

**IMPORT CAPABILITY TRANSFER
CONFIRMATION LETTER
BETWEEN
CITY OF SAN JOSÉ
AND
SAN DIEGO COMMUNITY POWER**

This confirmation letter including all appendices hereto (“Confirmation”) confirms the transaction between **City of San José, a California municipality** (“Seller”) and **San Diego Community Power, a California joint powers authority** (“Buyer”), each individually a “Party” and together the “Parties”, dated as of April 18, 2022 (the “Confirmation Effective Date”) in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in this Confirmation, in the amounts described in this Confirmation (the “Transaction”). This Confirmation is governed by the terms and conditions of the WSPP Agreement effective as of August 12, 2021, along with any schedules and amendments thereto (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. Capitalized terms not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (defined herein below).

**ARTICLE 1
TRANSACTION**

1.1 Product

Seller shall sell and transfer to Buyer, and Buyer shall purchase and receive from Seller, the Remaining Import Capability (the “Product”), at the Delivery Points in the amount of the Contract Quantity at the Contract Price for the Delivery Period.

1.2 Delivery Period and Term

- (a) Delivery Period. The Delivery Period is July 1, 2022 through October 31, 2022, inclusive, unless terminated earlier in accordance with the terms of this Agreement.
- (b) Term. The Term of this Transaction shall commence upon the Confirmation Effective Date and shall continue until the later of (i) the expiration of the Delivery Period or (ii) the date that the Parties’ obligations under this Confirmation have been satisfied. This Confirmation shall be effective and binding as of the Confirmation Effective Date.

1.3 Contract Quantity, Contract Price, and Delivery Point

For the Delivery Period, Seller shall transfer the Product to Buyer at the Contract Price, for the Delivery Points, and in the amount (the “Contract Quantity”), as specified in the Contract Quantity Table below:

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Contract Quantity Table

Delivery Period	Delivery Point	Contract Quantity (MWs)	Contract Price (\$/kW-month)
July 2022	ELDORADO_ITC	█	█
August 2022	ELDORADO_ITC	█	█
August 2022	PACI_MSL	█	█
September 2022	PACI_MSL	█	█
October 2022	PACI_MSL	█	█

**ARTICLE 2
DELIVERY OBLIGATIONS**

2.1 Delivery

Within three (3) Business Days from the Confirmation Effective Date, Seller shall transfer the Product to Buyer by registering the transfer with CAISO as a Bilateral Import Capability Transfer in the amount of the Contract Quantity for the applicable Contract Months in CAISO's CIRA Tool, and completing any other action or documentation required by the CAISO to effect such transfer (the "Registration"). As soon as reasonably practicable thereafter, but no later than three (3) Business Days from Registration, Buyer shall accept and confirm Seller's Registration in CAISO's CIRA Tool and Buyer will then communicate to Seller by email as to whether the transfer from Seller to Buyer of the Product in the amount of the Contract Quantity at the Delivery Point was successful or unsuccessful. If the transfer from Seller to Buyer of the Product in the amount of the Contract Quantity at the Delivery Point is unsuccessful, the Parties shall begin the registration process set forth in this Section 2.1 again, until such time as the transfer is completed successfully.

2.2 Buyer's Re-Sale of Product

Buyer may re-sell all or a portion of the Product acquired under this Confirmation.

**ARTICLE 3
PAYMENT**

3.1 One-Time Payment

Buyer shall make a One-Time Payment to Seller for the Product within ten (10) Business Days after the later of: (a) Buyer's receipt of the Product; or (b) receipt of Seller's invoice.

The One-Time Payment is calculated as follows:

$$\text{One-Time Payment} = \sum_i^n (A_i \times B_i \times 1,000)$$

where:

A = Contract Price (in \$/kW-month) for Contract Month *i*

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- B = Contract Quantity (in MW) transferred by Seller for Contract Month *i*
- i* = Each Contract Month
- n = number of Contract Months

The One-Time Payment calculation shall be rounded to two decimal places.

3.2 **Offset Rights**

Either Party may offset any amounts owing to it for revenues, penalties, fines, costs reimbursement, or other payments pursuant to Section 9 of the Master Agreement against any future amounts it may owe to the other Party.

ARTICLE 4 CONFIDENTIALITY

Notwithstanding Section 30 of the Master Agreement, the Parties agree that:

- (a) This Confirmation is subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.);
- (b) both Parties may disclose the terms of this Confirmation to the CAISO to effectuate Seller's performance and the transfer of the Product and the Parties acknowledge that the CAISO may publicly disclose the transfer of the Product from Seller to Buyer in accordance with the CAISO Tariff promptly following Seller's performance; and
- (c) in the event Buyer resells all or any portion of the Product, Buyer shall be permitted to disclose to the other party to such resale transaction all such information necessary to effect such resale transaction, other than the Contract Price;

provided, that each disclosing Party shall use reasonable efforts to limit, to the extent possible, the ability of any such applicable Governmental Authority or the CAISO to further disclose such information. 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.

ARTICLE 5 COLLATERAL REQUIREMENTS

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

ARTICLE 6 GENERAL PROVISIONS

6.1 Governing Law

Section 24 of the WSPP Agreement is deleted and replaced with the following: “This WSPP Agreement and any Confirmation shall be governed by and construed in accordance with the laws of the State of California, without regard to principles of conflicts of law.”

6.2 Counterparts

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

6.3 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.

6.4 No Recourse to Members of Buyer

Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and is a public entity separate from its constituent members. Buyer will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Seller will have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer’s constituent members, or the officers, directors, advisors, contractors, consultants or employees of Buyer or Buyer’s constituent members, in connection with this Confirmation.

6.5 Designated Fund and Limited Obligations

- (a) 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.

6.6 **City of San José Standard Provisions**

- (a) **Nondiscrimination/Non-Preference.** Buyer 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. Buyer will inform all subcontractors of these obligations. This prohibition is subject to the following conditions: (i) the prohibition is not intended to preclude Buyer from providing a reasonable accommodation to a person with a disability; (ii) the City's Compliance Officer may require Buyer to file, and cause any Buyer's subcontractor to file, reports demonstrating compliance with this section. Any such reports shall be filed in the form and at such times as the City's Compliance Officer designates. They shall contain such information, data and/or records as the City's Compliance Officer determines is needed to show compliance with this provision.
- (b) **Conflict of Interest.** 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. Buyer 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. Buyer shall avoid all conflicts of interest or appearances of conflicts of interest in performing this Agreement. Buyer 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 Seller in writing if it becomes aware of any facts giving rise to a conflict of interest or the appearance of a conflict of interest. Buyer's violation of this subsection (b) is a material breach.
- (c) **Environmentally Preferable Procurement Policy.** Buyer shall perform its obligations under this Agreement in conformance with San José City Council

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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. Buyer 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. Buyer shall not offer any City of San José officer or designated employee any gift prohibited by Chapter 12.08. Buyer’s violation of this subsection (d) is a material breach.
- (e) Disqualification of Former Employees. Buyer 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. Buyer shall not use either directly or indirectly any officer, employee or agent to perform any services if doing so would violate Chapter 12.10.

6.7 Other WSPP Agreement Changes

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

- (a) Section 22.2(b) of the WSPP Agreement is amended by inserting “and is continuing” after “Event of Default occurs” in the first line thereof and deleting the second sentence therein.
- (b) Section 22.3(c) of the WSPP Agreement is amended by deleting the third sentence thereof and replacing it with the following:

“If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement or a Confirmation, the Termination Payment for all such Terminated Transactions shall be zero, notwithstanding any provision in this Section or Agreement to the contrary.”
- (c) In Section 22.3(e), delete the entire provision (including subsections) and replace it with the following: “[Intentionally omitted]”
- (d) In Section 22.3(f), delete the entire provision and replace it with the following:

“If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, and provided that Defaulting Party has paid the undisputed part of the Termination Payment to the Non-Defaulting Party as provided under Section 22.3(c), and that any amounts disputed by the Defaulting Party are disputed in good faith, then the Defaulting

Party may submit the calculation issue to Dispute Resolution pursuant to Section 34.”

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

“34.1 INFORMAL DISPUTE RESOLUTION

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

“34.2 EXCLUSIVE JURISDICTION

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE OR FEDERAL COURTS LOCATED IN SAN JOSE OR SAN DIEGO, 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.”

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

“34.5 LIMITATION OF DAMAGES. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, FOR BREACH OF ANY PROVISION OF THIS 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 FOR THE BREACH, 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.”

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

“(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), and *NRG Power Marketing LLC v. Maine Public Utility Commission*, 558 U.S. 527 (2010).

“(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 from FERC 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,

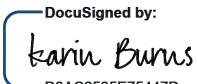
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to the fullest extent permitted by applicable law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes 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).”

Acknowledged and agreed to as of the Confirmation Effective Date.

SAN DIEGO COMMUNITY POWER, a California joint powers authority

CITY OF SAN JOSÉ, a California municipality

By:  _____
DocuSigned by: Karin Burns
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By:  _____
DocuSigned by: Jeanne Sole
87944CE8745D483...

Name: Karin Burns

Name: Jeanne Sole

Title: Chief Executive Officer

Title: Deputy Director of Power Resources

Approved as to form:

By:  _____
DocuSigned by: Luisa Elkins
C6D844AF6A3A4CC...

Name: Luisa Elkins

Title: Senior Deputy City Attorney

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APPENDIX A DEFINED TERMS

“Agreement” has the meaning set forth in the introductory paragraph of this Confirmation.

“Bilateral Import Capability Transfer” is the transfer of Remaining Import Capability from one Market Participant (as defined in the CAISO Tariff) to another, as described in the CAISO Tariff.

“Branch Group” means the branch group name used by the CAISO to represent the location of an Intertie with a Maximum Import Capability.

“Buyer” has the meaning set forth in the introductory paragraph of this Confirmation and shall have the same meaning as “Purchaser” under the Master Agreement.

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

“CAISO Tariff” means the California Independent System Operator Corporation Tariff, Business Practice Manuals (BPMs), Operating Agreements, 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 approved by FERC, if applicable.

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

“Confirmation” has the meaning set forth in the introductory paragraph of this Confirmation.

“Confirmation Effective Date” has the meaning set forth in the introductory paragraph of this Confirmation.

“Contract Month” means the month during the Delivery Period as set forth in the Contract Quantity Table in Section 1.3.

“Contract Price” has the meaning set forth in the Contract Quantity Table in Section 1.3.

“Contract Quantity” has the meaning set forth in the Contract Quantity Table in Section 1.3.

“CPUC” means the California Public Utilities Commission.

“Delivery Period” has the meaning set forth in Section 1.2(a).

“Delivery Point” has the meaning set forth in the Contract Quantity Table in Section 1.3.

“Governmental Authority” means any: (a) federal, state, local, municipal or other government; (b) 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 (c) court or governmental tribunal.

“Intertie” has the meaning set forth in the CAISO Tariff.

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“Master Agreement” has the meaning set forth in the introductory paragraph of this Confirmation.

“Maximum Import Capability” has the meaning set forth in the CAISO Tariff.

“MW” means megawatt (or 1,000 kilowatts) of alternating current electric energy generating capacity.

“One-Time Payment” has the meaning set forth in Section 3.1.

“Product” has the meaning set forth in Section 1.1.

“Registration” has the meaning set forth in Section 2.1.

“Remaining Import Capability” has the meaning set forth in the CAISO Tariff.

“SC” has the meaning set forth in the CAISO Tariff.

“Seller” has the meaning set forth in the introductory paragraph of this Confirmation.

“Tariff” means the tariff and protocol provisions of the CAISO, as amended or supplemented from time to time.

“Term” has the meaning set forth in Section 1.2(b).

“WSPP Agreement” is defined in the introductory paragraph hereof.

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 # 667628-000

Contractor: San Diego Community Power

Address: _____

Phone: _____

Email: _____

Contract Description: Contract ID: 22-199-08

Term Start Date: 05/12/2022 Term End Date: 10/31/2022 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:

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