

**CONFIRMATION
CAISO ENERGY**

This confirmation (“Confirmation”) confirms the transaction between **ConocoPhillips Company** and **City of San José**, a California municipality (“City of San José”), and each individually a “Party” and together the “Parties”, dated as of November 16, 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, including this Confirmation, and any applicable appendices, exhibits or amendments hereto, shall be collectively referred to herein as the “Agreement” and will constitute a single agreement between the Parties with respect to the Transaction. Terms capitalized but not defined herein shall have the meaning as set forth in the WSPP Agreement or the CAISO Tariff.

The Parties agree as follows:

Transaction Number:	SJCE: 21-112-33
Purchaser:	City of San José
Seller:	ConocoPhillips Company
Product:	CAISO Energy
Contract Quantity:	■ MW per Hour
Contract Price:	■/MWh
Delivery Period:	Start Date: December 1, 2021 End Date: December 31, 2021 Flat (all hours HE 1 through HE 24, Monday through Sunday, including NERC holidays.)
Delivery Point:	TH_NP15_GEN-APND
SCID Purchaser:	NSJC
SCID Seller:	
Scheduling:	The Product will be scheduled to Purchaser on a Day-Ahead basis using an Inter-SC Trade (IST). Seller will perform all scheduling requirements applicable to the Transaction(s) contemplated under this Confirmation. All scheduling shall be performed consistent with all applicable CAISO and WECC prevailing protocols.

Payment Terms:	<p>For each month during the Delivery Period, Purchaser shall pay Seller an amount equal to the Contract Quantity of Product that is scheduled and delivered to the Delivery Point in accordance with this Confirmation during such month multiplied by the Contract Price.</p> <p>Payment shall be made in accordance with Section 9 of the WSPP Agreement.</p>
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Governing Law: This Agreement 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.

Creditworthiness: Notwithstanding any other provision of the Agreement, Section 27 of the WSPP Agreement is not applicable to and credit support is not required for either Party under this Confirmation.

Confidentiality: The Parties acknowledge and agree that the Agreement is subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). Each Party (a “Receiving Party”) acknowledges that the other Party (a “Disclosing Party”) may submit information to the Receiving Party that the Disclosing Party 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). In order to designate information as confidential, the Disclosing Party must clearly stamp and identify the specific portion of the material designated with the word “Confidential”. The Parties agree not to over-designate material as confidential. Over-designation would include stamping whole agreements, entire pages or series of pages as confidential that clearly contain information that is not confidential. Upon request or demand of any third person or entity not a party to this Agreement (“Requestor”) for production, inspection and/or copying of information designated by a Party as confidential information (such designated information, the “Confidential Information”), the Receiving Party shall notify the Disclosing Party as soon as practical that such request has been made. 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 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.

If required by any law, statute, ordinance, a court, Governmental Authority or agency having jurisdiction over a Party, including the California Public Records Act, that Party may release Confidential Information, or a portion thereof, as required by the Applicable Law, statute, ordinance, decision, order or regulation. A Party may disclose Confidential Information to accountants in connection with audits. In the event a Party is required to release Confidential Information, such Party shall notify the other Party of the required disclosure, such that the other Party may attempt (if such Party so chooses), at its sole cost, to cause the recipient of the Confidential Information to treat such information in a confidential manner, and to prevent such

information from being disclosed or otherwise becoming part of the public domain. Parties acknowledge that Purchaser may be obligated to provide Confidential Information to the CPUC and CEC for regulatory compliance purposes, and Seller waives the prior notice requirement and authorizes such disclosures to the CPUC and CEC.

Except as provided in this *Confidentiality* section and the California Public Records Act, and subject to and without limiting Section R-7, neither Party shall publish, disclose, or otherwise divulge Confidential Information to any person at any time during or after the term of this Agreement, without the other Party's prior express written consent. Each Party shall permit knowledge of and access to Confidential Information only to those of its affiliates and to their respective attorneys, accountants, representatives, agents and employees who have a need to know such Confidential Information related to this Agreement.

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.

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. Delivery of an executed signature page of this Confirmation by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

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 Confirmation may be entered into only by a Documentary Writing executed by both Parties, and no amendment or modification to

this Confirmation shall be enforceable except through a Documentary Writing executed by both Parties.

City of San José Standard Provisions:

- (a) Nondiscrimination/Non-Preference. Seller shall not, and shall not cause and will use reasonable efforts to not 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 reports demonstrating compliance with this section.
- (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 Buyer 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 Buyer 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 knowingly use either

directly or indirectly any officer, employee or agent to perform any services if doing so would violate Chapter 12.10.

Definitions/Interpretations: For purposes of the Confirmation, the following definitions and rules of interpretations shall apply:

“CAISO” means the California Independent System Operator Corporation, or any successor entity.

“CAISO Energy” means a quantity of Energy equal to the hourly quantity without Ancillary Services that is or will be scheduled as an Inter-SC Trade pursuant to the CAISO Tariff for which the only excuse for failure to deliver or receive is an Uncontrollable Force. Terms that are capitalized, but not defined in this definition shall have the meaning ascribed to them in the CAISO Tariff.

“CAISO Tariff” means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and, to the extent subject to Federal Energy Regulatory Commission (“FERC”) approval, as approved by FERC.

“Flat” means all hours beginning 0 to HE 24, Monday through Sunday, including NERC holidays.

“HE” means hour ending.

“Inter-SC Trade” or “IST” has the meaning set forth in the CAISO Tariff.

“MW” means megawatt.

“MWh” means megawatt-hour.

“Off-Peak” means HE 01-06, 23-24 PPT Mon-Sat, HE 01-24 Sun and NERC Holidays.

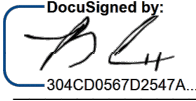
“On-Peak” means HE 07-22 PPT Mon-Sat, exc. NERC Holidays.

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

ACKNOWLEDGED AND AGREED TO AS OF THE EFFECTIVE DATE.

CONOCOPHILLIPS COMPANY

CITY OF SAN JOSÉ, A CALIFORNIA MUNICIPALITY

By: 
304CD0567D2547A...

Name: Ben Corbett

Title: Trader-West

By: 
CAB71B10506A4E6...

Name: Lori Mitchell

Title: Director of Community Energy

Department of Community Energy

Approved as to form:

By: 
E3CE9F67735D498...

Name: Luisa Elkins

Title: Senior Deputy City Attorney

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: Yes
 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 # 667289-000

Contractor: ConocoPhillips Company

Address: _____

Phone: _____ Email: _____

Contract Description: Contract ID: 21-112-33

Term Start Date: 11/16/2021 Term End Date: 12/31/2021 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