the disposal, clean-up, decontamination or remediation, on or off site, of hazardous substances.

“Expected Contract Quantity” means, with respect to any particular day of any Showing Month of the Delivery Period, (a) for Firm RA Product, the Contract Quantity of Product, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity with respect to such day, and (b) for Contingent Firm RA Product, the Contract Quantity of Product for such Showing Month, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity with respect to such day, less any reductions to Contract Quantity for such day consistent with Section 2.2 with respect to which Seller has not elected to provide Alternate Capacity.

“Extension Order” has the meaning set forth in Section 5.8.2.

“FCR” means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, the CAISO pursuant to the Tariff, or other Governmental Body having jurisdiction over Compliance Obligations and includes any non-binding advisory showing which an LSE is required to make with respect to flexible capacity.

“FCR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s FCR.

“Firm RA Product” has the meaning set forth in Article 1 herein.

“Governmental Body” means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.

“Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations.

“Local RAR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s Local RAR.

“LSE” means “Load Serving Entity” as such term is used in Section 40.9 of the Tariff.

“MW” means megawatt.

“Net Qualifying Capacity” has the meaning given in CAISO’s FERC-approved Tariff.

“Notification Deadline” is twenty (20) Business Days before the relevant deadlines for the corresponding Compliance Showings applicable to the relevant Showing Month.

“Option” and “Options” has the meaning set forth in Section 5.8.7(a).

“Option Period” has the meaning set forth in Section 5.8.7(b).

“Planned Outage” means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

“Product” means RAR Attributes, Local RAR Attributes and FCR Attributes, each for the Delivery Period, Unit, Contract Quantity, Contract Price and other specifications contained in Appendix B.

“Prorated Percentage of Unit Factor” means the percentage, as specified in Appendix B, of the Unit NQC as of the Effective Date that is dedicated to Purchaser under this Transaction.

“Prorated Percentage of Unit Flexible Factor” means the percentage, as specified in Appendix B, of the Unit EFC as of the Effective Date that is dedicated to Purchaser under this Transaction.

“Prudent Operating Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric power industry during the relevant time period in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the electric power industry in the Western United States.

“Put Option” has the meaning set forth in Section 5.8.7(a).

“RAR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s RAR.

“Replacement Unit” means a generating unit meeting the requirements specified in Section 2.3.

“Resource Adequacy Requirements” or “RAR” means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations, not including Local RAR or FCR.

“San José Clean Energy” means the City of San José’s community choice aggregation program. The San José Community Energy Department administers and manages San José Clean Energy.

“SC” means Scheduling Coordinator as defined in the Tariff.

“Showing Month” means the calendar month of the Delivery Period that is the subject of the related Compliance Showing.

“Shown Unit” means the Unit, or any Replacement Unit meeting the requirements of Section 2.3 of this Confirmation and specified by Seller in a Supply Plan, but not necessarily identified by Seller to Purchaser on the Effective Date.

“Subsequent Purchaser” means the purchaser of Product from Purchaser in a re-sale of Product by Purchaser.

“Subsequent SWRCB Action” has the meaning set forth in Section 5.8.7.

“SWRCB” means the State Water Resources Control Board.

“Tariff” means the CAISO Tariff, including any current CAISO-published “Operating Procedures” and “Business Practice Manuals,” in each case as amended or supplemented from time to time.

“Unit” means the generation unit described in Appendix B. A Unit or Shown Unit may not be a nuclear or coal-fired generating facility.

“Unit EFC” means the lesser of the Unit’s Effective Flexible Capacity as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.

“Unit NQC” means the lesser of the Unit’s Net Qualifying Capacity as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.

**APPENDIX B
PRODUCT AND UNIT INFORMATION**

Product:

RAR Local RAR Flexible Capacity

and all Capacity Attributes related to such Product.

Additional Product Information (fill in all that apply):

CAISO Zone:

MCC Bucket:

CPUC Local Area (if applicable):

Flexible Capacity Category (if applicable):

Delivery period: January 1, 2022 through December 31, 2023 – subject to conditions precedent and other provisions of this Confirmation and Agreement that may result in a termination, including Section 5.8

Contract Quantity and Contract Price:

Showing Month and Year	RAR Attributes Contract Quantity (MW)	FCR Attributes Contract Quantity (MW)	Contract Price (\$/kW-mo)
CY 2022	██████	██████	██████
CY 2023	██	██	██████

Unit Specific Information			
Resource Name		REDONDO GEN STA. UNIT 6	REDONDO GEN STA. UNIT 8
Physical Location		Redondo Beach, CA	Redondo Beach, CA
CAISO Resource ID		REDOND_7_UNIT 5	REDOND_7_UNIT 5
SCID of Resource		EDFR	EDFR
Unit NQC by month (e.g., Jan=50, Feb=65):		175	480
Unit EFC by month (e.g., Jan=30, Feb=50)		165	350
Resource Type (e.g., gas, hydro, solar, etc.)		Natural Gas Steam	Natural Gas Steam
Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3)		1	1
TAC Area (e.g., PG&E, SCE)		SCE	SCE
Prorated Percentage of Unit Factor			
Prorated Percentage of Unit Flexible Factor			
Capacity Area (CAISO System, Fresno, Sierra, Kern, LA Basin, Bay Area, Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt)		LA Basin	LA Basin
Resource Category as defined by the CPUC (DR, 1, 2, 3, 4)		4	4

(Repeat for additional Units)

[Information for specific Shown Units may be provided after the Effective Date pursuant to the Confirmation.]

**APPENDIX C
NOTICE INFORMATION**

Seller:	Purchaser:
<p>All Notices: Attn: Mark Miller Phone: [REDACTED] Facsimile: [REDACTED] Duns: [REDACTED] Federal Tax ID Number: [REDACTED]</p>	<p>All Notices: 200 E. Santa Clara Street, Tower 14 San José, CA 95113 Attn: Deputy Director, Power Resources Phone: [REDACTED] E-mail: [REDACTED] Duns: [REDACTED] Federal Tax ID Number: [REDACTED]</p> <p>With a copy to: Office of the City Attorney Attn. Deputy City Attorney, Community Energy 200 East Santa Clara Street, 16th Floor Tower San Jose, CA 95113-1905 Direct: [REDACTED] Email: [REDACTED]</p> <p>and an additional email copy to: Hall Energy Law PC Attn: Stephen Hall Phone: [REDACTED] Email: [REDACTED]</p>
<p>Invoices: Attn: Yiyu Zhong Phone: [REDACTED] Facsimile: [REDACTED] E-mail: [REDACTED]</p>	<p>Invoices: Attn: Division Manager, Risk Management, Contracts, & Administration Phone: [REDACTED] E-mail: [REDACTED]</p>
<p>Scheduling: Attn: David Redding Tel: [REDACTED] Tel: [REDACTED] Email: [REDACTED]</p>	<p>Scheduling: Attn: NCPA Pre-Scheduling Desk Phone: [REDACTED] E-mail: [REDACTED]</p> <p>Alternative: Attn: NCPA Scheduling Coordination Desk Phone: [REDACTED] E-mail: [REDACTED]</p>
<p>Wire Transfer: BNK: JP Morgan Chase Bank ABA: [REDACTED] ACCT: [REDACTED]</p>	<p>Wire Transfer: BNK: Wells Fargo Bank ABA: [REDACTED] ACCT: [REDACTED]</p>

<p>Credit and Collections: Attn: Mitch Tolbert Phone: [REDACTED] Facsimile: E-mail: [REDACTED]</p>	<p>Credit and Collections: Attn: Division Manager, Budget & Financial Planning Phone: [REDACTED] E-mail: [REDACTED]</p>
<p>Defaults: Attn: Assistant General Counsel Phone: [REDACTED] Facsimile: [REDACTED] E-mail: [REDACTED] And Attn: Mark Miller Phone: [REDACTED] Facsimile: [REDACTED] E-mail: [REDACTED]</p> <p>Additional notices of an Event of Default to: Address: AES Redondo Beach 690 North Studebaker Rd Long Beach, CA 90803 Attn: Mark Miller</p>	<p>With additional Notices of an Event of Default or Potential Event of Default to: Hall Energy Law PC Attn: Stephen Hall Phone: [REDACTED] Email: [REDACTED]</p> <p>and to: Attn: Director of Finance 200 East Santa Clara Street, Tower 13 San Jose, CA 95113 Phone: [REDACTED] Email: [REDACTED]</p> <p>and to: Office of the City Attorney Attn. Deputy City Attorney, Community Energy 200 East Santa Clara Street, 16th Floor Tower San Jose, CA 95113-1905 Direct: [REDACTED] Email: [REDACTED]</p>

**APPENDIX D
PLANNED OUTAGE SCHEDULE**

Redondo Beach Unit 6	Redondo Beach Unit 8
Jan-2022 Dates TBD	Mar-2022 Dates TBD
Nov-2022 Dates TBD	Nov-2022 Dates TBD
Jan-2023 Dates TBD	Mar-2023 Dates TBD

City of San José Contract/Agreement Transmittal Form

Route Order

Attached / Completed

Electronically Signed

- TO: City Attorney
 City Manager
 City Clerk OR Return to
Dept. (circle one)

- Insurance Certificates / Waivers Electronically Signed: Select one
 Business Tax Certificate Audit Trail Attached (if applicable)
 Contacted Clerk re: Form 700 Scanned Signature Authorization
 Supplemental Memorandums (if applicable): Select One

Type of Document: New Contract

Type of Contract: Other

REQUIRED INFORMATION FOR ALL CONTRACTS:

Existing GILES # 667023-000

Contractor: AES Redondo Beach, L.L.C.

Address: _____

Phone: _____ Email: _____

Contract Description: Contract ID: 21-113-11

Term Start Date: 7/20/2021 Term End Date: 12/31/2023 Extension: Select one

Method of Procurement: Select one RFB, RFP or RFQ No.: _____ Date Conducted: _____

Agenda Date (if applicable): _____ Agenda Item No.: _____

Resolution No.: _____ Ordinance No.: _____

Original Contract Amount: _____ Amount of Increase/Decrease: _____

Option #: ___ of ___ Option Amount: _____ NTE/Updated Contract Amount: _____

Fund/Appropriation: _____

Form 700 Required (Selection mandatory for processing): Select one Revenue Agreement: Select one

Tax Certificate No.: _____ Expiration Date: _____

Department: Community Energy

Department Contact: angela.sato-anderson@sanjoseca.go Customer (Finance Only): _____

Notes:

Department Director Signature: _____ Date

Office of the City Manager Signature: _____ Date

Pricing information within this Contract is confidential and may not be subject to disclosure under the California Public Records Act, and has been redacted.

Unredacted versions of Power Supply Contracts and Energy Confirmations are with the Community Energy Department. For additional information, contact the Community Energy Department at:

For additional information, contact the Community Energy Department at:

- Email: Invoices@sanjosecleanenergy.org
- Phone: (408) 535-4898