This confirmation letter ("Confirmation") confirms the transaction between Calpine Energy Services, L.P., a Delaware limited partnership ("Seller"), and City of San José, a California municipality ("Buyer"), each individually a "Party" and together the "Parties", dated as of February 28, 2020 (the "Confirmation Effective Date"), in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Article 3 of this Confirmation (the "Transaction"). This Transaction is subject to the terms and conditions of the Western Systems Power Pool Agreement (Effective Version; January 25, 2020) excluding the schedules thereto, as amended by this Confirmation (as so amended, 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 Tariff (as defined herein). To the extent that this Confirmation is inconsistent with any provision of the Master Agreement, this Confirmation shall control and shall govern the rights and obligations of the Parties in connection with the Transaction. Except as otherwise specified, references to an "Article" or a "Section" or an "Appendix" mean an Article or Section or Appendix of this Confirmation, as applicable.

1. DEFINITIONS

1.1 "Agreement" has the meaning specified in the introductory paragraph hereof.

1.2 "Alternate Capacity" means any replacement capacity from a Resource Adequacy Resource (as defined in the Tariff) which Seller has elected to provide to Buyer in accordance with the terms of Section 4.5 and that can be applied by Buyer to satisfy its RAR and/or FCR, as applicable.

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 specified 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 and shall have the same meaning as "Purchaser" under the Master Agreement.

1.7 "CAISO" means the California Independent System Operator or its successor.

1.8 "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. "Capacity Replacement Price" shall be deemed to be the "Replacement Price."

1.9 "Confirmation" has the meaning specified in the introductory paragraph hereof.
1.10 “Confirmation Effective Date” has the meaning specified in the introductory paragraph hereof.

1.11 “Contract Price” means, for any Monthly Delivery Period, the price specified under the RA Capacity Price Table in Section 4.9.

1.12 “Contract Quantity” means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MW) set forth in the table in Section 4.3 which Seller has agreed to provide to Buyer from the Unit for such Showing Month.

1.13 “CPUC Decisions” means CPUC Decisions 04-10-035, 05-10-042, 06-07-031, 19-10-021, and any other existing or subsequent decisions related to resource adequacy issued from time to time by the CPUC.

1.14 “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.

1.15 “Delivery Period” has the meaning specified in Section 4.1 hereof.

1.16 “Delivery Point” has the meaning specified in Section 4.2 hereof.

1.17 “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 Alternate Capacity that Seller has elected to provide Alternate Capacity with respect to, minus any reductions to Contract Quantity made as provided in Section 4.4 with respect to which Seller has not elected to provide Alternate Capacity.

1.18 “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.

1.19 “FCR Attributes” means, with respect to a Unit, any and all FCR attributes that can be counted toward an LSE's FCR, as 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 redefines the FCR Attributes of a Unit, then such change will not result in a change in obligations or payments made pursuant to this Transaction.

1.20 “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.

1.21 “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.

1.22 “Flexible RA Product” has the meaning specified in the Section 3.2 hereof.

1.23 “GADS” means the Generating Availability Data System or its successor.

1.24 “Generic RA Product” means Designated RA Capacity consisting of RAR Attributes which does not include FCR Attributes.
1.25 "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, including without limitation the CPUC, the CAISO and other Balancing Authorities and Regional Entities (as those terms are defined in the Tariff).

1.26 "Good Utility Practice" has the meaning set forth in the Tariff.

1.27 "Import Capability" means that portion of the Maximum Import Capability necessary to support the importation of the Contract Quantity and allocated by the CAISO as a Pre-RA Commitment for deliveries of the Unit into the CAISO Markets.

1.28 "Import RA Capacity" means the qualified and deliverable capacity from a System Resource that can be counted toward Buyer's RAR, and to the extent provided in Section 3.2, Buyer's FCR, each as provided in the CPUC Decisions and in accordance with the Tariff.

1.29 "LRA" has the meaning set forth in the Tariff.

1.30 "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).

1.31 "Master Agreement" has the meaning specified in the introductory paragraph hereof.

1.32 "Maximum Import Capability" has the meaning set forth in the Tariff.

1.33 "Monthly Delivery Period" means each calendar month during the Delivery Period and shall correspond to each Showing Month.

1.34 "Monthly RA Capacity Payment" has the meaning specified in Section 4.9 hereof.

1.35 "NERC" means the North American Electric Reliability Council, or its successor.

1.36 "NERC/GADS Protocols" means the GADS protocols established by NERC, as may be updated from time to time.

1.37 "Net Qualifying Capacity" has the meaning set forth in the Tariff.

1.38 "Non-Availability Charges" has the meaning set forth in the Tariff.

1.39 "Notification Deadline" means fifteen (15) Business Days before the relevant deadlines for the corresponding RAR Showings and/or FCR Showings for the applicable Showing Month.

1.40 "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).

1.41 "Planned Outage" means, subject to and as further described in the CPUC Decisions and the Tariff (a Planned Outage is referred to as an "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.
1.42 "Pre-RA Commitment" means the incremental Maximum Import Capability identified by the CAISO as associated with the 2005 FERC-approved settlement between the Western Area Power Administration and Calpine Construction Finance Company, L.P. (ER05-912).

1.43 "Product" has the meaning specified in Article 3 hereof.

1.44 "RA Capacity" means the qualifying and deliverable capacity of the Unit for RAR 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 and, if Flexible RA Product is specified in Section 3.2, FCR Attributes, of the capacity provided by a Unit, as applicable pursuant to this Confirmation.

1.45 "RA Capacity Price" means the price specified in the RA Capacity Price Table in Section 4.9 hereof.

1.46 "RAR" means the resource adequacy requirements, exclusive of FCR or any local area reliability requirements, established for LSEs by the CPUC pursuant to the CPUC Decisions or by another Governmental Body authorized to make such determination under Applicable Laws, excluding any resource adequacy requirements related to location, local areas, flexible response, ramping or flexible capacity.

1.47 "RAR Attributes" means, with respect to the Unit, any and all resource adequacy attributes, as they are identified as of the Confirmation Effective Date by the Tariff or the CPUC Decisions that can be counted toward RAR and are consistent with the operational limitations and physical characteristics of such Unit. RAR Attributes do not include any FCR or other attributes related to location, local areas, flexible response, ramping or other local or flexible capacity attributes.

1.48 "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 and the CPUC Decisions.

1.49 "Replacement Capacity" has the meaning specified in Section 4.7 hereof.

1.50 "Replacement Unit" means a generating unit meeting the requirements specified in Section 4.5.

1.51 "Resource Category" shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

1.52 "ROFO" has the meaning specified in Article 6 hereof.

1.53 "ROFO Notice" has the meaning specified in Article 6 hereof.

1.54 "San José Clean Energy" means the City of San José's community choice aggregation program. The San José Community Energy Department administers and manages San José Clean Energy.

1.55 "Scheduling Coordinator" has the same meaning as in the Tariff.

1.56 "Seller" has the meaning specified in the introductory paragraph hereof.

1.57 "Showing Month" shall be the calendar month during the Delivery Period that is the subject of the RAR Showing 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.
1.58 "Supply Plan" means the supply plans, or similar or successor filings, that each Scheduling Coordinator representing RA Capacity submits to the CAISO (or any successor Governmental Body) in order for that RA Capacity to count for its RAR Attributes and/or FCR Attributes.

1.59 "System Resource" has the meaning set forth in the Tariff.

1.60 "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.

1.61 "Transferred Import Capability" has the meaning specified in Section 3.1.

1.62 "Transaction" has the meaning specified in the introductory paragraph hereof.

1.63 "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.

1.64 "Unit EFC" means the Effective Flexible Capacity set by the CAISO for the Unit. If the CAISO adjusts the Effective Flexible Capacity of the 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 Unit, the Unit EFC shall be as agreed to by the Parties and specified in Article 2. To the extent the Unit is providing FCR Attributes and the CAISO creates new categories of flexible capacity during the term of this Transaction and the Unit can provide and count toward such new categories of flexible capacity while operating consistent with the operational limitation and physical characteristics of the Unit, any and all such new categories of flexible capacity shall be deemed to be part of the Effective Flexible Capacity of the 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.

1.65 "Unit NQC" means the Net Qualifying Capacity set by the CPUC for the applicable Unit. If the CPUC 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 CPUC-adjusted Net Qualifying Capacity.

2. UNIT INFORMATION

Name: Sutter Energy Center

Location: Yuba City, California

Resource Specific CAISO Resource ID: TBD

Intertie Resource ID: TBD

Product Type (Flexible/Generic): Generic

If Generic: Unit NQC (as of the Confirmation Effective Date): 540

If Flexible: Unit EFC (as of the Confirmation Effective Date): N/A

Flexible Capacity Category (Base/Peak/Super-peak) (as of the Confirmation Effective Date): N/A
3. RESOURCE ADEQUACY CAPACITY PRODUCT

3.1 Product

During the Delivery Period, and subject to Seller's rights under Sections 4.4 and 4.5, Seller shall (x) provide to Buyer, pursuant to the terms of this Confirmation, the Contract Quantity of Import RA Capacity, including its RAR Attributes and, if Flexible RA Product is specified in Section 3.2, its FCR Attributes, in accordance with the terms and conditions of this Agreement, subject to the availability of the Unit as hereinafter provided and (y) transfer or cause to be transferred to Buyer annually Import Capability of not less than the Contract Quantity shown in Section 4.3 (the "Transferred Import Capability" and, together with the Import RA Capacity, the "Product"). However, if (i) the Unit is not available to provide the full amount of the Contract Quantity due to Force Majeure, Planned Outage, loss or reduction of Import Capability for any reason other than Seller's negligence or failure to perform its obligations hereunder, or reduction of the RA Capacity of the 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 Alternate Capacity from one or more Replacement Units pursuant to Section 4.5. If Seller fails to provide Buyer with any portion of the Designated RA Capacity for (x) a reason other than a Force Majeure, Planned Outage, loss or reduction of Import Capability for any reason other than Seller's negligence or failure to perform its obligations hereunder, or reduction of the RA Capacity of the Unit, and (y) Seller fails 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. For purposes of this Confirmation, Seller may apportion the effects of a loss or reduction of Import Capability 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. The Product does not confer to Buyer any right to the electrical output from the Unit, other than the right to include the Designated RA Capacity associated with the Contract Quantity in RAR Showings and FCR Showings, as applicable. Specifically, no energy or ancillary services associated with the Unit are 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 the Unit that is in excess of the Contract Quantity and any RAR Attributes, FCR Attributes or other capacity attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

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. Seller shall only be obligated to provide FCR Attributes under this Confirmation to the extent they are available from the Unit. Seller shall not be obligated to make any modifications to the Unit or to its operation or dispatch procedures in order to make any FCR Attributes available, but may do so in its discretion. The Contract Price shall not be affected by whether or not FCR Attributes are delivered.

3.3 Unit Specific Import RA Capacity Product

Seller and Buyer acknowledge and agree that the Product qualifies as "Import RA Capacity" within the meaning of the CPUC Decisions because (1) the Product is supported by operating reserves, (2) the Product cannot be curtailed for economic reasons, and (3) this Agreement specifies a firm Delivery Point within the CAISO.

Seller and Buyer acknowledge and agree that, pursuant to the CPUC Decisions, the Product qualifies as a "Resource Specific" or "Unit Specific" Import RA Capacity resource because the Unit is pseudo-tied into the CAISO Markets. The Parties agree that, throughout the Delivery Term, they shall 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 consistent with the Tariff, as further described in Section 7 below.
Seller and Buyer acknowledge and agree that in Decision 19-11-016, the CPUC (i) required that LSEs procure certain amounts of additional RA capacity beyond a baseline of resources assumed to be procured, (ii) required that no more than 20 percent of such additional RA procurement be from import resources located outside the CAISO, but (iii) specified that "the Sutter Power Plant is not included in the baseline and is also not considered an import, for purposes of [the RA procurement required by this decision]." D.19-11-016, mimeo at 32; Ordering Paragraphs 3, 6.

3.4 CAISO Revenues

Seller shall retain any and all revenues received from the CAISO with respect to the Transaction contemplated by this Confirmation or with respect to any other capacity, energy, ancillary services or other products provided by or from the Unit.

4. DELIVERY AND PAYMENT

4.1 Delivery Period

The Delivery Period shall be January 1, 2021 through December 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 the Unit shall be TESLA230 which maps to the CAISO Branch Group TRACY230_BG or such other point or points at which Import Capability has been allocated by CAISO for the Unit and designated by written notice from Seller to Buyer, so long as the Product delivered at that Delivery Point can be applied by Buyer to satisfy its RAR.

4.3 Contract Quantity

The Contract Quantity of each Unit for each Monthly Delivery Period shall be:

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<tr>
<th>Contract Year</th>
<th>Contract Quantity (MW)</th>
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<tr>
<td>2021</td>
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<td>2022</td>
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<td>2023</td>
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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 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 applicable to that month as a result of such Planned Outage. For purposes of this Confirmation, Seller may apportion the effects of a Planned Outage 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.
If Seller is unable to provide the applicable Contract Quantity for a Showing Month because of a Planned Outage of the Unit, Seller has the option, but not the obligation, to provide Alternate Capacity 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 Alternate Capacity from Replacement Units and the 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:** 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) the 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:** To the extent the Product includes Flexible RA Product as provided in Section 3.2, 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) the 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 the 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 the 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 the 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 cost to Buyer, provide Buyer with Alternate Capacity from one or more Replacement Units, with the total amount of Product and Alternate Capacity provided to Buyer from the Unit and the Replacement Units, respectively, not to exceed an amount equal to the Contract Quantity for the applicable Showing Month; provided that in each case, Seller shall notify Buyer of its intent (i) not to provide or (ii) to provide Alternate Capacity and identify Replacement Units meeting the above requirements no later than the Notification Deadline; and provided further that Buyer's provision of such Alternate Capacity shall not violate the requirements of D.19-11-016. Replacement Units shall be capable of delivering Alternate Capacity that can be applied by Buyer to satisfy its RAR. 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) If Seller does not provide Alternate Capacity in an amount that, together with Product provided by the Unit, is 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, loss of Import Capability for any reason other than Seller's negligence or failure to perform its obligations hereunder, or a Planned Outage and, in the case of a Planned Outage, Seller notified Buyer, no later than the Notification Deadline, of Seller's intent not to provide Alternate Capacity for the Product that cannot be provided from the Unit for that Showing Month.

4.6 Delivery of Product

Subject to Seller's rights under Sections 4.4 and 4.5, Seller shall provide Buyer with the Contract Quantity 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 Contract Quantity, 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 the Notification Deadline, 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 Contract Quantity for such Showing Month.

(c) Seller shall give, or shall cause the Unit's Scheduling Coordinator to give, Buyer written notice of whether or not Import Capability has been allocated to the Unit and, if so, whether or not the allocated Import Capability is sufficient to enable Seller to transfer to Buyer Transferred Import Capability sufficient to enable Buyer to apply the Import RA Capacity to satisfy its RAR. Such notice shall be given annually on or before the Notification Deadline for the annual Supply Plans to be filed by Buyer with respect to each calendar year in the Delivery Period.
4.7  Damages for Failure to Provide Designated RA Capacity

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month and is not excused from providing the Designated RA Capacity as provided herein, 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 and/or FCR Attributes as the Designated RA Capacity not provided by Seller. 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 21 of the Master Agreement, the following damages in lieu of damages specified in Section 21 of the Master Agreement: an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, plus (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.7(a), 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 Section 9 of the Master Agreement.

4.8  Indemnities for Failure to Deliver Contract Quantity

Subject to Seller's rights under Sections 4.4 and 4.5, to the extent Seller is required to, and fails, to provide the Designated RA Capacity hereunder, 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) The Unit Scheduling Coordinator's failure to timely submit Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder; or

(d) The 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 Section 9 of the Master Agreement, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, in arrears after the applicable Showing Month. The 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; provided, however, that the Monthly RA Capacity Payment shall be prorated to reflect any portion of Designated RA Capacity that was not delivered or replaced pursuant to Sections 4.4 and 4.5. The final product of this Monthly RA Capacity Payment calculation shall be rounded to the nearest penny (i.e., two decimal places).

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<th>Contract Year</th>
<th>RA Capacity Price ($/kW-month)</th>
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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, FCR Showing, or any similar capacity or resource adequacy showing with the CAISO or CPUC required to be made hereunder. 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. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit Designated RA Capacity provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.

5. CAISO OFFER REQUIREMENTS

During the Delivery Period, except to the extent the Unit is in an Outage or is affected (or its transmission path is affected) by an event of Force Majeure or loss of Import Capability that results in a partial or full Outage of the Unit, or as otherwise provided in Section 4.4, 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, 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 the 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. CONDITIONS PRECEDENT

This Confirmation shall be effective and as of the Confirmation Effective Date only to the extent necessary to give effect to the following provisions (i) Article 6 (except as provided below), Article 8, Article 12(e) and the related definitions in Article 1 of this Confirmation and Sections 12 and 30 of the Master Agreement. None of the Parties' other obligations under this Confirmation including without limitation any obligation by Seller to sell, deliver or provide any Product from the Unit shall become effective or binding on the Parties unless and until the conditions precedent set forth below (the "Conditions Precedent") have been achieved (or waived in writing by Seller in its sole discretion) on or before August 1, 2020 (or such later date as may be mutually agreed by the Parties) the "Conditions Precedent Deadline":

(a) CAISO Import Capability of not less than 270 MW for use by the Unit pursuant to the process set forth in Exhibit A-3 (Import Capability Posting and Submittal Dates) of the CAISO's Business Practice Manual for Reliability Requirements, Revision 46 (last revised January 10, 2020);

(b) CAISO shall have obtained final and non-appealable approval from the Federal Energy Regulatory Commission to enter into the Pseudo-Tie Participating Generator Agreement with the Unit; and;

(c) [execution by all required parties of such other agreements, including transmission service agreements, Pseudo-Tie Participating Generator Agreement, and Inter-Balancing Area Authority Dynamic Transfer Agreements that are necessary, in Seller's good faith opinion, to enable Seller to transfer a portion of the Import Capability to Buyer and to deliver the Product to Buyer as provided herein].

Seller shall take commercially reasonable actions within its control to timely satisfy each of the Conditions Precedent. For each month from the Confirmation Effective Date through the Conditions Precedent Deadline, Seller shall provide Buyer with monthly progress reports regarding the completion of each of the Conditions Precedent.

If the Conditions Precedent have not been satisfied (or waived by Seller) by the Conditions Precedent Deadline, then either Party may terminate this Confirmation by providing written notice to the other Party; provided that this Confirmation shall terminate automatically with no further action by the Parties if, by no later than 30 days after the Conditions Precedent Deadline, Seller has not confirmed that the Conditions Precedent have been satisfied or waived.

If Seller terminates this Confirmation pursuant to this Article 6 or the Confirmation terminates automatically as provided in the preceding sentence, for sixty (60) days after Buyer's receipt of Seller's termination notice, Buyer shall have a Right of First Offer ("ROFO") with respect to the Contract Quantity of the Product. Prior to marketing all or any portion of the Contract Quantity to any third party, Seller shall provide written notice to Buyer of (i) its intent to market the Contract Quantity to third parties and (ii) the terms and conditions thereof (for the avoidance of doubt, such terms, including but not limited to pricing, may be different than the terms of this Confirmation) ("ROFO Notice"). Buyer shall have five (5) business days from its receipt of the ROFO Notice to respond indicating its interest in purchasing the Contract Quantity pursuant to the terms and conditions set forth in the ROFO Notice. If Buyer indicates an interest in purchasing such Contract Quantity, Buyer shall have ten (10) additional business days to enter into a definitive contract for the purchase and sale of the Contract Quantity, which period of time shall begin upon Seller's delivery to Buyer of a confirmation letter pursuant to the Master Agreement incorporating the terms and conditions set forth in the ROFO Notice. If Buyer fails to respond to the ROFO Notice, or (c) the Parties' failure to timely enter into a definitive contract for purchase and sale of the Contract Quantity. Notwithstanding the foregoing, Seller
shall have no further obligation to pursue satisfaction of any of the Conditions Precedent after it has sent Buyer a notice of termination pursuant to this Article 6.

7. OTHER COVENANTS AND REPRESENTATIONS

7.1 Further Assurances
Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's RAR and/or FCR, consistent with the Tariff and the CPUC Decisions. Such commercially reasonable actions may include:

(a) Meeting requirements established by the Tariff and the CPUC Decisions, including (i) demonstrating the ability to deliver the Contract Quantity over all hours of the Delivery Term required for full RAR eligibility, (ii) demonstrating that the Contract Quantity can be delivered to the CAISO controlled grid pursuant to “deliverability” standards established by the CPUC or another Governmental Body responsible for administration of RAR and/or FCR, and (iii) causing Seller's Scheduling Coordinator to provide a Supply Plan to the CAISO and sufficient information to Buyer to allow Buyer's Scheduling Coordinator to submit the required RAR Showing and/or FCR Showing with respect to the Unit;

(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 or another Governmental Body responsible for administration of RAR and/or FCR in order to maintain the intent of the Parties and the benefit of the bargain struck by the Parties on the Confirmation Effective Date; and

(c) At all times using Good Utility Practice.

7.2 Certain Representations
Seller represents to and covenants with Buyer that, throughout the Delivery Period:

(a) Buyer has the exclusive right to count the Contract Quantity of Import RA Capacity Product from the Unit toward Buyer's RAR and/or FCR, as applicable;

(b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy RAR, FCR or other analogous capacity obligations in CAISO markets;

(c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, FCR or other analogous capacity obligations in any non-CAISO market; and

(d) Seller will comply with all applicable provisions of the Tariff and the CPUC Decisions, and all applicable rules and requirements established by FERC, with respect to Import RA Capacity.

8. CONFIDENTIALITY
Notwithstanding Section 30.1 of the Master Agreement, the Parties agree that Buyer may disclose the Designated RA Capacity under this Transaction to the CPUC, the CAISO or another Governmental Body, having jurisdiction in order to support its RAR Showings, and Seller may disclose the transfer of the Designated RA Capacity under this Transaction to the Unit's SC in order for such SC to timely submit accurate Supply Plans.
Seller acknowledges that Buyer is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.) and that Buyer may be required to make public this Confirmation (which may be partially redacted by Buyer) in connection with the process of seeking approval from its directors for the execution of this Confirmation. Seller may submit information to Buyer that Seller 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). Seller acknowledges that Buyer may submit to Seller information that Buyer considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third party or entity not a party to this Confirmation ("Requestor") pursuant to the California Public Records Act for production, inspection and/or copying of this Confirmation or any information designated by a disclosing party as confidential, the receiving party shall notify the disclosing party that such request has been made, by telephone call and letter sent via electronic mail, and/or by overnight carrier. Such notice shall provide a copy of the request and describe the specific information that has been requested. The disclosing party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be confidential information and to prevent release of it to the Requestor by the receiving party. If the disclosing party takes no such action within ten (10) days, after receiving the foregoing notice, the receiving party shall be permitted to comply with the Requestor's demand and is not required to defend against it. If Buyer discloses any such confidential information pursuant to the Act, Buyer will promptly provide notice of such disclosure (and the contents thereof) to Seller, and from and after such disclosure, such disclosed confidential information shall no longer be treated as confidential pursuant to the Master Agreement or this Confirmation. Notwithstanding the foregoing, Buyer may release confidential information without advance notice to or over the objection of Seller if Buyer's legal counsel delivers a written legal opinion to Buyer that Buyer is required by law to release such confidential information, and Buyer delivers such legal opinion to Seller.

9. BUYER'S RE-SALE OF PRODUCT

Buyer may re-sell all or a portion of the Product hereunder; provided that Seller's liability hereunder for breach of or failure to comply with this Confirmation shall not exceed the amounts Seller would have owed Buyer under this Confirmation if Buyer had not resold the Product. Buyer will notify Seller in writing of any re-sale of Product and the purchaser thereof no later than two (2) 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 (including Section 27) to the contrary, neither Party shall be required to post collateral or other security in connection with this Transaction.
12. MASTER AGREEMENT AMENDMENTS

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

(a) Section 21.1 of the Master Agreement is amended by deleting "direct" in the ninth line thereof. The Parties also agree that the waiver on the fifth line of that section does not apply to any damages or other remedies expressly provided for in this Confirmation.

(b) Section 22.1 of the Master Agreement is modified by deleting subsection (d) and replacing it with "(intentionally omitted)" and by inserting the following new text at the end thereof:

"(f) the failure of the Defaulting Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver or receive the quantities of Product due under this Agreement, the exclusive remedy for which is provided in Section 21.3) if such failure is not remedied within ten (10) Business Days after written notice;

(g) the failure of the Defaulting Party to pay its debts generally as they become due or the Defaulting Party's admission in a writing that is unable to generally pay its debts as they become due;

(h) the institution, by the Defaulting Party, of a general assignment for the benefit of its creditors;

(i) the application for, consent to, or acquiescence to, by the Defaulting Party, the appointment of a receiver, custodian, trustee, liquidator, or similar official for all or a substantial portion of its assets."

(c) Section 22.2(b) of the Master Agreement is amended by inserting "and is continuing" after "Event of Default occurs" in the first line thereof and deleting the second sentence thereof.

(d) Section 22.3 of the Master Agreement is amended by:

1) In Section 22.3(b), replacing the second sentence thereof with "The "Present Value Rate" shall mean an annual rate equal to the "prime rate" as published in the Wall Street Journal from to time plus 2%.");

2) In Section 22.3(c), deleting the third sentence thereof and replacing it with the following: "If the Non-Defaulting Party's aggregate Gains exceeds its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Termination Payment for all such Terminated Transactions shall be zero, notwithstanding any provision in this Section in this Confirmation or Agreement to the contrary."

3) In Section 22.3(d), replacing "this Agreement and any Confirmation" in the third line thereof with "any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party";

4) In Section 22.3(e), deleting the entire provision (including subsections) and replacing it with the following: "(intentionally omitted)";
5) In Section 22.3(f), deleting the entire provision and replacing it with the following:

"If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, and provided that Defaulting Party has paid the undisputed part of the Termination Payment to the Non-Defaulting Party as provided under Section 22.3(c), and that any amounts disputed by the Defaulting Party are disputed in good faith, then the Defaulting Party may submit the calculation issue to Dispute Resolution pursuant to Section 34."

(e) Section 24 of the Master Agreement is deleted and replaced with the following:

"This Master Agreement and any Confirmation shall be governed by and construed, enforced and performed in accordance with the laws of the State of California, without regard to principles of conflicts of law."

(f) Section 27 of the Master Agreement is deleted and replaced with the following:

"[intentionally omitted]"

(g) The netting provisions of Section 28, NETTING, of the Master Agreement shall apply to the transaction covered by this Confirmation as if Buyer and Seller had both executed Exhibit A, NETTING, to the Master Agreement. Both Parties intend for the netting provisions of Exhibit A to the Master Agreement to be effective on the Confirmation Effective Date.

(h) Section 30.1 of the Master Agreement is amended by inserting "or requested" after the word "required" in Section 30.1(4), by deleting "or" immediately before clause (7), and by adding the following at the end of the first sentence: "; or (8) to the Party's and such Party's affiliates' lenders and potential lenders, investors or potential investors, counsel, accountants, advisors and agents who have a need to know such information and have agreed to keep such terms confidential".

(i) Section 31 of the Master Agreement is amended by deleting the second sentence thereof.

(j) Subsections 34.1 and 34.2 of the Master Agreement are hereby deleted and replaced with the following:

"34.1 WAIVER OF JURY TRIAL

EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION, CLAIM OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT (WHETHER BASED IN CONTRACT, TORT OR ANY OTHER THEORY) AND HEREBY (i) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (ii) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION."

"34.2 EXCLUSIVE JURISDICTION"
EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE OR FEDERAL COURTS LOCATED IN SAN FRANCISCO, CALIFORNIA, FOR ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY TRANSACTION, AND EXPRESSLY WAIVES ANY OBJECTION IT MAY HAVE TO SUCH JURISDICTION OR THE CONVENIENCE OF SUCH FORUM.*

(k) The phrase "arbitration or" is hereby deleted from the first line of Section 34.4.

(l) The following shall be inserted as a new Section 34.5; PROVIDED, HOWEVER, THAT THE FOLLOWING NEW SECTION 34.5 SHALL NOT LIMIT BUYER'S RIGHT TO RECOVER FROM SELLER, OR SELLER'S OBLIGATION TO PAY BUYER, ANY AND ALL AMOUNTS OWED UNDER SECTION 4.8 OF THIS CONFIRMATION, INCLUDING PENALTIES AS SPECIFIED THEREIN:

"34.5 LIMITATION OF DAMAGES. FOR BREACH OF ANY PROVISION OF THIS CONFIRMATION AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, THE EXPRESS REMEDY OR MEASURE OF DAMAGES PROVIDED IS THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT, AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. 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, WHICH SHALL BE THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT FOR SUCH BREACH, AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. 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; PROVIDED, HOWEVER, THAT THE FOREGOING SHALL NOT LIMIT EITHER PARTY'S RIGHT TO RECOVER DAMAGES UNDER EXPRESS INDEMNITY PROVISIONS SET FORTH IN THE CONFIRMATION.*

Section 37 of the Master Agreement is amended by inserting the following in the beginning of the section: "On the date of entering into this Confirmation,":

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

i. it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

ii. it has all contractual, governmental, regulatory and legal authorizations necessary for it to legally perform its obligations under this Confirmation;

iii. the execution, delivery and performance of this Confirmation are within its powers, and have been duly authorized by all necessary action;
iv. this Confirmation and each other document executed and delivered in accordance with this Confirmation constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending;

v. it is acting for its own account, has made its own independent decision to enter into this Confirmation and as to whether this Confirmation is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in doing so, and is capable of assessing the merits of and understanding, and understands and accepts, the terms and conditions and risks of this Confirmation.

(o) Section 41 "Witness" of the Master Agreement shall become Section 42 and the following shall be added as Section 41 and entitled "Standard of Review":

"The Parties agree as follows:

(i) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any section of this Master Agreement (including this Transaction and other Confirmations) specifying the rate(s) or other material economic terms and conditions agreed to by the Parties herein, whether proposed by a Party, a non-party or FERC acting sua sponte, shall be the "public interest" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 380 U.S. 332 (1965) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) (the "Mobile-Sierra" doctrine) and clarified in Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish, 554 U.S. 527 (2008) and NRG Power Marketing LLC v. Maine Pub. Util. Comm'n, 558 U.S. 165 (2010).

(ii) The Parties, for themselves and their successors and assigns, (i) agree that this "public interest" standard shall apply to any proposed changes in any other documents, instruments or other agreements executed or entered into by the Parties in connection with this Master Agreement or this Transaction and (ii) hereby expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the "just and reasonable" standard.

13. DESIGNATED FUND AND LIMITED OBLIGATIONS

(a) Designated Fund. Buyer 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) Buyer 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, Buyer 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 Buyer's payment obligations under its other contracts for the
purchase of energy for San José Clean Energy. Buyer shall provide Seller with reasonable access to account balance information with respect to the San José Clean Energy Designated Fund during the Delivery Period.

(b) Limited Obligations. Buyer's payment obligations under the Agreement are special limited obligations of the Buyer 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.

14. 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 facsimile or electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

15. 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 Transaction may be confirmed only through a Documentary Writing executed by both Parties, and no amendment or modification to this Transaction shall be enforceable except though a Documentary Writing executed by both Parties.

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE

Calpine Energy Services, L.P. 

City of San José, a California municipality

By: ____________________________
Name: Andrew Novotny
Title: Vice President

By: ____________________________
Name: Lori Mitchell
Title: Director of Community Energy

San Jose City Clerk
Received 12 A & 22

O:\Confirmations\RA & LAR Deals\City of San Jose\2542458_Phys Capacity_San Jose_2.28.2020.docx
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
City of San José Contract/Agreement Transmittal Form

Route Order

TO: ☐ City Attorney  ☐ City Manager  ☑ City Clerk OR Return to Dept. (circle one)

Attached / Completed

☐ Insurance Certificates / Waivers ☐ Business Tax Certificate
☐ Contacted Clerk re: Form 700 ☐ Supplemental Memorandums (if applicable): Select One

Electronically Signed

☐ Electronically Signed: Select one  ☐ Audit Trail Attached (if applicable)
☐ Scanned Signature Authorization

Type of Document: New Contract  Type of Contract: Other

REQUIRED INFORMATION FOR ALL CONTRACTS:

Contractor: Calpine Energy Services, LP

Address: __________________________________________

Phone: __________________________________________ Email: __________________________________________

Contract Description: SJCE Contract ID: 20-113-03

Term Start Date: 01/01/20  Term End Date: 05/31/24  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: _____________  Updated Contract Amount: _____________

Fund/Appropriation: __________________________________________

Form 700 Required: Select one  Revenue Agreement: Select one

Business Tax Certificate No.: _____________  Expiration Date: _____________

Department: Community Energy

Department Contact Name/Phone: Jeannette Mestaz-Romero/x53828

Notes:

Department Director Signature: /s/ ___________________________  Date: 03/05/20

Lori Mitchell, Director Community Energy Department

Office of the City Manager Signature: __________________________________________  Date: ___________________________