

**EEI AGREEMENT  
LONG FORM CONFIRMATION  
FOR RESOURCE ADEQUACY**

THIS EEI AGREEMENT LONG FORM CONFIRMATION FOR RESOURCE ADEQUACY (“Confirmation”) sets forth the Transaction between **Chevron Power Holdings Inc.** (“Party A” or “Seller”) and **City of San José**, a California municipality (“Party B” or “Buyer”), each individually a “Party” and together the “Parties”, dated as of April 18, 2022 (the “Confirmation Effective Date”), in which Seller agrees to sell and deliver, and Buyer agrees to purchase and receive, the Product. This Transaction shall be deemed to have been entered into pursuant to, and shall supplement, form a part of, and be governed by the terms and conditions of the form of Master Power Purchase and Sale Agreement published by the Edison Electric Institute and the National Energy Marketers Association (version 2.1 dated 4/25/00) (the “EEI Agreement”) with a Cover Sheet containing the elections and other changes contained herein as if the Parties have executed the EEI Agreement (with such Cover Sheet the “Master Agreement”). The Master Agreement and this Confirmation shall be collectively referred to herein as the “Agreement”. Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the CAISO Tariff (defined herein). To the extent that this Confirmation is inconsistent with any provision of the Master Agreement, this Confirmation shall govern the rights and obligations of the Parties hereunder.

**Name:** Chevron Power Holdings Inc.

**All Notices:**

Chevron Pipeline & Power Supervising  
Counsel

[REDACTED]

Duns: N/A

Federal Tax ID Number: [REDACTED]

**Name:** City of San José

**All Notices:**

City of San José, a California municipality

[REDACTED]

Duns: [REDACTED]

Federal Tax ID Number: [REDACTED]

**With a copy to:**

Office of the City Attorney  
Attn. Deputy City Attorney, Community Energy

[REDACTED]

**and an additional email copy to:**

[REDACTED]

**Invoices:**

Attn: Finance Manager

[REDACTED]

**Invoices:**

Attn: Division Manager, Risk Management,

[REDACTED]

**Scheduling:**

[Redacted]

**Scheduling:**

Attn: NCPA Pre-Scheduling Desk

[Redacted]

**Alternative:**

Attn: NCPA Scheduling Coordination Desk

[Redacted]

**Confirmations:**

[Redacted]

**Confirmations:**

Attn: Deputy Director of Power Resources

[Redacted]

**Payments:**

Attn: Accounts Receivable

[Redacted]

**Wire Transfer:**

[Redacted]

**Wire Transfer:**

[Redacted]

**Credit and Collections:**

Attn: Credit Manager

[Redacted]

**Credit and Collections:**

Attn: Division Manager, Budget & Financial Planning

[Redacted]

**With additional Notices of an Event of Default or Potential Event of Default to:**

[Redacted]

**With additional Notices of an Event of Default or Potential Event of Default to:**

[Redacted]

**and to:**

Attn: Director of Finance

[Redacted]

**and to:**

Office of the City Attorney

Attn. Deputy City Attorney, Community Energy

[Redacted]

The Parties hereby agree that the General Terms and Conditions of the Master Agreement are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

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**Article Two:**

Transaction Terms  
and Conditions

Optional provision in Section 2.4. If not checked, inapplicable.

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**Article Four:**

Remedies for Failure  
to Deliver or Receive

Accelerated Payment of Damages. If not checked, inapplicable.

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**Article Five:**

Events of Default; Remedies

Cross Default for Party A:  
 Party A: N/A Cross Default Amount: N/A  
 Other Entity: N/A Cross Default Amount: N/A

Cross Default for Party B:  
 Party B: N/A Cross Default Amount: N/A  
 Other Entity: N/A Cross Default Amount: N/A

**5.6 Closeout Setoff**

- Option A (Applicable if no other selection is made.)
  - Option B – Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows: \_\_\_\_\_
  - Option C (No Setoff)
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**Article Eight:**

Credit and  
Collateral Requirements

**8.1 Party A Credit Protection:**

- (a) Financial Information:
  - Option A
  - Option B Specify: \_\_\_\_\_
  - Option C Specify: \_\_\_\_\_
- (b) Credit Assurances:
  - Not Applicable
  - Applicable
- (c) Collateral Threshold:
  - Not Applicable
  - Applicable
- (d) Downgrade Event:
  - Not Applicable
  - Applicable
- (e) Guarantor for Party B: N/A  
Guarantee Amount: N/A

8.2 Party B Credit Protection:

- (a) Financial Information:
    - Option A
    - Option B Specify: \_\_\_\_\_
    - Option C Specify:  
Summarized financial data of Chevron U.S.A Inc. as published in the annual report.
  
  - (b) Credit Assurances:
    - Not Applicable
    - Applicable
  
  - (c) Collateral Threshold:
    - Not Applicable
    - Applicable
  
  - (d) Downgrade Event:
    - Not Applicable
    - Applicable
  
  - (e) Guarantor for Party A: N/A  
Guarantee Amount: N/A
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**Article Ten:**

Confidentiality  Confidentiality Applicable If not checked, inapplicable.

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**Schedule M:**

- Party A is a Governmental Entity or Public Power System
  - Party B is a Governmental Entity or Public Power System
  - Add Section 3.6. If not checked, inapplicable
  - Add Section 8.4. If not checked, inapplicable
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**Changes to Master Agreement:**

**This Confirmation incorporates, by reference, the changes published in the EEI Errata, Version 1.1, dated July 18, 2007.**

**ARTICLE ONE: GENERAL DEFINITIONS**

1. Section 1.24 “**Gains**” is amended by adding before the period at the end thereof the following: “based on the prime rate of interest as published from time to time under The Wall Street Journal for such period and in accordance with Section 5.2”.
  
2. Section 1.27 “**Letters of Credit**” is amended by deleting the phrase “or a foreign bank with a U.S. branch” and replacing it with the phrase “or a U.S. branch of a foreign bank.”
  
3. Section 1.46 “**Potential Event of Default**” is deleted in its entirety.

4. Section 1.51 “**Replacement Price**” is amended by adding “for delivery” immediately before “at the Delivery Point” in the second line, and replacing “at Buyer’s option” with “absent a purchase” in the fifth line.
5. Section 1.53 “**Sales Price**” is deleted in its entirety.
6. Section 1.60 “**Transaction**” is amended by inserting the words “in writing” immediately following the words “agreed to”.

## **ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS**

7. Section 2.1 is deleted in its entirety and replaced with the following: “A Transaction, or an amendment, modification or supplement thereto, shall be entered into only upon a writing signed by both Parties.”
8. Section 2.2 is amended by deleting “(including any Confirmations accepted in accordance with Section 2.3)” from the second sentence.
9. Section 2.3 is deleted in its entirety and replaced with the following:

“2.3 Confirmation. A Transaction shall be entered into only by a written confirmation in a form mutually agreeable to both Parties and signed by both Parties (“Confirmation”). Notwithstanding anything to the contrary in this Master Agreement, the Master Agreement and any and all Confirmations may not be amended or modified except by an instrument in writing signed by both of the Parties.”
10. Section 2.4 is amended by deleting the words “either orally or” in the sixth line.
11. Section 2.5 is deleted in its entirety and replaced with the following:

“2.5 Recording. Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording (“Recording”) of all telephone conversations between the Parties to this Master Agreement, and that any such Recordings will be retained in confidence and secured from improper access. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees.”

## **ARTICLE THREE: OBLIGATIONS AND DELIVERIES**

12. Section 3.2 is amended by adding to the end thereof: “Product deliveries shall be scheduled in accordance with the then-current applicable tariffs, including the generally applicable protocols, operating procedures and scheduling practices adopted pursuant to such tariffs, for the relevant region.”

## **ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES**

13. Section 5.1(a) is amended by changing “three (3) Business Days” to “five (5) Business Days”.
14. Section 5.2 is amended by adding the following to the end of that provision: “then each such Transaction shall be terminated as soon thereafter as reasonably practicable, and upon termination shall be deemed to be a Terminated Transaction and the Termination Payment

payable in connection with all such Transactions shall be calculated in accordance with Section 5.3 below). The Gains and Losses for each Terminated Transaction shall be determined by the Non-Defaulting Party (or its agent) calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of that Terminated Transaction. In making such calculation, the Non-Defaulting Party may reference information supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include dealers in the relevant markets, brokers and information vendors, including, without limitation, Intercontinental Exchange, Inc. and other sources of market information not affiliated with the Parties. If the Non-Defaulting Party's calculation of the Termination Payment results in an amount that would be due to the Defaulting Party (i.e. the Defaulting Party was in-the-money), then the Termination Payment shall be deemed to be zero dollars (\$0.00)."

#### **ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS**

15. A new Section 8.4. "UCC Waiver," is added as follows:

"8.4 UCC Waiver. Article Eight sets forth the entirety of the agreement of the Parties regarding credit, collateral and adequate assurances in respect of the Transactions under this Agreement. Except as expressly set forth therein, neither Party:

(a) has or will have any obligation to post margin, provide letters of credit, pay deposits, make any other prepayments or provide any other financial assurances, in any form whatsoever, or

(b) will have reasonable grounds for insecurity with respect to the creditworthiness of a Party that is complying with the relevant provisions of Article Eight of this Agreement; and

(c) all rights, express or implied, relating to financial assurances arising from Section 2-609 of the Uniform Commercial Code or case law applying similar doctrines, are hereby waived."

#### **ARTICLE TEN: MISCELLANEOUS**

16. Section 10.6 is amended by changing "NEW YORK" to "CALIFORNIA".

17. Section 10.2(ix) is deleted in its entirety and replaced with the following:

"it is a "forward contract merchant" within the meaning of the Title 11 of the United States Code, as amended (the "Bankruptcy Code"), all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute a "settlement payment" within the meaning of the Bankruptcy Code, all transfers of Performance Assurance by one Party to the other Party under this Agreement constitute a "margin payment" within the meaning of the Bankruptcy Codes, each Party shall have the "contractual right" to terminate, liquidate, accelerate, or offset the transaction as a "master netting agreement participant" within the meaning of the Bankruptcy Code, electricity delivered hereunder constitutes a "good" under Section 503(b)(9) of the Bankruptcy Code, and the Parties are entities entitled to the rights under, and protections afforded by, Sections 362, 546, 553, 556, 560, 561 and 562 of the Bankruptcy Code."

18. Section 10.8 is amended by adding the following to the end thereof: "This Master Agreement and any Confirmation hereunder 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 Master Agreement and any Confirmation by electronic mail transmission, including in PDF format, shall be effective as delivery of a manually executed signature page.”

19. Section 10.10 is amended by adding at the end of Section 10.10: “Each Party further agrees that, for purposes of this Agreement, the other Party is not a "utility" as such term is used in 11 U.S.C. Section 366, and each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. Section 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort with respect to the Agreement or any Transaction hereunder Without limiting the binding nature of any other provision of this Agreement on permitted successors and assigns, this provision is intended to be binding upon all successors and assigns of the Parties, including judgement lien creditors, receivers, estates in possession, and trustees thereof.”

20. Section 10.11 is amended by adding the following at the end of the last sentence:

“Party A and Party B acknowledge and agree that this Agreement is subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). Party B acknowledges that Party A or its Affiliates may submit information to Party B that the other 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). Party A acknowledges that Party B or its Affiliates may submit to Party A information that Party B considers confidential or proprietary or protected from disclosure pursuant to exemptions 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” and the disclosing Party, the “Disclosing Party”), the Party receiving such request (the “Receiving Party”) as soon as practical, shall notify the Disclosing Party that such request has been made as specified in the Cover Sheet and the Disclosing Party shall have at least nine (9) days’ notice of such request to take action to prevent disclosure of Confidential Information. If the Disclosing Party takes no such action within nine (9) days after receiving the foregoing notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor’s demand and is not required to defend against it. The Parties will agree upon the information in this Confirmation to be designated as confidential and will prepare a redacted version of this Confirmation. If the Disclosing Party instructs the Receiving Party not to disclose the information, the Receiving Party shall release the redacted version of the Confirmation. In the case where Party B is the Receiving Party and it has provided redacted information to the Requestor in accordance with the foregoing, and the Requestor then challenges the withholding of redacted material in an action in superior court under section 6259 of the California Public Records Act, Party B shall promptly provide notice of such action to Party A so that Party A can

intervene and present its position.”

21. The following new Section shall be added as Section 10.12:

“10.12 City of San José Standard Provisions.

- (a) Nondiscrimination/Non-Preference. Seller 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. Seller will inform all its affiliates of these obligations under this Agreement. 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.
- (b) Conflict of Interest. Each Party 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. Each Party represents that, as of the Confirmation Effective Date, it was unaware of any facts constituting a conflict of interest . Each Party shall avoid all conflicts of interest in performing this Agreement. Each Party has the obligation of determining if the manner in which it performs any part of this Agreement results in a conflict of interest, and a Party shall promptly notify the other Party in writing if it becomes aware of any facts giving rise to a conflict of interest. Seller’s violation of this subsection (b) is a material breach .
- (c) Environmentally Preferable Procurement Policy. When feasible, 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. Chapter 12.08 of the San José Municipal Code 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 related to this Agreement and no employee of the City of San José’s Community Energy Department with responsibilities related to the performance of this Agreement shall take any action to solicit or accept any gift. Seller’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. Seller shall not use any officer, employee



or agent to perform any services related to this Agreement if doing so would violate Chapter 12.10.”

22. The following new Section shall be added as Section 10.13:

“10.13 FERC Standard of Review; Mobile Sierra Doctrine.

(a) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver in subsection (b) below is unenforceable or ineffective as to such Party), a non-party or FERC acting *sua sponte*, shall solely be the “public interest” application of the “just and reasonable” 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) and clarified by Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish 554 U.S. 527 (2008) ( the “Mobile-Sierra” doctrine).

(b) In addition, and notwithstanding the foregoing subsection (a), to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means directly or indirectly (through complaint, investigation, or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable law or market conditions that may occur. In the event it were to be determined that applicable law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection (b) shall not apply, provided that, consistent with the foregoing subsection (a), neither Party shall seek any such changes except solely under the “public interest” application of the “just and reasonable” standard of review and otherwise as set forth in the foregoing section (a).”

23. The following new Section shall be added as Section 10.14:

“10.14 Counterparts. This Agreement may be executed in counterparts, each of which will be considered an original, but all of which together will constitute the same instrument. Without limiting the foregoing, a facsimile copy of this Agreement or copy of this Agreement sent via electronic mail in a portable document format (“PDF”) will be considered an original.”

## **SCHEDULE M: GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEMS**

1. The Parties agree to add the following definitions in Article One:

“Act” means City of San José Municipal Code Title 26.

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

“Designated Fund” means that certain Department of Community Energy designated fund that shall be used solely for Party B (San José Clean Energy) costs and expenses, including the obligations under this Master Agreement.

“Governmental Entity or Public Power System” means Party B (San José Clean Energy).

“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.

“Special Fund” means the Designated Fund.

2. Section 3.4 is hereby deleted in its entirety and replaced with the following:

“Section 3.4 Party B Deliveries. Upon the reasonable request of Party A, Party B shall provide Party A copies, certified or otherwise identified to Party A’s reasonable satisfaction, of all ordinances, resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery and performance by Party B of this Master Agreement.”

3. If the appropriate box is checked on the Cover Sheet, as an alternative to selecting one of the options under Section 8.3, the Parties agree to add the following section to Article Three:

“Section 3.6 Governmental Entity or Public Power System Security. Party B 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 without an appropriation for such obligation, and, therefore, nothing in this Agreement shall constitute an obligation of future legislative bodies of the City to appropriate funds for purposes of this Agreement; provided, however, that (a) Party B has created and set aside a Special Fund for payment of its obligations under this Agreement and (b) 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, Party B agrees to establish San José Clean Energy rates and charges that are sufficient to maintain revenues in the Special Fund necessary to pay its obligations under this Agreement and all of Party B’s payment obligations under its other contracts for the purchase of energy for San José Clean Energy. Party B’s payment obligations under this Agreement are special limited obligations of Party B payable solely from the Special 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. Party B shall provide Party A with reasonable access to account balance information with respect to the San José Clean Energy Designated Fund during the term of this Agreement.”

4. Section 10.6 is amended by adding the following at the end thereof:

“NOTWITHSTANDING THE FOREGOING, IN RESPECT OF THE APPLICABILITY OF THE ACT AS HEREIN PROVIDED, THE LAWS OF THE STATE OF CALIFORNIA SHALL APPLY.”

**1.  
DEFINITIONS**

- 1.1 “Agreement” has the meaning specified in the introductory paragraph hereof.
- 1.2 “Alternate Capacity” means any replacement Product which Seller has elected to provide to Buyer in accordance with the terms of Section 4.5.
- 1.3 “Applicable Laws” means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.4 “Availability Incentive Payments” has the meaning set forth in the Tariff.
- 1.5 “Availability Standards” shall mean Availability Standards as defined in Section 40.9 of the Tariff or otherwise applicable to CAISO.
- 1.6 “Buyer” has the meaning specified in the introductory paragraph hereof.
- 1.7 “CAISO” means the California Independent System Operator or its successor.
- 1.8 “Capacity Attributes” means attributes of the Unit that may be counted toward Compliance Obligations, including: flexibility, dispatchability, physical location or point of electrical interconnection of the Unit; Unit ability to generate at a given capacity level, provide ancillary services, or ramp up or down at a given rate; any current or future defined characteristics, certificates, tags, credits, or accounting constructs of the Unit, howsoever entitled, identified from time to time by the CAISO or a Governmental Body having jurisdiction over Compliance Obligations.
- 1.9 “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 definition of Section 1.51 of the Master Agreement, “Capacity Replacement Price” shall be deemed to be the “Replacement Price.”
- 1.10 “Compliance Obligations” means, as applicable, RAR, LAR and FCR.
- 1.11 “Confirmation” has the meaning specified in the introductory paragraph hereof.
- 1.12 “Confirmation Effective Date” has the meaning specified in the introductory paragraph hereof.
- 1.13 “Contingent Firm RA Product” has the meaning specified in Section 3.4 hereof.
- 1.14 “Contract Price” means, for any Monthly Delivery Period, the price specified under the RA Capacity Price Table in Section 4.9.
- 1.15 “Contract Quantity” means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in the Contract Quantity Table in Section 4.3 which Seller

has agreed to provide to Buyer from the Unit for such Showing Month (as such amount may be adjusted pursuant to Section 4.4).

- 1.16 “CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 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 subsequent decisions related to resource adequacy issued from time to time by the CPUC.
- 1.17 “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.
- 1.18 “Delivery Period” has the meaning specified in Section 4.1 hereof.
- 1.19 “Delivery Point” has the meaning specified in Section 4.2 hereof.
- 1.20 “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 the amount of Contract Quantity that Seller has elected to provide Alternate Capacity with respect to, minus any reductions to Contract Quantity specified in Section 4.4 with respect to which Seller has not elected to provide Alternate Capacity.
- 1.21 “Effective Flexible Capacity” means the flexible capacity of a resource that can be counted towards an LSE’s FCR obligation, as identified from time to time by the Tariff, the CPUC Decisions, LRA, or other Governmental Body having jurisdiction.
- 1.22 “FCR Attributes” means, with respect to a Unit, any and all FCR attributes that can be counted toward an LSE’s FCR, as they are identified from time to time by the CPUC Decisions, the Tariff, an LRA, or other Governmental Body having jurisdiction that can be counted toward FCR and are consistent with the operational limitations and physical characteristics of such Unit. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines the FCR Attributes of a Unit, then such change will not result in a change in obligations or payments made pursuant to this Transaction.
- 1.23 “FCR Showings” means the FCR 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 and the Tariff, or to an LRA having jurisdiction over the LSE.
- 1.24 “Firm RA Product” has the meaning specified in the Section 3.3 hereof.
- 1.25 “Flexible Capacity Category” shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- 1.26 “Flexible Capacity Requirements” or “FCR” means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by an LRA or other Governmental Body having jurisdiction over Compliance Obligations.
- 1.27 “Flexible RA Product” has the meaning specified in the Section 3.2 hereof.
- 1.28 “GADS” means the Generating Availability Data System or its successor.

- 1.29 “Generic RA Product” means Designated RA Capacity consisting of RAR Attributes and, if applicable, LAR Attributes, which does not include FCR Attributes.
- 1.30 “Good Utility Practice” has the meaning set forth in the Tariff.
- 1.31 “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.
- 1.32 “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 having jurisdiction over the LSE, as implemented in the Tariff. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.33 “LAR Attributes” means, with respect to a Unit, any and all resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC Decisions, CAISO, LRA, or other Governmental Body having jurisdiction over Compliance Obligations, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward LAR and are consistent with the operational limitations and physical characteristics of such Unit, but exclusive of any RAR Attributes which are not associated with where in the CAISO Control Area the Unit is physically located or electrically interconnected. 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 obligations or payments made pursuant to this Transaction.
- 1.34 “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 having jurisdiction over the LSE.
- 1.35 “LRA” has the meaning set forth in the Tariff.
- 1.36 “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).
- 1.37 “Master Agreement” has the meaning specified in the introductory paragraph hereof.
- 1.38 “Monthly Delivery Period” means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 1.39 “Monthly RA Capacity Payment” has the meaning specified in Section 4.9 hereof.
- 1.40 “NERC” means the North American Electric Reliability Council, or its successor.
- 1.41 “NERC/GADS Protocols” means the GADS protocols established by NERC, as may be updated from time to time.
- 1.42 “Net Qualifying Capacity” has the meaning set forth in the Tariff.

- 1.43 “Non-Availability Charges” has the meaning set forth in the Tariff.
- 1.44 “Notification Deadline” is twenty (20) Business Days before the relevant deadlines for the corresponding Compliance Showings applicable to the relevant Showing Month.
- 1.45 “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).
- 1.46 “Party” and “Parties” have the meanings specified in the introductory paragraph hereof.
- 1.47 “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.
- 1.48 “Product” has the meaning specified in Article 3 hereof.
- 1.49 “RA Capacity” means the qualifying and deliverable capacity of the Unit for RAR, LAR, and FCR 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 RAR Attributes, LAR Attributes and FCR Attributes of the capacity provided by a Unit, as applicable pursuant to this Confirmation.
- 1.50 “RA Capacity Price” means the price specified in the RA Capacity Price Table in Section 4.9 hereof to be paid by Buyer for the Product, including all RAR Attributes, LAR Attributes and FCR Attributes of the capacity provided by a Unit, as applicable pursuant to this Confirmation.
- 1.51 “RAR” or “Resource Adequacy Requirements” means the resource adequacy requirements, exclusive of LAR and FCR, established for LSEs by the CPUC pursuant to the CPUC Decisions, by the CAISO under the Tariff, or by an LRA or other Governmental Body having jurisdiction over Compliance Obligations.
- 1.52 “RAR Attributes” means, with respect to a Unit, any and all resource adequacy attributes, as they are identified as of the Confirmation Effective Date by the Tariff, the CPUC Decisions, LRA, or any Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward RAR and are consistent with the operational limitations and physical characteristics of such Unit, exclusive of any LAR Attributes or FCR Attributes.
- 1.53 “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 Tariff or CPUC Decisions, or to an LRA having jurisdiction over Compliance Obligations.
- 1.54 “Replacement Capacity” has the meaning specified in Section 4.7 hereof.
- 1.55 “Replacement Unit” means a generating unit meeting the requirements specified in Section 4.5.
- 1.56 “Resource Category” shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

- 1.57 “Scheduling Coordinator” or “SC” has the meaning set forth in the Tariff.
- 1.58 “Seller” has the meaning specified in the introductory paragraph hereof.
- 1.59 “Showing Month” shall be the calendar month during the Delivery Period that is the subject of the RAR Showing, LAR Showing, and/or FCR 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.
- 1.60 “Subsequent Buyer” means the purchaser of Product from Buyer in a resale of Product by Buyer.
- 1.61 “Supply Plan” means the supply plans, or similar or successor filings, that each Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other Governmental Body, pursuant to Applicable Laws, in order for that RA Capacity to count for its RAR Attributes, LAR Attributes, and/or FCR Attributes.
- 1.62 “System Resource” has the meaning set forth in the Tariff.
- 1.63 “Tariff” means the tariff and protocol provisions of the CAISO, including associated rules, procedures and business practice manuals, as amended or supplemented from time to time.
- 1.64 “Transaction” has the meaning specified in the introductory paragraph hereof.
- 1.65 “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.
- 1.66 “Unit EFC” means the Effective Flexible Capacity set by the CAISO for the applicable Unit. 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, and (ii) the CAISO-adjusted Effective Flexible Capacity. To the extent the Confirmation Effective Date of this Confirmation occurs prior to the CAISO’s setting of a Unit EFC for the applicable Unit, the Unit EFC shall be as agreed to by the Parties and specified in Article 2, and Seller represents that, to the best of its knowledge, this Unit EFC is consistent with the CAISO’s methodology for determining Unit EFC as of the Confirmation Effective Date. To the extent the CAISO creates new categories of flexible capacity during the term of this Transaction and a Unit can count toward such new categories of flexible capacity while operating consistent with the operational limitation and physical characteristics of such Unit, any and all such new categories of flexible capacity shall be deemed to be part of the Effective Flexible Capacity of that Unit. The above notwithstanding, to the extent the CAISO decides to reduce the applicable Unit EFC, Seller shall not be liable for any costs or damages related to such reduction and the Unit EFC shall be reduced per Section 4.4 of this Confirmation.
- 1.67 “Unit NQC” means the Net Qualifying Capacity set by the CAISO for the applicable Unit. 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, and (ii) the CAISO-adjusted Net Qualifying Capacity.

2.  
**UNIT INFORMATION**

<b>Name:</b>	Sycamore 3 Cogeneration	Salinas River Cogeneration
<b>Location:</b>	Bakersfield, CA	San Ardo, CA
<b>CAISO Resource ID:</b>	SYCAMR_2_UNIT 3	SALIRV_2_UNIT
<b>Resource Type:</b>	Gas Cogen	Gas Cogen
<b>Resource Category (1, 2, 3 or 4):</b>	4	4
<b>Point of interconnection with the CAISO Controlled Grid (“Substation”):</b>	[ _____ ]	[ _____ ]
<b>Path 26 (North, South or None):</b>	South	North
<b>Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment:</b>	None	None
<b>Run Hour Restrictions:</b>	None	None
<b>LAR Attributes (Yes/No):</b>	No	No
<b>If yes: Local Capacity Area (as of Confirmation Effective Date):</b>	[ _____ ]	[ _____ ]
<b>Product Type (Flexible/Generic):</b>	Generic	Generic
<b>If Generic: Unit NQC (as of the Confirmation Effective Date):</b>	Various	Various
<b>If Flexible: Unit EFC (as of the Confirmation Effective Date):</b>	NA	NA
<b>Flexible Capacity Category (Base/Peak/Super-peak) (as of the Confirmation Effective Date):</b>	NA	NA



<b>Name:</b>	Kern River 4 Cogeneration	
<b>Location:</b>	Bakersfield, CA	
<b>CAISO Resource ID:</b>	OMAR_2_UNIT 4	
<b>Resource Type:</b>	Gas Cogen	
<b>Resource Category (1, 2, 3 or 4):</b>	4	
<b>Point of interconnection with the CAISO Controlled Grid (“Substation”):</b>	[ _____ ]	
<b>Path 26 (North, South or None):</b>	South	
<b>Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment:</b>	None	
<b>Run Hour Restrictions:</b>	None	
<b>LAR Attributes (Yes/No):</b>	No	
<b>If yes: Local Capacity Area (as of Confirmation Effective Date):</b>	[ _____ ]	
<b>Product Type (Flexible/Generic):</b>	Generic	
<b>If Generic: Unit NQC (as of the Confirmation Effective Date):</b>	Various	
<b>If Flexible: Unit EFC (as of the Confirmation Effective Date):</b>	NA	
<b>Flexible Capacity Category (Base/Peak/Super-peak) (as of the Confirmation Effective Date):</b>	NA	

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) RAR Attributes and, if applicable, LAR Attributes, and (ii) FCR Attributes, if Flexible RA Product is specified in Section 3.2, and the Contract Quantity shall be either a Firm RA Product or a Contingent Firm RA Product, as specified in either Section 3.3 or 3.4 (the “Product”). The Product does not confer to Buyer any right to the electrical output from the

Units, other than the right to include the Designated RA Capacity associated with the Contract Quantity in RAR Showings, LAR Showings, and FCR 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 pursuant to the Tariff any RA Capacity from a Unit that is in excess of that Unit's Contract Quantity and any RAR Attributes, LAR Attributes or FCR Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

**3.1 RAR and LAR Attributes**

Seller shall provide Buyer with the Designated RA Capacity of RAR Attributes and, if applicable, LAR Attributes from each Unit, as measured in MWs, in accordance with the terms and conditions of this Agreement.

**3.2 Flexible RA Product**

Seller shall provide Buyer with Designated RA Capacity of FCR Attributes from the Units in the amount of the applicable Contract Quantity.

**3.3  Firm RA Product**

Seller shall provide Buyer with Designated RA Capacity from the Units in the amount of the Contract Quantity. If the Units are not available to provide the full amount of the Contract Quantity for any reason other than Force Majeure, including without limitation any Outage or any adjustment of the RA Capacity of any Unit, pursuant to Section 4.4, then, Seller shall provide Buyer with Designated RA Capacity from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with replacement Designated RA Capacity from Replacement Units pursuant to Section 4.5, then Seller shall 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.

**3.4  Contingent Firm RA Product**

Seller shall provide Buyer with Designated RA Capacity from the Units in the amount of the applicable Contract Quantity; provided, however, that if (i) the Units are not available to provide the full amount of the Contract Quantity due to Force Majeure, any Planned Outage or any reduction of the RA Capacity of any Unit, and (ii) Seller has given Buyer timely notice pursuant to Section 4.5, then, Seller may either reduce the Contract Quantity or provide Buyer with Designated RA Capacity from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with any portion of the Designated RA Capacity (x) for a reason other than a Force Majeure, Planned Outage or reduction of the RA Capacity of any Unit, or (y) Seller failed to give Buyer timely notice pursuant to Section 4.5(a), then Seller shall 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.

**4.  
DELIVERY AND PAYMENT**

**4.1 Delivery Period**

The Delivery Period shall be (a) June 1, 2023 through October 31, 2023, inclusive. For the avoidance of doubt, nothing in this Agreement shall obligate Seller to provide any RA Capacity to Buyer for any period after the end of the Delivery Period.

**4.2 Delivery Point**

The Delivery Point for each Unit shall be 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 Table**

Contract Month/Year	Contract Quantity (MWs)
June 2023	█
July 2023	█
Aug 2023	█
Sept 2023	█
Oct 2023	█

**4.4 Adjustments to Contract Quantity**

- (a) **Planned Outages:** Seller’s obligation to deliver the Contract Quantity for any Showing Month may be reduced at Seller’s option if any portion of the Unit originally identified in Article 2 hereof is scheduled for a Planned Outage during the applicable Showing Month; provided, Seller notifies Buyer, no later than the Notification Deadline of the amount of Product from the Unit Buyer is permitted to include in Buyer’s RAR Showings, LAR Showings, and/or FCR Showings applicable to that month as a result of such Planned Outage.

If Seller is unable to provide the applicable Contract Quantity for a Showing Month because of a Planned Outage of a Unit, Seller has the option, but not the obligation, to provide Product for such Showing Month from Replacement Units, provided, Seller provides and identifies such Replacement Units in accordance with Section 4.5. If Seller chooses not to provide Product from Replacement Units and a Unit is on a Planned Outage for the applicable Showing Month, then, the Contract Quantity shall be revised in accordance with any applicable adjustments stipulated by the CPUC Filing Guide or CAISO Tariff in effect for the applicable Showing Month in which the Planned Outage occurs.

- (b) Reductions in Unit NQC: If Product is both (i) Generic RA Product, and (ii) Contingent Firm RA Product specified under Section 3.4, then Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced 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 (a) the applicable Showing Month Contract Quantity and (b) the total amount (in MW) Unit NQC was reduced since Confirmation Effective Date, divided by (c) Unit NQC as of the Confirmation Effective Date. If the Unit experiences such a reduction in Unit NQC, then Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product and/or (ii) from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 4.5.
- (c) Reductions in Unit EFC: If Product is both (i) Flexible RA Product specified under Section 3.2, and (ii) Contingent Firm RA Product specified under Section 3.4, then Seller's obligation to deliver the applicable Contract Quantity of Product for any Showing Month may also be reduced 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 (a) the applicable Showing Month Contract Quantity and (b) the total amount (in MW) Unit EFC was reduced since Confirmation Effective Date, divided by (c) Unit EFC as of the Confirmation Effective Date. If the Unit experiences such a reduction in Unit EFC, then Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product and/or (ii) from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 4.5.
- (d) 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).
- (e) Force Majeure: Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced at Seller's option if the Unit or transmission to the Delivery Point is affected by Force Majeure. If Seller is unable to provide the applicable Contract Quantity for a Showing Month because of Force Majeure, Seller has the option, but not the obligation, to provide Alternate Capacity for such Showing Month from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 4.5. For purposes of this Confirmation, Seller may apportion the effects of a Force Majeure among Buyer and Seller's other customers purchasing substantially the same product from the Unit on a pro rata basis or such other basis as Seller reasonably determines to be equitable.

#### 4.5 Alternate Capacity and Replacement Units

- (a) If Seller is unable to provide the full Contract Quantity for any Showing Month for any reason, including, without limitation, due to one of the reasons specified in Section 4.4, or Seller desires to provide the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no additional cost to Buyer, provide Buyer with Alternate Capacity from one or more Replacement Units, with the total amount of Product provided to Buyer from the Unit and Replacement Units up to an amount equal to the Contract Quantity for the applicable Showing Month; provided that in each case, Seller shall notify Buyer no later than the Notification Deadline for such Showing Month of its intent to provide Product from and identify such alternate unit that (i) has the same Resource Category and Flexible Capacity Category as the Unit originally identified in Article 2, (ii) such alternate unit is accepted by the CAISO, and (iii) such alternate unit otherwise satisfies the requirements of this Confirmation (a “Replacement Unit”). Seller will identify the Replacement Unit(s) and Quantity by providing Buyer with the specific Unit information contemplated in Article 2 no later than the Notification Deadline for the relevant Showing Month. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for that Showing Month.
- (b) With respect to a Contingent Firm RA Product, if Seller does not provide Alternate Capacity in an amount equal to the Contract Quantity for that Showing Month, then Buyer may, but shall not be required to, purchase replacement Product. 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 the failure to deliver the full Contract Quantity is due to Force Majeure, any Planned Outage or any reduction of the RA Capacity of any Unit and Seller notified Buyer, no later than ten (10) Business Days before that Showing Month’s relevant deadlines for Buyer’s RAR Showings, LAR Showings, and/or FCR Showings, as applicable, of Seller’s intent not to provide Alternate Capacity in an amount equal to the Contract Quantity of that Showing Month.

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

Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month consistent with the following:

- (a) Seller shall, on a timely basis, submit, or cause the Unit’s SC to submit, Supply Plans to identify and confirm the Designated RA Capacity provided to Buyer for each Showing Month so that the total amount of Designated RA Capacity identified and confirmed for such Showing Month equals the Designated RA Capacity, unless specifically requested not to do so by the Buyer.
- (b) Seller shall cause the Unit’s Scheduling Coordinator to submit written notification to Buyer, no later than ten (10) Business Days before the applicable RAR Showings, LAR Showings and/or FCR Showings deadlines for each Showing Month, that Buyer will be credited with the Designated RA Capacity for such Showing Month in the Unit’s Scheduling Coordinator Supply Plan so that the Designated RA Capacity credited equals the Designated RA Capacity for such Showing Month.

#### **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 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 RAR Attributes, LAR Attributes and/or FCR Attributes as the Designated RA Capacity not provided by Seller, provided, that, if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having RAR Attributes and no LAR Attributes (such capacity shall also include FCR Attributes if this is a Flexible Capacity Product) and no such RAR capacity is available, then Buyer may replace such portion of the Designated RA Capacity with other capacity having RAR Attributes and LAR Attributes (as well as FCR Attributes if this is a Flexible Capacity Product) ("Replacement Capacity"). Such Replacement Capacity may be provided by CAISO to Buyer pursuant to the Tariff. Buyer may enter into purchase transactions with one or more parties to replace any portion of Designated RA Capacity not provided by Seller. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver capacity to another party and, to the extent such transactions are done at prevailing market prices, such arrangements shall be considered equivalent to the procurement of Replacement Capacity. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.
- (b) Seller shall pay to Buyer at the time set forth in Section 4.1 of the Master Agreement, the following damages in lieu of damages specified in Section 4.1 of the Master Agreement: an amount equal to the positive difference, if any, between (i) the sum of (A) the applicable Capacity Replacement Price times the Replacement Capacity purchased by Buyer, plus (B) the applicable 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), and (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 future amounts it may owe to Seller under this Confirmation pursuant to Article Six of the Master Agreement.

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

Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, resulting from any of the following:

- (a) Seller's failure to provide any portion of the Designated RA Capacity;
- (b) Seller's failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Section 4.6;
- (c) A Unit Scheduling Coordinator's failure to timely submit Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder; or
- (d) A Unit Scheduling Coordinator's failure to 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.

**4.9 Monthly RA Capacity Payment**

In accordance with the terms of Article Six of the Master Agreement, Buyer shall make a monthly payment to Seller for each Unit, in arrears after the applicable Showing Month (“Monthly RA Capacity Payment”). 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 adjusted to reflect any portion of Designated RA Capacity for the Showing Month that was not delivered in accordance with Section 4.6 for such Showing Month.

**RA Capacity Price Table**

Showing Month and Year	RA Capacity Price (\$/kW-month)
June 2023 through October 2023	[REDACTED]

**4.10 Allocation of Other Payments and Costs**

Seller may retain any revenues it 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) capacity 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, FCR Showing, 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. The Parties acknowledge and agree that 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 (c) above). In accordance with Section 4.9 of this Confirmation and Article Six of the Master Agreement, all such revenues received by Seller, or a Unit’s SC, owner, or operator shall be remitted to Buyer, and Seller shall indemnify Buyer for any such revenues that Buyer does not receive, and Seller shall pay such revenues to Buyer if the Unit’s SC, owner, or operator fails to remit those revenues to Buyer. If Seller fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues 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 Buyer shall retain and receive any and all related revenues.

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 Force Majeure 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.

6.

**RESERVED**

7.

**OTHER BUYER AND SELLER COVENANTS**

**7.1.** 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 RAR, LAR and/or FCR, as applicable. Such commercially reasonable actions (neither Party shall be required to spend more than \$10,000 in total under the Agreement in support of such 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 RAR, LAR and/or FCR 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 CAISO, the CPUC, or by an LRA having jurisdiction over Compliance Obligations, to demonstrate for each month of the Delivery Period the ability to deliver the Contract Quantity from each Unit to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, and providing information requested by the CPUC, the CAISO or other Governmental Body having jurisdiction over Compliance Obligations to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid, pursuant to "deliverability" standards established by the CAISO, or other Governmental Body having jurisdiction over Compliance Obligations; and
- (b) Negotiating in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, CAISO, FERC, or other Governmental Body having jurisdiction over Compliance Obligations, so as to maintain the benefits of the bargain struck by the Parties on the Confirmation Effective Date.

**7.2 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, CAISO, CPUC or other jurisdictional LRA, 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 RAR, LAR, FCR or such analogous capacity 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, FCR, or analogous capacity obligations in any non-CAISO market;
  - (d) Each 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 each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, 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 each Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity and, as applicable, RAR, LAR and/or FCR;
  - (g) If Seller is the owner of any Unit, the respective cumulative sums of LAR Attributes, RAR Attributes, and FCR 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 SC is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, and RAR, LAR and FCR;
  - (i) Seller has notified the SC of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the Tariff;
  - (j) Seller has notified the SC of each Unit that Seller is obligated to cause each Unit's SC to provide to the Buyer, at least five (5) Business Days before the relevant deadline for each RAR Showing, LAR Showing, and/or FCR Showing, as applicable, the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and
  - (k) Seller has notified each Unit's SC that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

**8.**

**CONFIDENTIALITY**

Notwithstanding Section 10.11 of the Master Agreement, the Parties agree that (a) Buyer may disclose the this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA having jurisdiction over

Compliance Obligations in order to support its LAR Showings, RAR Showings, and/or FCR Showings, as applicable, or as necessary to any Subsequent Buyer; provided that such Subsequent Buyer is bound to Buyer by the same or similar confidentiality requirements as set forth in this Confirmation, and (b) Seller may disclose the transfer of the Designated RA Capacity under this Transaction to the SC of each Unit in order for such SC to timely submit accurate Supply Plans.

**9.**

**BUYER'S RE-SALE OF PRODUCT**

Buyer may re-sell all or a portion of the Product hereunder; provided that any such re-sale must not increase or modify Seller's obligations hereunder other than as set forth in this Article 9. For any such a resale, Seller will, or will cause the Unit's SC, to follow Buyer's instructions with respect to providing such resold Product to Subsequent Buyers, to the extent such instructions are consistent with Seller's obligations under this Confirmation. Seller will, and will cause the Unit's SC, to take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Buyers to use such resold Product in a manner consistent with Buyer's rights under this Confirmation. If Buyer incurs any liability to a Subsequent Buyer due to the failure of Seller or the Unit's SC to comply with this Confirmation, Seller will be liable to Buyer for the same amounts Seller would have owed Buyer under this Confirmation if Buyer had not resold the Product. Buyer will notify Seller in writing of any resale of Product and the Subsequent Buyer no later than two Business Days before the Notification Deadline for the Showing Month. Buyer will notify Seller of any subsequent changes or further resales no later than two Business Days before the Notification Deadline for the Showing Month.

**10.**

**MARKET BASED RATE AUTHORITY**

Seller agrees, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 697, to, upon request of Buyer, 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 also agrees that it will 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.

**11.**

**COLLATERAL REQUIREMENTS**

Notwithstanding anything herein or in the Master Agreement to the contrary, Performance Assurance shall not be required from either Party in connection with this Transaction.

*[Signatures on following page.]*

IN WITNESS WHEREOF, the Parties have caused this Confirmation to be duly executed as of the Confirmation Effective Date.

**CHEVRON POWER HOLDINGS INC.**

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

By: *Brenda McNew*  
Brenda McNew (Apr 21, 2022 14:14 CDT)

Name: Brenda McNew

Title: Regulatory Officer

By: *Lori Mitchell*  
Lori Mitchell (Apr 21, 2022 12:27 PDT)

Name: Lori Mitchell

Title: Director of Community Energy

**Approved as to form:**

By: *Luisa Elkins*

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 # 667590-000

Contractor: Chevron Power Holdings

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

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

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

Contract Description: Contract ID: 22-113-05

Term Start Date: 04/21/2022 Term End Date: 10/31/2023 Extension: Select one

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

Agenda Date (if applicable): \_\_\_\_\_ Agenda Item No.: \_\_\_\_\_

Resolution No.: \_\_\_\_\_ Ordinance No.: \_\_\_\_\_

Original Contract Amount: \_\_\_\_\_ Amount of Increase/Decrease: \_\_\_\_\_

Option #: \_\_\_ of \_\_\_ Option Amount: \_\_\_\_\_ NTE/Updated Contract Amount: \_\_\_\_\_

Fund/Appropriation: \_\_\_\_\_

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

Tax Certificate No.: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

Department: Community Energy

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

Notes:

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

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

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

**Unredacted versions of Power Supply Contracts and Energy Confirmations are with the Community Energy Department.**

**For additional information, contact the Community Energy Department at:**

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