

**CONFIRMATION  
CAISO ENERGY**

This confirmation agreement (“Confirmation”) confirms the Transaction between **CalPeak Power, LLC** and **City of San José, a California municipality** (“City of San José”), each individually a “Party” and together the “Parties,” dated as of 1/20/2022 (“Effective Date”) by which Seller agrees to sell and deliver, and Buyer agrees to purchase and receive, the Product. This Transaction is governed by, constitutes part of, and is subject to the terms and provisions of the Edison Electric Institute Master Power Purchase and Sale Agreement dated December 21, 2021 between the Parties, as amended from time to time (the “Master Agreement”). The Master Agreement and this Confirmation, including any appendices, exhibits or amendments thereto, shall collectively be referred to herein as the “Agreement” and shall constitute a single agreement between the Parties with respect to the Transaction.

The Parties agree as follows:

<b>Transaction Number:</b>	SJCE: 22-112-01
<b>Buyer:</b>	City of San José
<b>Seller:</b>	CalPeak Power, LLC
<b>Product:</b>	CAISO Energy
<b>Contract Quantity:</b>	See Appendix A for shape.
<b>Contract Price:</b>	██████/MWh
<b>Delivery Period:</b>	<b>Start Date:</b> June 1, 2022 <b>End Date:</b> October 31, 2025 See Appendix A for shape.
<b>Delivery Point:</b>	TH_NP15_GEN-APND
<b>SCID Buyer:</b>	NSJC
<b>SCID Seller:</b>	TS6
<b>Scheduling:</b>	The Product will be scheduled to Buyer 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.
<b>Payment Terms:</b>	For each month during the Delivery Period, Buyer shall pay Seller an amount equal to the Contract Quantity of Product that is scheduled

	<p>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 Article Six of the Master Agreement.</p>
<p><b>Transaction Terms:</b></p>	
<p><b>City of San José          Standard Provisions:</b></p>	<p>(a) <u>Nondiscrimination/Non-Preference</u>. 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.</p> <p>(b) <u>Conflict of Interest</u>. 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.</p>

	<p>(c) <u>Environmentally Preferable Procurement Policy</u>. 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.</p> <p>(d) <u>Gifts Prohibited</u>. 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.</p> <p>(e) <u>Disqualification of Former Employees</u>. 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.</p>
<p><b>Definitions:</b></p>	<p>Any capitalized terms used in this Confirmation but not otherwise defined below shall have the meaning ascribed to such term in the Master Agreement or the CAISO Tariff.</p> <p>“<u>CAISO</u>” means the California Independent System Operator Corporation, or any successor entity.</p> <p>“<u>CAISO Energy</u>” 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.</p> <p>“<u>CAISO Tariff</u>” 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</p>

	<p>Federal Energy Regulatory Commission (“FERC”) approval, as approved by FERC.</p> <p>“<u>City’s Compliance Officer</u>” has the meaning set forth in Section 4.08.020 of the San José Municipal Code.</p> <p>“<u>Flat</u>” means all hours beginning 0 to HE 24, Monday through Sunday, including NERC holidays.</p> <p>“<u>HE</u>” means hour ending.</p> <p>“<u>Inter-SC Trade</u>” or “<u>IST</u>” has the meaning set forth in the CAISO Tariff.</p> <p>“<u>MW</u>” means megawatt.</p> <p>“<u>MWh</u>” means megawatt-hour.</p> <p>“<u>Off-Peak</u>” means HE 01-06, 23-24 PPT Mon-Sat, HE 01-24 Sun and NERC Holidays.</p> <p>“<u>On-Peak</u>” means HE 07-22 PPT Mon-Sat, exc. NERC Holidays.</p>
--	--

*[Signatures appear on the following page.]*

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

**CALPEAK POWER, LLC**

**CITY OF SAN JOSÉ, A CALIFORNIA  
MUNICIPALITY**

By: *Graham Baldwin*  
Name: Graham Baldwin  
Title: Vice President

By: *Lori Mitchell*  
Lori Mitchell (Feb 9, 2022 15:13 PST)  
Name: Lori Mitchell  
Title: Director of Community Energy

**Approved as to form:**

By: *Luisa Elkins*  
Name: Luisa Elkins  
Title: Senior Deputy City Attorney



**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**

# 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 # 667443-000

Contractor: CalPeak Power, LLC

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

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

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

Contract Description: Contract ID: 22-112-01

Term Start Date: 2/9/2022 Term End Date: 10/31/2025 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): Á' \_\_\_\_\_

Notes:

Department Director Signature: \_\_\_\_\_ Date

Office of the City Manager Signature: \_\_\_\_\_ Date