

34083

AMENDMENT NUMBER 1

to the

MEMORANDUM OF UNDERSTANDING

by and between

THE CITY OF LONG BEACH AND AES ALAMITOS, LLC

This Amendment Number 1 to the Memorandum of Understanding (hereinafter this "Amendment Number 1") is entered into this 3rd day of March 2022, by and between the City of Long Beach, a municipal corporation (the "City") and AES Alamitos, LLC, a California limited liability company ("AES"), each individually a "Party" and collectively the "Parties," pursuant to the minute order of the Long Beach City Council dated _____, 2022, with reference to the following facts:

RECITALS

WHEREAS, the City and AES entered into that certain Memorandum of Understanding dated and effective as of November 16, 2015 ("the 2015 MOU"), related to the existing AES Alamitos Generating Station ("AGS"), Units 1-6, located on Studebaker Road, Long Beach, California, related to the anticipated future cessation of operations of the AGS; and

WHEREAS, Section 1 of the 2015 MOU includes the following "Purpose and Implementation": "The purpose of this MOU is to memorialize a) the voluntary commitment of AES to demolish the existing Alamitos Generating Station Units 1-6 ('AGS Units') when these facilities permanently cease operations and AES has received the applicable permits from City and approval from any other necessary authorities (the 'Project'); and b) the City's procedures and time considerations for receiving application, processing, and issuing a demolition permit"; and

WHEREAS, on November 16, 2015, the effective date of the 2015 MOU, the State Water Resources Control Board ("State Water Board") Once Through Cooling ("OTC") Policy included a "compliance date" for AGS Units 1-6 (the date when the AGS Units were expected to cease operations) of December 31, 2020; and

WHEREAS, on December 31, 2019, AES successfully retired Alamitos Units 1, 2 and 6 a year early; and

WHEREAS, on September 1, 2020, recognizing that AGS and other coastal powerplants continue to play a critical role in supporting electricity reliability and the integration of renewable resources to serve California's electricity needs and climate policy objectives, the State Water Board adopted its Final Amendment to its OTC Policy, extending the compliance date for the Alamitos Units 3, 4, and 5 to December 31, 2023; and

WHEREAS, the 2015 MOU expressly recognized the possibility that the Parties may need to amend the MOU in response to changed circumstances, like the State Water Board's extension of the compliance date for Alamitos Units 3, 4, and 5 to December 31, 2023; and

WHEREAS, the City is in the process of performing necessary investigative work relating to engineering feasibility options to maintain current water circulation patterns and install fish-friendly pumps for the benefit of Alamitos Bay at an inlet channel located at the existing AGS ("Alamitos Bay Water Quality Enhancement Project" or the "Project"); and

WHEREAS, the City and AES remain dedicated to their shared commitment of working cooperatively to enhance the quality of life and the quality of the environment of Long Beach; and

WHEREAS, the City and AES desire to, among other things, extend the Term of the 2015 MOU by mutual agreement by and through this Amendment Number 1, to reflect the Parties' continuing shared commitments to the City of Long Beach.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Section 5 of the 2015 MOU, "Term and Renegotiation" is deleted and replaced in its entirety with the following:

5. Term and Renegotiation

A. Term and Expiration. The Term of this MOU shall be from its effective date of November 16, 2015 and shall end on December 31, 2023 (the "Termination Date"). If the OTC compliance date for any or all the AGS Units is extended beyond December 31, 2023, the Term of this MOU shall be extended to align with the new OTC compliance date (the "Extended Termination Date") or another extended date as negotiated between the Parties. AES will provide written notification to the City of any OTC compliance date extension for any of the AGS Units. All provisions of this MOU, as may be amended from time to time by the Parties, shall expire either on the Termination Date or, if applicable, the Extended Termination Date, unless otherwise extended by mutual agreement in writing.

B. AES will provide one-time financial assistance to the City to support engineering and due diligence efforts for the City's Alamitos Bay Water Quality Enhancement Project in an amount not to exceed one hundred fifty thousand dollars (\$150,000). The one-time financial assistance from AES does not constitute a commitment for future Alamitos Bay Water Quality Enhancement Project funding.

C. AES will work in good faith with the City to provide reasonable on-site access to the intake and outfall structure for AGS Units 5 and 6 and associated pumping equipment, to develop costs estimates for parasitic load for the Alamitos Bay Water Quality Enhancement Project, and to develop reasonable cost estimates for operations and maintenance support and other site needs for the Alamitos Bay Water Quality Enhancement Project, as determined by AES and the City. AES will

provide ongoing monitoring of water circulation pumps post installation and startup. Monitoring will include observation of pump operations, examining intake screens and providing site security. A separate pump operations agreement to implement this Section 5.C will be developed with specific operational parameters delineated.

AES understands that the City is investing significant resources in the planning and design stage of the Project and that timely access is required to perform site inspections, surveys, and monitoring activities that will inform the Project's engineering design and allow compliance with regulatory permit requirements. City staff agrees to provide at least 72 hour advance notice by email to AES of a required site visit, for which AES will on a best efforts basis grant such access or inform the City or its representatives of any conflicts and suggest an alternate date and time if the original proposed date/time does not work. AES will not withhold reasonable access to the site during the term of this agreement.

D. AES will lease the property on which the pumping system is installed to the City of Long Beach for a reasonable fee, to be negotiated at a later date. Specific terms of the lease to implement this Section 5.D will be delineated in a separate agreement.

E. AES will use commercially reasonable efforts to assist and facilitate points of contacts and communication with property owners on adjacent properties to obtain easements as necessary for the purpose of pump equipment installation and operations.

F. AES will use commercially reasonable efforts to assist and support any efforts by the City of Long Beach to secure grants and funding from the state of California or other entities to defray the cost of the pump installation and operations.

G. AES will use commercially reasonable efforts to assist and support the efforts of the City of Long Beach to assign/transfer any existing permits that can help expedite the permitting process for the Project. The Parties acknowledge that the City of Long Beach will manage the permitting process with the applicable permitting authorities and be responsible for all costs associated with the assignment/transfer of any permits, however, AES agrees to work in good faith with the City to obtain all required regulatory approvals for the Project, at the City's sole cost.

H. The City acknowledges and agrees that AES's voluntary commitments under subsections 5.B-5.G do not constitute a commitment to provide any goods, services, or utilities, or to perform or take any other future actions with respect to, or otherwise impose any

obligation relating to implementation of, the Alamitos Bay Water Quality Enhancement Project, but agrees to use commercially reasonable efforts to assist the City, at the City's sole cost, in its efforts to preserve and enhance water quality within Alamitos Bay in accordance with the terms of this MOU.

2. **Full Force and Effect.** Except as expressly set forth in Section 1 of this Amendment Number 1, all other provisions of the 2015 MOU remain unchanged and in full force and effect.
3. **Entire Agreement.** This Amendment Number 1 and the 2015 MOU constitute the final and entire agreement between the Parties respecting the subject matter hereof and thereof and any oral or written representation, warranty, course of dealing or trade usage not contained or referenced herein shall not be binding on the Parties. Each Party agrees it has not relied upon or been induced by any representation of the other Party not contained in this Amendment Number 1.
4. **Precedence.** In the event of a conflict between the terms of this Amendment Number 1 and the 2015 MOU, the terms of this Amendment Number 1 shall control.
5. **Amendment.** This Amendment Number 1 and the 2015 MOU may be further amended only by an instrument in writing mutually agreed to and executed by the Parties hereto.
6. **Counterparts.** This Amendment Number 1 may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument. Any signature page of any such counterpart, or any electronic facsimile thereof, may be attached or appended to any other counterpart to complete a fully executed counterpart of this Amendment Number 1. Any electronic facsimile transmission of any signature of a Party shall be deemed an original and shall bind such Party.
7. **Private Undertaking.** It is specifically understood and agreed by and between the Parties that no partnership, joint venture, or other association of any kind between AES and the City is formed by this Amendment Number 1 or the 2015 MOU.

(Remainder of this page intentionally left blank.)

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment Number 1 effective as of the Amendment Effective Date.

AES ALAMITOS, LLC
A CALIFORNIA LIMITED LIABILITY COMPANY

Date: 3/3/2022

By: Mark Miller

Name: Mark Miller

Title: President

CITY OF LONG BEACH
A MUNICIPAL CORPORATION

Date: July 21, 2022

By: RBH

Name: Tom Modica

Title: City Manager

APPROVED AS TO FORM

July 7, 2022
CHARLES PARKIN, City Attorney

By: Vanessa S. Ibarra
VANESSA S. IBARRA
DEPUTY CITY ATTORNEY