



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Lori Mitchell

SUBJECT: SEE BELOW

DATE: September 12, 2022

Approved

Date

9/22/2022

**SUBJECT: CITY INITIATIVES ROADMAP - CLEAN ENERGY RESILIENCE:
AGREEMENTS WITH MIDDLE RIVER POWER AND SENTINEL
ENERGY CENTER FOR RESOURCE ADEQUACY AND
DISPATCHABLE ENERGY**

RECOMMENDATION

Adopt a resolution authorizing the Director of the Community Energy Department to negotiate and execute an agreement with:

- a. Middle River Power, or its affiliate MRP Pacifica Marketing LLC, using the Edison Electric Institute Agreement with modifications, as appropriate, to buy Resource Adequacy and Dispatchable Energy products from a natural gas plant and associated battery, in an amount not to exceed \$15,800,000 annually and \$190,000,000 in aggregate during Calendar Years 2024 through 2036, to be paid solely from the San José Clean Energy Operating Fund and subject to the annual appropriation of funds; and
- b. Sentinel Energy Center, LLC, using the Edison Electric Institute Agreement with modifications, as appropriate, to buy Resource Adequacy and Dispatchable Energy products from a natural gas plant that will be retrofitted to have the capability to burn a natural gas and green hydrogen blended fuel to generate the products under the agreement, in an amount not to exceed \$18,600,000 annually and \$186,000,000 in aggregate during Calendar Years 2023 through 2033, to be paid solely from the San José Clean Energy Operating Fund and subject to the annual appropriation of funds.

OUTCOME

Entering into agreements with Middle River Power or its affiliate MRP Pacifica Marketing LLC (MRP) and Sentinel Energy Center, LLC (Sentinel) will allow the Community Energy Department (Department) to make progress towards complying with San José Clean Energy's (SJCE) capacity

obligations under the California Public Utilities Commission's Resource Adequacy Program. These agreements will also supply power to SJCE's customers from a battery and two natural gas fired power plants, which can respond quickly to changes in electric demand due to heat waves and other events. These resources are also available to generate power when renewable energy resources experience unexpected decreases in generation due to weather variations, or to meet demand due to market factors.

The agreements include requirements for the natural gas plants to add technologies to reduce their carbon emissions; these technologies include battery storage and the ability to run on a natural gas and clean hydrogen blended fuel. It is important that load serving entities such as utilities and Community Choice Aggregation programs, such as SJCE, make investments in these types of technologies to ensure that the natural gas fleet can transition to clean resources while maintaining reliability.

BACKGROUND

On August 8, 2017, the City Council approved Ordinance No. 29978 to amend Title 2 of the San José Municipal Code to add a new department, the Department, and functions, powers, and duties of the department head.

On October 13, 2017, the City Council approved Ordinance 29987 to amend Chapter 4.80 of Title 4 of the San José Municipal Code to create and establish a special fund named the San José Clean Energy Operating Fund. All revenues and costs associated with the operations of the SJCE shall be deposited and expended from the San José Clean Energy Operating Fund.

On November 7, 2017, the City Council approved Ordinance No. 30028 to add Title 26 to the San José Municipal Code for the operation and management of SJCE. Title 26 defined terms and established operational parameters for rate setting and power procurement for SJCE.

Section 26.50.020 of the San José Municipal Code states that the City may enter into contracts to procure power products for a term up to 25 years. Section 26.50.050 of the San José Municipal Code requires the Department Director to submit an energy risk management policy to City Council. On May 1, 2018, the City Council approved the Energy Risk Management Policy (Policy). The Policy may be amended by resolution of the City Council.

The City Manager appoints members to an Energy Risk Oversight Committee to oversee SJCE energy risk management and provide advice on these matters. The Risk Oversight Committee approves and amends the Energy Risk Management Regulations (Regulations). The current version of the Regulations was approved on February 28, 2022. The Regulations set forth in more detail the risk management roles, strategies, controls, and authorities outlined in the Policy to form a comprehensive energy risk management

program. The Regulations require the Department to undertake competitive solicitations to procure power products for the operation of SJCE and set forth the requirements for these solicitations.

On March 19, 2019, City Council authorized the Director of Community Energy (Director) or her designee to negotiate and execute power supply contracts for Energy, Renewable Energy, Renewable Energy Credits, Resource Adequacy, and Low Carbon power and attributes using the Edison Electric Institute agreement.

On June 4, 2019, City Council authorized the Director or her designee to negotiate and execute medium- to long-term contracts using the Edison Electric Institute agreement for a term of up to twenty years to procure Resource Adequacy.

On June 15, 2021, City Council increased the authority of the Director or her designee to negotiate and execute contracts for power supply and Resource Adequacy, including dispatchable power products.

On September 22, 2022, the City Manager's Risk Oversight Committee approved making a recommendation to City Council to authorize the Director to enter into agreements for Resource Adequacy and Dispatchable Energy products with MRP for deliveries from 2024-2036 and Sentinel for deliveries from 2023-2033.

ANALYSIS

Need for Flexible Resources

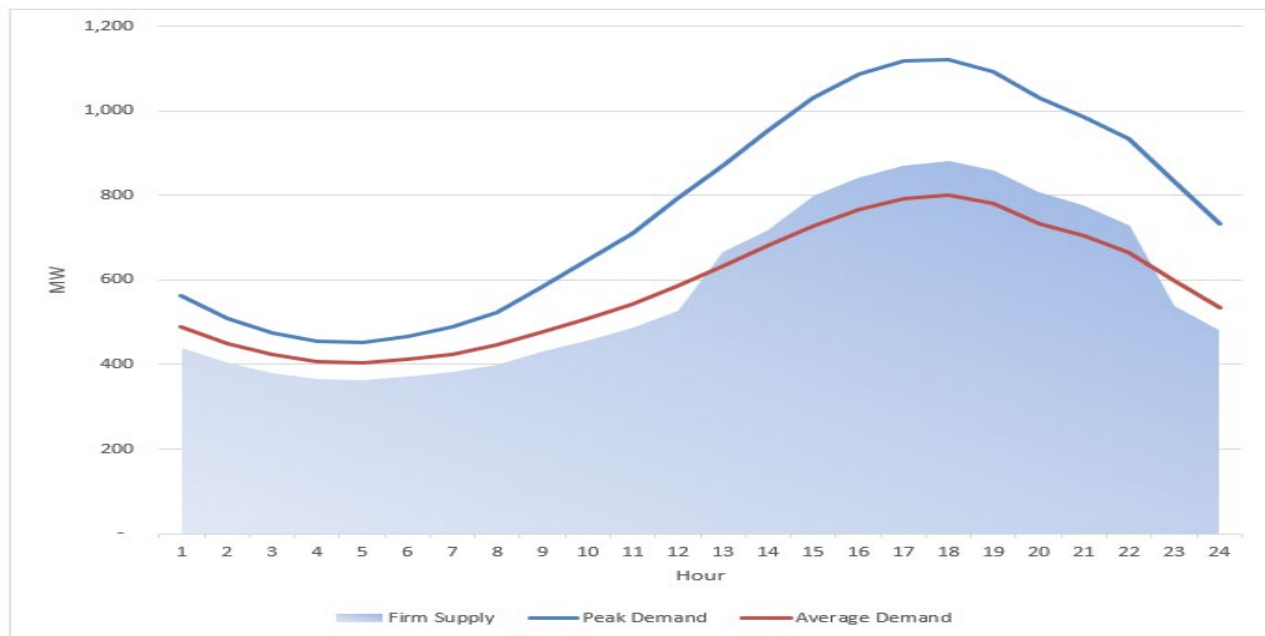
Electrical demand can vary depending on the service territory, types of service accounts, weather, and other factors. For example, areas with large cooling demand may see a large increase in electrical demand during hot days. SJCE's electrical demand is sensitive to days when temperatures exceed 90 degrees Fahrenheit and typically increases by 25% to 50%, with 200 to 400 megawatts (MW) of additional demand materializing. SJCE's average peak daily demand is 600 to 700 MW during the summer months; however, this demand can rise to over 1,000 MW during hot days. This is particularly likely during the afternoon and evening hours as SJCE customers turn on air-conditioning.

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Figure 1. SJCE Demand Scenario



On hot days, power prices also tend to be high as customers turn on air conditioning across California. As demand increases, more resources need to operate, including less efficient power plants that are more expensive. This increases market power prices. For context, California Independent System Operator's power markets are generally below \$200 per megawatt hour (MWh); however, they can approach or exceed \$1,000 per MWh on hot days. As a result, the daily power costs for the SJCE program on hot days can be up to two to five times higher than the average daily power costs on these days.

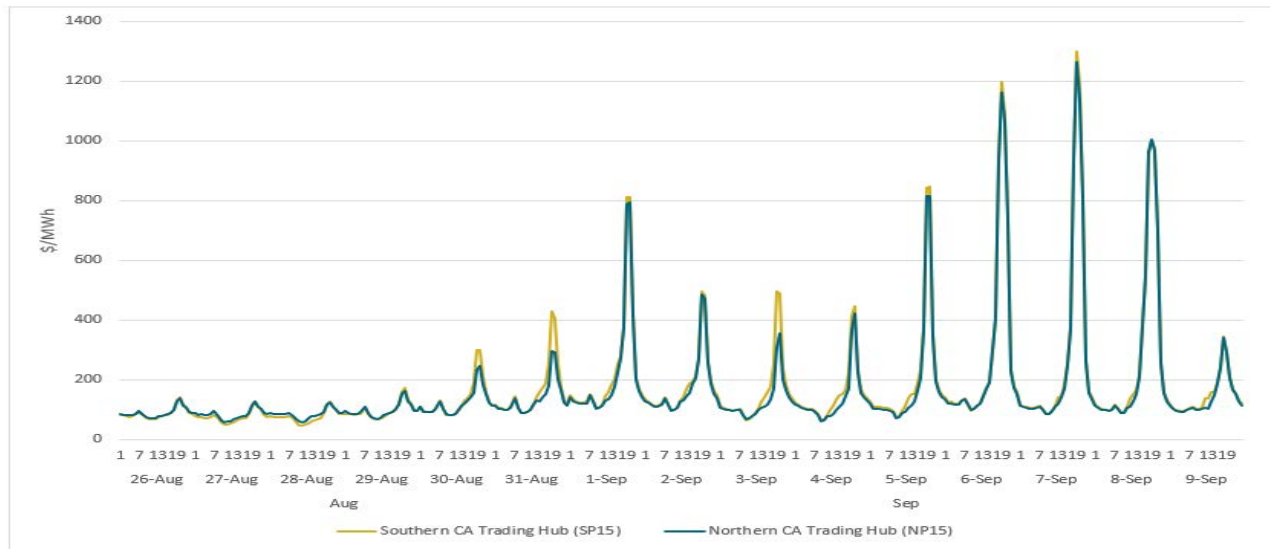
Figure 2 shows California Independent System Operator day ahead market prices in northern and southern California during the most recent heat wave from August 26, 2022 through September 9, 2022. The graph illustrates the significant increase in market prices that took place during the heat wave.

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Figure 2: California Independent System Operator Late Summer 2022 Day-Ahead Market Power Prices

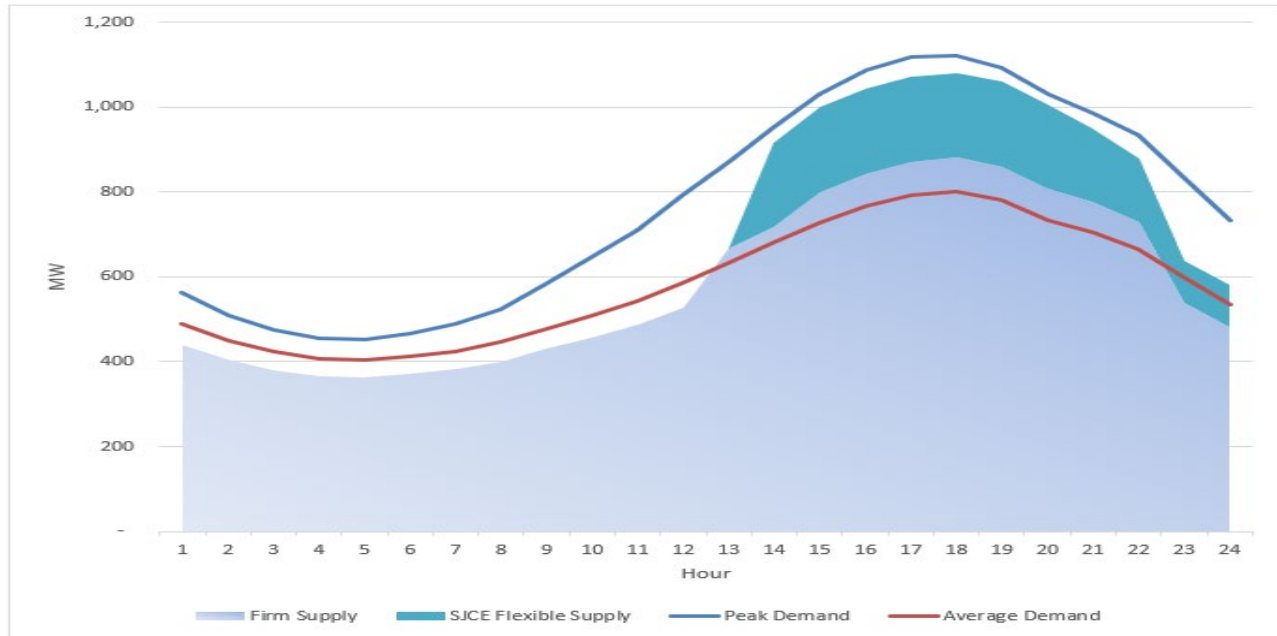


Hot weather days create an additional challenge. While temperatures above 90 degrees are routine in San José during the summer, the exact days when these temperatures will occur are not predictable in advance. The Department typically buys power years and months ahead to meet SJCE's average load. The Department doesn't buy fixed power ahead of time for the full load that materializes on hot days because this would significantly increase power supply costs and result in excess supply. The recommended contracts are expected to reduce SJCE's exposure to high market prices by making supplies available when market prices are higher than the contract price. Ensuring that the Department has resources available to meet SJCE's high loads and reducing exposure to high market prices is important to ensuring reliability and rate stability for customers.

The recommended contracts can also help to moderate costs and reduce risk due to other types of events that can result in additional load, reduced supply, and unanticipated high prices. For example, in February of 2021, cold weather in Texas resulted in disruptions throughout the West and caused market prices to increase. In the summer of 2020 and 2021, fires caused smoke in the Bay Area and reduced solar generation. The Department's solar and wind contracts could be impacted by these types of events or other operational issues and could result in unexpectedly high costs. The recommended contracts help moderate these risks as they can operate when market prices are high.

The graph below shows how these resources would be available to meet SJCE's peak demand on hot days.

Figure 3. SJCE Peak Demand Scenario



The agreements are consistent with modeling completed as part of SJCE's 2022 Integrated Resource Plan, which selected continued use of natural gas plants to cost-effectively ensure there is sufficient generation to meet loads during the transition to a carbon neutral grid as a complement to intermittent renewable resources. Importantly, the power plants are not designed, expected, or allowed in their air permits to operate frequently. The Department expects that the battery associated with one of the natural gas plants will run one hour each day; however, the Department expects the natural gas plants to run less than 10% of the year.

Resource Adequacy

State and federal laws require load serving entities such as Community Choice Aggregations like SJCE to contract with power plants to be available to meet load through the Resource Adequacy program. The California Public Utilities Commission requires SJCE to procure specified amounts of Resource Adequacy on an annual and monthly basis and imposes significant penalties for failing to meet the requirements. Over the past five years the price of Resource Adequacy has increased significantly as California seeks to close gas plants to achieve aggressive greenhouse gas reduction goals. Gas plants are still needed to cost-effectively meet expected load. It is important that the Department invests in technologies that reduce carbon emissions from natural gas plants, such as adding batteries that allow natural gas plants to run less often and adding the capability to burn cleaner fuels such as green hydrogen.

Solicitation Process

On April 5, 2022, the Department issued a Request for Information for flexible resources. This Request for Information sought information regarding available solutions to meet SJCE's highest load and other unpredictable demand and supply fluctuations. The Department received information regarding potential programs and technologies, including, demand response programs, gas-fired generating plants¹, and battery storage.

On June 15, 2022, the Department issued a Request for Offers seeking proposals for dispatchable resources. The Department invited proposals from dispatchable facilities such as power plants and batteries with an online date no later than December 31, 2024, that could provide a combination of Resource Adequacy and dispatchable energy. The Department indicated that for existing natural gas plants, it supports hybridization (the addition of batteries) and/or retrofitting to burn a natural gas and green hydrogen blend. Green hydrogen is hydrogen produced using renewable energy or other clean power sources.

Three entities submitted five bids in response to the solicitation. The Department analyzed the offers, considering factors such as value, technology, location, project risk, emissions mitigation, and counterparty experience. One entity submitted three bids, two for new solar projects with a battery, and one for a standalone battery. Middle River Power (MRP) submitted a bid for an existing natural gas plant that will add a one-hour battery. Sentinel Energy Center (Sentinel) submitted a bid for an existing natural gas plant that will be retrofitted to be able to burn a blend of natural gas and green hydrogen.

The new solar projects with a battery and the standalone battery bids were not competitive and were more expensive than bids the Department is considering in a separate solicitation of these types of resources. Thus, based on their overall scores, the Department shortlisted the two bids from natural gas fired facilities that include technologies to reduce carbon emissions.

The Selected Projects

Middle River Power: Natural Gas Power Plant with an Associated Battery

The Department selected this proposal because of the price and value, and because of the environmental benefit resulting from the addition of a battery.

Key Project Terms: (Additional terms are included in Attachment A):

- **Annual contract cost:** \$15,800,000
- **Total contract cost:** \$190,000,000
- **Delivery Term:** 12 years

¹ Including efficient plants that run most hours of the day (baseload) and plants that are cheaper to build but less efficient and consequently are more expensive to operate (peaker plants).

The power plant is owned and operated by MRP. MRP operates over two gigawatts of power plant capacity in California and an approximately three gigawatts throughout the United States. MRP has successfully developed and contracted several assets in California such as a 100 MW solar project with a 50 MW battery in Victorville, a 60 MW standalone battery, and a 130 MW geothermal project in Coso Junction, California.

The power plant is a natural gas fired plant located in Southern California. As part of the agreement with the Department, MRP will install a one-hour lithium-ion battery. Developer modeling shows that the addition of the battery is expected to reduce operation of the natural gas plant by 50-70%. While the battery operation will replace the operation of the natural gas plant, the battery will charge during the lowest cost hours which are increasingly the hours that solar power is available. To achieve San José's goal of being carbon neutral by 2030, the Department will offset power it receives from these natural gas power plants with carbon-free power starting 2030.

The agreement gives the Department the ability to direct MRP to buy gas in the forward markets to ensure that reasonably priced fuel is available when needed. The agreement requires the Department to reimburse MRP for these purchases to the extent the costs are not fully covered by the revenues from selling power from the plant into the California Independent System Operator market. The risk of high fuel costs will be moderated by careful analysis before any forward commitment for fuel is made and by ensuring that the price of the commitment is justified by credible market indices.

Sentinel: Power Plant Retrofitted to use a Natural Gas and Green Hydrogen Blend

The Department selected this proposal because of the price, value, and the environmental benefit resulting from the capability to burn a natural gas and green hydrogen blend.

Key Project Terms: (Additional terms are set forth in Attachment A):

- **Annual contract cost:** \$18,600,000
- **Total contract cost:** \$186,000,000
- **Delivery Term:** 10 years

The power plant began operations in 2013 and is jointly owned by Diamond Generating LLC, Partners Group, and Voltage Finance LLC. Diamond Generating LLC has a 50% ownership interest. Diamond Generating LLC has an ownership interest in 11 operating power generating facilities in the United States and Mexico, having total output capacity of approximately 5,200 MW. Diamond Generating LLC is owned by Mitsubishi. The Partners Group has a 25% ownership interest. The Partners Group is a large, independent investment firm with \$131 billion in assets under management. Voltage Finance LLC has a 25% ownership interest. Voltage Finance LLC is owned by private investors and managed by an independent board of directors, one of whom is a member of the Infrastructure Group of Guggenheim Partners.

The power plant is a natural gas-fired power plant located in Southern California. The agreement requires Sentinel to add technology to enable the units associated with SJCE's agreement to burn a fuel blend with up to 30% green hydrogen. The developer estimates that when a unit burns a blend with 30% green hydrogen, carbon emissions are expected to be reduced by 11%. The technologies associated with these upgrades are eligible for credits in the Inflation Reduction Act.

The agreement gives the Department the ability to direct Sentinel to buy gas in the forward markets to ensure that reasonably priced fuel is available when needed. The agreement requires the Department to reimburse Sentinel for these purchases to the extent the costs are not fully covered by the revenues from selling power from the plant. The risk of high fuel costs will be moderated by careful analysis before any forward commitment for fuel is made and by ensuring that the price of the commitment is justified by credible market indices.

Currently green hydrogen is a high-cost fuel; therefore, to maintain stable rates, the Department recommends limiting green hydrogen use in the early years. Over time, as the availability and cost of green hydrogen becomes more favorable, the Department recommends using this fuel more often to reduce emissions. Beginning in 2030, the Department will offset any power it receives from the natural gas power plant with clean power so that the Department can achieve the carbon neutrality goal on an annual basis. Enabling natural gas plants to use green hydrogen is an important step towards ensuring a reliable transition to clean energy.

CONCLUSION

The Department staff recommend City Council adopt a resolution authorizing the Director to negotiate and execute (a) an agreement with MRP or its affiliate MRP Pacifica Marketing LLC to buy Resource Adequacy and Dispatchable Energy products from a natural gas fired power plant and associated battery; and (b) an agreement with the Sentinel to buy Resource Adequacy and Dispatchable Energy products from a natural gas fired power plant to be retrofitted to be able to burn a blend of natural gas and green hydrogen fuel.

EVALUATION AND FOLLOW-UP

No additional follow-up is expected at this time.

POLICY ALTERNATIVES

Alternative #1: Do not enter into these agreements and continue to be exposed to high power prices during heat waves and other market disruptions.

Pros: There is always the possibility that heat waves and other market disruptions discussed in this memorandum will not materialize or will not be as severe as past events. In this case, these resources may not be needed or cost-effective. This is true for all energy supplies procured to reduce risks and provide cost certainty. Deciding not to contract with these power plants limits SJCE's exposure to long-term investments with natural gas.

Cons: If the Department does not have dispatchable resources, it will continue to be exposed to cost increases for heat waves and other market disruptions. Additionally, the Department will still have to procure Resource Adequacy from natural gas resources to meet the California Public Utilities Commission's Resource Adequacy program obligations. SJCE will not be investing in technologies such as batteries and green hydrogen to help the natural gas fleet reduce emissions while maintaining reliability.

Reason for not recommending: Deciding not to approve these contracts will leave SJCE exposed to high power costs.

Alternative #2: Contract exclusively with a combination of "clean resources" such as energy storage and demand response.

Pros: Energy storage and demand response can provide flexibility and have the advantage that they do not directly produce carbon emissions.

Cons: Energy storage and demand response are important components of a balanced portfolio, and the Department is pursuing these approaches in combination with the agreements recommended in this memorandum. Current levels of demand response capacity are insufficient to meet the 25-50% load swings that SJCE experiences. The Department is negotiating with battery storage providers and intends to bring related agreements to City Council in the fall of 2022. Supply chain disruptions and regulatory mandates have resulted in challenging negotiations and prices are continuing to escalate. Moreover, cost-effective energy storage is currently comprised of batteries that have limited durations and cannot operate throughout the night. Accordingly, California Public Utilities Commission rules do not permit SJCE to use more than a limited proportion of batteries to meet SJCE's Resource Adequacy requirements. Finally, the agreement with MRP includes a battery component that was central to selection of this project.

Reason for not recommending: Batteries and demand response are important components of a balanced power portfolio; however, at this time they do not avoid the need for dispatchable resources that can operate for longer time periods.

CLIMATE SMART SAN JOSÉ

The Department recognizes the importance of considering how contracting with natural gas fired power plants will impact San José's goal to achieve carbon neutrality by 2030. These projects include components that support carbon reductions from existing natural gas plants that are still needed to meet the state's reliability and flexible power needs. These projects support the transition towards a carbon neutral future in a manner that maintains reliability and complements intermittent renewables. In addition, by 2030, SJCE will offset any remaining carbon emissions from these projects with clean energy to ensure the City meets its carbon neutrality goals.

PUBLIC OUTREACH

This memorandum will be posted on the City's website for the October 4, 2022 City Council meeting.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office and the City Manager's Budget Office.

COMMISSION RECOMMENDATION/INPUT

These recommendations were not considered by the Clean Energy Community Advisory Commission.

FISCAL/POLICY ALIGNMENT

The recommended actions support Climate Smart San José (action 1.1 Transition to a Renewable Energy Future) and the Envision San José 2040 General Plan (Goal MS-2 and Appendix 8: GHG Reduction Strategy).

COST SUMMARY/IMPLICATIONS

These agreements do not impact the fiscal year 2022-2023 budget. The current fiscal year 2022-2023 allocation remains sufficient, and the Department will continue to monitor SJCE allocations and if necessary, will bring forward budget adjustments as part of a future budget process.

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CEQA

Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

/s/

LORI MITCHELL

Director, Community Energy

For questions, please contact Lori Mitchell, Director of Community Energy Department, at (408) 535-4880.

Attachment

Attachment A - Summary of Agreement Terms

Summary of Agreement Terms

MIDDLE RIVER POWER: GAS PLANT AND BATTERY

This agreement is structured as a long-form confirmation under the Edison Electric Institute (“EEI”) Agreement. This means the standard EEI agreement terms apply unless modified on the Cover Page.

Key Terms

- **Annual contract cost:** \$15,800,000
- **Total contract cost:** \$190,000,000
- **Delivery Term:** 12 years

Cover Page: The Cover Page summarizes certain key terms that are essential to the agreement and any changes to the standard EEI agreement terms.

Parties:

- **Seller:** The seller is a limited liability company, MRP Pacifica Marketing LLC that owns and operates a natural gas fired power plant. This plant will generate the energy and attributes sold to the Buyer.
- **Buyer:** The buyer will be the City of San José, as administrator of San José Clean Energy (“SJCE”), which is permitted under California law to buy energy at wholesale because it is certified as a Community Choice Aggregation. The City will purchase products from the facility to serve SJCE customers. The City will not own the facility.

Product: SJCE will purchase: (1) dispatchable energy, (2) capacity, (3) fuel.

- **(1) Dispatchable Energy:** This product has two components: the natural gas power plant and the battery. The battery and the power plant will use the same interconnection capacity, such that when the battery is charging or discharging, the power plant cannot operate.
 - For the natural gas plant, the City will be entitled to the positive difference between the cost to operate the plant (operation and maintenance costs plus fuel) and the day-ahead CAISO spot market price during all hours, with the exception of the hour with the highest day-ahead spot market price (which will be paid to the City for discharging the battery). These hours are expected to be limited since the plant is a peaker plant that has relatively low construction and maintenance costs, but it is less efficient and hence more expensive to operate.
 - For the battery, the City will pay to charge the battery daily at the lowest day-ahead CAISO hourly spot market price, and receive the revenues from discharging the energy from the battery during the highest day-ahead CAISO hourly spot market price. Because of efficiency losses, it will take more power to charge the battery than the City will receive for discharging the battery. However, on an

annual basis, the difference between the lowest day-ahead hourly spot market price and the highest day-ahead hourly spot market price should make up this difference and provide for a positive cash flow from this feature. The battery will be charged from the power grid, for example, during periods of excess solar power on the grid.

The City will obtain dispatchable energy from the battery and the plant when the facility is not on a planned outage. The operator may only plan outages during particular months when loads are typically lower within California.

- Capacity: Also known as resource adequacy attributes, is the ability to provide adequate supply during peak load and generation outage conditions. the City will receive the resource adequacy credit for SJCE from the natural gas fired plant.
- Fuel: The contract allows the City to direct the seller to buy fuel on a year-ahead, month-ahead, or daily basis to moderate the risk that natural gas prices are high at the times when electric prices are high. If the fuel is subsequently not needed to operate the power plant, the City can direct the sale in the daily gas markets and will reimburse the seller for any difference between the initial cost of the fuel and the price for the sale.

Delivery Period: June 1, 2024 through May 31, 2036, inclusive.

Requirements to add the battery in a timely manner: If the seller fails to timely build the battery, the City may terminate the agreement without any liability to either party.

Termination Payment: If there is an event of default from either party, the defaulting party may have to pay a Termination Payment to the other party.

- *Buyer default*: buyer must reimburse the seller for the lost revenues to the seller for the remainder of the agreement, minus the revenues the seller can make from reselling the products.
- *Seller default*: cost that the buyer is expected to incur in buying replacement power and expenses associated with switching providers.

Designated Fund and Appropriation of Funds: The agreement will include provisions that will limit the City's liability to the San José Clean Energy Operating Fund ("Designated Fund"). This fund is used solely for the City's costs and expenses associated with operating SJCE.

Specifically, the agreement will provide that payment obligations are special limited obligations of the City payable solely from the Designated Fund, and that those obligations shall not be a charge upon the revenues or general fund of the City of San José or upon any non-SJCE moneys or other property of the Community Energy Department or the City of San José.

The agreement will also not financially bind future governing bodies and will not constitute an obligation of future legislative bodies of the City to appropriate funds.

SENTINEL POWER PLANT

This agreement is structured as a confirmation under the EEI agreement. This means the standard EEI agreement terms apply unless modified in the Cover Page.

Key Terms:

- **Annual contract cost:** \$18,600,000
- **Total contract cost:** \$186,000,000
- **Delivery Term:** 10 years

Cover Page: The Cover Page summarizes certain key terms that are essential to the agreement, and any changes to the standard EEI agreement terms.

Parties:

- **Seller:** The seller is a limited liability company, Sentinel Energy Center, LLC (“Sentinel”) that owns and operates a natural gas-fired power plant. This plant will generate the energy and attributes sold to the City.
- **Buyer:** The buyer will be the City of San José as administrator of SJCE, which is permitted under California law to buy energy at wholesale because it is certified as a Community Choice Aggregation. The City will purchase products from the facility to serve SJCE customers. The City will not own the facility.

Product: SJCE will purchase: (1) dispatchable energy, (2) capacity, (3) fuel.

- **Dispatchable Energy:** The City will be entitled to the positive difference between the cost to operate the plant (operation and maintenance costs plus fuel) and the day-ahead CAISO hourly spot market prices. If the cost to operate the plant (operation and maintenance costs plus fuel) is less than the day-ahead CAISO hourly spot market price, the City will be entitled to the positive difference between the cost to operate the plant (operation and maintenance plus fuel) and the real-time CAISO hourly spot market price. The hours when the plant is expected to operate are limited since the power plant is a peaker plant that has a relatively low construction and maintenance costs, but is less efficient and hence more expensive to operate.

The City will obtain dispatchable energy from the plant when the facility is not on a planned outage. The operator may only plan outages during particular months when loads are typically lower within California.

- **Capacity:** Capacity, also known as resource adequacy attributes, is the ability to provide adequate supply during peak load and generation outage conditions. The City will receive the resource adequacy credit for SJCE from the power plant.

Fuel: The contract allows the City to direct the seller to buy fuel on a year-ahead, month-ahead or daily basis to moderate the risk that natural gas prices are high at the times when electric prices are high. If the fuel is subsequently not needed to operate the power plant, the City can direct the sale in the daily gas markets and will reimburse the seller for any difference between the initial cost of the fuel and the price for the sale.

Delivery Period:

- For the resource adequacy: January 1, 2024 through December 31, 2033, inclusive.
- For the Dispatchable Energy: August 1, 2023 through December 31, 2033, inclusive.

Requirements to add capability to burn a natural gas and green hydrogen blend in a timely manner: If seller fails to timely modify the facility to allow it to burn a blend of natural gas and green hydrogen, the City may terminate the agreement without any liability to either party.

Termination Payment: If there is an event of default from either party, the defaulting party may have to pay a Termination Payment to the other party.

- *Buyer default:* buyer must reimburse the seller for the lost revenues to the seller for the remainder of the agreement, minus the revenues the seller can make from reselling the products.
- *Seller default:* cost that the buyer is expected to incur in buying replacement power and expenses associated with switching providers.

Designated Fund and Appropriation of Funds: The agreement will include provisions that will limit the City's liability to the San José Clean Energy Operating Fund ("Designated Fund"). This fund is used solely for the City's costs and expenses associated with operating SJCE.

Specifically, the agreement will provide that payment obligations are special limited obligations of the City payable solely from the Designated Fund, and that those obligations shall not be a charge upon the revenues or general fund of the City of San José or upon any non-SJCE moneys or other property of the Community Energy Department or the City of San José.

The agreement will also not financially bind future governing bodies and will not constitute an obligation of future legislative bodies of the City to appropriate funds.