

## **SETTLEMENT AND RELEASE AGREEMENT**

This Settlement Agreement (the/this “Settlement Agreement”) is made and entered into between CALPINE ENERGY SOLUTIONS, LLC, including its successors and assigns, (“CALPINE”)<sup>1</sup> and the City of San José, a California municipal corporation, including its successors and assigns, (the “CITY”). Individually the CITY and/or CALPINE above may be referred to herein as “a Party” and collectively as “the Parties”.

WHEREAS, The CITY and CALPINE entered into the Professional Services Agreement for Data Management and Customer Call Center Services on February 27, 2018, and amended on February 14, 2020 through February 27, 2025 (the “Services Agreement”);

WHEREAS, the Services Agreement was amended again on February 28, 2025, through May 29, 2025;

WHEREAS, Beginning in 2022, CALPINE underbilled approximately 13,000 customers over a period of approximately 2 years for a total estimated amount of One Million and Eighty-Six Thousand Dollars (\$1,086,000.00) (the “Underbilled Amount”);

WHEREAS, CITY is not recommending that CALPINE collect by rebilling customers a portion of the Underbilled Amount;

WHEREAS, CALPINE disputes liability for the total amount of the Underbilled Amount;

WHEREAS, on June 28, 2024 Peninsula Clean Energy, a community choice aggregator, conducted a competitive procurement for data management and billing services, and which procurement provided for another public agency to enter into a subsequent contract with CALPINE based on substantially similar terms;

WHEREAS, the CITY wishes to rely on the competitive solicitation by Peninsula Clean Energy, and execute a new agreement for similar services with CALPINE (“New Services Agreement”); and

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<sup>1</sup> The term “CALPINE” as used in this Settlement Agreement, specifically includes, extends to, and encompasses the affiliated Calpine Community Energy, LLC, the entity that contracted with Peninsula Clean Energy and is contracting with CITY for the New Services Agreement (defined below).

WHEREAS, the Parties desire to compromise and settle all claims concerning the Underbilled Amount, as set forth in this Settlement Agreement.

NOW, THEREFORE, the Parties hereto, in consideration of the mutual covenants and agreements to be performed as hereinafter set forth, agree as follows:

**1. Payment of Consideration:**

- a. By execution of this Settlement Agreement, the CITY agrees to accept, and CALPINE agrees to pay, or otherwise cause its affiliate, Calpine Community Energy, LLC, to pay the total sum of Nine-Hundred Thousand Dollars (\$900,000.00) in the form of a credit against the compensation due to CALPINE from CITY for services provided under the New Services Agreement (the "Credit"). The Credit will be divided into 36 equal amounts of Twenty-Five Thousand Dollars (\$25,000.00) ("Monthly Credit"), with a Monthly Credit applied to the first 36 invoices submitted to the CITY under the New Services Agreement. If the New Services Agreement is terminated or otherwise expires prior to the CITY receiving all the Credit, CALPINE shall remit a payment to the CITY in the outstanding amount of the Credit as soon as commercially reasonable.

**2. Release:**

The CITY, for and in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does for itself, its affiliates, parent corporations, subsidiary corporations, divisions, predecessors-in-interest, successors-in-interest, partners, agents, insurers, sureties, servants and employees, hereby remises, releases, acquits and forever discharges CALPINE its affiliates, parent corporations, subsidiary corporations, divisions, predecessors-in-interest, successors-in-interest, partners, agents, insurers, sureties, servants and employees, of and from any and all past, present and future claims, demands, debts, rights, actions, damages (including direct, indirect, incidental and consequential damages), costs, causes of action, suits at law or in equity, claims for indemnity or contribution, expenses and fees of attorneys, expenses and fees of consultants and/or experts and all claims of any nature or kind whatsoever, now existing or which may hereafter accrue and relating in any way to the Underbilled Amount. In giving the release herein, which includes claims

which may be unknown to the CITY at present, the CITY acknowledges that it has read and understands Section 1542 of the California Civil Code, which reads as follows: “A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.” The CITY hereby expressly waives and relinquishes all rights and benefits under that section and any law of any other jurisdiction of similar effect with respect to your release of any unknown or unsuspected claims herein.

3. **Continuing Cooperation:** The Parties hereto shall perform any and all reasonable acts and execute and deliver any and all documents which are or may become necessary and proper to give effect to and carry out the terms hereof.

4. **Amendment and Waiver:** No amendment or modification of this Settlement Agreement, and no waiver, discharge, or termination of any one or more of the provisions hereof, including but not limited to acceptance of past due payments, shall be effective unless set forth in writing and signed by all of the Parties hereto.

5. **Counterparts:** This Settlement Agreement may be executed in multiple counterparts by electronic signatures, whether digital or encrypted, of the Parties, which are intended to authenticate this writing and to have the same force and effect as manual signatures. Delivery of a copy of this Settlement Agreement bearing an original or electronic signature by facsimile transmission, by electronic mail in “portable document format” (“.pdf”) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing an original or electronic signature.

6. **Governing Law:** This Settlement Agreement shall be governed by, construed and enforced in accordance with, and subject to the laws of the State of California, without giving effect to its conflict of law’s provisions.

7. **Representations.** Each person executing this Settlement Agreement hereby warrants that he has full authority to do so.

8. **Headings:** The headings and subsections of this Settlement Agreement are inserted

for convenience only and shall not control or affect the meaning, construction, or effect of this Settlement Agreement or any of its provisions.

9. **Interpretation:** If for any reason a court of competent jurisdiction finds any provision of this Settlement Agreement, or any portion thereof, to be unenforceable, such provision will be enforced to the maximum extent permissible so as to implement the intention of the Parties, and the remainder of this Settlement Agreement shall continue in full force and effect.

10. **Joint Preparation:** This Settlement Agreement was prepared jointly by the Parties and their attorneys and each Party is considered the drafter.

11. **Full Agreement:** It is understood that all Parties have each carefully read this Settlement Agreement and each had opportunity to discuss this Settlement Agreement with counsel of its own choosing. Each Party further acknowledges that this Settlement Agreement constitutes the full, final, sole, and complete agreement between the Parties for the settlement of the matters discussed herein, and this Settlement Agreement is not executed by any Party hereto based upon any representation, statement, or warranty not specifically set forth in this Settlement Agreement. This Settlement Agreement supersedes all oral negotiations and prior writings with respect to the subject matter hereof and thereof.

**[Signature Pages Follow]**

**IN WITNESS WHEREOF**, the Parties, by their duly authorized representatives, having declared their intentions to be bound contractually by all such terms and conditions herein, execute and deliver this *Settlement Agreement* on the dates indicated by their signatures below.

**CALPINE ENERGY SOLUTIONS, LLC**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Acknowledged and agreed by:**

**CALPINE COMMUNITY ENERGY, LLC**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**THE CITY OF SAN JOSE**

By: \_\_\_\_\_

Printed Name: Nora Frimann

Title: City Attorney

Date: \_\_\_\_\_

**Approved as to form:**

By: \_\_\_\_\_

Printed Name: William Charley

Title: Senior Deputy City Attorney

Date: \_\_\_\_\_