

**TRANSACTION CONFIRMATION  
RESOURCE ADEQUACY**

This Confirmation Letter (“Confirmation”) confirms the transaction between **Calpine Energy Services, L.P.** (“Buyer”) and the **City of San José, a California municipality** (“Seller”), each individually a “Party” and together the “Parties”, dated as of December 13, 2021 (the “Confirmation Effective Date”) in which Seller agrees to provide to Buyer the right to the Product (the “Transaction”). This Transaction is governed by the terms and conditions of the Western Systems Power Pool Agreement (Effective Version: August 12, 2021), along with any schedules and amendments thereto (including by this Confirmation) (collectively, the “Master Agreement”). The Master Agreement and this Confirmation shall be collectively referred to herein as the “Agreement”. If there is any conflict between the terms set forth in this Confirmation and the Master Agreement, the terms set forth in this Confirmation shall govern with respect to the Transaction. Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (defined herein below).

**ARTICLE 1. DEFINITIONS**

- 1.1** “AES” means AES Redondo Beach, LLC.
- 1.2** “AES Confirmation” means that certain WSPP Agreement Confirmation between Seller and AES, dated July 20, 2021.
- 1.3** “Affiliate” means, with respect to a Party, any entity that, directly or indirectly, through one or more of intermediaries, controls, or is controlled by, or is under common control with that Party. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.
- 1.4** “Agreement” is defined in the introductory paragraph hereof.
- 1.5** “Alternate Capacity” means any replacement Product which Seller has elected to provide to Buyer from a Replacement Unit in accordance with the terms of Section 4.5.
- 1.6** “Applicable Laws” means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body of competent jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.7** “Availability Incentive Payments” is defined in the Tariff.
- 1.8** “Availability Standards” means the availability standards set forth in Section 40.9 of the Tariff.
- 1.9** “Buyer” is defined in the introductory paragraph hereof.

- 1.10** “CAISO” means the California Independent System Operator Corporation or its successor.
- 1.11** “Capacity Replacement Price” means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner. For purposes of the Master Agreement, “Capacity Replacement Price” shall be deemed to be the “Replacement Price.”
- 1.12** “CIRA Tool” means the CAISO Customer Interface for Resource Adequacy application, or its successor platform.
- 1.13** “Confirmation” is defined in the introductory paragraph hereof.
- 1.14** “Confirmation Effective Date” is defined in the introductory paragraph hereof.
- 1.15** “Contract Price” means, for any Monthly Delivery Period, the price specified for such Monthly Delivery Period in the “RA Capacity Price Table” set forth in Section 4.9.
- 1.16** “Contract Quantity” means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in table in Section 4.3, which Seller has agreed to provide to Buyer from the Unit for such Showing Month.
- 1.17** “CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, and 19-02-022 and any other existing or subsequent decisions related to resource adequacy issued from time to time by the CPUC.
- 1.18** “CPUC Filing Guide” means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE’s to demonstrate compliance with the CPUC’s resource adequacy program.
- 1.19** “Delivery Period” is defined in Section 4.1 hereof.
- 1.20** “Delivery Point” is defined in Section 4.2 hereof.
- 1.21** “Designated RA Capacity” shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product for such Showing Month (including any Alternate Capacity) less any reductions to Contract Quantity made by Seller pursuant to Section 4.4 for such Showing Month with respect to which Seller has not elected to provide Alternate Capacity.

- 1.22** “Effective Flexible Capacity” means the flexible capacity of a Unit that can be counted toward an LSE’s Flexible RAR obligation, as identified from time to time by the Tariff, the CPUC Decisions, LRA or other Governmental Body having jurisdiction.
- 1.23** “Flexible RA Attributes” means, with respect to a Unit, any and all flexible resource adequacy attributes, consistent with the operational limitations and physical characteristics of such Unit, as may be identified at any time during the Delivery Period by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and LAR Attributes.
- 1.24** “Flexible RAR” means the flexible resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.
- 1.25** “Flexible RAR Showing” means the Flexible RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.
- 1.26** “Governmental Body” means (i) any federal, state, local, municipal or other government; (ii) 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 (iii) any court or governmental tribunal.
- 1.27** “LAR” means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA of competent jurisdiction over the LSE. LAR may also be known as local resource adequacy, local RAR, “PG&E Other RA”, “Greater Bay Area RA”, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.28** “LAR Attributes” means, with respect to a Unit, any and all local resource adequacy attributes (or other locational attributes related to system reliability) consistent with the operational limitations and physical characteristics of such Unit, as they are identified as of the Confirmation Effective Date by the CPUC, CAISO, LRA, or other Governmental Body of competent jurisdiction, associated with the physical location or point of electrical interconnection of such Unit within the CAISO Control Area, that can be counted toward LAR, exclusive of any RA Attributes and Flexible RA Attributes. For clarity, it should be understood that if the CAISO, LRA or other Governmental Body defines new or re-defines existing local areas, then such change will not result in a change in payments or obligations made pursuant to this Transaction.
- 1.29** “LAR Showings” means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the

CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.

- 1.30** “LRA” means Local Regulatory Authority as defined in the Tariff.
- 1.31** “LSE” means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).
- 1.32** “Master Agreement” is defined in the introductory paragraph hereof.
- 1.33** “Monthly Delivery Period” means each calendar month during the Delivery Period and corresponds to each Showing Month.
- 1.34** “Monthly RA Capacity Payment” is defined in Section 4.9 hereof.
- 1.35** “Net Qualifying Capacity” is defined in the Tariff.
- 1.36** “Notification Deadline” is defined in Section 4.5 hereof.
- 1.37** “Outage” means disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff. For the avoidance of doubt, Outage shall be deemed to include Planned Outage (defined below).
- 1.38** “Planned Outage” means, subject to and as further described in the CPUC Decisions and the Tariff (Planned Outage referred to as “Approved Maintenance Outage” under the Tariff), 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.
- 1.39** “Product” is defined in Article 3 hereof.
- 1.40** “RA Attributes” means, with respect to a Unit, any and all resource adequacy attributes, consistent with the operational limitations and physical characteristics of such Unit, as they are identified as of the Confirmation Effective Date by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward RAR, exclusive of any LAR Attributes and Flexible RA Attributes.
- 1.41** “RA Capacity” means the qualifying and deliverable capacity of the Unit for RAR or LAR and, if applicable, Flexible RAR purposes for the Delivery Period, as determined by the CAISO or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RA Attributes, LAR Attributes, and if applicable, Flexible RA Attributes of the capacity provided by a Unit, as applicable pursuant to this Confirmation.

- 1.42** “RAR” means the resource adequacy requirements (other than LAR or Flexible RAR) established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.
- 1.43** “RAR Showings” means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction.
- 1.44** “Replacement Capacity” is defined in Section 4.7 hereof.
- 1.45** “Replacement Unit” is defined in Section 4.5.
- 1.46** “Resource Category” is as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- 1.47** “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.
- 1.48** “Scheduling Coordinator” is defined in the Tariff.
- 1.49** “Seller” is defined in the introductory paragraph hereof.
- 1.50** “Showing Month” is the calendar month during the Delivery Period that is the subject of the RAR Showing, LAR Showing and/or Flexible RAR Showing, as applicable, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.51** “Supply Plan” means the supply plan, or similar or successor filing, that a Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other applicable Governmental Body pursuant to Applicable Laws in order for the RA Attributes, LAR Attributes and/or Flexible RAR Attributes of such RA Capacity to count.
- 1.52** “Tariff” means the tariff and protocol provisions of the CAISO, as amended or supplemented from time to time. For purposes of Article 5, the Tariff refers to the tariff and protocol provisions of the CAISO as they exist on the Confirmation Effective Date.
- 1.53** “Transaction” for purposes of this Confirmation means the transaction (as that term is used in the Master Agreement) that is evidenced by this Confirmation.
- 1.54** “Unit” or “Units” shall mean the generation assets described in Article 2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer. A Unit shall not be a coal-fired generating facility.

- 1.55** “Unit EFC” means the Effective Flexible Capacity that is or will be set by the CAISO for the applicable Unit. The Parties agree that if the CAISO adjusts the Effective Flexible Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit EFC shall be deemed the lesser of (i) the Unit EFC as of the Confirmation Effective Date, or (ii) the CAISO-adjusted Effective Flexible Capacity.
- 1.56** “Unit NQC” means the Net Qualifying Capacity set by the CAISO for the applicable Unit. The Parties agree that if the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, or (ii) the CAISO-adjusted Net Qualifying Capacity.

## ARTICLE 2. UNIT INFORMATION

Name:	Multiple Units
Location:	Multiple
CAISO Resource ID:	Multiple
Unit SCID:	N/A
Unit NQC:	N/A
Unit EFC:	Varies by month
Resource Type:	I_Phys_Res
Resource Category (1, 2, 3 or 4):	4
Flexible RAR Category (1, 2 or 3):	1
Path 26 (North or South):	N/A
Local Capacity Area (if any, as of Confirmation Effective Date):	N/A
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment:	None
Run Hour Restrictions:	None

## ARTICLE 3. RESOURCE ADEQUACY CAPACITY PRODUCT

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Confirmation, the Designated RA Capacity in the amount of the Contract Quantity of (i) RA Attributes and, if applicable, LAR Attributes, and (ii) if applicable, Flexible RA Attributes from each Unit, as further marked and specified in Section 3.1, and the Contract Quantity shall be either a Firm RA Product or a Contingent Firm RA Product, as marked and specified in either Section 3.2 or Section 3.3 below (the “Product”), measured in MWs. The Product does not confer to Buyer any right to the electrical output from the Unit. Rather, the Product confers the right to include the Designated RA Capacity associated with the Contract Quantity in RAR Showings, LAR

Showings, and Flexible RAR Showings, as applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, no energy or ancillary services associated with any Unit is required to be made available to Buyer as part of this Transaction and Buyer shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Confirmation. Seller retains the right to sell any RA Capacity from the Unit in excess of the Unit's Contract Quantity and any RA Attributes, LAR Attributes or Flexible RA Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

### 3.1 Product Attributes

- RA Attributes
- RA Attributes with Flexible RA Attributes
- LAR Attributes
- LAR Attributes with Flexible RA Attributes
- Flexible RA Attributes

### 3.2 Firm RA Product

Seller shall provide Buyer with Product from the Unit in the amount of the Contract Quantity specified in Section 4.3. If the Unit is not available to provide the Contract Quantity for any reason other than Uncontrollable Force, including without limitation any adjustment of the RA Capacity of any Unit as set forth in Section 4.4, then Seller shall have the option to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Buyer with the Contract Quantity and has failed to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period, the Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Section 4.7 and 4.8.

### 3.3 Contingent Firm RA Product

Seller shall provide Buyer with Product from the Unit in the amount of the Contract Quantity specified in Section 4.3. If the Unit is not available to provide the Contract Quantity as a result of any Planned Outage of the Unit and/or reduction in the Unit NQC or Unit EFC of the Unit, then, subject to Section 4.4, Seller shall have the option to notify Buyer that either (a) Seller will not provide the Contract Quantity 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. If Seller fails to provide Buyer with the Contract Quantity and has failed to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period, the Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Section 4.7 and 4.8; provided, however, that Seller shall not be liable for damages and/or required to indemnify Buyer for costs, penalties or fines pursuant to the terms of Sections 4.7 and 4.8 if and only if Seller has provided Buyer with timely notice in accordance with the Notification Deadline of Seller's intent not to provide Alternate Capacity in an amount equal to

the Contract Quantity of that Showing Month due to a Planned Outage of the Unit and/or reduction in the Unit NQC or Unit EFC of the Unit.

#### ARTICLE 4. DELIVERY AND PAYMENT

##### 4.1 Delivery Period

The Delivery Period shall be: February 1, 2022 through April 30, 2022, inclusive, plus November 1, 2022 through November 30, 2022, inclusive.

##### 4.2 Delivery Point

The Delivery Point for each Unit is the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

##### 4.3 Contract Quantity

The Contract Quantity for each Monthly Delivery Period shall be:

**Contract Quantity (MWs)**

Contract Year/Month	Contract Quantity (MWs)
February 2022	█
March 2022	█
April 2022	█
May 2022	█
June 2022	█
July 2022	█
August 2022	█
September 2022	█
October 2022	█
November 2022	█

##### 4.4 Adjustments to Contract Quantity

- (a) Planned Outages: If Seller is unable to provide the applicable Contract Quantity for a portion of a Showing Month due to a Planned Outage of the Unit, then Seller shall have the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to either (i) reduce the Contract Quantity in accordance with the Planned Outage for such portion of the Showing Month; or (ii) provide Alternate Capacity in accordance with Section 4.5 up to the Contract Quantity for the applicable portion of such Showing Month.



- (b) Invoice Adjustment: In the event that the Contract Quantity is reduced due to a Planned Outage as set forth in Section 4.4(a) above or a reduction in Unit NQC and/or Unit EFC as set forth in Sections 4.4(c) and 4.4(d) below, and Seller does not elect to provide Alternate Capacity, then the invoice for such month(s) shall be adjusted to reflect a daily pro rata amount for the duration of such reduction.
- (c) Reductions in Unit NQC: If the Product is Contingent Firm RA Product consisting of RA Attributes (and, if applicable, LAR Attributes) but does not include Flexible RA Attributes Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced by Seller if the Unit experiences a reduction in Unit NQC as determined by the CAISO. Seller's potential reduction in Contract Quantity for each remaining Showing Month shall equal the product of (i) the applicable Showing Month Contract Quantity and (ii) the total amount (in MW) Unit NQC was reduced since the Confirmation Effective Date, divided by (iii) the Unit NQC as of the Confirmation Effective Date. If the Unit experiences such a reduction in Unit NQC, then Seller shall have the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from the same Unit (provided the Unit has sufficient remaining and available Product) and/or Alternate Capacity in accordance with Section 4.5 up to the Contract Quantity.
- (d) Reductions in Unit EFC: If the Product is Contingent Firm RA Product that includes Flexible RA Attributes, Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced by Seller if the Unit experiences a reduction in Unit EFC as determined by the CAISO. Seller's potential reduction in Contract Quantity for each remaining Showing Month shall equal the product of (i) the applicable Showing Month Contract Quantity and (ii) the total amount (in MW) Unit EFC was reduced since the Confirmation Effective Date, divided by (iii) the Unit EFC as of the Confirmation Effective Date. If the Unit experiences such a reduction in Unit EFC, then Seller shall have the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from the same Unit (provided the Unit has sufficient remaining and available Product) and/or Alternate Capacity in accordance with Section 4.5 up to the Contract Quantity.
- (e) UCAP. If during the Delivery Period the CAISO or the CPUC either replaces Unit NQC as the value utilized to measure the qualifying capacity of a Unit with a successor value such as unforced capacity (UCAP) or utilizes such successor value as a supplemental means of measuring the qualifying capacity of a Unit together with Unit NQC, then from and after such replacement Seller will convey the equivalent amount of qualifying capacity of such Unit on a pro rata basis (i.e. following such replacement, Seller's delivery obligation will be obtained by calculating the product of (i) the Contract Quantity divided by the Unit NQC, multiplied by (ii) the Unit's overall qualifying capacity (in MW) as measured by such new method of measuring a Unit's qualifying capacity). If the Unit

experiences such a reduction due to UCAP, then Seller shall have the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from the same Unit (provided the Unit has sufficient remaining and available Product) and/or Alternate Capacity in accordance with Section 4.5 up to the original Contract Quantity.

- (f) Notwithstanding any provision in this Confirmation, Seller shall have the right to reduce the Contract Quantity under this Section 4.4(f) to the extent of AES' failure to deliver all or any portion of the "Contract Quantity" under the AES Confirmation where such failure is excused pursuant to Section 5.8.5 of the AES Confirmation (a redacted copy of such AES Confirmation is attached hereto as Attachment A) by providing written notice to Buyer of such reduction no later than the Notification Deadline for such Showing Month.

#### **4.5 Alternate Capacity and Replacement Units**

- (a) The "Notification Deadline" in respect of a Showing Month shall be fifteen (15) Business Days before the relevant deadlines for the corresponding RAR Showings, LAR Showings and/or Flexible RAR Showings for such Showing Month.
- (b) If Seller desires to provide the Contract Quantity of Product for any Showing Month from a generating unit other than the Unit (a "Replacement Unit"), then Seller may, at no additional cost to Buyer, provide Buyer with Alternate Capacity from one or more Replacement Units, up to the Contract Quantity, for the applicable Showing Month; provided that in each case, Seller shall notify Buyer in writing of its intent to provide Alternate Capacity and identify such Replacement Units no later than the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of the Product description in Article 3 and notice provisions in this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for the remaining portion of that Showing Month, provided however that the Replacement Unit shall not be a coal-fired generating facility.
- (c) Seller shall not be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof if Seller notified Buyer, no later than the Notification Deadline, of Seller's intent not to provide Alternate Capacity in an amount equal to the Contract Quantity of that Showing Month due to a Planned Outage of the Units and/or reduction in the Unit NQC or Unit EFC of the Units.

#### **4.6 Delivery of Product**

- (a) Seller shall provide Buyer with the Designated RA Capacity of Product for each day of each Showing Month.

- (b) Seller shall submit, or cause the Unit's Scheduling Coordinator to submit, by the Notification Deadline (i) Supply Plans to the CAISO, LRA, or other applicable Governmental Body identifying and confirming the Designated RA Capacity to be provided to Buyer for the applicable Showing Month, unless Buyer specifically requests in writing that Seller not do so (it being understood that any Designated RA Capacity subject to such a request from Buyer will be deemed to have been provided to Buyer for all purposes under this Confirmation); and (ii) written confirmation to Buyer that Buyer will be credited with the Designated RA Capacity for such Showing Month per the Unit's Scheduling Coordinator Supply Plan.
- (c) The Product is delivered and received when the CIRA Tool shows the Supply Plan accepted for the Product from the Unit by CAISO or Seller complies with Buyer's instruction to withhold all or part of the Contract Quantity from Seller's Supply Plan for any Showing Month during the Delivery Period. Seller has failed to deliver the Product if (i) Buyer has elected to submit the Product from the 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 due solely to a Seller error, and are rejected by CAISO or (ii) Seller fails to submit the volume of Designated RA Capacity for any Showing Month pursuant to this Confirmation. Buyer will have received the Contract Quantity if (i) Seller's Supply Plan is accepted by the CAISO for the applicable Showing Month, (ii) Seller correctly submits the Supply Plan and the Supply Plan and/or Resource Adequacy Plan are not matched in the CIRA Tool due solely to a Buyer error or (iii) Seller complies with Buyer's instruction to withhold all or part of the Contract Quantity from Seller's Supply Plan for the applicable Showing Month. Seller will not have failed to deliver the Contract Quantity if Buyer fails or chooses not to submit the Unit and the Product in its Resource Adequacy Plan with the CPUC or CAISO.

#### **4.7 Damages for Failure to Provide Designated RA Capacity**

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month, and such failure is not excused under the terms of this Confirmation, then the following shall apply:

- (a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RA Attributes, LAR Attributes and, if applicable, Flexible RA Attributes as the Designated RA Capacity not provided by Seller; provided, however, that if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having solely RA Attributes and no LAR Attributes or Flexible RA Attributes, and no such RA Capacity is available, then Buyer may replace such portion of the Designated RA Capacity with capacity having any applicable Flexible RA Attributes and/or LAR Attributes ("Replacement Capacity") by entering into purchase transactions with one or more third parties, including, without limitation, third parties who have

purchased capacity from Buyer so long as such transactions are done at prevailing market prices. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.

- (b) Seller shall pay to Buyer the following damages in lieu of damages specified in Section 21.3 of the Master Agreement: an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, and (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.7(a); minus (ii) the Designated RA Capacity not provided for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any CAISO revenues or future amounts it may owe to Seller under this Confirmation pursuant to Section 28 of the Master Agreement.

#### **4.8 Indemnities for Failure to Deliver Contract Quantity**

Subject to any adjustments made pursuant to Section 4.4 and requests from Buyer pursuant to Section 4.6(b)(i), Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, to the extent not otherwise paid by Seller to Buyer under Section 4.7(b), resulting from any of the following:

- (a) Seller's failure to provide any portion of the Designated RA Capacity for any portion of the Delivery Period;
- (b) Seller's failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Section 4.4 and Section 4.5; or
- (c) A Unit Scheduling Coordinator's failure to timely submit accurate Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation pursuant to Section 28 of the Master Agreement.

#### **4.9 Monthly RA Capacity Payment**

In accordance with the terms of Section 9 of the Master Agreement, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, in arrears, after the applicable Showing Month. Each Unit's Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery

Period, and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be prorated to reflect any portion of Designated RA Capacity that was not delivered pursuant to Section 4.4 at the time of the CAISO filing for the respective Showing Month.

**RA CAPACITY PRICE TABLE IS CONFIDENTIAL INFORMATION PURSUANT TO ARTICLE 8 BELOW**

**RA CAPACITY PRICE TABLE**

<b>Contract Years</b>	<b>RA Capacity Flat Price (\$/kW-month)</b>
February 2022	██████
March 2022	██████
April 2022	██████
May 2022	██████
June 2022	██████
July 2022	██████
August 2022	██████
September 2022	██████
October 2022	██████
November 2022	██████

**4.10 Allocation of Other Payments and Costs**

Seller shall be entitled to receive and retain all revenues Buyer is not expressly entitled to receive pursuant to this Agreement, including all revenues that Seller may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) revenue for ancillary services, (c) energy sales, (d) any revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, Flexible RAR Showing, as may be applicable, or any similar capacity or resource adequacy showing with the CAISO or CPUC.

Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. Any Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing

to achieve Availability Standards. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during the Delivery Period (including any capacity or availability revenues from RMR Agreements for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in clauses (a) through (e) above).

In accordance with Section 4.9 of this Confirmation and Sections 9 and 28 of the Master Agreement, all such Buyer revenues actually received by Seller, or a Unit's Scheduling Coordinator, owner, or operator shall be remitted to Buyer, and Seller shall indemnify Buyer for any such revenues that Seller does not remit to Buyer, owner, or operator, and Seller shall pay such revenues received by it to Buyer if the Unit's Scheduling Coordinator, owner, or operator fails to remit those revenues to Buyer. If Seller or the Unit's Scheduling Coordinator, owner, or operator (as applicable) fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues pursuant to Section 28 of the Master Agreement against any future amounts it may owe to Seller under this Confirmation. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit Designated RA Capacity provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.

#### **ARTICLE 5. CAISO OFFER REQUIREMENTS**

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an event of Uncontrollable Force that results in a partial or full outage of that Unit, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit's Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

#### **ARTICLE 6. GENERAL REPRESENTATIONS AND WARRANTIES**

In addition to the representations and warranties contained in Section 37 of the Master Agreement, each of Buyer and Seller represents and warrants to the other party that, as of the Effective Date:

- (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (b) it has all contractual, governmental, regulatory and legal authorizations necessary for it to legally perform its obligations under this Confirmation;

- (c) the execution, delivery and performance of this Confirmation are within its powers, and have been duly authorized by all necessary action;
- (d) this Confirmation and each other document executed and delivered in accordance with this Confirmation constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending;
- (e) it is acting for its own account, has made its own independent decision to enter into this Confirmation and as to whether this Confirmation is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in doing so, and is capable of assessing the merits of and understanding, and understands and accepts, the terms and conditions and risks of this Confirmation; and
- (f) with respect to the Master Agreement and this Confirmation, the obligations to make payments hereunder do not constitute or create any kind of lien on, or security interest in, any property or revenues of Buyer.

## **ARTICLE 7. OTHER BUYER AND SELLER COVENANTS**

### **7.1 Further Assurances**

Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's applicable RAR, LAR and Flexible RAR. Such commercially reasonable actions shall include, without limitation:

- (a) Cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, 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 RAR, LAR, and Flexible RAR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CPUC, the CAISO, a LRA of competent jurisdiction, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, pursuant to the "deliverability" standards established by the CAISO or other Governmental Body of competent jurisdiction; and

- (b) Negotiating in good faith to make necessary amendments, if any, to this Confirmation, which are subject to agreement of such Parties, in each Party's sole discretion, to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, so as to maintain the purpose and intent of the Transaction agreed to by the Parties on the Confirmation Effective Date.

## 7.2 Seller Representations and Warranties

Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:

- (a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, the CAISO, the CPUC, a LRA of competent jurisdiction, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy such third party's applicable RAR, LAR or Flexible RAR or analogous obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit's owner or operator;
- (c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR or Flexible RAR, or analogous obligations in any non-CAISO market;
- (d) The Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;
- (e) The owner or operator of the Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, in accordance with General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities;
- (f) The owner or operator of the Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;
- (g) If Seller is the owner of any Unit, the aggregation of all amounts of applicable LAR Attributes, RA Attributes and Flexible RA Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity;



- (h) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit's Scheduling Coordinator is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;
- (i) Seller has notified the Scheduling Coordinator of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the Scheduling Coordinator is obligated to deliver the Supply Plans in accordance with the Tariff;
- (j) Seller has notified the Scheduling Coordinator of each Unit that Seller is obligated to cause each Unit's Scheduling Coordinator to provide to the Buyer, by the Notification Deadline, the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Confirmation for the applicable period; and
- (k) Seller has notified each Unit's Scheduling Coordinator that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such Scheduling Coordinator is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

#### **ARTICLE 8. CONFIDENTIALITY**

In addition to the rights and obligations in Section 30 of the Master Agreement, the Parties agree that Buyer may disclose the Designated RA Capacity under this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA of competent jurisdiction in order to support its applicable LAR, RAR or Flexible RAR Showings, if applicable, and Seller may disclose the transfer of the Designated RA Capacity under this Transaction to the Scheduling Coordinator of each Unit in order for such Scheduling Coordinator to timely submit accurate Supply Plans. In addition, in the event Buyer resells all or any portion of the Contract Quantity to another party, Buyer shall be permitted to disclose to the other party to such resale transaction all such information necessary to effect such resale transaction.

Also, each Party recognizes that this Confirmation 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; provided such Party shall cause all accountants who receive Confidential Information to observe the terms of this Agreement and such Party shall cause all accountants who receive Confidential Information to observe the terms of this Agreement and such Party shall be responsible for an breach of the terms of this Agreement by such accountant. 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 Buyer may be obligated to provide Confidential Information to the CPUC and CEC for regulatory compliance purposes for the California RPS program, 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; provided such Party shall cause all such Affiliates, attorneys, accountants, representatives, agents and employees who receive Confidential Information to observe the terms of this Agreement and such Party shall be responsible for any breach of the terms of this Agreement by any such Affiliate and any of their attorneys, accountants, representatives, agents and employees.

#### **ARTICLE 9. BUYER'S RE-SALE OF PRODUCT**

Buyer may re-sell all or a portion of the Product hereunder; provided, however, that any such re-sale does not increase Seller's obligations or liabilities hereunder.

#### **ARTICLE 10. MARKET BASED RATE AUTHORITY**

Upon Buyer's written request, Seller shall, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 697, submit a letter of concurrence in support of any affirmative

statement by Buyer that this contractual arrangement does not transfer “ownership or control of generation capacity” from Seller to Buyer 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 Buyer.

## **ARTICLE 11. COLLATERAL REQUIREMENTS**

Notwithstanding any provision in the Master Agreement to the contrary, neither Party shall be required to post collateral or other security for this Transaction.

## **ARTICLE 12. GENERAL PROVISIONS**

### **12.1. 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.

### **12.2. Designated Fund and Limited Obligations**

- (a) Designated Fund. Seller 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) Seller 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, Seller 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 Seller’s payment obligations under its other contracts for the purchase of energy for San José Clean Energy. Seller shall provide Buyer with reasonable access to account balance information with respect to the San José Clean Energy Designated Fund during the Term.
- (b) Limited Obligations. Seller’s payment obligations under the Agreement are special limited obligations of the Seller 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.

### **12.3. City of San José Standard Provisions**

- (a) Nondiscrimination/Non-Preference. Buyer shall not, and shall not cause or allow its affiliates in connection with this Agreement 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. Buyer will inform its affiliates of these obligations under the Agreement. The prohibition is not intended to preclude Buyer from providing a reasonable accommodation to a person with a disability.
- (b) Conflict of Interest. As of the Effective Date, Buyer 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. As of the Effective Date, Buyer is unaware of any facts constituting a conflict of interest related to this Agreement. Buyer shall avoid all conflicts of interest in performing this Agreement. Upon Buyer having express knowledge that the manner in which it performs any part of this Agreement results in a conflict of interest it shall promptly notify the Seller in writing of the facts giving rise to a conflict of interest. Buyer's violation of this subsection (b) is a material breach.
- (c) Environmentally Preferable Procurement Policy. When feasible, Buyer 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 Seller to terminate this Agreement.
- (d) Gifts Prohibited. Chapter 12.08 of the San José Municipal Code generally prohibits a City of San José officer or designated employee from accepting any gift. Buyer shall not offer any City of San José officer or designated employee any gift prohibited by Chapter 12.08 related to this Agreement. Buyer's violation of this subsection (d) is a material breach.
- (e) Disqualification of Former Employees. Chapter 12.10 of the San José Municipal Code 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. Buyer shall not use any officer, employee or agent to perform any services related to this Agreement if doing so would violate Chapter 12.10.

#### **12.4. 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 electronic, facsimile or scanned signatures as originals under this Confirmation. 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.

#### **12.5. 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.

### **ARTICLE 13. MASTER AGREEMENT AMENDMENTS**

For purposes of this Transaction only, the Master Agreement shall be amended as follows:

- (a) Section 22.1 is modified by inserting the following new text at the end thereof:
  - “(f) the failure of the Defaulting Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party’s obligations to deliver or receive the quantities of capacity and/or energy due under this Agreement, the exclusive remedy for which is provided in Section 21.3) if such failure is not remedied within ten (10) Business Days after written notice;
  - (g) 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;
  - (h) the institution, by the Defaulting Party, of a general assignment for the benefit of its creditors; or
  - (i) 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) is amended by inserting “and is continuing” after “Event of Default occurs” in the first line thereof and deleting the second sentence therein.
- (c) Section 22.3 is amended by:

- 1) In Section 22.3(b), replacing the second sentence thereof with “The “Present Value Rate” shall be determined by the Non-Defaulting Party in a commercially reasonable manner.”;
  - 2) In Section 22.3(c), 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, the Termination Payment for all such Terminated Transactions shall be zero, notwithstanding any provision in this Section in this Confirmation or Agreement to the contrary.”
  - 3) In Section 22.3(e), deleting the entire provision (including subsections) and replacing it with the following: “[intentionally omitted]”;
  - 4) In Section 22.3(f), deleting the entire provision and replacing 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.”
- (d) The netting provisions of Section 28, NETTING, shall apply to the Transaction covered by this Confirmation as if Buyer and Seller had both executed Exhibit A, NETTING, to the Master Agreement. Both Parties intend for the netting provisions of Exhibit A to the Master Agreement to be effective on the Confirmation Effective Date.
- (e) Section 30.1 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”.
- (f) Subsection 34.2 is hereby deleted and replaced with the following:

“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.”

- (g) The phrase “arbitration or” is hereby deleted from the first line of Section 34.4.
- (h) The following shall be inserted as a new Section 34.5; PROVIDED, HOWEVER, THAT THE FOLLOWING NEW SECTION 34.5 SHALL NOT LIMIT BUYER’S RIGHT TO RECOVER FROM SELLER, OR SELLER’S OBLIGATION TO PAY BUYER, ANY AND ALL AMOUNTS OWED UNDER SECTION 4.8 OF THIS CONFIRMATION, INCLUDING PENALTIES AS SPECIFIED THEREIN:

“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 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.”

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

“The Parties agree as follows:

For purposes of this Section, the term “Transaction” means a specific sale and purchase, or an option for sale and purchase, of capacity and/or energy to be supplied by one Party to the other Party. From the date of entering into a Transaction under this Master 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 Master 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 Master 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.”

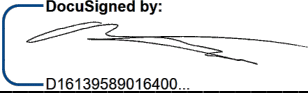
*[Signatures appear on following page.]*



**ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.**


**CALPINE ENERGY SERVICES, L.P.**

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

By:  \_\_\_\_\_  
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Name: Andrew Novotny


Title: Vice President

By:  \_\_\_\_\_  
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Name: Jeanne Sole

Title: Deputy Director of Power Resources

**Approved as to form:**

By:  \_\_\_\_\_  
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Name: Luisa Elkins

Title: Senior City Deputy Attorney

**Attachment A**

**Redacted AES Confirmation**

## **ELECTRONIC RECORD AND SIGNATURE DISCLOSURE**

From time to time, Calpine Corporation (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

### **Getting paper copies**

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

### **Withdrawing your consent**

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

### **Consequences of changing your mind**

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

### **All notices and disclosures will be sent to you electronically**

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

### **How to contact Calpine Corporation:**

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: [gus.dahu@calpine.com](mailto:gus.dahu@calpine.com)

### **To advise Calpine Corporation of your new email address**

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at [gus.dahu@calpine.com](mailto:gus.dahu@calpine.com) and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

### **To request paper copies from Calpine Corporation**

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to [gus.dahu@calpine.com](mailto:gus.dahu@calpine.com) and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

### **To withdraw your consent with Calpine Corporation**

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to [gus.dahu@calpine.com](mailto:gus.dahu@calpine.com) and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

### **Required hardware and software**

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

### **Acknowledging your access and consent to receive and sign documents electronically**

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to ‘I agree to use electronic records and signatures’ before clicking ‘CONTINUE’ within the DocuSign system.

By selecting the check-box next to ‘I agree to use electronic records and signatures’, you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify Calpine Corporation as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by Calpine Corporation during the course of your relationship with Calpine Corporation.

# 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 # 667328-000

Contractor: Calpine Energy Services, L.P.

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Contract Description: Contract ID: 21-199-21

Term Start Date: 12/13/2021 Term End Date: 11/30/2022 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](mailto:Invoices@sanjosecleanenergy.org)
- Phone: (408) 535-4898