

MEMORANDUM OF UNDERSTANDING
AES SOUTHLAND DEVELOPMENT, LLC AND
CITY OF HUNTINGTON BEACH

This **MEMORANDUM OF UNDERSTANDING** ("MOU") is entered into this 3rd day of November, 2020 by and between the City of Huntington Beach, a municipal corporation ("City") and AES Southland Development, LLC, A California limited liability company ("AES") pursuant to Resolution No. 2020-81 of the City Council of the City of Huntington Beach and AES' Design Review Planning Application dated September 14th, 2020, with reference to the following facts:

RECITALS

WHEREAS, AES has begun operation of the new Huntington Beach Energy Project ("HBEP"), a natural gas-fired, combined cycle air-cooled 644-megawatt electrical generation facility, which shall serve as a replacement for the AES Huntington Beach Generating Station ("HBGS"); and

WHEREAS, the City has previously adopted Resolution No. 2016-27, "A Resolution of the City Council of the City of Huntington Beach Supporting Proposed Architectural Improvements as Modified and Approximate 150-Foot-High Structures Related to the Reconstruction of the Huntington Beach Energy Project", which in part provided that construction of the HBEP would include architectural enhancements to soften the view of the new HBEP structures, including the use of an architectural screen wall design to preserve and enhance public visual resources as required in the Coastal Zone overlay; and

WHEREAS, following an extensive public outreach effort by AES to the local community, the local community supported the development of a mural-based surface treatment by renowned Southern California artist, Kim West as an alternative to the previously approved architectural screen. The mural highlights imagery depicting the natural environment, local fauna and flora and regional features, all intended to highlight nature and the unique Huntington Beach experience; and

WHEREAS, in support of the mural-based aesthetic design, AES submitted a Design Review Planning Application to the City seeking an Advisory Resolution from the City recommending approval by the California Energy Commission ("CEC") for the mural at the HBEP; and

WHEREAS, in consideration of the City issuing an Advisory Resolution from the City recommending approval by the CEC for the mural-based aesthetic design at the HBEP and the CEC's subsequent approval of such mural-based design at the HBEP, AES agrees to fund certain Capital Improvement Projects ("CIPs") and Programs for the City as set forth in this MOU.

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

1. Purpose and Implementation

The purpose of this MOU is to memorialize (a) the agreement of AES to fund the CIPs and Programs as set forth in Section 2 of this MOU; and (b) the City's issuance of an Advisory Resolution from the City recommending approval by the California Energy Commission ("CEC") for the mural-based aesthetic design at the HBEP.

2. AES' Performance

- A. Funding for CIPs and Programs. Consistent with the requirements of Section 3 below, AES shall submit the payment of Four Million, Nine Hundred Thousand Dollars (\$4,900,000) to the General Fund of the City of Huntington Beach, which funds shall be allocated by the City for the following CIPs and Programs:

- a) Neighborhood Mitigation Program
- b) Homeless Response Program
- c) Southeast Neighborhood Improvements
- d) Downtown Connectivity Project
Economic Development

The City Council shall have the discretion to allocate an amount not to exceed \$4,900,000 between the various CIPs and Programs at its sole discretion.

- B. Compliance with the Advisory Resolution. AES shall comply with the provisions of the Advisory Resolution from the City recommending approval by the California Energy Commission ("CEC") for the mural-based aesthetic design at the HBEP unless such provisions are in conflict with or preempted by the CEC's Certification.

3. The City's Performance

- A. Issuance of the Advisory Resolution. AES shall submit payment in the amount of \$4,900,000 for the funding of the CIPs and Programs as set forth in Section 2(A) above within thirty (30) days of the completion of all the following conditions: (a) execution of this MOU by the Parties; (b) receipt of the Advisory Resolution from the City recommending approval by the CEC for the mural-based aesthetic design at the HBEP; and (c) the CEC's approval of the AES petition to amend the CEC's Certification being final and no longer subject to administrative appeals or judicial review.
- B. Use of Funds. The City shall use the funding provided by AES as set forth in Section 2(A) above exclusively for the listed CIPs and Programs; provided, however that in the event the allocated costs exceed the actual costs of the listed CIPs and Programs, the City may retain the excess payment exclusively for other CIPs designated by the City for construction. In no event shall AES be required to pay more than the Sum Total of \$4,900,000.00 as set forth in Section 2(A) above.

4. Term and Renegotiation

- A. Term and Expiration. The term of this MOU shall be for two (2) years commencing upon execution of the MOU by the Parties. All provisions of this MOU shall expire on the termination date unless extended by mutual agreement in writing.
- B. Renegotiation. In the event either party desires to negotiate the provision of a successor MOU, that party shall serve upon the other its written request to commence negotiations. Negotiations shall begin no later than thirty (30) days from date of receipt of notice unless extended by mutual agreement between the Parties.
- C. No Assignment. Neither AES nor its subsidiaries or affiliates shall assign or transfer any interest in this MOU or the performance of any obligation hereunder without the prior written consent of the City, and any attempt to so assign this MOU or any rights, duties or obligations arising hereunder shall be void and of no effect. This section shall not apply to assignments between AES and any of its subsidiaries and affiliates under common control or a successor-in-interest by merger, consolidation or reorganization.

5. Indemnification

- A. No Liability to Third Parties. Nothing in this MOU shall be deemed to create rights or obligations in third parties not signatories to this MOU except as specifically stated herein.
- B. AES shall defend, indemnify and hold harmless the City, its council, commissions, officials, agents and employees from or against any and all liability, loss expense (including reasonable attorneys' fees) or claims for injury or damage arising out of the performance of this MOU, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or the result of the negligent or intentional acts or omissions of AES.

6. Private Undertaking

It is specifically understood and agreed by and between the Parties that the Project is exclusively undertaken as private development. No partnership, joint venture or other association of any kind between AES and the City is formed by this MOU.

7. Governing Law

This MOU shall be governed by the laws of the state of California.

8. Modifications

Any modification of or amendment to this MOU will be effective only if in writing signed by the Parties.

IN WITNESS WHEREOF, the Parties have caused this document to be duly executed with all formalities required by law as of the date first stated above.

AES Southland Development, LLC, A
California limited liability company

CITY OF HUNTINGTON BEACH, a
municipal corporation of the State of
California

By: _____

Mayor

print name

ITS: *(circle one)* Chairman/President/Vice
President

City Clerk

AND

INITIATED AND APPROVED:

By: _____

print name

ITS: *(circle one)* Secretary/Chief Financial
Officer/Asst. Secretary - Treasurer

REVIEWED AND APPROVED:

City Manager

APPROVED AS TO FORM:

By City Attorney *me*