

PROFESSIONAL SERVICES AGREEMENT FOR DATA MANAGEMENT AND CUSTOMER CALL CENTER SERVICES

This Agreement is between the City of San José, a municipal corporation (“City”), and Calpine Energy Solutions, LLC, a California limited liability company (“Calpine”).

This Agreement is made and entered into this _____ day of February 2018 (“Contract Date”).

THE CITY AND CALPINE AGREE AS FOLLOWS:

1. AGREEMENT SCOPE

- 1.1 General:** This Agreement sets forth the terms and conditions under which the Calpine will provide professional consulting services to the City.
- 1.2 Exhibits:** This Agreement consists of this agreement form and the following exhibits, which are incorporated herein by reference:
- Exhibit A:** Scope of Basic Services
 - Exhibit B:** Compensation
 - Exhibit C:** Insurance Requirements
 - Exhibit D:** Notice of Exercise of Option to Extend Agreement
 - Exhibit E:** Living Wage Determination
 - Exhibit F:** Pro Forma Security Breach Policy
- 1.3 Director:** “Director” means the Director of Community Energy or the Director’s designee.
- 1.4 Business Days:** “Business Day” and “Business Days” means the day(s) on which City Hall is open to conduct business.
- 1.5 Entire Agreement:** This Agreement is the final, complete and exclusive understanding of the parties as to the matters contained herein. It supersedes all prior communications and understandings regarding such matters.
- 1.6 Amendments:** This Agreement may be modified only by a written amendment executed by the parties.

2. AGREEMENT TERM

- 2.1 The Agreement term is two (2) years from the Contract Date (“Initial Term”), inclusive, unless terminated earlier pursuant to Section 20 below.
- 2.2 After the Initial Term, City reserves the right, at its sole discretion, to extend the term of this Agreement for up to two (2) additional one-year terms (“Option Terms”). City shall provide Consultant with no less than thirty (30) days prior written notices of its intention to exercise the option to extend the term of this Agreement. See Exhibit D for Notice of Exercise of Option to Extend Agreement form.

3. SCOPE OF SERVICES

- 3.1 **Basic Services:** “Basic Services” means the services set forth in Exhibit A. The Calpine must perform the Basic Services to the Director’s satisfaction.
- 3.2 **Additional Services:** “Additional Services” means the following: (a) services that are included in the Basic Services but exceed the specified level of the Basic Services, or (b) services that relate but are not included in the Basic Services.
- 3.2.1 **Authorization:** The City will not compensate Calpine for any Additional Services without the Director’s prior written authorization.
- 3.2.2 **Director’s Authorization:** The Director may authorize the Calpine to perform Additional Services up to the cumulative, maximum amount set forth in Exhibit B for such services. The Director must authorize Calpine to perform Additional Services through a written amendment executed by both parties in advance of Calpine’s performance of any Additional Services. The written amendment must set forth the scope of the Additional Services, the schedule for completing such services, and the amount and method of compensating Calpine for such services. The Director is authorized to execute the amendment for Additional Services for the City.

4. WAGE REQUIREMENTS

- 4.1 Pursuant to the City’s Prevailing Wage and Living Wage Policies, Calpine and any subcontractor agree to pay not less than the prevailing wage or living wage in accordance with the requirements of this Agreement, and the Wage Determination as indicated in Exhibit E attached to this Agreement.

4.2 CITY COUNCIL WAGE POLICIES

4.2.1 Living Wage Policy

Under City Council Policy 3-3, contractors who are awarded certain City service and labor contracts are required to pay a minimum level of compensation and provide a minimum number of days of compensated time off to covered employees who work on these projects.

'Living wages' mean the wages paid under a collective bargaining agreement between Calpine and a recognized union representing employees who will perform services pursuant to the Agreement.

If the wage rates set forth in the collective bargaining agreement fall below the then current Living Wage Rate set by the City, the required rate of pay will be the City's Living Wage Rate unless the collective bargaining agreement expressly provides that the agreement supersedes the requirements of the Living Wage Policy.

If there is no collective bargaining agreement as described above, not less than the following Living Wage Rate must be paid to covered employees performing work identified in the attached Exhibit E Living Wage Determination issued by the City's Office of Equality Assurance.

Calpine must provide twelve (12) days of compensated time off to full time covered employees, and six (6) days of compensated time off to part time covered employees. Paid holidays, paid sick days, paid vacation and paid personal days are allowed to count towards the 12 or six required days.

4.2.2 Reports

The Office of Equality Assurance will monitor the payment of prevailing and living wages by requiring Calpine and all Subcontractors to file a LABOR COMPLIANCE WORKFORCE STATEMENT and LABOR COMPLIANCE FRINGE BENEFIT STATEMENT with supporting documentation.

Calpine and its Subcontractors must also report such other additional information, including certified payrolls, as requested by the Director of Equality Assurance to ensure adherence to the Policies.

Labor compliance statements must be filed in the Office of Equality Assurance within 10 days of execution of this Agreement at the address below.

City of San José
Office of Equality Assurance
200 East Santa Clara Street
Fifth Floor
San José, CA 95113
Phone: 408-535-8430

4.3 LIVING WAGE POLICY PROVISIONS

On November 17, 1989, by Resolution No. 68554, amended on June 8, 1999 by Resolution No. 68900, amended on May 27, 2003 by Resolution No. 71584, amended on June 4, 2013 by Resolution No. 76653 and amended on January 28, 2014 by Resolution No. 76911, the San José City Council adopted its Living Wage Policy to meet the employment and economic development needs of low wage workers by mandating:

- 4.3.1** A minimum level of compensation and a minimum number of days of compensated time off for workers employed by contractors and subcontractors who are awarded certain City of San José service and labor contracts with an expenditure in excess of \$20,000 and recipients who receive direct monetary financial assistance from the City in the amount of \$100,000 or more in any twelve-month period, excluding non-profit corporations;
- 4.3.2** The provision of health insurance benefits or the ability to afford health insurance;
- 4.3.3** Retention of employees when certain new contractors take over a continuing City service;
- 4.3.4** An environment of labor peace; and
- 4.3.5** Employee Work Environment Evaluation (Third Tier Review)

4.4 WAGE REQUIREMENTS

- 4.4.1** Covered Employees Defined: For the purpose of this provision, Covered Employees means any person employed by Calpine or its Subcontractor who meets the following conditions:
- 4.4.2** The person does not provide volunteer services that are uncompensated except for reimbursement of expenses such as meals, parking or transportation;
- 4.4.3** The person expends at least half of his/her time on work for the City;
- 4.4.4** The person is at least eighteen (18) years of age; and

4.4.5 The person is not in training for the period of training specified under training standards approved by the City.

4.5 ENFORCEMENT

Remedies for Calpine's Breach of Prevailing Wage/Living Wage Provisions include the following:

4.5.1 Withholding of Payment: Calpine agrees that providing the necessary documentation to the City as required in this Agreement ("Documentation Provision") is critical to the City's ability to monitor Calpine's compliance with the Wage Requirement and to ultimately achieve the City's living wage policy goals. Calpine further agrees its breach of this Section 4 will result in the need for additional enforcement action to verify compliance with the Wage Requirements. In light of the critical importance of the Documentation Provision, the City and Calpine agree that Calpine's compliance with this Section 4 and the related Exhibits to this Agreement are express conditions of City's obligation to make each payment due to Calpine pursuant to this Agreement. The City is not obligated to make any payment due the Calpine until Calpine has performed all of its obligations under this Section 4. The parties agree that the City can withhold all or part of a payment to Calpine until all required documentation is submitted. Any payment by the City despite Calpine's failure to fully perform its obligations under this Section 4 will not be deemed to be a waiver of any other term or condition contained in this Agreement or a waiver of the right to withhold payment for any subsequent breach of the wage and reporting requirements in this Section 4.

4.5.2 Restitution: Calpine agrees that in the event of a breach of its obligations, it will pay any amounts underpaid in violation of the required payments and City's administrative costs and liquidated damages and, in the case of financial assistance, to refund any sums disbursed by the City.

4.5.3 Liquidated Damages for Breach of Wage Provision: Calpine agrees its breach of the Wage Requirement would cause the City damage by undermining the living wage goals, and City's damage would not be remedied by Calpine's payment of restitution to the workers who were paid a substandard wage. Calpine further agrees that such damage would increase the greater the number of employees not paid the applicable prevailing/living wage and the longer the amount of time over which such wages were not paid. The City and Calpine mutually agree that making a precise determination of the amount of City's damages as a result of Calpine's breach of this Section 4 and related Exhibits would be impractical or extremely difficult. Therefore, the parties agree that, in the event of such a breach, Calpine will pay to the City as liquidated damages the sum of three (3) times the difference between the actual amount of wages paid and the amount of wages that should have been paid.

4.5.4 Additional Remedies: Calpine agrees that in addition to the remedies set forth above City retains the right to suspend or terminate the Agreement for cause and to debar Calpine or its Subcontractors from future City contracts.

4.6 AUDIT RIGHTS

All records or documents required to be kept pursuant to this Contract to verify compliance with the wage provisions must be made available for audit at no cost to City, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to City for audit at City Hall, unless an alternative is mutually agreed upon

4.7 COEXISTENCE WITH ANY OTHER EMPLOYEE RIGHTS

These provisions are not to be construed to limit an employee’s ability to bring any legal action for violation of any rights of the employee.

5. CITY’S CONTRACT MANAGER

The City’s contract manager for this Agreement is:

Name: Lori Mitchell	Phone No.: (408) 535-4871
Department: Community Energy	E-mail: lori.mitchell@sanjoseca.gov
Address: 200 E. Santa Clara St, 14 th Floor San José, CA 95113	

The Director can change the above contract manager by giving the Calpine written notice.

6. CALPINE’S STAFFING

6.1 Calpine’s Contract Manager and Other Staffing: Identified below are the following: (a) Calpine’s contract manager, and (b) Calpine(s) or employee(s) of Calpine who will be principally responsible for providing the Basic Services. If any individual identified below is required to file a Statement of Economic Interests, Form 700 (“Form 700”), and the individual does not have a current Form 700 on file with the City Clerk for a separate agreement with the City, Calpine must comply with the requirements of Subsection 17.2 below.

		<u>Required to File Form 700</u>		
<u>CALPINE's Contract Manager</u>		Yes Already Filed (Insert Date Filed)	Yes Need to File	No
Name: Drake Welch	Phone No.: 619.684.8039		<u>X</u>	
Address: 401 West A Street, Suite 500, San Diego, CA 92101	E-mail: Drake.Welch@calpinesolutions.com			
<u>Other Staffing</u>				
<u>Name:</u>	<u>Assignment:</u>			
1. Tony Choi	Director – CCA Services			
2. Paula White	Director – CCA Operations		X	
3. Paul Soco	Manager – CCA Implementation		X	

6.2 Contract Manager's Authority: Calpine's contract manager is authorized to act on behalf of the Calpine.

6.3 Staffing Changes: The Director's prior written approval is required for Calpine to remove, replace or add to any of its staffing identified in Section 6.1, above.

7. USE OF SUBCONSULTANTS

7.1 Authority to Use: Whichever of the following is marked applies to this Agreement:

Calpine **cannot** use any Subcontractors without the Director's prior written approval.

- Calpine will use the following Subcontractors for the specified areas of work. Calpine cannot remove, replace or add to any of the Subcontractors identified in this provision without the Director’s prior written approval.

Subcontractor’s Name	Area of Work
1. Energy Choice California, Inc.	Call Center
2.	
3.	

7.2 Subcontractor Work: Calpine warrants all services and deliverables provided by any Subcontractors it uses, and represents that each such subcontractors is specially trained, experienced, and competent to perform its portion of the work.

8. INDEPENDENT CONTRACTOR

8.1 General: Calpine has complete control over its operations and employees, and is an independent contractor. Calpine is not an agent or employee of the City, and must not represent or act as the City’s agent or employee. Calpine, on behalf of itself and its employees and Subcontractor’s, does not have any rights to retirement benefits or other benefits accruing to City employees, and expressly waives any claim it may have to any such rights.

8.2 Subcontractors: As an independent contractor, Calpine has complete control over its Subcontractors, suppliers, affiliates agents and any other person or entity with whom the Calpine contracts in furtherance of this Agreement (collectively “Subcontractors”). Subject to the requirements of Section 7 of this Agreement, Calpine is solely responsible for selecting, managing and compensating its Subcontractors, and for ensuring they comply with this Agreement.

8.3 Indemnity: Calpine must place in each Subcontractor agreement indemnity obligations in favor of the City in the exact form and substance of those contained in Section 11 below.

9. STANDARD OF PERFORMANCE

Calpine represents that it possesses all necessary training, licenses and permits needed to perform the Basic Services. Calpine represents that its performance of the Basic Services will conform to the standard of practice of a person or entity that specializes in performing services of a like nature and complexity.

10. COMPENSATION

- 10.1 Maximum Total Compensation:** The maximum amount the City will pay Calpine for all professional fees, costs, charges, and expenses related to performing Basic Services and any Additional Services for the Initial Term is \$ 5,783,800.00 (“Maximum Total Compensation”) for the Initial Term. In the event the City exercises its option to extend the term of this Agreement after the Initial Term as provided in Section 2.2, above, the compensation to Calpine will be adjusted by U.S. Bureau of Labor Statistics Consumer Price Index for the San Francisco Bay Area and the Maximum Total Compensation for the Agreement with any permitted extensions will be \$ 15,683,800.00, but any extensions will be subject and conditioned upon City Council appropriation of funds.
- 10.2 Intentionally Omitted.**
- 10.3 Exhibit B - Compensation:** The City will pay Calpine up to the Maximum Total Compensation in accordance with Exhibit B.
- 10.4 Tax Forms Required:** The following are conditions on the City’s obligation to process any payment pursuant to this Agreement:
- 10.4.1 U.S. Based Person or Entity:** If Calpine is a U.S. based person or entity, Calpine acknowledges and agrees that Calpine is required to provide the City with a properly completed Internal Revenue Service Form W-9 before the City will process payment. If Calpine is a U.S. based person or entity, but has neither a permanent place of business in California nor is registered with the California Secretary of State to do business in California, Calpine acknowledges and agrees that Calpine is required to provide the City with a properly completed California Franchise Tax Board form related to nonresident withholding of California source income.
- 10.4.2 Non-U.S. Based Person or Entity:** If Calpine is not a U.S. based person or entity, Calpine acknowledges and agrees that Calpine is required to provide the City with the applicable Internal Revenue Service form related to its foreign status and a California Franchise Tax Board form related to nonresident withholding before the City will process payment.

11. INDEMNIFICATION AND LIMITATION OF LIABILITY

- 11.1 Obligation:** Calpine shall defend, indemnify and hold harmless the City and its officers, employees and agents against all claims, losses, damages, injuries, expenses or liabilities that – directly or in whole or in part - arise out of, pertain to, or relate to any of the following:
- 11.1.1** Calpine’s negligent performance of all or any part of the Basic Services and any Additional Services; or

- 11.1.2** Any negligent act or omission, recklessness or willful misconduct of Calpine, any of its Subcontractors, anyone directly or indirectly employed by either Calpine or any of its Subcontractors, or anyone that they control; or
- 11.1.3** Any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person(s) caused by the City's authorized use of any services, deliverables or other items provided by Calpine pursuant to the requirements of this Agreement. For the purposes of this Agreement, "authorized use" means any and all use by the City, but does not include illegal acts; or
- 11.1.4** Any violation of Calpine's confidentiality obligations or Calpine's use of confidential data for Calpine's personal gain; or
- 11.1.5** Any breach of this Agreement.
- 11.2** **Limitation on Obligation:** The obligation in Subsection 11.1 above shall not apply to the extent that any claim, loss, damage, injury, expense or liability results from inaccurate data provided by PG&E or any data processing error by PGE or CAISO or the sole negligence or willful misconduct of the City or its officers, employees, other contractors or agents..
- 11.3** **Duty to Defend:** Calpine's obligation in Subsection 11.1 above applies to the maximum extent allowed by law and includes defending the City, its officers, employees and agents as set forth in Sections 2778 and 2782.8 of the California Civil Code. Upon the City's written request, Calpine, at its own expense, shall defend any suit or action that is subject to the obligation in Subsection 11.1 above.
- 11.4** **Insurance:** The City's acceptance of any insurance in accordance with Section 12 does not relieve Calpine from its obligations under this Section 11. Calpine's obligations under this Section 11 apply whether or not the insurance required by the Agreement covers any damages or claims for damages.
- 11.5** **Survival:** Calpine's obligations under this Section 11 survive the expiration or earlier termination of the Agreement.
- 11.6** **Limitation of Liability:** All liability under this agreement by either party will be limited to direct, actual damages only.

12. INSURANCE REQUIREMENTS

- 12.1** **General:** Calpine must comply with the insurance requirements set forth in Exhibit C for the Agreement term.
- 12.2** **Documentation:** Before performing any services, Calpine must submit to the City's designated risk manager ("Risk Manager"), for the Risk Manager's written

approval, all documents demonstrating compliance with the requirements of Exhibit C.

- 12.3 Changes:** The Risk Manager may amend or waive, in writing, any of the requirements contained in Exhibit C. The Risk Manager may also request Calpine to increase the insurance amounts or provide additional insurance products. The provision of additional insurance policies or increase in limits will be subject to (a) the mutual agreement of the Parties, in their reasonable discretion, (b) the insurance requested must be both commercially-available and reasonable under the circumstances, and (c) reimbursement by City of the reasonable increased premium on a pass-through basis, without any mark-up.

13. OWNERSHIP OF WORK PRODUCT

- 13.1 Ownership:** The City owns all reports, drawings, plans, data, and documents (including electronic equivalents) provided by Calpine that are specifically created for the City (collectively “Deliverables”) without restriction or limitation upon their use. Calpine owns all rights in and to any of the work product produced in conjunction with Calpine’s services under this Agreement (excluding any City or customer data). Calpine also owns all computer software used and computer intelligence employed in preparing the work product including all software, models, documents, or other materials developed or discovered by Calpine in conjunction with Calpine’s services. Notwithstanding the foregoing, the City’s ownership of the Deliverables excludes any formulas, logic, macros, software code, programming, etc. that are embedded in electronic Deliverable formats, which will remain the property of Calpine.
- 13.2 Copyright:** Calpine will be deemed to be the author of the work product for purposes of copyright, trademark and patent. Calpine hereby grants and assigns to the City a perpetual license with no limitation of the use and with no additional cost, to use the Deliverables generated by Calpine for the City.
- 13.3 Intentionally Omitted.**

14. DISCLOSURE OF WORK PRODUCT

- 14.1 Prohibition:** Except as authorized by the Director or as otherwise required by law, Calpine shall not disclose any of the following to a third party: (a) Deliverables, (b) discussions between the City and Calpine, or (c) the City’s Confidential Information as defined in Section 15.
- 14.2 Notification:** Calpine will immediately notify the Director if it is requested by a third party to disclose any Deliverables, discussions or Confidential Information that Calpine is otherwise prohibited from disclosing.
- 14.3 Limit on Prohibition:** The prohibition in Subsection 14.1 above does not apply to disclosures between Calpine and its Subcontractors that are needed to perform the Basic Services.

14.4 Survival: This Section 14 survives the expiration or earlier termination of this Agreement.

15. USE OF CONFIDENTIAL INFORMATION AND CONFIDENTIALITY

15.1 Confidential Information: Calpine will receive and have access to San José Clean Energy (“SJCE”) customer lists, PG&E customer data, SJCE usage data and other proprietary or personal customer information. All customer information and SJCE proprietary or operational information, including without limitation, names, addresses, electricity usage information, phone numbers, SJCE data, total load data, and Calpine proprietary information is “Confidential Information” and must be kept confidential and handled in accordance with this Agreement. Calpine recognizes and understands that the City operates in an open and transparent manner under the California Public Records Act. Calpine must clearly identify in writing on the document or material it believes to be proprietary information and state the specific provision in the Public Records Act that provides the exemption as well as the factual basis for claiming the exemption.

15.2 Nondisclosure and Nonuse of Confidential Information: The Parties agree to protect Confidential Information, using at least the same degree of care that each Party uses to protect its own confidential and proprietary information of similar importance, but no less than a reasonable degree of care. Calpine agrees to use Confidential Information obtained in performing the work under this Agreement for the sole purpose of providing services to the City, SJCE and SJCE customers to the extent necessary to perform under this Agreement. Calpine shall not disclose, publish or disseminate Confidential Information to anyone other than the City and those of its employees and City’s authorized contractors who have a need to know in order to perform the Scope of Services in this Agreement and who are bound by a written agreement that prohibits unauthorized disclosure or use of Confidential Information. Calpine will be responsible for any violation of the terms of this Agreement by its employees and Subcontractors. Calpine agrees not to use Confidential Information for any other purpose or for its own or any third party’s benefit without the prior written consent of the Director and the customer providing the information in each instance. Calpine may disclose Confidential Information to the extent required by law, provided Calpine gives City and customer notice of such requirement prior to any disclosure and takes reasonable steps to obtain protective treatment of the Confidential Information, unless such notice is otherwise prohibited by law.

With respect to information that Calpine has identified as proprietary information pursuant to Section 15.1, above, and although the California Public Records Act recognizes that certain confidential information may be protected from disclosure (e.g. trade secret information), the City may not be in a position to establish that the information that Calpine submits is a trade secret or otherwise may be excluded from release under the Public Records Act. Prior to any disclosure to a third party of information identified in writing as “Confidential”, “Trade Secret” or “Proprietary”, the City will provide Calpine notice of the proposed disclosure with

reasonable notice to seek protection from disclosure by a court of competent jurisdiction. Notice under this Section may be given via electronic mail without the requirement for a written notice of receipt. If Calpine does not seek protection from the court, the Parties agree that the City in its independent discretion may release the document(s) in which case, no liability will attach to the City under this Agreement and the City will not be deemed in default of the mutual confidentiality obligations in this section 15.

Notwithstanding any limitations in Section 11, above, in the event of a legal challenge relating to the City's withholding of Calpine Confidential Information from release under the Public Records Act, Calpine Agrees to indemnify, defend, protect, and hold the City harmless, with counsel reasonably acceptable to the City, from and against any and all expenses, claims, costs, attorneys' fees, damages, and penalties.

- 15.3. License to Confidential Information:** Except as expressly set forth in this Agreement, no license or other rights to Confidential Information are granted or implied and City retains all of its rights therein.
- 15.4 No Warranty:** All information is provided "AS IS," and without any warranty, whether express or implied, as to its accuracy or completeness.
- 15.5 Chain of Custody:** Calpine will document the electronic receipt of all tangible Confidential Information that is specifically identified or marked as such whether received from the City or PG&E. City acknowledges that all City employees granted logins to the Customer Information System or any other database created or utilized by Calpine have access to a log of all Confidential Information received throughout the term of this Agreement. City further acknowledges that all City employees granted logins to the Customer Information System have access to a log of all users with access to Confidential Information. This log will include name of user, and time and date of logins during which time a user *may have* accessed Confidential Information.
- 15.6 Disposition of Confidential Information Upon Termination of Agreement:** Upon expiration or termination of this Agreement, Calpine will give City a description of all Confidential Information it has in its possession. City, in its sole discretion will direct Calpine to return or delete, in whole or in part, all Confidential Information under the control of Calpine, without retaining any electronic or tangible copies thereof.
- 15.7 PG&E Requirements:** Calpine must comply with all PG&E Confidentiality requirements respecting PG&E Customer data for all Confidential Information that Calpine receives from PG&E.
- 15.8 Intentionally Omitted.**

15.9 Equitable Relief: Calpine agrees that City will have the right to seek and obtain immediate injunctive relief to enforce confidentiality obligations under this Agreement in addition to any other rights and remedies it may have.

15.10 No Export: Calpine agrees that no Confidential Information, or any portion thereof, will be exported to any country in violation of the United States Export Administration Act and regulations thereunder, or any other applicable export control laws or regulations.

15.11 Exceptions: The obligations imposed by Section 15 herein do not apply, or will cease to apply, to any Confidential Information if or when, but only to the extent that, such Confidential Information:

15.11.1 was known to Calpine prior to the receipt of the Confidential Information;
or

15.11.2 was, or becomes through no breach of Calpine's obligations hereunder, known to the public; or

15.11.3 becomes known to Calpine from sources other than the City under circumstances not involving any breach of any confidentiality obligation; or

15.11.4 is independently developed by Calpine, as evidenced by the written records thereof.

15.11.5 is disclosed through legal process as more fully described in 15.2, above.

In the event of dispute regarding the use of Confidential Information, Calpine will have the obligation to establish that any of the above exceptions apply.

15.12 Survival of this Provision: The confidentiality obligations in this Section 15, including the indemnity obligations, and the obligations to maintain data security found in Exhibit A will survive the expiration or early termination of this Agreement.

16. AUDIT/INSPECTION OF RECORDS

16.1 Retention Period: Calpine shall retain the following records (collectively “Records”) for a minimum of three (3) years from the date of the City’s final payment to Calpine under this Agreement or for any longer period required by law:

- All ledgers, books of accounts, invoices, vouchers, canceled checks, and other records relating to Calpine’s charges for performing services, or to Calpine’s expenditures and disbursements charged to the City; and
- All work product and other records not covered by Section 15 evidencing Calpine’s performance.

16.2 Producing Records: At any time during the Agreement term or during the period of time that Calpine is required to retain the Records, the City Manager, the Director, the City Attorney, the City Auditor, or a designated representative of any of these officers may request, in writing, production of all or a portion of the Records. Calpine shall produce the requested Records at City Hall during normal business hours, or at any other location and time mutually agreed upon by the parties. Calpine shall produce the requested Records at no cost to the City.

16.3 State Auditor: In accordance with Government Code Section 8546.7, Calpine may be subject to audit by the California State Auditor with regard to Calpine’s performance of this Agreement if the compensation under this Agreement exceeds \$10,000.

17. NON-DISCRIMINATION/NON-PREFERENCE

17.1 Prohibition: Calpine shall not 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.

17.2 Intentionally Omitted.

17.3 Subcontracts: Calpine shall include Subsection 16.1 of this Agreement in each subcontract that it enters into in furtherance of this Agreement.

18. CONFLICT OF INTEREST

18.1 General: Calpine 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. Calpine certifies that, as of the Contract Date, it was unaware of any facts constituting a conflict of interest or, to the extent required by law or the

City's policies, creating an appearance of a conflict of interest. Calpine must avoid all conflicts of interest or, to the extent required by law or the City's policies, appearances of conflicts of interest in performing this Agreement. Calpine 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 must immediately notify the City in writing if it becomes aware of any facts giving rise to a conflict of interest or the appearance of a conflict of interest.

18.2 Filing Form 700: In accordance with the California Political Reform Act (Government Code Section 81000 et seq.), Calpine shall cause each person performing services under this Agreement, and identified as having to file a Form 700 to do each of the following:

18.2.2 Disclose the categories of economic interests in Form 700 as required by the Director;

18.2.3 Complete and file the Form 700 no later than 30 calendar days after the person begins performing services under this Agreement and all subsequent Form 700s in conformance with the requirements specified in the California Political Reform Act; and

18.2.4 File the original Form 700 with the City's Clerk with a copy submitted to the Director.

18.3 Future Services: Calpine acknowledges each of the following with regard to performing future services for the City:

18.3.1 The Calpine's performance of the services required by this Agreement may create an actual or, to the extent required by law or City policies, appearance of a conflict of interest with regard to Calpine performing or participating in the performance of some related **future** services, particularly if the services required by this Agreement comprise one element or aspect of a multi-phase process or project;

18.3.2 Such an actual or, to the extent required by law or City policies, appearance of a conflict of interest would be a ground for the City to disqualify Calpine from performing or participating in the performance of such future services; and

18.3.3 Calpine is solely responsible for considering what potential conflicts of interest, if any, performing the services required by this Agreement might have on its ability to obtain contracts to perform future services.

19. ENVIRONMENTALLY PREFERABLE PROCUREMENT POLICY

19.1 General: Calpine will perform its obligations under the Agreement in conformance with City Council Policy 1-19, entitled "Prohibition of City Funding

for Purchase of Single Serving Bottled Water,” and City Council Policy 4-6, entitled “Environmentally Preferable Procurement Policy.”

19.2 Prohibition of City Funding for Purchase of Single Serving Bottled Water:

The City’s policy is that City funds may not be used for the purchase of single-serving bottled water except for any of the following:

- 19.2.1 Public safety emergencies, investigations and extended deployments or activation of the Office of Emergency Services;
- 19.2.2 Situations where there is a high risk of cross-contamination with non-potable water; or
- 19.2.3 Situations where there are no reasonable alternatives to bottled water, such as large public events and when large quantities of water need to be distributed for health and safety reasons.

An invoice seeking reimbursement from City for the cost of single-serving bottled water under one of the above exceptions must be accompanied by a waiver form provided by the City and signed by the Director.

19.3 Environmentally Preferable Procurement Policy: The Environmentally Preferable Procurement Policy, along with a brief policy description, is located on the City’s website at the following link: <http://www.sanjoseca.gov/esd/natural-energy-resources/epp.htm>. Environmental procurement policies and activities related to the completion of Calpine’s work will include, whenever practicable, but are not limited to:

- The use of recycled and/or recyclable products in daily operations (i.e. 30%, 50%, 100% PCW paper, chlorine process free, triclosan-free hand cleaner, etc.);
- The use of Energy-Star Compliant equipment;
- The use of alternative fuel and hybrid vehicles, and implementation of protocols aimed at increasing the efficiency of vehicle operation;
- The implementation of internal waste reduction and reuse protocol(s); and
- Water and resource conservation activities within facilities, including bans on individual serving bottled water and the use of compostable food service products.

20. TERMINATION

20.1 For Convenience: The Director may terminate this Agreement at any time and for any reason by giving the Calpine written notice of the termination. The written notice must set forth the effective date of the termination, which must be at least

seven (7) Business Days' after the date of the written notice.

- 20.2 For Cause:** The Director may terminate this Agreement immediately upon written notice for any material breach by the Calpine. If the Director terminates the Agreement for cause and obtains the same services from another Calpine at a greater cost, the Calpine is responsible for such excess cost in addition to any other remedies available to the City.
- 20.3 Delivery of Work:** If the Director terminates the Agreement – whether for convenience or for cause – the Director has the option of requiring the Calpine to provide to the City any finished or unfinished work product prepared by the Calpine up to the date of Calpine's receipt of the written notice of termination. Calpine must also provide all data to the City in compliance with this Agreement and in particular Section 15.
- 20.4 Compensation:** The City will pay the Calpine the reasonable value of services satisfactorily rendered by Calpine to the City up to the last day of service, as agreed upon by the Parties, or the date of Calpine's receipt of the written notice of termination if the Parties do not agree upon another date. For services to be "satisfactorily rendered," the Director must determine that Calpine provided them in accordance with the terms and conditions of this Agreement. The Director will determine the reasonable value of satisfactorily rendered services based on the Compensation Table and any Schedule of Rates and Charges attached to this Agreement.
- 20.5 Receipt of Notice:** For purposes of this provision, the Calpine's receipt of the written notice of termination will be determined based on the date of actual receipt or based on Subsection 21.2 below, whichever occurs first.
- 20.6 Transfer of Information upon Expiration or Termination:** Upon the expiration or termination of the Agreement, Calpine will promptly transfer all existing SJCE customer-related data, documents and other materials required to maintain continuity in the performance of Data Manager Services to City personnel or a new services provider; provide to the City, or the City's designee, all existing SJCE customer-related data required for administration of SJCE's customer information system, and maintain, return, and (as directed by the Director) subsequently destroy or delete all SJCE customer-related data in accordance with the provisions of Section 15 of the Agreement and any other applicable confidentiality requirements. The Parties agree that there will be no additional charge to the City for Calpine to comply with the requirements of this Section 20.6.

21. FORCE MAJEURE

- 21.1 FORCE MAJEURE:** A Party shall be excused from performance under this Agreement and shall not be considered in default with respect to any obligation hereunder (other than obligations to pay money), if, and to the extent, its failure of,

or delay in, performance is due to a Force Majeure Event; provided, however, that (a) such claiming Party gives written notice and full particulars of such Force Majeure Event to the other Party promptly after the occurrence of the event relied on, (b) such notice shall estimate the expected duration and probable impact on the performance of such Party's obligations hereunder, (c) such affected Party shall continue to furnish timely regular reports with respect thereto during the continuation of the delay in the affected Party's performance, (d) the suspension of such obligations sought by such Party is of no greater scope and of no longer duration than is required by the Force Majeure Event, (e) no obligation or liability of either Party which became due or arose before the occurrence of the event causing the suspension of performance shall be excused as a result of the occurrence; (f) the affected Party shall exercise good faith efforts to mitigate or limit the interference, impairment and losses to the other Party by promptly taking appropriate and sufficient corrective action; (g) when the affected Party is able to resume performance of the affected obligations under this Agreement, the affected Party shall give the other Party written notice to that effect, and (h) the affected Party shall resume promptly performance under this Agreement. The term "Force Majeure Event" means the occurrence of any event beyond the reasonable control of the Party affected that results in the failure or delay by such Party of some performance under this Agreement, in full or part, including but not limited to the following: drought, flood, earthquake, storm, fire, volcanic eruption, lightning, epidemic, war, pests, riot, civil disturbance, sabotage, terrorism or threat of terrorism, total casualty to equipment, or restraint order or decree by a governmental authority. Notwithstanding the foregoing, Force Majeure Events shall expressly not include lack of financial resources, material cost increases in commodities or labor, strike or labor difficulties, other economic conditions, or any conditions within the control of the Party asserting a force Majeure.

22. NOTICES

- 22.1 Manner of Giving Notice:** All notices and other communications required by this Agreement must be in writing, and must be made via a recognized national courier service (e.g. FedEx, UPS) which renders a receipt for delivery or via U.S. mail, return receipt requested. Communications made via electronic mail will be deemed notice on the date sent provided a hard copy is sent concurrently via one of the other recognized manners of giving notice.
- 22.2 When Effective:** A notice or other communication that is e-mailed is effective when sent provided the sender receives an acknowledgement from the intended recipient (e.g. return receipt, return e-mail, or other written acknowledgement). A notice or other communication that is personally served is effective when personally delivered. Any notice that is mailed via U.S. mail or sent by a courier service, must be sent in a manner that provides a written receipt to the sender and is effective on the date delivered.

22.3 To Whom Given: All notices and other communications between the parties regarding the Agreement must be given to the individuals identified below using the appropriate contact information for giving notice:

To the City: City of San José
Director of Community Energy
Attn: Lori Mitchell
200 E. Santa Clara St.,
14th Floor
San José CA 95113
408-535-4871
Lori.mitchell@sanjoseca.gov

To Calpine: Calpine Energy Solutions, LLC
Attn: Legal Dept.
401 West A St., 5th Floor
San Diego, CA 92101
619-684-8251
sean.white@calpinesolutions.com

22.4 Changing Contact Information: Either party may change its contact information for receiving written notices and communications regarding the Agreement by providing notice of such change to the other party pursuant to this Section 22.

23. MISCELLANEOUS

23.1 Gifts Prohibited: Calpine represents that it is familiar with Chapter 12.08 of the San José Municipal Code, which generally prohibits a City officer or designated employee from accepting any gift. Calpine shall not offer any City officer or designated employee any gift prohibited by Chapter 12.08. Calpine's violation of this Subsection 23.1 is a material breach.

23.2 Disqualification of Former Employees: Calpine represents that it is familiar with Chapter 12.10 of the City's Municipal Code, which generally prohibits a former City officer and a former designated employee from providing services to the City connected with his/her former duties or official responsibilities. Calpine shall not use either directly or indirectly any officer, employee or agent to perform any services if doing so would violate Chapter 12.10. Calpine's violation of this Subsection 23.2 is a material breach.

23.3 Waiver of a Violation: The City's waiver of any violation of this Agreement by Calpine is not a waiver of any other violation by Calpine.

23.4 Acceptance of Services Not a Waiver: The City's acceptance of any service or deliverable is not a waiver or release of any professional duty of care applicable to such service or deliverable, or of any right of indemnification, any insurance

requirements, or any other term or condition of this Agreement.

23.5 Compliance with Laws: Calpine will perform all services consistent with all applicable federal, state and local laws, ordinances, codes and regulations. This obligation is not limited in any way by Calpine's obligation to comply with any specific law, ordinance, code or regulation set forth elsewhere in this Agreement.

23.6 Business Tax: Calpine represents and warrants that it currently has a City business tax certificate or exemption, if qualified, and will maintain such certificate or exemption for the Agreement term.

23.7 Assignability: Except to the extent this Agreement authorizes Calpine to use subcontractors, Calpine will not assign any part of this Agreement without the Director's prior written consent. The Director, at the Director's discretion, may void this Agreement if a violation of this provision occurs. Notwithstanding the above, Calpine may assign this Agreement to any affiliate meeting the following criteria: (a) Calpine must retain 50% or greater ownership in the affiliate; (b) the affiliate must have at least five (5) years of experience in the California energy markets including participating in the CAISO market and complying with all market requirements, (c) the affiliate must maintain the call center that serves the City in California; and (d) the affiliate must have at least five (5) years experience performing the work described in the Scope of Work in Exhibit A to this Agreement.

23.8 Governing Law: California law governs the construction and performance of this Agreement.

23.9 Venue: Any litigation resulting from this Agreement will be filed and resolved by a federal or state court in Santa Clara County, California.

23.10 Severability: If a court finds any part of this Agreement unenforceable, the parties agree that all other parts will remain enforceable.

23.11 Headings: The section and exhibit headings are for convenience only and are not to be used in its construction.

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IN WITNESS WHEREOF, the City and Calpine have caused this Agreement to be executed by their respective duly authorized representatives as follows.

NOTE: Calpine must make one of the following representations by placing its initials in the space provided. **The City will not process this Agreement unless Calpine has initialed one of the provisions.**

_____ Calpine certifies that Calpine has a permanent place of business in California or is registered with the California Secretary of State to do business in California. Calpine will file a California tax return and withhold on payments of California source income to nonresidents when required. If Calpine ceases to have a permanent place of business in California or ceases to do any of the above, Calpine will promptly notify the City at the address specified in Subsection 20.3 of this Agreement.

Or

_____ If Calpine is unable to make the above certification, Calpine acknowledges and agrees to provide the City with the applicable tax forms issued by the Internal Revenue Service and California Franchise Tax Board, as applicable, as specified in Section 10.8 of this Agreement.

City of San José

Calpine Energy Solutions, LLC

By

By

TONI J. TABER, CMC Date
CITY CLERK

James Wood Date
President

Approval as to Form (City Attorney):

Form Approved by the Office of the City Attorney
(Maximum Total Compensation is \$100,000 or less, and standard provisions of the form are not altered.)

Approved as to Form:

LEAH S. GOLDBERG Date
Senior Deputy City Attorney

EXHIBIT A: SCOPE OF BASIC SERVICES

Calpine shall provide services and deliverables as set forth in this **Exhibit A**. Calpine shall provide all services and deliverables required by this **Exhibit A** to the satisfaction of the Director.

General Description of Project: Provide data management and customer call center services for San Jose Clean Energy.

During the Agreement term, Calpine agrees to provide the Scope of Basic Services listed in this Exhibit.

1. DEFINITIONS

“Billing Window” refers to the period between receipt of metered usage data from PG&E and submission of related bill data to PG&E for CCA Services, typically three (3) Business Days.

“CARE” refers to the California Alternate Rates for Energy program administered by PG&E which provides discounts on energy bills for income qualified households designated by PG&E.

“Customer Data Acquisition” refers to acquisition of customer electricity usage data under PG&E’s Share My Data program.

“Community Choice Aggregation/Aggregator” (CCA) refers to local government entities or joint powers agencies whose governing boards have elected to acquire and provide electric power and energy services to utility end-use customers located within their service area(s), as set forth in California Public Utilities Code Section 366.2 and other California Public Utilities Commission (CPUC) directives. In this Agreement, CCA refers to San José Clean Energy (“SJCE”).

“CCA Service” means the sale of retail electric power by a SJCE to utility end-use customers located within its service area(s), as set forth in California Public Utilities Code Section 366.2 and other California Public Utilities Commission (CPUC) directives.

“CCA Service Request” (CCASR) means a request in a form approved by PG&E to change a CCA customer’s or utility customer’s choice of services, which could include returning a CCA customer to bundled utility service or direct access service.

“Customer Information System” (CIS) refers to the systems used by Calpine to store SJCE customer-specific information, including account enrollment status, rate tariff, payment history, collection status, correspondence and other information that is necessary for Calpine to effectively administer Data Manager Services.

“Customer Relationship Manager” (CRM) refers to a software platform populated by a database, and designed to manage and analyze customer interactions and data through the customer lifecycle with the goal of improving business relationships with customers, assisting in customer retention and driving customer participation.

“Direct Access Customer” refers to a PG&E customer purchasing retail power from an Electric Service Provider.

“Electronic Data Interchange” (EDI) refers to the transfer of data between PG&E and Calpine related to customers of SJCE CCA Service. The EDI file types used for Data Manager Services are as follows:

- 810 – CCA invoice information that appears on customer’s PG&E bill
- 814 – CCA enrollments, changes, opt outs and disconnects
- 820 – Remittance advice identifying the detail needed to perform cash application to accounts receivable by customer
- 824 – Application Advice for Invoices, used to reject invoice transactions
- 867 – Electric meter usage data by customer account

“First-Contact” or “First Call Resolution” refers to addressing the customer's need the *first* time they contact or *call for assistance*, thereby eliminating the need for the customer to follow up with a second *call*.

“Interactive Voice Response” (IVR) refers to the call center voice-recorded system that enables customers, through keypad input, to select options related to their account or access a live call center agent.

“Local Distribution Company” or “Utility Distribution Company” (LDC or UDC) refers to the relevant electric utility (such as Pacific Gas and Electric Company).

“Mass Enrollment” refers to the phase-in of a group of new customers (who have not opted out) onto CCA Service over one billing cycle beginning with each customer’s regularly scheduled meter read date, as further defined in PG&E’s Electric Schedule E-CCA.

“SJCE-Designated Third Party” refers to any third party that acts in the place or stead of SJCE under the terms of the Agreement. For the avoidance of doubt, any such SJCE-Designated Third Party shall abide by and be bound by the terms of the Agreement, in the same way as SJCE.

“SJCE Data” refers to all data and information provided, collected, or produced on SJCE’s behalf in connection with the services provided under this Agreement; including, but not limited to, confidential personally identifiable information or utility customer data protected under state privacy laws, billing data, usage data, Settlement Quality Meter Data, enrollment information, contact history, and any other confidential or proprietary information that relates to current, prospective, or former SJCE customers.

“Medical Baseline” refers to the Medical Baseline Allowance program administered by PG&E which provides a higher baseline quantity on energy bills for eligible customers designated by PG&E.

“Meter Data Management Agent (MDMA) Services” include: reading customers’ meters, validating the meter reads, editing the meter reads if necessary and transferring the meter reading data to a server pursuant to PG&E standards.

“Net Energy Metering” refers to one of the various Net Energy Metering programs administered by PG&E as described in its Electric Schedules, for which SJCE may provide bill credits for qualifying self-generation to participating CCA Service customers.

“NAICS” (North American Industry Classification System) refers to the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data.

“Non-Enrollment Period” refers to any other period that is not a Statutory Enrollment Period.

“Qualified Reporting Entity” (QRE) refers to an entity authorized by WREGIS to submit meter data associated with renewable energy on behalf of the generator owner using the WREGIS application.

“Service Agreement ID” (SAID) refers to an account number that reflects an account’s billing arrangement with PG&E. The SAID includes the rate plan, service location, and meter information.

“Service Agreement” refers to the agreement between customers and PG&E documenting the customer’s billing arrangement, including rate plan, used to calculate PG&E charges.

“Settlement Quality Meter Data” (SQMD) refers to meter data gathered, edited, validated, and stored in a settlement-ready format, for settlement and auditing purposes.

“Statutory Enrollment Period” refers to the six –month period comprising (a) the three-month period prior to a Mass Enrollment, (b) the month in which the Mass Enrollment occurs, and (c) the two months following Mass Enrollment.

“Western Region Energy Generation Information System” (WREGIS) refers to the independent, renewable energy tracking system for the region covered by the Western Electricity Coordinating Council (WECC).

2. DESCRIPTION OF STANDARD DATA MANAGER SERVICES. During the Operational Period, Calpine will provide the Standard Data Manager Services listed below.

(a) Electronic Data Exchange Services:

- i. Process CCA Service Requests (CCASRs) from or to PG&E, which specify the changes to a customer's choice of services, such as enrollment in CCA Service or customer initiated returns to bundled utility service or customer initiated returns to direct access service (814 Electronic Data Interchange Files).
- ii. If no payment for CCA Service is received from the customer within a time period specified by SJCE of late payment notice being sent by Calpine, issue a CCASR to return customer to PG&E.
- iii. Obtain all customer usage data from PG&E's MDMA server, and validate usage data to ensure required billing determinants are provided to generate customer bills for CCA Service.
- iv. Ensure timely billing (according to PG&E requirements) of each customer (867 Electronic Data Interchange Files).
- v. Maintain and communicate the amount to be billed by PG&E for services provided by SJCE (810 Electronic Data Interchange Files).
- vi. Receive, maintain, and make accessible to SJCE or a SJCE-Designated Third Party, all data related to payment transactions applied to SJCE charges from PG&E after payment is received by PG&E from customers (820 Electronic Data Interchange Files).
- vii. Process CCASRs with PG&E when customer status changes.
- viii. Participate in the Customer Data Acquisition Program (CDA) beta testing for SmartMeter data sharing as SJCE's Data Manager.
- ix. Receive and store SmartMeter data from PG&E. Provide SmartMeter data to SJCE in a mutually agreed upon method.

(b) Qualified Reporting Entity (QRE) Services:

- i. Consistent with terms and conditions included in the QRE Services Agreement(s) between SJCE and Calpine, serve as QRE for up to fifteen (15) locally situated, small-scale renewable generators supplying electric energy to SJCE, having individual capacities less than 20 MW, including generators participating in a SJCE Feed-in Tariff (FIT).
- ii. As QRE, Calpine shall receive applicable electric meter data from PG&E for SJCE small-scale local projects, consistent with PG&E's applicable meter servicing agreement, and shall retain this data and provide such data to SJCE monthly or, using commercially reasonable efforts, more frequently for purposes of performance tracking and invoice creation by SJCE.
- iii. Submit a monthly generation extract file to WREGIS on SJCE's behalf, which will conform to the characteristics and data

requirements set forth in the WREGIS Interface Control Document for Qualified Reporting Entities.

(c) Customer Information System/Customer Relationship Management System:

- i. Store, maintain and make accessible to SJCE or a SJCE-Designated Third Party, an accurate database of all accounts eligible for CCA Service who are located in the SJCE service area and identify each account's enrollment status (opt out, opt-in, and CCA Service offering), rate tariff election(s), rate history, payment history, collection status, on-site generating capacity, if applicable, any correspondence with customer as well as other information that may become necessary to effectively administer CCA Service as mutually agreed to by parties from time to time.
- ii. Receive, load, and make accessible to SJCE or a SJCE-Designated Third Party the following historical information by account provided by PG&E or SJCE: energy usage data, service address, customer service activity, standardized PG&E snapshots, rate information and NAICS codes.
- iii. Allow SJCE to have functional access to the online database to add customer interactions and other account notes.
- iv. Provide SJCE with quarterly training and as-needed training for necessary SJCE employees and any SJCE-Designated Third Party, to functionally access CRM. Provide SJCE with up-to-date user guides describing CRM functionality and navigation, and maintain such guides.
- v. Allow SJCE to view customer email or written letter correspondence within online database.
- vi. Document in the CRM all email and telephone calls between Calpine and CCA Service customers, using commercially reasonable efforts to submit in CRM within one (1) business day.
- vii. Maintain and provide energy usage data on all CCA Service customers for a time period of five years, unless such data are unavailable.
- viii. Upon request for data relating to usage more than five (5) years in the past according to written parameters provided by SJCE, Calpine will provide such data within 10 business days.
- ix. Maintain viewing access, available to appropriate SJCE staff, to view PG&E bills for SJCE customers, including supporting the intuitive parsing and labeling of PG&E provided files. Billing records for usage within the past 18 months should be attached to their respective SAID and accessible via the CRM.
- x. Upon request for billing records relating to usage more than 18 months prior to the date such request is received by Calpine, Calpine will provide such billing records within 10 business days.

- xi. Maintain and communicate to SJCE as needed records of customers who have been offered service with SJCE but have elected to opt out, either before or after starting service with SJCE.
- xii. Maintain and communicate to SJCE as needed records of Net Energy Metering credits and generation data for customers to be posted on bills monthly and settled annually.
- xiii. Maintain and communicate to SJCE as needed records of Net Energy Metering credits and generation data for customers who have terminated their account with SJCE.
- xiv. When requested by SJCE, identify appropriate Balanced Payment Plan (BPP) type estimated charges and implement for BPP customers.
- xv. When requested by SJCE, perform quarterly BPP reviews to assess appropriate customer charge level.
- xvi. When requested by SJCE, place On Bill Repayment (OBR) charges on the relevant customer account, identified by SAID.
- xvii. When requested by SJCE, send OBR as a separate line item to PG&E for placement on monthly bill during term of repayment.

(d) Customer Call Center:

- i. Receive calls from CCA Service customers referred to Calpine by PG&E and receive calls directly from CCA Service customers.
- ii. Provide professional Interactive Voice Response (IVR) recordings for SJCE customer call center.
- iii. Implement IVR self-service, according to parameters provided by SJCE, and track how many customers start and complete self-service options without live-agent assistance. Provide updates to the IVR process map and scripts each calendar year according to parameters provided by SJCE.
- iv. Staff a call center during non-enrollment periods between the hours of 8:00 A.M. and 5:00 P.M. Pacific Prevailing Time Monday through Friday, excluding PG&E holidays. These hours may be adjusted as mutually agreed.
- v. Provide one Calpine-employed call center representative between the hours of 8:00 A.M. and 5:00 P.M. Pacific Prevailing Time Monday through Friday, excluding Calpine holidays. SJCE shall have the right to request in writing one additional Calpine-employed call center representative in the event that call center performance does not meet SJCE's needs. Calpine shall make commercially reasonable efforts to provide the additional Calpine-employed call center representative within 90 calendar days of receiving SJCE's written request.
- vi. Provide sufficient third party call center staffing to meet the requirements set forth herein, including designating SJCE specific agents to the extent needed to meet the performance standards in Section 3(e).

- vii. Provide a sufficient number of Calpine Account Analysts to manage escalated calls during regular business hours between 8:00 A.M. and 5:00 P.M. Pacific Prevailing Time, Monday through Friday, excluding Calpine holidays.
- viii. The call center will be staffed with personnel and locally situated. The call center location will be selected with SJCE's input to align with its program and City development objectives.
- ix. Provide callers with the estimated hold time, if they are placed on hold. Provide an automated 'call back' option for callers who will be put on hold for an estimated five minutes or longer.
- x. Record all inbound calls and make recordings available to SJCE staff upon request. Maintain an archive of such recorded calls for a minimum period of 24 months.
- xi. Track call center contact quality with criteria, including:
 - i. Use of appropriate greetings and other call center scripts;
 - ii. Courtesy and professionalism;
 - iii. Capturing key customer data;
 - iv. Providing customers with correct and relevant information;
 - v. First-contact or first-call resolution;
 - vi. Accuracy in data entry and call coding; and
 - vii. Appropriate grammar and spelling in text communication (email and chat)
- xii. Evaluate customer satisfaction through voluntary customer surveys asking general questions about call quality, call resolution and the customer's overall satisfaction level with the service received. Calpine will provide recommendations and additional call center training when survey results are not satisfactory.
- xiii. Evaluate call center staff by completing a minimum of two (2) quality assurance calls per call center representative (regardless of CSR's location/employer) per month. Evaluate low-performing call center representative by completing a minimum of four (4) quality assurance calls per month until he/she improves.
- xiv. Provide the call center number on the LDC invoice allowing CCA Service customers to contact the call center.
- xv. Respond to telephone inquiries from CCA Service customers using a script developed by SJCE. Ensure call center staff are trained on and have fluency in the SJCE scripts by monitoring and reporting on call center recordings as described in Section 5(b). Escalate calls as needed for customers requiring additional handling by Calpine Account Analysts.
- xvi. Respond to CCA Service customer inquiries along the following guidelines for customer complaints:
 - a. Customer complaints on matters under the control of SJCE:

- i. Calpine will relay the complaint to SJCE staff within one (1) business day.
 - ii. Calpine will communicate the complaint resolution to the customer within three (3) business days of notification from SJCE.
 - b. Customer complaints on matters under the control of PG&E:
 - Calpine will refer the customer to PG&E.
- xvii. Engage in bi-annual or as needed coordination meetings with PG&E call center at SJCE's request. Such meetings may include SJCE management/ staff and may require on-site participation by Provider's management/staff.
- xviii. Provide Spanish speaking call center staff to customers during regular business hours.
- xix. Provide translation services for inbound calls for the following languages: Spanish, Vietnamese, Mandarin, Cantonese, Tagalog, Russian, Korean and Laotian. Use commercially reasonable efforts to provide translation services for additional languages as requested by SJCE.
- xx. Create and maintain online forms for the SJCE websites so that customers may request changes to their account status to enroll, opt-up, or opt out of various SJCE programs under CCA's Service. Utilize the SJCE brand guidelines for the color of the forms. Assess the forms annually with SJCE staff to identify improvement areas. Implement configurable changes provided by SJCE in writing within 30 days. For changes requiring system development which can be implemented, provide an estimated schedule and use commercially reasonable effort to achieve implementation.
- xxi. Comply with the City's Customer Service Policy (Attachment 1).
- xxii. Transition of Call Center Duties.
 - a. SJCE reserves the right to transition all call center duties from Calpine to SJCE, with at least 90 days' notice to Calpine. Upon completion of the transition, the service fee will be reduced as stipulated in Section 4, Fees for Data Manager Standard Service.
 - b. Transition of call center duties may occur in phases, according to call needs and demands, overflow call center options, and third-party translation services. Calpine agrees to assist in this transition.
 - c. SJCE shall be responsible for any reasonable additional infrastructure or programming costs incurred by Calpine to facilitate this transition. Calpine will provide an estimate and receive approval from SJCE for these costs prior to Calpine incurring them. Calpine will invoice these costs to SJCE without any added charges, where such costs will depend on the City's actual transition plan and scope, including timeline, phasing and residual services required of Calpine.

- d. Calpine’s non-binding estimate of costs under a complete transition of all call center functions as described in (a) is \$135,000, which covers four weeks of training for up to 12 City of San Jose agents, CRM data synch programming, IVR and VCQ system reprogramming, CRM licenses / setup / ongoing support, Calpine travel costs and project management and transition assistance.
- e. Calpine’s non-binding estimate of costs under a complete transition of all call center functions as described in (a) but not including direct training of City of San Jose agents is \$75,000, which covers advising City of San Jose on agent training. This is time and travel costs to “train the trainer”, CRM data synch programming, IVR and VCQ system reprogramming, CRM licenses / setup / ongoing support, Calpine travel costs and project management and transition assistance.
- f. Calpine will be responsible for training all SJCE CSRs and providing such services as group chat, call escalation, and call monitoring for training and evaluation.
- g. Calpine will provide SJCE with quarterly performance reports of SJCE’s CSR(s).
- h. In the event SJCE partially transitions a portion of the call center duties from Calpine by hiring internal customer service representatives, Calpine will credit SJCE for any avoided cost realized by such transition in accordance with the reduction stipulated in Section 4 - Fees for Data Manager Standard Service. If required, the Parties will further develop a cost reduction methodology upon finalizing the call allocation mechanism between SJCE and Calpine.
- i. In the event Calpine considers transitioning to a new third-party call center (outside of AnswerNet or an affiliated provider), it will provide SJCE notice at least 90 days in advance of such decision to transition.

(e) Call Center Performance Standards and Contact Quality Tracking Criteria

- i. During Non-Enrollment Periods, the following performance standards shall apply:
 - a. A minimum of 75% of all calls will be answered within 45 seconds.
 - b. A minimum of 90% of calls will be answered within three (3) minutes.
 - c. 100% of voicemail messages will be answered within one (1) business day.
 - d. 100% of emails receive an immediate automated acknowledgement.
 - e. 95% of emails receive a customized response within one (1) business day.

- f. 100% of emails receive a customized response within three (3) business days.
 - g. Achieve a no greater than ten percent (10%) abandon rate for all calls.
 - ii. During Statutory Enrollment Periods, the following performance standards shall apply:
 - a. A minimum of 75% of all calls will be answered within 60 seconds.
 - b. A minimum of 90% of calls will be answered within three (3) minutes.
 - c. 100% of voicemail messages answered within one (1) business days
 - d. 100% of emails receive an immediate automated acknowledgement.
 - e. 95% of emails receive a customized response within one (1) business day.
 - f. 100% of emails receive a customized response within three (3) business days.
 - g. Achieve a no greater than 10% abandon rate for all calls.
 - iii. In accordance with Section 5(b) of this Exhibit A, Calpine must provide monthly reports documenting whether the above performance standards have been met.
- (f) Quality Assurance:
- i. Project list. Parties will maintain a project list of current SJCE requests and other initiatives related to Data Manager Services, which will include request date, project owners, project status and next steps, expected completion date and actual completion date. Parties will coordinate to make progress on items on the list and resolve issues.
 - ii. Monthly operational call. Calpine will host a monthly call to discuss operational issues requested by SJCE, including call center performance, opportunities to improve call center service and progress on projects. Parties will communicate agenda items at least one (1) business day in advance.
 - iii. Monthly PG&E/Calpine/SJCE operational call. Calpine will take part in a monthly call, hosted by SJCE, to discuss operational issues, including billing, long-term projects, and opportunities to improve customer service.
 - iv. Quarterly management meeting. At SJCE's request, Calpine will attend quarterly management meetings at SJCE's offices. Parties will communicate discussion agenda items at least five (5) business days in advance of the meeting.
 - v. Review of work products. Calpine must take reasonable care to ensure that its work products associated with carrying out the

services are free of error including typographical, formatting and other inconsistencies.

(g) Customer Enrollments (Statutory Enrollment Period):

- i. Staff a call center, during any SJCE Statutory Enrollment Period, between the hours of 7:00 A.M. to 7:00 P.M. Pacific Time, seven (7) days-a-week, to process opt out requests according to the provisions in Section 3(d). Ensure that all calls, except overflow volume, are answered by staff located in California.
- ii. For new CCA Service customers, update CIS and CRM to track enrollment status and store account information provided by PG&E.
- iii. Provide weekly update of opt outs during Statutory Enrollment Periods.

(h) Mailing Lists:

- i. Generate and provide mailing lists to an SJCE-designated printer, within seven (7) business days of SJCE's request according to written parameters provided by SJCE, for each of the following:
 - a. Mass enrollment notifications during statutory enrollment periods;
 - b. Late payment notifications to CCA Service customers that are over 90 days or \$250 overdue, generated on a monthly basis;
 - c. New CCA Service account/new move-in customer enrollments (during non-enrollment and statutory enrollment periods) within seven (7) days of enrollment receipt of CCASR;
 - d. 100% renewable option residential welcome packets within seven (7) days of opt up request;
 - e. Opt out confirmation letters within seven (7) days of opt out request;
 - f. Welcome Back to SJCE confirmation letters within seven (7) days of re-enrollment;
 - g. Welcome to NEM program confirmation letters with seven (7) days of notification from PG&E of rate change to NEM;
 - h. Customers eligible for SJCE's Net Energy Metering annual settlement process based on SJCE's current NEM program; and
 - i. Other mailing lists as requested, such as SJCE program participation and changes in rates.
- ii. All mailing lists must adhere to the following parameters, unless otherwise specified by SJCE:
 - a. Remove duplicate occurrences of identical Service Agreement account holder name and full mailing address.
 - b. Remove Direct Access customers.

- c. Send the above lists to SJCE staff via SFTP for review and/or to SJCE's designated printer via SFTP, in accordance with SJCE's request.

(i) Billing Administration:

- i. Receive data on CCA Service from PG&E, and provide PG&E with appropriate charges for applicable rate class and other charges related to CCA Service.
- ii. Timely submit billing information for each CCA Service customer to PG&E to meet PG&E Billing Window.
- iii. Use commercially reasonable efforts to remedy CCA Service billing errors for any customer in a timely manner, within one billing cycle from discovery of the error.
- iv. Update CCA's Service rates according to written parameters provided by SJCE, and provide written confirmation that Calpine has validated the accuracy of the Calpine-programmed CCA Service rates.
- v. Conduct testing to ensure CCA Service rates are being applied correctly to all customers. Make testing results available to SJCE upon request, and provide a method for SJCE staff to validate the accuracy of the Calpine-programmed rates upon request.
- vi. Assist with annual settlement process for Net Energy Metering customers by identifying eligible customers and providing accrued charges and credits based on SJCE's NEM program guidelines.
- vii. Assist with monthly settlement process for Net Energy Metering customers who have terminated their account by identifying eligible customers and providing accrued balances based on SJCE's NEM program guidelines.
- viii. Place On-Bill Repayment (OBR) charges on the relevant customer account, identified by SAID.
- ix. Send OBR as a separate line item to PG&E for placement on monthly bill during term of repayment.
- x. When requested by SJCE, implement Balanced Payment Plan (BPP) charges on monthly bills.
- xi. Perform quarterly BPP reviews to assess appropriate customer charge level.

(j) Reporting:

- i. Calpine will deliver the reports to SJCE as follows:

Report	Frequency	Delivery Method
Aging	Weekly & Monthly	SFTP
Cash Receipts	Weekly & Monthly	SFTP
Days To Invoice	Weekly & Monthly	SFTP
Utility User Tax (UUT) where applicable	Monthly	SFTP or Email
Invoice Summary Report	Weekly & Monthly	SFTP
Invoice Summary Report – Mid Month	Monthly	SFTP
Monthly Transaction Summary	Monthly	SFTP or Email
Opt Out with Rate Class	Weekly & Monthly	SFTP
Retroactive Returns	Monthly	SFTP or Email
Sent to Collections	Monthly	SFTP or Email
Snapshot	Weekly	SFTP
Snapshot with Addresses	Weekly	SFTP
Unbilled Usage	Monthly	SFTP
Account Count by Rate	Monthly	SFTP or Email
Full Volume Usage by Rate Class	Monthly	SFTP

(k) Settlement Quality Meter Data:

- i. Calpine shall provide SJCE or its designated representative with Settlement Quality Meter Data (“SQMD”) based on usage data for CCA Service customers as provided by PG&E and required by the CAISO.
- ii. Upon SJCE’s request, Calpine shall submit the SQMD directly to the CAISO on behalf of SJCE or SJCE’s designated Scheduling Coordinator.
- iii. The parties agree to work together on an acceptable format for the SQMD.
- iv. SJCE agrees that Calpine shall have no responsibility for any charges or penalties assessed by the CAISO associated with the SQMD under an indemnity provision or otherwise unless such charge/penalty is the result of error(s) by Calpine in processing the data.
- v. Calpine must provide available usage data for SJCE’s Scheduling Coordinator to perform load forecasting.
- i. Calpine shall prepare the SQMD using the same level of care that Calpine would use if preparing the SQMD for its own account as an LSE.

3. FEEES FOR STANDARD DATA MANAGER SERVICE

- (a) The fee is \$1.10 per meter per month.
- (b) Without Full Call Center: In the event that SJCE elects to assume certain call center services, the per meter per month fee will be reduced by the costs avoided by Calpine to perform such services, up to a maximum of \$0.15.

- (c) Without Partial Call Center: In the event that SJCE elects to self-provide a portion of call center services, the per meter per month fee will be reduced by the following amounts:
 - i. If the number of Calpine or dedicated third-party CSRs can be reduced as a result of SJCE providing its own call center representatives, while maintaining performance levels and call quality, the per meter per month fee will be reduced \$0.03 for each such reduction up to a maximum of fee reduction of \$0.09.

No additional reductions in fee are provided unless all call center operations are provided by SJCE or its Calpine, as provided in 3(b).

4. DESCRIPTION OF EXPANDED DATA MANAGER SERVICES

During the Operational Period, Calpine must provide Expanded Data Manager Services as described below.

- (a) Letter templates. Calpine will save letter templates in CRM specified below as provided by SJCE, and update additional templates upon request. At SJCE’s request, Parties will review letter templates during the monthly operational call, including without limitation, the following.
 - i. Opt out confirmation emails
 - ii. Opt out confirmation letters
 - iii. Late payment letters
 - iv. Move in Notices
 - v. Welcome Letters

- (b) Reports generation. Generate additional reports specified in the table below. For reports requiring customized programming, use commercially reasonable efforts to provide requirements and estimated completion time to SJCE within five (5) business days, based on written parameters provided by SJCE.

Report	Frequency	Delivery Method
Call center statistics required to evaluate performance against standards established in Sections 3(e).	Monthly	SFTP or Email
Call center statistics including call volume, call types, language selections, average call duration, hold times and customer survey results available from the IVR.	Monthly	SFTP or Email

Analysis of call center activity including any significant changes, outliers or trends.	Monthly	SFTP or email
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- (c) CRM reports and dashboard. Provide access to customer data via the CRM portal via routine reports and dashboards according to written parameters provided by SJCE.
- (d) Storage of customer communication in CRM, including letter correspondence, late payment notifications, Net Energy Metering cash-out notifications, enrollment notices, Joint Rate Mailer, confirmation notices, California Energy Commission power content labels, and other notifications related to CCA Services provided by SJCE staff.
- (e) Ad hoc reports and mailing lists. Generate ad hoc reports and mailing lists requested by SJCE, using commercially reasonable efforts to provide within 10 business days of SJCE’s request. Parties will coordinate to ensure the business requirements for development of such reports and mailing lists are reasonably finalized to minimize revisions.
- (f) Coordinate with SJCE staff to develop requests for new CRM database fields to store SJCE program participation information and daily historical values for compliance purposes. For such requests, which can be implemented, Calpine will provide an estimated schedule to achieve implementation.
- (g) Coordinate with SJCE staff to develop requests to make modifications to CRM. For requests, which can be implemented, Calpine will provide an estimated schedule to achieve implementation. To the extent SJCE-requested modifications require user testing, such modifications will be tested by SJCE in the CRM user acceptance testing environment prior to implementation in the CRM production environment.
- (h) Coordinate with SJCE staff to develop requirements for a RES-BCT program. Calpine will provide an estimated schedule to achieve implementation.

5. FEES FOR EXPANDED DATA MANAGER STANDARD SERVICE

- (a) \$0.00 (zero) per meter per month.

6. DATA SECURITY

- (a) Calpine and/or its employees, Calpine's, officers, agents or successors, must comply with all applicable data security laws and regulations.
- (b) Calpine must maintain all customer data in compliance with SJCE's customer privacy policy, the Non-Disclosure Agreement provisions in Section 15 of the Agreement, and the requirements of relevant CPUC Decisions including D.12-08-045, including a daily backup process.
- (c) Calpine must maintain a Security Breach Policy in a form substantially consistent with Exhibit F, excluding changes to the Covered Information Users Lists.
- (d) All data must be stored in North America.
- (e) Return of Customer Data. Upon SJCE's request, Calpine must provide to SJCE, or SJCE's designee, all existing SJCE Data used by Calpine for administration of SJCE's customer information system. Calpine shall maintain, return, or (if so directed by SJCE) subsequently destroy or delete all customer-related data in accordance with the provisions of Section 15 of the Agreement and any other applicable confidentiality requirements, that the data identified for return, destruction or deletion are not necessary for Calpine's performance of continuing obligations under the Agreement.
- (f) Return of Data Generally.
 - i. At SJCE's reasonable direction during the term of the Agreement, Calpine must provide to SJCE or its designee a copy of all or specified items of SJCE Data. Parties will confer to determine the method and form of delivering such data.
 - ii. Upon termination or expiration of the Agreement for any reason, Calpine will provide to SJCE or its designee all SJCE data, whether in written, electronic or other form or media, and at SJCE's request. Subsequently, Calpine must securely dispose of all copies of SJCE data. Calpine shall thereafter certify in writing to SJCE that all such data has been returned to SJCE or disposed of securely. Calpine shall not retain copies of SJCE Confidential Information.
 - iii. As provided in Section 15, SJCE reserves the right to request return or destruction of specified items of data during the term of the Agreement, subject to the Parties' reasonable mutual agreement that the data in question are no longer necessary for Calpine's performance of its obligations under the Agreement.
- (g) In the event of any detected breach of data security or unauthorized access concerning any data, particularly data that includes personal

information, in accordance with the Agreement or applicable SJCE and Calpine privacy and data security policies, Calpine will immediately notify the City Manager and the Director. Calpine agrees to reimburse the City for any costs incurred by the City to investigate potential breaches of this data by the Calpine and, where applicable, the cost of assisting individuals who may be impacted by the Calpine's breach. Contractor agrees, at its sole cost, to assist and cooperate in investigating security breaches and obtaining the return of any misappropriated data and other appropriate remedies.

7. THIRD-PARTY AUDIT REQUIREMENT

The third party auditor selected by Calpine will conduct a SOC 1 Type II Report Audit. Calpine agrees to pay all associated costs and fees of the SOC audit. SJCE may also audit Calpine's systems and processes related to performance of its obligations under the Agreement.

8. REMEDIES FOR FAILURE TO MEET CERTAIN PERFORMANCE STANDARDS

Calpine agrees that liquidated damages may be assessed and recovered by SJCE against Calpine, in the event of a Calpine-caused failure to meet the performance standards specified in Sections 2(e). For any month in which SJCE believes Calpine has failed to substantially meet these performance standards, SJCE will provide notification to Calpine within 30 calendar days and the Parties will meet and confer to establish a plan to remedy such failure. In the event Calpine is unable to complete such remedy within 30 calendar days of notification, Calpine will be liable to SJCE for payment of liquidated damages in an amount of Ten Thousand Dollars (\$10,000) for each month that Calpine fails to meet these performance standards. Any such liquidated damage payments may be provided to SJCE in the form of a reduction of charges in the following month's invoice under the Agreement. The foregoing liquidated damages payment shall be limited to \$10,000 regardless of how many performance standards are not met, in whole or in part, in any given month. Liquidated damages are intended to represent estimated actual damages and are not intended as a penalty, and Calpine agrees to pay them to SJCE without limiting SJCE's right to terminate this Agreement for default.

9. PRIMARY POINTS OF CONTACT

Calpine must identify a SJCE dedicated primary point of contact for day-to-day billing issues and customer contact including call center interactions. In addition, Calpine must identify primary points of contact for (a) call center operations, including reporting, staffing, training and scripting; (b) other services provided in the Agreement; (c) general client relationship issues. For email communication related to the above, SJCE will copy distribution lists provided by Calpine.

SJCE will provide a primary point of contact for each of the following areas: (a) day-to-day billing issues and customer contact including call center interactions; (b) call center operations, including reporting, staffing, training and scripting; (c) other services provided in this Addendum; (d) general client relationship issues. For email communication related to (a), (b) and (c) above, Calpine agrees to copy distribution lists provided by SJCE.

Each Party's points of contact will coordinate to ensure that all concurrently active requests and issues are managed in accordance with SJCE priorities and availability of Calpine resources.

ATTACHMENT 1: CUSTOMER SERVICE GUIDELINES

Parties mutually understand that some of the provisions in the Customer Service Guidelines do not apply. In the provision, the term “employee” refers to Calpine representatives. Calpine representatives should strive to meet the intent of the guidelines on the following pages.

Customer Service Guidelines

1.2.9

PURPOSE

To define expectations and provide guidance to departments, call centers and employees related to providing excellent customer service.

GUIDELINES

The City of San José recognizes that successful customer service reflects a quality organization. Departments and employees at all levels are required to be mindful of their individual responsibility to provide excellent customer service. These guidelines are to be applied to internal as well as external customers. Internal customers include other City staff, elected and appointed officials, and vendors and contractors hired to perform work on behalf of the City.

Excellent customer service requires that:

- City products and services are easy to locate and use;
- City employees and representatives are responsive, knowledgeable, and capable of assisting or connecting customers with others who can assist;
- City employees treat everyone with respect; and
- Customers receive excellent and appropriate help.

Excellent customer service is a natural result when all levels of the City embrace the values identified in the City's [Code of Ethics](#), [City Administrative Policy Manual Section 1.2.1](#), and [Employee Values](#). [City Administrative Policy Manual Section 1.2.4](#). These include but are not limited to:

- Integrity – upholding the highest work ethic and being open, honest, and accountable;
- Respect – treating internal and external customers fairly; and
- Excellence – focusing on all customers and providing outstanding service

Department Guidelines - General

- 1. Processes:** There are many processes within the City that require following specific procedures. Departments are expected to make such processes as simple as possible. Easy-to-understand instructions, simplified forms, plain language, and upto-date and accurate information are examples of efforts that will help ensure a positive customer experience.
- 2. Website Maintenance:** Departments are responsible for ensuring their webpages are current, accurate, and regularly updated. Additionally, departments must ensure that links in the City's webpages are working or accurately and readily refer customers to appropriate and functional links.

Departments are required to review their website content regularly and make corrections where appropriate. More information about City website management is outlined in the City's [Web Governance](#). [City Administrative Policy Manual Section 1.7.9](#).

- 3. Department Telephone Directories:** The role of an up-to-date citywide directory for ensuring quality customer service cannot be overstated. Customers are frustrated when they are directed to a wrong or non-functional phone number.

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Departments are required to review and update directories periodically to ensure that, at a minimum, their staff's direct business phone numbers and proper departments are correctly and completely listed.

- 4. Telephone Trees and Interactive Voice Response (IVR):** Telephone trees and IVR can be effective tools for providing fast routing options and popular information to customers. Departments that maintain telephone trees and IVR solutions are required to conduct periodic reviews to ensure they are making proper referrals and that the phone numbers and other information are correct.
- 5. Self-Service Options:** Self-service options can enhance and improve the customer experience. Departments should identify situations where access to some of the most frequently used services can be automated or accelerated through online, mobile, and voice methods, such as telephone trees and messaging, IVR, online forms, CRM, and/or specialized mobile applications.

Upon deployment of self-service options, departments are expected to develop ongoing ways to let customers become aware of these convenient features, as well as to maintain these responsive methods over time.

- 6. Setting Standards for Responding to Inquiries/Requests for Service:** Departments should set minimum standards for responses to inquiries/requests. Department standards may vary depending on staffing and function.
 - a. Ideally, responses to customers should be made within one business day, even if that means merely acknowledging receipt of an email and committing to following up with a substantive response later. Departments should take into consideration staffing resources and the nature of the services provided when establishing internal response time standards, and communicate those expectations to departmental staff.
 - b. Departments should set standards to ensure that when a phone number or email account will not be staffed to answer calls or emails, then there is a referral message to a staffed phone or email, and/or provide information about approximately when someone will be staffing the phone/email account.
 - c. Email, whether complaints, compliments, or suggestions, should be acknowledged in an appropriate manner.
- 7. Information and Referral:** Often people will inquire about issues that are not within the contacted department's or City's domain. Every effort should be made to refer these callers to the entity that is best able to handle their concern. All referrals should include a phone number or location of the suggested agency.

Internal referrals should be handled in a similar manner. If a person on the phone or through email is being referred to a different department or employee, the individual should be given direct contact information for future reference and then be transferred. Customers should not have to call back for assistance with the transfer.

If a referral is made to another City department, every effort should be made to ensure the referral is correct and, if transferring by phone, that the call is indeed being delivered to the appropriate entity.

- 8. Compliments/Complaints:** Each department shall designate a specific location to direct complaints and compliments. The department will track such records in accordance with applicable City policy or laws. When there is a compliment, employees who are the subject of the praise should be copied or notified of the compliment by their supervisor.

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Customer Service Guidelines

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Employee Guidelines - General

1. **Helpful, Courteous, and Responsive Service:** Common courtesy and respect form the foundation of exceptional customer service. City employees will treat customers with respect, dignity, and courtesy as described in the City's [Code of Ethics, City Administrative Police Manual Section 1.2.1](#). Examples of responsive and courteous customer service include but are not limited to:
 - a. *Give full attention to the customer.*
 - b. *Communicate clearly and effectively.* Help the customer understand the issue and the City's processes, and provide useful information. Use plain language and minimize jargon as much as reasonably possible.
 - c. *Understand and empathize with the customer's point of view.* While recognizing that customer compliance with the City requirements, codes, and policies is mandatory, staff should work with the customer to understand the problem and goals, and then when possible, identify practical alternatives and solutions.
2. **Professionalism:** All employees are expected to present a professional, informed, and commonsense approach to City customers, members of the City Council, residents, businesses, and other customers, as well as to other City employees.

Customers expect City employees to be knowledgeable in matters related to their work classification. Although employees cannot be expected to be all-knowing, they do have a responsibility to maintain a solid understanding of their work responsibilities and how they relate to the overall effectiveness of the City's core values as described in the City's [Employee Values, City Administrative Policy Manual Section 1.2.4](#).

When an employee is unable to answer a question or concern raised by a customer, the employee should facilitate connecting the customer with a City expert who can answer the question or provide the service requested.

3. **Voice and Electronic Communications Standards:** Voicemail and email are effective tools for excellent customer service when managed effectively.
 - a. **Personal greeting:** City employees with direct telephone numbers are required to use the voicemail greeting system. It is expected that employees use a personal greeting for their outgoing message that includes the employees' name and department to allow for confirmation that a call has been transferred or routed to the intended person/department.
 - i. The voicemail pocket guide with instructions for changing voicemail is available at: www.sjcity.net/documentcenter/view/2792.
 - ii. To access voicemail, dial your direct number from any phone or press the envelope icon on your assigned phone.
 - iii. Press the "*" button when the auto attendant answers.
 - iv. Enter your PIN.
 - v. To work with greetings, press "3."
 - vi. To work with your personal greeting, press "1." This is your day-to-day greeting.
 - b. **Alternate/Holiday greeting:** City employees with direct telephone numbers are expected to provide an alternate greeting when they will be out of the office for an extended period of time, such as for holiday closures, vacations, or other leaves of absence. At a minimum, the greeting should identify the

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name and phone number of an alternate contact for callers during the employee's absence and note the period of absence. Alternate greetings should be cleared upon the employee's return to the office.

- i. See 3.a. i-v above. ii. To work with alternate greetings, press "2" and follow prompts. This greeting would be activated for extended absences.
 - iii. If you have difficulty setting your "Out of Office" greeting using the instructions provided, please contact IT for assistance.
- c. **Email:** City employees are expected to provide an "Out of Office" automatic reply when they will be out of the office for an extended period of time, such as holiday closures, vacations, or other planned leaves of absence. At a minimum, the response should identify the name, email address, and/or phone number of an alternate contact during the employee's absence. "Out of Office" greetings should be cleared upon the employee's return to the office.
- i. For Outlook, click "File" in the upper left corner of the email window.
 1. Click "Automatic Replies".
 2. Click "Send automatic replies".
 3. If you click "Only send during this time range:" the automatic reply will only go out during the time specified. If not clicked, it will send automatic replies until manually turned off (deselect).
 4. In the narrative box, type in the information you want to convey, such as: dates of absence and who to contact during this time.
 5. You will need to do this for responses to both internal and external responses by clicking the tabs.
 6. Click "OK"
 - ii. For Office 365 Outlook, click the "Settings" wheel.
 1. Click "Automatic Replies"
 2. Click "Send automatic replies"
 3. Enter the date range and times
 4. Provide the information you want to convey in both narrative boxes for inside and outside responses.
 5. Click "OK".
 - iii. If you have difficulty setting your "Out of Office" automatic reply using the instructions provided, please contact IT for assistance.
 - d. **Directory Information:** City employees are required to update their contact information in the Citywide Directory accessible via the City intranet site and PeopleSoft.
 - i. From the City Intranet (www.sjcity.net), click "Employee Directory" in the left window.
 - ii. Click "Update Profile" – if you get a "session expired" notice, click the link "Sign in as a different user".
 1. User log-in information is the same as the computer log-in (FirstName.LastName). Use your computer log-in password. iii. Update fields as needed.
 - iv. If you make changes, a "Save" button will appear below your name to save changes.
 - v. If you have difficulty changing your directory information using the instructions provided, please contact IT for assistance.

Department Guidelines - Call Centers, Information Counters & Department Main**Telephone Contact Numbers**

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- 1. Performance Standards:** Departments responsible for call centers, public counters, telephone answer points, and/or information centers should establish performance goals identifying expectations such as for optimal answer rates or wait times based upon the nature of the services provided.
- 2. Staffing:** Staffing levels for call centers and information counters should be arranged to ensure the most effective coverage given the available resources. Techniques to ensure effective staffing include modifying schedules based upon call volume or customer wait time and using short-term staffing relief where possible.
- 3. Equipment Requirements:** Call center equipment and systems should include at a minimum:
 - a. Components that allow for review of calls for quality assurance and/or addressing complaints. This would include telephone recording and recording notification systems.
 - b. Call management capabilities that automatically track wait times and route calls to the next available operator.
 - c. Analytic tools to track demand by day of week, hour of day, length of call, as well as other measures required for reviewing overall performance.
 - d. The ability to add self-service options and telephone trees that can be programmed by in-house systems administrators.
 - e. The ability to switch service over to back-up systems and/or add lines quickly and with ease.
 - f. Other features as may be identified in requests for bids, qualifications, or proposals.

For assistance with bringing equipment requirements up to the standards listed above, please contact the Information Technology Department.

- 4. Backup Plans:** In the event of a situation that interferes with the operation of the call center, there must be a backup plan in place to ensure that calls can be delivered and/or answered. Plans should be regularly tested to ensure that backup equipment is in working order and the staff members assigned to provide service understand their roles and knows how to operate the equipment where applicable.

Backup plans should identify staff to handle general voicemail boxes and email accounts when the primary person is not available.

Employee Guidelines – Call Center, Information Counter & Staff Answering

Department's Main Telephone Line(s)

- 1. Acknowledge Customers:** Acknowledge customers arriving at public counters promptly. Employees should strive to meet performance goals established for their Call Center, Information Counter, and/or department.
- 2. Log in at Assigned Time:** Starting on time ensures customers can receive services when the City has stated they are available. Departments and employees should be prepared to handle customers throughout posted business hours.

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For call centers using activity or call management systems, logging in ensures that customers and calls can be properly distributed for prompt attention. Employees are also required to follow department guidelines for notifications when late or sick, and to log out for designated breaks or upon conclusion of their shift, so customers and calls are not directed to stations where no one is available to provide assistance. Contact center supervisors and managers in the City have the important responsibility of ensuring staff availability, training, and tools are organized to maximize positive customer experiences.

3. Use Effective and Professional Customer Contact/Telephone Protocols.

- a. Greet all customers immediately and welcome them.
- b. Answer telephone calls, return calls, and ensure customers are not waiting any longer than the established performance goals set by your department or by these guidelines if no department policy exists.
- c. Identify yourself by name, if not displayed or visible.
- d. Refrain from using profane or inappropriate language.

4. Information and Referral: In addition to the requirements set forth in Employee Guidelines General, Call Center employees are responsible for entering requests for tracking, following up on requests to ensure prompt service, escalating issues properly, and documenting resolutions to improve future response.

Difficult Customers

1. When dealing with a difficult customer, employees shall remain professional at all times and inform customers that staff will do their best to assist in resolving the customer's request. City employees will attempt to work through the customer's concern. If employees cannot resolve the issue, they will inform the customer that the matter needs to be referred to a supervisor.
2. Although it is ultimately the City's goal to provide customers with excellent customer service, employees may terminate a conversation with any customer who demonstrates threatening, aggressive, belligerent, or other clearly inappropriate behavior or language. Where possible, the customer should be informed that continued inappropriate behavior will result in a termination of the contact.
3. A customer who demonstrates an inability to conduct themselves in a civil manner ceases to be a "customer." If such a situation arises, an employee should discuss this issue with a supervisor, who may consult with the Department Director and others, as needed.
4. On occasion, an employee may deem there is a risk to people or property in a customer or public interaction. When staff members determine there is a need to contact the police or security personnel because a customer exhibits aggressive or threatening behavior, they should do so immediately. Employees are valuable members of our City team and not expected to put themselves at risk during such any interaction with a customer. Additional information for reporting and documenting such issues is available in the City's [Workplace Violence Policy, City Administrative Policy Manual Section 1.3.1](#).

Approved:

Effective Date: August 14, 2017

Customer Service Guidelines

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/s/ Norberto Dueñas

August 14, 2017

City Manager

Date

Effective Date: August 14, 2017

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

ATTACHMENT 2: PROJECT INITIAL LAUNCH SCHEDULE

Launch Date	9/1/2018		Start	End	
Task No.	Implementation Task	Duration (days)	Days from Launch	Days from Launch	Responsible Party
1	Designated as Calpine with the Utility	7	187	180	City
2	Complete and submit required Utility Forms	7	187	180	City
3	Infrastructure & Application Configuration	90	150	60	Calpine
4	CRM Install and Configuration	90	180	90	Calpine
5	FAQ Creation and Approval	28	155	127	City
6	IVR Scripting Creation and Approval	28	155	127	City
7	Website Forms Template Review and Approval	28	155	127	City
8	IVR Script Translation	7	127	120	City
9	Website iFrames Translation	7	127	120	City
10	Website iFrames Design and Construction	42	117	75	Calpine
11	IVR Recordings	10	120	110	City
12	Print Vendor Selection	0	90	90	City
13	IVR Programming	35	110	75	Calpine
14	Bank Vendor Selection	0	90	90	City
15	EDI Certification (Utility and Bank)	42	102	60	Calpine
16	List of phase 1 customers	0	75	75	City
17	Print Vendor Collaboration and Testing	14	89	75	Calpine
18	Rate Design and Approval	0	90	90	City
19	Contact Center Training	21	88	67	Calpine
20	Program Rates	30	60	30	Calpine
21	1st Opt Out Period	30	60	30	Calpine
22	2nd Opt Out period	30	30	0	Calpine
23	Report Programming	30	30	0	Calpine
24	Utility Account Set Up	14	21	7	Utility
25	Power Flow	0	0	0	
26	Accounts Switch	37	7	+30	Utility/Calpine
27	3rd Opt Out Period	30	0	+30	Calpine
28	1st Full Cycle Bills	30	+30	+60	Calpine
29	4th Opt Out Period	30	+30	+60	Calpine

ATTACHMENT 3: FORMAT FOR SETTLEMENT QUALITY METER DATA (“SQMD”)

MSID	CHANNEL	DATE	TIME	VALUE	UOM	INTERVAL	STATUS	DSTFLAG
DLAPPGAESCPA	1	1/10/2017	1:00	233237.2746	1	60	A	N
DLAPPGAESCPA	1	1/10/2017	2:00	218176.6529	1	60	A	N
DLAPPGAESCPA	1	1/10/2017	3:00	212534.5118	1	60	A	N
DLAPPGAESCPA	1	1/10/2017	4:00	209817.8198	1	60	A	N
DLAPPGAESCPA	1	1/10/2017	5:00	216359.4529	1	60	A	N
DLAPPGAESCPA	1	1/10/2017	6:00	240069.1958	1	60	A	N
DLAPPGAESCPA	1	1/10/2017	7:00	278479.7393	1	60	A	N
DLAPPGAESCPA	1	1/10/2017	8:00	310945.0992	1	60	A	N
DLAPPGAESCPA	1	1/10/2017	9:00	318039.7816	1	60	A	N
DLAPPGAESCPA	1	1/10/2017	10:00	320063.7212	1	60	A	N
DLAPPGAESCPA	1	1/10/2017	11:00	325050.6807	1	60	A	N
DLAPPGAESCPA	1	1/10/2017	12:00	331158.6209	1	60	A	N
DLAPPGAESCPA	1	1/10/2017	13:00	327683.8249	1	60	A	N
DLAPPGAESCPA	1	1/10/2017	14:00	327967.0335	1	60	A	N
DLAPPGAESCPA	1	1/10/2017	15:00	324069.006	1	60	A	N
DLAPPGAESCPA	1	1/10/2017	16:00	326782.8635	1	60	A	N
DLAPPGAESCPA	1	1/10/2017	17:00	338530.6395	1	60	A	N
DLAPPGAESCPA	1	1/10/2017	18:00	361358.618	1	60	A	N
DLAPPGAESCPA	1	1/10/2017	19:00	361331.7703	1	60	A	N
DLAPPGAESCPA	1	1/10/2017	20:00	353276.827	1	60	A	N
DLAPPGAESCPA	1	1/10/2017	21:00	342521.8718	1	60	A	N
DLAPPGAESCPA	1	1/10/2017	22:00	309773.6219	1	60	A	N
DLAPPGAESCPA	1	1/10/2017	23:00	281434.1606	1	60	A	N
DLAPPGAESCPA	1	1/10/2017	24:00:00	253031.9996	1	60	A	N
DLAPPGAESCPA	4	1/10/2017	1:00	0	1	60	A	N
DLAPPGAESCPA	4	1/10/2017	2:00	0	1	60	A	N
DLAPPGAESCPA	4	1/10/2017	3:00	0	1	60	A	N
DLAPPGAESCPA	4	1/10/2017	4:00	0	1	60	A	N
DLAPPGAESCPA	4	1/10/2017	5:00	0	1	60	A	N
DLAPPGAESCPA	4	1/10/2017	6:00	0	1	60	A	N
DLAPPGAESCPA	4	1/10/2017	7:00	0	1	60	A	N
DLAPPGAESCPA	4	1/10/2017	8:00	0	1	60	A	N
DLAPPGAESCPA	4	1/10/2017	9:00	0	1	60	A	N
DLAPPGAESCPA	4	1/10/2017	10:00	0	1	60	A	N
DLAPPGAESCPA	4	1/10/2017	11:00	0	1	60	A	N
DLAPPGAESCPA	4	1/10/2017	12:00	0	1	60	A	N
DLAPPGAESCPA	4	1/10/2017	13:00	0	1	60	A	N
DLAPPGAESCPA	4	1/10/2017	14:00	0	1	60	A	N
DLAPPGAESCPA	4	1/10/2017	15:00	0	1	60	A	N
DLAPPGAESCPA	4	1/10/2017	16:00	0	1	60	A	N
DLAPPGAESCPA	4	1/10/2017	17:00	0	1	60	A	N
DLAPPGAESCPA	4	1/10/2017	18:00	0	1	60	A	N
DLAPPGAESCPA	4	1/10/2017	19:00	0	1	60	A	N
DLAPPGAESCPA	4	1/10/2017	20:00	0	1	60	A	N
DLAPPGAESCPA	4	1/10/2017	21:00	0	1	60	A	N
DLAPPGAESCPA	4	1/10/2017	22:00	0	1	60	A	N
DLAPPGAESCPA	4	1/10/2017	23:00	0	1	60	A	N
DLAPPGAESCPA	4	1/10/2017	24:00:00	0	1	60	A	N

EXHIBIT B: COMPENSATION

1. Compensation

The maximum amount payable for all products and services provided under this Agreement will not exceed five million, seven hundred and eighty-three thousand, eight hundred dollars (\$5,783,800.00) per year which represents 375,000 active meters. Compensation to Calpine shall be based on \$1.10 monthly cost per active meter enrolled in SJCE service within the month.

The following table represents the projected cost and maximum accounts SJCE expects to serve under the contract as well as the projected cost and customer accounts in 2018 and 2019. SJCE expects to serve Phase 1 customers starting in September of 2018. These projections are subject to change and are not binding. Notwithstanding anything contrary in this agreement, the City's monthly payment obligation is limited to the number of active customer accounts (meters) enrolled in SJCE service within the month. In no event will the City be responsible for any payment obligations for accounts that are not Active Customer Accounts (meters).

Max Customer Accounts (meters)	375,000
Cost (\$/month/ meter)	\$ 1.10
Annual Cost	\$ 4,950,000.00
Max 14 months Jan. 2019 - Mar. 2020	\$ 5,775,000.00
2018 Projected Phase 1 Customer Accounts (meters)	2,000
Cost (\$/month/ meter)	\$ 1.10
2018 Projected Cost (4 months)	\$ 8,800.00
2019 Projected Customer Accounts (meters)	350,000
Cost (\$/month/ meter)	\$ 1.10
Max 14 months Jan. 2019 - Mar. 2020	\$ 5,390,000.00

An "Active Customer Account" is defined as a PG&E service account that has received energy supplied by SJCE (post-launch) within a particular month. Pricing will be fixed priced for the initial two-year term of the Agreement. The City shall consider compensation adjustments in option years three (3), and four (4) as applicable and as requested by the Calpine. Any per meter increase shall be limited to no greater than seventy percent (70%) of the City's most recent annual Living Wage increase.

The Fees defined herein include only the Basic services as set forth in Exhibit A. Unless the parties mutually agree on the price of additional services, additional services will Calpine be billed at a labor rate of a hundred and fifty dollars (\$150.00) per hour plus any out-of-pocket costs incurred by Calpine without any mark-up. Any such additional deliverable shall be first agreed to by the parties in writing.

2. Payments

Work shall commence immediately upon execution of the Agreement and shall include completion of the tasks listed in the following Project Initial Launch Schedule, to the City's satisfaction in accordance with the Scope of Work in Exhibit A.

Calpine must submit monthly invoices to the City for work performed, related to active customer accounts, during the previous calendar month. The City shall authorize payment upon receipt of a complete and properly submitted invoice. No payments will be paid until the services for which payment is requested are fully operational, tested, and accepted by the City, where such acceptance is not unreasonably withheld.

3. Invoicing Procedure

Calpine must submit its invoice to the City's contract manager by the 10th business day of each month for work completed during the previous month. Calpine will invoice the City in accordance with Section 10 (Compensation).

EXHIBIT C: INSURANCE REQUIREMENTS

CALPINE, at CALPINE’S sole cost and expense, shall procure and maintain for the duration of this AGREEMENT, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by CALPINE, its agents, representatives, employees or subcontractors. The cost of such insurance shall be included in CALPINE’S bid.

1. Minimum Scope and Limit of Insurance

There shall be no endorsements reducing the scope of coverage required below unless approved by the City’s Risk Manager.

Type of Insurance	Minimum Limit
<p>1. Commercial General Liability The coverage provided by Insurance Services Office “occurrence” form CG 0001, including coverages for contractual liability, personal injury, broadform property damage, independent contractors, products and completed operations.</p>	<p>\$2,000,000 per occurrence for bodily injury, personal injury and property damage or \$4,000,000 annual aggregate.</p>
<p>2. Automobile Liability The coverage provided by Insurance Services Office form number CA 0001. Coverage shall be included for all owned, non-owned and hired automobiles.</p>	<p>\$1,000,000 combined single limit per accident for bodily injury and property damage.</p>
<p>3. Workers’ Compensation and Employer Liability As required by the Labor Code of the State of California.</p>	<p>Not less than \$1,000,000 each claim and annual aggregate.</p>
<p>4. Professional Liability/Errors and Omissions. Including coverages for negligent acts, errors or omissions arising from professional services provided under this contract with any deductible not exceed \$100,000 each claim.</p>	<p>Not less than \$1,000,000 each claim and annual aggregate</p>
<p>5. Cyber Liability Insurance Covering liabilities for financial loss resulting or arising from acts, errors, or omissions, in rendering services provided and network security liability under this agreement, including damages it is obligated to pay City or any third party, which are associated with any Security Breach (as hereafter defined) or loss of</p>	<p>\$1,000,000 each loss</p>

personal data, regardless of cause (including, without limitation, CALPINE negligence or gross negligence and unlawful third party acts). " Security Breach" means (1) the failure by CALPINE to properly handle, manage, store, destroy or otherwise control, or the unauthorized disclosure by CALPINE of: (a) Personal Data in any format or (b) third party corporate information in any format specifically identified as confidential and protected under a confidentiality agreement or similar contract; (2) an unintentional violation of CALPINE's privacy policy or misappropriation that results in the violation of any applicable data privacy laws or regulations; or (3) any other act, error, or omission by CALPINE in its capacity as such which is reasonably likely to result in the unauthorized disclosure of Personal Data.	
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2. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by, the City's Risk Manager. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials, employees, agents and contractors; or CALPINE shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the City's Risk Manager.

3. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

3.1. General Liability and Automobile Liability Coverages

- 3.1.1. The City, its officials, employees, and agents are to be covered as additional insureds as respects: liability arising out of activities performed by, or on behalf of, CALPINE; products and completed operations of CALPINE; premises owned, leased or used by CALPINE; or automobiles owned, leased, hired or borrowed by CALPINE. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, and agents.
- 3.1.2. CALPINE's insurance coverage shall be primary insurance as respects the City, its officials, employees, and agents. Any insurance or self-insurance maintained by the City, its officials, employees, and agents shall be excess of CALPINE's insurance and shall not contribute with it.
- 3.1.3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, or agents.

3.1.4. Coverage shall state that CALPINE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

3.1.5. Coverage shall contain a waiver of subrogation in favor of the City, its officials, employees, and agents.

3.2. Workers' Compensation and Employers Liability

Coverage shall be endorsed to state carrier waives its rights of subrogation against the City, its officials, and agents.

3.3. All Coverages

Each insurance policy required by this clause shall not be canceled, except after thirty (30) days' prior written notice has been given to the City.

4. Acceptability of Insurance

Insurance is to be placed with insurers maintaining an AM Best Rating of A-9 or better or otherwise acceptable to the City's Risk Manager.

5. Verification of Coverage

5.1. CALPINE shall furnish the City with certificates of insurance and with original blanket endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

5.2. Copies of all the required blanket ENDORSEMENTS shall be attached to the CERTIFICATE OF INSURANCE which shall be provided by CALPINE's insurance company as evidence of the stipulated coverages.

5.3. Proof of insurance shall be either emailed in pdf format to: Riskmgmt@sanjoseca.gov, or mailed to the following postal address (or any subsequent email or postal address as may be directed in writing by the Risk Manager):

City of San José – Finance Department
Risk & Insurance
200 East Santa Clara St., 14th Floor
San José, CA 95113-1905

6. Subcontractors

Contractor shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractors.

EXHIBIT D: NOTICE OF EXERCISE OF OPTION TO EXTEND AGREEMENT

AGREEMENT TITLE and DATE:	
CONSULTANT Name and Address:	
DATE OF OPTION:	

(date the notice is sent must be consistent with the time for exercise set forth in Agreement)

Pursuant to Section 2.2 of the Agreement referenced above, the City of San Jose hereby exercises its option to extend the term under the following provisions:

OPTION NO.	
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NEW OPTION TERM

Begin date:	
End date:	

MAXIMUM COMPENSATION for New Option Term:	
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For the option term exercised by this Notice, City shall pay Consultant an amount not to exceed the amount set forth above for Consultant’s services and reimbursable expenses, if any. The undersigned signing on behalf of the City of San Jose hereby certifies that an unexpended appropriation is available for the term exercised by this Notice, and that funds are available as of the date of this signature.

<p>CITY OF SAN JOSE a municipal corporation</p> <p>By _____ Name: Title:</p>



Exhibit: E
City of San José Living Wage Determination
OFFICE OF EQUALITY

San Jose Clean Energy Customer Call Center Services

Contracts governed by the City of San Jose’s Living Wage Policy (Council Policy 3-3 <http://www.sanjoseca.gov/DocumentCenter/View/3859>) must utilize the living wage rates identified below. The wage rates shall be subject to annual adjustment on the anniversary date of the Agreement.

LIVING WAGE RATES

The Living Wage rates for the period July 1, 2017 through June 30, 2018 are:

Living Wage Rate With Health Benefits	Living Wage Rate Without Health Benefits
\$20.57	\$21.82

Hours and Days of Work
(Industrial Welfare Commission Order)

Employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1 ½) times the employee’s regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and
- (b) Double the employee’s regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) on the seventh (7th) consecutive day of work in a workweek.

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

EXHIBIT F: PRO FORMA SECURITY BREACH POLICY

Scope

This document outlines the Procedure for detecting and reporting security breaches that impact Community Choice Aggregation (“CCA”) clients, such as San Jose Clean Energy, with regards to their customers’ Covered Information.

The Procedure applies to the below listed activities, which constitute a Security Breach(es) of Covered Information:

- 1) Unauthorized access
- 2) Unauthorized destruction
- 3) Unauthorized use
- 4) Unauthorized modification
- 5) Disclosure to third parties for Secondary Purposes (see below)

The aforementioned activities pertain to residential and small commercial usage data at the service account level (“Covered Information”).

Aggregated usage data that cannot be used to identify an individual account falls outside the scope and is not Covered Information.

Related Documents

Attachment 1	Covered Information Users List []
Attachment 2	Covered Information Users List (Microsoft Dynamics CRM)
Attachment 3	CCA Privacy Policy

Terms and Definitions

Covered Entity A “covered entity” is (1) and Community Choice Aggregator or Electrical Service Provider (when providing service to residential or small commercial customers), or any third party that provides services to a Community Choice Aggregator or Electrical Service Provider (when providing service to

residential or small commercial customers) under contract, (2) any third party who accesses, collects, stores, uses or discloses covered information pursuant to an order of the Commission, unless specifically exempted, who obtains this information from an electrical corporation, a Community Choice Aggregator or an Electrical Service Provider (when providing service to residential or small commercial customers) or (3) any third party, when authorized by the customer, that accesses, collects, stores, uses, or discloses covered information from an electrical corporation, a Community Choice Aggregator or an Electrical Service Provider (when providing service to residential or small commercial customers).

Covered Information “Covered information” is any usage information obtained through the use of the capabilities of Advanced Metering Infrastructure when associated with any information that can reasonable be used to identify an individual, family, household, residence, or non-residential customer, except that covered information does not include information from which identifying information has been removed such that an individual, family, household, or residence, or non-residential customer cannot reasonable be identified or re-identified. Covered information, however, does not include information provided to the Commission pursuant to its oversight responsibilities.

Primary Purposes The “primary purposes” for the collection, storage, use or disclosure or covered information are to:

- (1) Provide or bill electrical power or gas,
- (2) Provide for system, grid, or operational needs,
- (3) Provide services as required by state or federal law or as specifically authorized by an order of the Commission, or as part of a Commission authorized program conducted by a governmental entity under the supervision of the Commission.

Secondary Purpose “Secondary purpose” means any purpose that is not a primary purpose.

Non-Covered Entity “Non-Covered Entity means any entity not defined as a Covered Entity

[II] is a fully integrated, customer care, billing, and contract management software platform for retail energy markets. Billing agents can support multiple commodities through the entire customer lifecycle—from prospecting, to customer acquisition, customer service, and billing—in residential, commercial, and industrial markets.

CRM Microsoft Dynamics CRM is a customer relationship management solution that helps companies improve marketing, sales, and service engagement with their customers to drive organizational efficiency, while helping to improve customer experience.

Responsible Parties

Calpine CCA Team

CCA Operations, CCA Services

Energy Choice California CSR	Customer Service Representatives, Supervisors
Application Support	System Administrators
Calpine IT Operations	Calpine Energy Solutions IT Support Organization
CCA	Community Choice Aggregator Staff and Third Parties contracted by CCA

Procedure

(1) Detecting and Reporting of Security Breaches

- a. All Responsible Parties are required to protect Covered Information from unauthorized access, unauthorized destruction, unauthorized use, unauthorized modification, or disclosure to non-Covered Entities for Secondary Purposes.
- b. Any requests by non-Covered Entities, for access to CCA’s customer usage data must be reviewed and approved by a manager level Calpine Energy Solutions employee or higher to ensure no inadvertent release of Covered Information.
- c. All authorized releases of Covered Information to non-Covered Entities shall be logged and reported to affected CCA on an annual basis for CCA’s reporting purposes.
- d. Any discovery of a security breach of Covered Information must be reported to the affected CCA within one (1) week of detection.
- e. Any Security Breach affecting 1,000 or more accounts associated with the same CCA must also be reported to the California Public Utilities Commission’s Executive Director.

(2) Security Breach Handling Procedure

- a. The discovering party, after receiving complaint/notification email from an external source, or having detected/discovered any Security Breaches of Covered Information contained in [], must contact the Calpine Energy Solutions CCA Operations Manager immediately. If the CCA Operations Manager is unavailable, the discovering party must notify the Vice President of Customer Care.
- b. The CCA Operations Manager will quantify and validate the type and extent of the Security Breach(es) and report to the affected CCA in writing.
 - i. The report will contain enough information, if available, for the affected CCA to quantify the extent and the impact of the Security Breach and will identify a contact at Calpine Energy Solutions that will be responsible as primary contact for the CCA in regards to the Security Breach(es).
 - ii. A Security Breach(es) that affects 1,000 or more accounts are to be reported in writing to the California Public Utilities Commission’s Executive Director in addition to the affected CCA.
- c. Within sixty (60) days of the end of a calendar year, the CCA Operations Manager will review all annual discoveries of a Security Breach(es) of Covered Information and prepare a summary report to the CCA.

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(3) Review of the Covered Information Security Breach Policy and Procedure as Agent for Community Choice Aggregators

- a. At least annually, the CCA Operations Manager will review the Covered Information Security Breach Policy and Procedure as Agent for Community Choice Aggregators documentation to update the material for any changes, revisions or modifications based on experience(s). This includes reviewing and updating Attachment 1 and confirming that the policy documentation has the most current version of Attachment 2.
- b. Any proposed changes to the Covered Information Security Breach Policy and Procedure as Agent for Community Choice Aggregators documentation shall be reviewed and approved by the Vice President, Customer Care.

Attachment 1

Covered Information Users List []

<u>Calpine IT Team</u>	<u>Calpine CCA Team</u>	<u>Calpine CCA Team</u>	<u>Calpine Other</u>
NAME	NAME	NAME	<u>Auditing</u>
			NAME
			<u>CAISO Settlements</u>
			NAME

Attachment 3

Email, Opt Out Notice, and bill message tagline:

San Jose Clean Energy is committed to protecting customers and their privacy.

Learn more at: website to be developed by San Jose Clean Energy

Privacy Policy:

To be developed.