

Master Power Purchase and Sale Agreement
for
CleanPowerSF Community Choice Aggregation
by and between
The City and County of San Francisco, acting by and through its Public Utilities
Commission, Power Enterprise
and
Calpine Energy Services, L.P.

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MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This *Master Power Purchase and Sale Agreement* ("Master Agreement") is made as of the following date: January ____, 2016 ("Effective Date"). The *Master Agreement*, together with the exhibits, schedules and any written supplements hereto, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.1 hereto) shall be referred to as the "Agreement." The Parties to this *Master Agreement* are the following:

City and County of San Francisco, acting by and through its Public Utilities Commission, Power Enterprise ("City" or "Party A")

All Notices:

Street: 525 Golden Gate Ave, 7th Floor

City: San Francisco, CA Zip: 94102

Attn: Contract Administration

Phone: 415-554-4603

Facsimile: 415-554-3225

Federal Tax ID Number: 946000417

Invoices:

Attn: Angie Lee

Phone: 415-554-2451

Facsimile: 415-554-3280

Scheduling:

Attn: Jiayo Chiang

Phone: 415-554-0709

Facsimile: 415-554-3280

Email: jchiang@sfwater.org

Scheduling Desk: PowerScheduler@sfwater.org

Payments:

Attn: Angie Lee

Phone: 415-554-2451

Facsimile: 415-554-3280

Wire Transfer:

BNK: Bank of America

ABA (ACH): 121-000-358

ACCT: 14997-21926

Calpine Energy Services, L.P. ("Party B")

All Notices:

Street: 717 Texas Ave, Suite 1000

City: Houston, TX Zip: 77002

Attn: Contract Administration

Phone: (713) 830-2000

Facsimile: (713) 830-8751

Email: Commoditycontracts@calpine.com

Duns: 16-966-8212

Federal Tax ID Number: 77-0212977

With a copy to:

4160 Dublin Blvd., Suite 100

Dublin, CA 94568

Attn: Vice President, West Operations

Invoices:

Attn: Power Accounting

Phone: (713) 830-2000

Facsimile: (713) 830-8749

Scheduling:

Attn: Scheduling

Phone: (713) 830-8353

Facsimile: (713) 830-8749

Payments:

Attn: Power Accounting

Phone: (713) 830-2000

Facsimile: (713) 830-8749

Wire Transfer:

BNK: Union Bank, N.A.

ABA: 122000496

ACCT: 187-0031951

Credit and Collections:

Attn: Michael Hyams
Phone: 415-554-1590
Facsimile: 415-554-3280

With additional Notices of an Event of Default or Potential Event of Default to:

Attn: Michael Hyams
Phone: 415-554-1590
Facsimile: 415-554-3280

Credit and Collections:

Attn: Director of Corporate Credit
Phone: (713) 332-5257
Facsimile: (713) 570-4764

With additional Notices of an Event of Default or Potential Event of Default to:

Attn: Risk Management Counsel
Facsimile: (713) 830-8751

With a copy to:

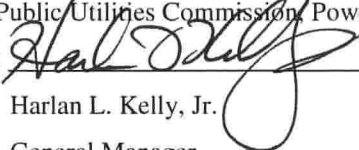
Attn: Chief Legal Officer
Facsimile: (832) 325-1508

and to:

Attn: Assistant General Counsel
Facsimile: (925) 479-9608

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the date first above written.

City and County of San Francisco, acting by and through its Public Utilities Commission Power Enterprise


By: 
Harlan L. Kelly, Jr.
General Manager,
San Francisco Public Utilities Commission

Calpine Energy Services, L.P.

By: _____
Name: _____
Title: _____

Approved as to Form:

Dennis J. Herrera
City Attorney

By: 
Deputy City Attorney
Austin Yang

Credit and Collections:
Attn: Michael Hyams
Phone: 415-554-1590
Facsimile: 415-554-3280

With additional Notices of an Event of Default or
Potential Event of Default to:
Attn: Michael Hyams
Phone: 415-554-1590
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Credit and Collections:
Attn: Director of Corporate Credit
Phone: (713) 332-5257
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City and County of San Francisco, acting by and through
its Public Utilities Commission, Power Enterprise

By: _____

Harlan J. Kelly, Jr.
General Manager,
San Francisco Public Utilities Commission

Calpine Energy Services, L.P.

By:  _____

Name: Wade Garney Griggs, III
Title: Vice President



Approved as to Form:

Dennis J. Herrera
City Attorney

By: _____
Deputy City Attorney

GENERAL TERMS AND CONDITIONS

CONDITIONS PRECEDENT

This Master Agreement shall not be effective until the date on which the following conditions have been satisfied or waived by City or Party B, as applicable (such conditions shall be referred to collectively as the “Conditions Precedent”):

A. By the City: The following conditions (the “Party B Conditions Precedent”) shall be satisfied by City:

1. The General Manager of the San Francisco Public Utilities Commission has received any necessary San Francisco Public Utilities Commission and/or San Francisco Board of Supervisors approvals to execute this Master Agreement and has executed this Master Agreement;
2. The San Francisco Public Utilities Commission has taken action pursuant to SFPUC Resolution 15-0112 to authorize the General Manager to finalize the schedule of electric rates and charges and commence the opt out process for CleanPowerSF; and
3. The Controller has certified in accordance with the City’s Charter that sufficient unencumbered balances will be available in the fund described in Section 6.9 of this Master Agreement in order to pay amounts under this Agreement as they become due.

B. City shall advise Party B in writing as each such Condition Precedent is satisfied. In the event all Conditions Precedent have not been satisfied and Party B declines to waive in writing any unsatisfied Condition(s) Precedent following the expiration of sixty (60) days from the execution of this Master Agreement, either Party may at any time thereafter elect to terminate this Master Agreement by giving the other Party ten (10) days written notice, and upon such notice this Master Agreement shall terminate with no liability by either Party to the other Party.

ARTICLE ONE: GENERAL DEFINITIONS

1.1 “Affiliate” means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

1.2 “Agreement” has the meaning set forth in the Cover Sheet.

1.3 “Applicable Law” means any statute, law, treaty, rule, tariff, regulation, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or governmental authority of competent jurisdiction (“Governmental Authority”), or any binding interpretation of the foregoing, as any of them is amended or supplemented from time to time, that apply to either or both of the Parties or the terms of the Agreement.

1.4 “Bankrupt” means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (iv) is generally unable to pay its debts as they fall due.

1.5 “Business Day” means any day except a Saturday, Sunday, a Federal Reserve Bank holiday, or a City and County of San Francisco holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party’s principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.6 “Buyer” means the Party to a Transaction that is obligated to purchase and receive, or cause to be received, the Product, as specified in the Transaction.

1.7 “CAISO” means the California Independent System Operator Corporation or the successor organization to the functions thereof.

1.8 “CAISO Tariff” means the California Independent System Operator Corporation, Fifth Replacement Federal ERC Electric Tariff as it may be amended, supplemented or replaced (in whole or in part) from time to time.

1.9 “CEC” means the California Energy Commission or any successor government agency.

1.10 “Change in Law” means any modification or amendment, by a Governmental Authority, to any Applicable Law that applies to either or both of the Parties or the terms of the Agreement that is enacted or issued after the Effective Date.

1.11 “City’s Collateral Posting” has the meaning set forth in Section 8.2(a).

1.12 “City’s Collateral Requirement” has the meaning set forth in Section 8.2(a).

1.13 “Claiming Party” has the meaning set forth in Section 3.3.

1.14 “Claims” means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of the Agreement.

1.15 “CleanPowerSF” means the City’s Community Choice Aggregation Program.

1.16 “Confidential Information” has the meaning set forth in Section 10.13(b).

1.17 “Confirmation” has the meaning set forth in Section 2.1.

1.18 “Contract Price” means the price in \$U.S. to be paid by Buyer to Seller for the purchase of the Product, as specified in the Transaction.

1.19 “Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace a Terminated Transaction; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the termination of a Transaction.

1.20 “CPUC” means the California Public Utilities Commission or any successor government agency.

1.21 “Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P, Moody’s or any other rating agency agreed by the Parties.

1.22 “Defaulting Party” has the meaning set forth in Section 5.1.

1.23 “Delivery Period” means the period of delivery for a Transaction, as specified in the Transaction.

1.24 “Delivery Point” means the point at which the Product will be delivered and received, as specified in the Transaction.

1.25 “Early Termination Date” has the meaning set forth in Section 5.2.

1.26 “Effective Date” has the meaning set forth on the Cover Sheet.

1.27 “Energy” means three-phase, 60-cycle alternating current electric energy measured in MWh.

1.28 “ERR” shall mean an Eligible Renewable Energy Resource as such term is defined in California Public Utilities Code Section 399.12 or Section 399.16.

1.29 “Equitable Defenses” means any bankruptcy, insolvency, reorganization and other laws affecting creditors’ rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

1.30 “Event of Default” has the meaning set forth in Section 5.1.

1.31 “Excluded Transaction” has the meaning set forth in Section 5.2.

1.32 “FERC” means the Federal Energy Regulatory Commission or any successor government agency.

1.33 “Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under one or more Transactions, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer’s markets; (ii) Buyer’s inability economically to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller’s supply (unless due to an event or circumstance that would otherwise qualify as Force Majeure); or (iv) Seller’s ability to sell the Product at a price greater than the Contract Price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (i) such Party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the Delivery Point and (ii) such curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the Transmission Provider’s tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred. The applicability of Force Majeure to the Transaction is governed by the terms of the Products and Related Definitions contained in the applicable Confirmation. For the avoidance of doubt, City shall not be entitled to claim Force Majeure in connection with actions taken by City in its governmental capacity.

1.34 “Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of a Terminated Transaction, determined in a commercially reasonable manner.

1.35 “Governmental Charges” has the meaning set forth in Section 9.2.

1.36 “Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from a Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from a project, (ii) production tax credits associated with the construction or operation of a project and other financial incentives in the form of credits, reductions, or allowances associated with the project that are applicable to a state or federal income

taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by a project for compliance with local, state, or federal operating and/or air quality permits. If a Project is a biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project.

1.37 “Indemnified Parties” has the meaning set forth in Section 10.4.

1.38 “Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

1.39 “Investment Grade” means a Credit Rating of BBB- or better by S&P and Baa3 or better by Moody’s.

1.40 “Involuntary Proceeding” has the meaning set forth in Section 5.1(e).

1.41 “Letter(s) of Credit” means one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least A3 from Moody’s or A- from S&P in a form acceptable to the Party in whose favor the letter of credit is issued. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

1.42 “Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of a Terminated Transaction, determined in a commercially reasonable manner.

1.43 “Master Agreement” has the meaning set forth on the Cover Sheet.

1.44 “Moody’s” means Moody’s Investor Services, Inc. or its successor.

1.45 “NERC Business Day” means any day except a Saturday, Sunday or a holiday as defined by the North American Electric Reliability Council or any successor organization thereto. A NERC Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party’s principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.46 “Nominal Value of the Transaction” means, for any Transaction, as of the date of determination, the aggregated value of the payment obligations then due and owing pursuant to such Transaction plus the expected remaining payment obligations expected to be incurred pursuant to such Transaction over the remainder of the Delivery Period.

1.47 “Non-Defaulting Party” has the meaning set forth in Section 5.2.

1.48 "Obligations" means the payment obligations of the City under this Master Agreement and any Transactions entered into pursuant to this Master Agreement.

1.49 "Offsetting Transactions" mean any two or more outstanding Transactions, having the same or overlapping Delivery Period(s), Delivery Point and payment date, where under one or more of such Transactions, one Party is the Seller, and under the other such Transaction(s), the same Party is the Buyer.

1.50 "Party B's Collateral Posting" has the meaning set forth in Section 8.1.

1.51 "Party B's Collateral Requirement" has the meaning set forth in Section 8.1.

1.52 "Performance Assurance" means collateral in the form of either cash, Letter(s) of Credit, or other security acceptable to the Requesting Party.

1.53 "Pledgor" has the meaning set forth in Section 8.3.

1.54 "Political Activity" has the meaning set forth in Section 10.20.

1.55 "Portfolio Content Category 1" or "PCC1" means Renewable Energy products that satisfy the requirements of Section 399.16(b)(1) of the California Public Utilities Code.

1.56 "Portfolio Content Category 2" or "PCC2" means Renewable Energy products that satisfy the requirements of Section 399.16(b)(2) of the California Public Utilities Code.

1.57 "Portfolio Content Category 3" or "PCC3" means Renewable Energy products that satisfy the requirements of Section 399.16(b)(3) of the California Public Utilities Code.

1.58 "Potential Event of Default" means an event which, with notice or passage of time or both, would constitute an Event of Default.

1.59 "Product" means electric capacity, energy or other product(s) related thereto as specified by the Parties in a Confirmation.

1.60 "Public Records Laws" means the California Public Records Act, California Government Code § 6250 et seq., and the San Francisco Sunshine Ordinance, San Francisco Administrative Code, Chapter 67.

1.61 "Quantity" means that quantity of the Product that Seller agrees to make available or sell and deliver, or cause to be delivered, to Buyer, and that Buyer agrees to purchase and receive, or cause to be received, from Seller as specified in the Transaction.

1.62 "Renewable Energy" means Energy generated from an ERR that is generated in the same calendar year that it is delivered to City.

1.63 "Renewable Energy Credits" or "RECs" has the meaning set forth in California Public Utilities Code Section 399.12(h) and CPUC decision 08-08-028 as may be amended from time to time or as further defined or supplemented by Applicable Law.

1.64 “Renewables Portfolio Standard” or “RPS” means the California renewables portfolio standard, as set forth in California Public Utilities Code §§ 399.11 et seq. and California Public Resources Code §§ 25740-25751, as may be modified by subsequent legislation and as administered by the CEC, and the CPUC.

1.65 “Replacement Price” means the price at which Buyer, acting in a commercially reasonable manner, purchases for delivery at the Delivery Point a replacement for any Product specified in a Transaction but not delivered by Seller, plus (i) costs reasonably incurred by Buyer in purchasing such substitute Product and (ii) additional transmission charges, if any, reasonably incurred by Buyer to the Delivery Point (provided Buyer shall use reasonable efforts to minimize any such additional transmission charges), or absent a purchase, the market price at the Delivery Point for such Product not delivered as determined by Buyer in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller’s liability. For the purposes of this definition, Buyer shall be considered to have purchased replacement Product to the extent Buyer shall have entered into one or more arrangements in a commercially reasonable manner whereby Buyer repurchases its obligation to sell and deliver the Product to another party at the Delivery Point.

1.66 “Resource Adequacy” or “RA” means the local and system resource adequacy capacity requirements established for load serving entities by the CPUC pursuant to the CPUC Decisions, the flexible capacity standards under the CAISO Tariff or by any other Governmental Authority having jurisdiction.

1.67 “S&P” means the Standard & Poor’s Financial Services LLC (a subsidiary of McGraw-Hill, Inc.) or its successor.

1.68 “Sales Price” means the price at which Seller, acting in a commercially reasonable manner, resells any Product not received by Buyer, deducting from such proceeds any (i) costs reasonably incurred by Seller in reselling such Product and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Product to the third party purchasers (provided Seller shall use reasonable efforts to minimize any such additional transmission charges), or absent a sale, the market price at the Delivery Point for such Product not received as determined by Seller in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer’s liability. For purposes of this definition, Seller shall be considered to have resold such Product to the extent Seller shall have entered into one or more arrangements in a commercially reasonable manner whereby Seller repurchases its obligation to purchase and receive the Product from another party at the Delivery Point.

1.69 “Schedule” or “Scheduling” means the actions of Seller, Buyer and/or their designated representatives, including each Party’s Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity and type of Product to be delivered on any given day or days during the Delivery Period at a specified Delivery Point.

1.70 “Scheduling Coordinator” or “SC” has the meaning set forth in the CAISO Tariff.

1.71 “Secured Party” has the meaning set forth in Section 8.3.

1.72 “Seller” means the Party to a Transaction that is obligated to sell and deliver, or cause to be delivered, the Product, as specified in the Transaction.

1.73 “Settlement Amount” means, with respect to a Transaction and the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such party incurs as a result of the liquidation of a Terminated Transaction pursuant to Section 5.2.

1.74 “SFPUC” means the San Francisco Public Utilities Commission or any successor government agency.

1.75 “Terminated Transaction” has the meaning set forth in Section 5.2.

1.76 “Termination Payment” has the meaning set forth in Section 5.3.

1.77 “Transaction” means a particular transaction agreed to by the Parties relating to the sale and purchase of a Product pursuant to this Master Agreement.

1.78 “Transmission Provider” means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point in a particular Transaction.

1.79 “WREGIS” means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS

2.1 Transactions. A Transaction shall be entered into upon agreement of the Parties in writing, through the execution of a confirmation in form and substance mutually agreed to by the Parties (a “Confirmation”). No Confirmation shall be binding until executed by the SFPUC on behalf of the City in accordance with all applicable City contracting requirements, and by Party B. Neither Party is obligated to enter into any Transaction or Confirmation pursuant to this Master Agreement and no Party shall have any obligation to purchase or sell any Product unless and until the Parties have executed a Confirmation.

2.2 Governing Terms. Unless otherwise specifically agreed, each Transaction between the Parties shall be governed by this Master Agreement. This Master Agreement (including all exhibits, schedules and any written supplements hereto), any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions executed in accordance with Section 2.1 shall form a single integrated agreement between the Parties. When a Confirmation contains provisions, other than those provisions relating to the commercial terms of the Transaction (e.g., price or special transmission conditions), which modify or supplement the general terms and conditions of this Master Agreement (e.g., arbitration provisions or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 2.1 unless agreed to in writing by the Parties; provided that the foregoing shall not invalidate any Transaction agreed to by the Parties. Any inconsistency between any terms of this Master Agreement and any terms of the Confirmation shall be resolved in favor of the terms of such Confirmation.

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

3.1 Seller's and Buyer's Obligations. With respect to each Transaction, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Quantity of the Product at the Delivery Point, and Buyer shall pay Seller the Contract Price. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its receipt at and from the Delivery Point.

3.2 Transmission and Scheduling. Seller shall arrange and be responsible for transmission service to the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Providers, as specified by the Parties in the Transaction, or in the absence thereof, in accordance with the practice of the Transmission Providers, to deliver the Product to the Delivery Point. Buyer shall arrange and be responsible for transmission service at and from the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Providers to receive the Product at the Delivery Point.

3.3 Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under the Transaction and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Party as soon as practicable, then, unless the terms of the Product specify otherwise, the Claiming Party shall be excused from the performance of its obligations with respect to such Transaction (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

3.4 No Immunity Claim. City warrants and covenants that with respect to its contractual obligations under the Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (a) suit, (b) relief by way of injunction, order for specific performance or recovery of property, (c) attachment of assets, or (d) execution or enforcement of any judgment. However, nothing in this Master Agreement shall have any effect on either Party's rights and obligations pursuant to the California Tort Claims Act (Government Code 810 et seq.).

ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE

4.1 Seller Failure. If Seller fails to schedule and/or deliver all or part of the Product pursuant to a Transaction, and such failure is not excused under the terms of the Product or by Buyer's failure to perform, then Seller shall pay Buyer, on the date payment would otherwise be due in respect of the month in which the failure occurred an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

4.2 Buyer Failure. If Buyer fails to schedule and/or receive all or part of the Product pursuant to a Transaction and such failure is not excused under the terms of the Product or by

Seller's failure to perform, then Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which the failure occurred, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES

5.1 Events of Default. An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

- (a) the failure to make, when due, any payment required pursuant to a Transaction if such failure is not remedied within five (5) Business Days after written notice;
- (b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and is not cured or remedied within thirty (30) days after written notice;
- (c) the failure to perform any material covenant or obligation set forth in the Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver or receive the Product, the exclusive remedy for which, subject to Section 5.1(h), is provided in Article 4) if such failure is not cured or remedied within thirty (30) days after written notice; provided, however, if the Event of Default cannot reasonably be cured or remedied within such initial thirty (30) day period, then so long as such Party continues to diligently pursue the cure or remedy of such failure, such Party shall have an additional period (not to exceed an additional ninety (90) days or such longer period as may be mutually agreed to by the Parties) to cure or remedy such failure;
- (d) such Party becomes Bankrupt; provided, however, if the presentation of an involuntary petition for the winding-up or liquidation of a Party (an "Involuntary Proceeding") is commenced, such Involuntary Proceeding shall not be an Event of Default in respect of that Party unless the Involuntary Proceeding has not been withdrawn, dismissed, discharged, stayed or restrained within ninety (90) days of its commencement;
- (e) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article Eight hereof;
- (f) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under the Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party; and

- (g) with respect to Party B: Party B fails to schedule and/or deliver at least seventy percent (70%) of the Product for a period of six (6) consecutive months for reasons other than Force Majeure or City's failure to perform.

5.2 Remedies Upon Default

Declaration of an Early Termination Date and Calculation of Settlement Amounts. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right to (i) designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate all, but not less than all, Transactions (each referred to as a "Terminated Transaction") between the Parties, (ii) withhold any payments due to the Defaulting Party under the Agreement and (iii) suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transaction as of the Early Termination Date or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, then each such Transaction (individually, an "Excluded Transaction" and collectively, the "Excluded Transactions") shall be terminated as soon thereafter as reasonably practicable), and upon termination shall be deemed to be a Terminated Transaction and the Termination Payment payable in connection with all such Transactions shall be calculated in accordance with Section 5.3 below. The Gains and Losses for each Terminated Transaction shall be determined by calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of that Terminated Transaction. The Non-Defaulting Party (or its agent) may determine its Gains and Losses by reference to information either available to it internally or supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information.

5.3 Net Out of Settlement Amounts. The Non-Defaulting Party shall aggregate all Settlement Amounts into a single amount by: netting out (a) all Settlement Amounts that are due to the Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party pursuant to Article Eight, plus any or all other amounts due to the Defaulting Party under the Agreement against (b) all Settlement Amounts that are due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting Party under the Agreement, so that all such amounts shall be netted out to a single liquidated amount (the "Termination Payment"), provided that if the aggregation of Settlement Amounts results in a Termination Payment being owed to the Defaulting Party, the Termination Payment shall be deemed to be zero (\$0). Notwithstanding the foregoing, in no event shall the aggregate Settlement Amounts in City's Termination Payment exceed the aggregate amount of City's Termination Payment Cap as set forth in the Confirmation for each Terminated Transaction.

5.4 Notice of Payment of Termination Payment. As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount

of the Termination Payment. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Defaulting Party within fifteen (15) Business Days after such notice is effective.

5.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within fifteen (15) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Termination Payment.

5.6 Suspension of Performance. Notwithstanding any other provision of this Master Agreement, if an Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance under any or all Transactions; provided, however, in no event shall any such suspension continue for longer than ten (10) NERC Business Days with respect to any single Transaction unless an early Termination Date shall have been declared and notice thereof pursuant to Section 5.2 given, and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.

5.7 Termination for Convenience. City may terminate this Master Agreement and any Transactions for City's convenience and without cause at any time by giving Party B thirty (30) days' written notice of such termination. In the event of such termination, Party B will be paid for those deliveries made, pursuant to all terminated Transactions, to the satisfaction of City up to the date of termination. In no event will City be liable for costs incurred by Party B after receipt of a notice of termination, other than those reasonably incurred costs authorized under this section. Upon receipt of notice of termination from City under this Section, Party B, acting in a commercially reasonable manner, shall liquidate all terminated Transactions, calculate the City's Termination Payment in accordance with Section 5.2 and 5.3 as of the date of termination under this section, and provide notice to City of the Termination Payment, if any, as set forth in Section 5.4. Notwithstanding the foregoing, the City's Termination Payment under this section 5.7 shall not be limited by the amount of the City's Termination Payment Cap as set forth in each Confirmation for the Terminated Transactions. Provided, however, that if Party B's calculation of the Termination Payment would result in a payment being owed to City, the Termination Payment shall be deemed to be zero. The Termination Payment shall be made by City within fifteen (15) Business Days after the effective date of the notice of termination for convenience.

ARTICLE SIX: PAYMENT AND NETTING

6.1 Billing Period. Unless otherwise specifically agreed upon by the Parties in a Transaction, (i) the calendar month shall be the standard period for all payments under the Agreement and (ii) as soon as practicable after the end of each month Party B will render to City an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

6.2 Timeliness of Payment. Unless otherwise specifically agreed upon by the Parties in a Transaction, all invoices shall be due and payable in accordance with each Party's invoice

instructions on or before the forty-fifth (45) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amount due on this Agreement not paid within 45 days from the invoice date, shall be subject to a late payment penalty equal to a daily rate of \$5.50 per \$100,000 for a maximum period of ninety (90) business days after such payment is due.

6.3 Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under the Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with a late payment penalty equal to a daily rate of \$5.50 per \$100,000 for each day from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments along with a late payment penalty equal to a daily rate of \$5.50 per \$100,000 for each day from and including the original payment date to but excluding the date returned or deducted. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.3 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance of a Transaction occurred, the right to payment for such performance is waived.

6.4 Netting of Payments. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date pursuant to all Transactions through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Products during the monthly billing period under the Agreement, including any related damages calculated pursuant to Article Four, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

6.5 Payment Obligation Absent Netting. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any related damage amounts calculated pursuant to Article Four, interest, and payments or credits, that Party shall pay such sum in full when due.

6.6 Security. Unless the Party benefiting from Performance Assurance or a guaranty notifies the other Party in writing, and except in connection with a liquidation and termination in accordance with Article Five, all amounts netted pursuant to this Article Six shall not take into account or include any Performance Assurance or guaranty which may be in effect to secure a Party's performance under the Agreement.

6.7 Transaction Netting. If the Parties enter into one or more Transactions, which in conjunction with one or more other outstanding Transactions, constitute Offsetting Transactions,

then all such Offsetting Transactions may by written agreement of the Parties, be netted into a single Transaction under which:

- (a) the Party obligated to deliver the greater amount of Product will deliver the difference between the total amount it is obligated to deliver and the total amount to be delivered to it under the Offsetting Transactions, and
- (b) the Party owing the greater aggregate payment will pay the net difference owed between the Parties.

Each single Transaction resulting under this Section shall be deemed part of the single, indivisible contractual arrangement between the parties, and once such resulting Transaction occurs, outstanding obligations under the Offsetting Transactions which are satisfied by such offset shall terminate.

6.8 Guaranteed Maximum Costs. The City's obligation hereunder (excluding any obligation to make a Termination Payment, which is secured by the City's Collateral Posting pursuant to Section 8.2) shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse Party B for, commodities or services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

6.9 Designated Fund

- (a) Auto-Appropriating Designated Fund. The City's Obligations shall be paid from a SFPUC designated fund that will automatically appropriate CleanPowerSF revenues on an on-going basis without further City action and which shall be used solely for CleanPowerSF costs and expenses, including the City's Obligations. City agrees to set CleanPowerSF rates and charges that are sufficient to maintain revenues necessary to pay its Obligations and all of City's payment obligations under its other contracts for the purchase of energy for CleanPowerSF. City shall provide Party B with reasonable access to account balance information with respect to the SFPUC designated fund at all times during the Delivery Period of a Transaction.
- (b) Recourse. Except with respect to City's obligation to make a Termination Payment (which is secured by the City's Collateral Posting pursuant to Section 8.2), the Obligations are special limited obligations of the City payable solely from the revenues of CleanPowerSF. The Obligations are not a charge upon the revenues or general fund of the SFPUC or the City or upon any non-CleanPowerSF moneys or other property of the SFPUC or the City.

ARTICLE SEVEN: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages. THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THE AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION SET FORTH IN THIS MASTER AGREEMENT; PROVIDED, HOWEVER, NOTHING IN THIS SECTION SHALL AFFECT THE ENFORCEABILITY OF THE PROVISIONS OF THIS MASTER AGREEMENT RELATING TO REMEDIES FOR FAILURE TO DELIVER/RECEIVE IN SECTIONS 4.1 AND 4.2, AND CALCULATION AND PAYMENT OF THE TERMINATION PAYMENT IN SECTIONS 5.2 AND 5.3. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

7.2 Liability of City. CITY'S PAYMENT OBLIGATIONS UNDER THE AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED UNDER THIS CONTRACT (INCLUDING ANY TERMINATION PAYMENT SECURED BY THE CITY'S COLLATERAL POSTING PURSUANT TO SECTION 8.2).

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

8.1 City Credit Protection. To secure its obligations to make a Termination Payment, Party B shall deliver to City concurrently with the execution and delivery of a Confirmation and maintain throughout the Delivery Period of such Transaction a Letter of Credit ("Party B's Collateral Posting") in an amount as set forth in such Confirmation ("Party B's Collateral Requirement"). Party B's Collateral Posting shall remain in full force and effect in an amount equal to Party B's Collateral Requirement until such time as all payment obligations of Party B arising under the

applicable Transaction, including indemnification payments and other damages, are paid in full (whether directly or indirectly such as through set-off or netting). City shall arrange for the return of Party B's Collateral Posting promptly after each of the following has occurred: (i) the Delivery Period has ended or an Early Termination Date has occurred, as applicable, and (ii) all payment obligations of Party B are paid in full (whether directly or indirectly such as through set-off or netting).

8.2 Party B Credit Protection.

- (a) City's Collateral Posting. To secure the City's obligation to make a Termination Payment, City shall deliver to Party B concurrently with the execution and delivery of a Confirmation and maintain throughout the Delivery Period of such Transaction a Letter of Credit ("City's Collateral Posting") in an amount as set forth in such Confirmation ("City's Collateral Requirement"). City's Collateral Posting shall remain in full force and effect until such time as the City's Obligations are terminated. Party B shall arrange for the return of City's Collateral Posting promptly after each of the following have occurred: (i) the Delivery Period has ended or an Early Termination Date has occurred, as applicable, and (ii) all Termination Payment obligations of City are paid in full (whether directly or indirectly such as through set-off or netting).
- (b) Financial Information. No later than the fifteenth (15th) day after the end of each calendar quarter, City shall deliver to Party B a report in form and substance mutually agreed by the Parties containing (i) account balance information regarding the designated fund described in Section 6.9 of this Master Agreement and any reserves for energy payments and/or other operating expenses, (ii) the amount of payments made from such fund in the preceding quarter and the amount of payments anticipated to be made from such fund in the following quarter and (iii) the amount of revenues received into such fund in the preceding quarter and the amount of revenues anticipated to be received into such fund in the following quarter.
- (c) Credit Assurances. If City's creditworthiness has fallen below Investment Grade or the City Controller has determined during the City's budget review process that the account balance and anticipated revenues of the fund described in Section 6.9 of this Master Agreement are inadequate to meet the City's Obligations, Party B may provide City with written notice requesting Performance Assurance in an amount determined by Party B in a commercially reasonable manner. Upon receipt of such notice City shall have ten (10) Business Days to respond to the notice with a commercially reasonable plan to provide Performance Assurance, a guaranty, or other credit assurance. The Parties shall negotiate a mutually acceptable time frame for the performance of the plan. In the event that City fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party B within the agreed upon time frame, then an Event of Default under Article Five will be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement. If the Controller has failed to certify the CleanPowerSF obligations, Party B will be relieved of its obligation to provide Credit Assurances in

accordance with Section 8.1 until such time as the Controller has certified such obligations.

8.3 Grant of Security Interest/Remedies. To secure its obligations under the Agreement and to the extent either or both Parties deliver Performance Assurance hereunder, each Party (a "Pledgor") hereby grants to the other Party (the "Secured Party") a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, such Secured Party, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Secured Party's first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, the Non-Defaulting Party may do any one or more of the following: (i) exercise any of the rights and remedies of a Secured Party with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the Defaulting Party in the possession of the Non-Defaulting Party or its agent; (iii) draw on any outstanding Letter of Credit issued for its benefit; and (iv) liquidate all Performance Assurance then held by or for the benefit of the Secured Party free from any claim or right of any nature whatsoever of the Defaulting Party, including any equity or right of purchase or redemption by the Defaulting Party. The Secured Party shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Pledgor's obligations under the Agreement (the Pledgor remaining liable for any amounts owing to the Secured Party after such application), subject to the Secured Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

ARTICLE NINE: GOVERNMENTAL CHARGES

9.1 Cooperation. Each Party shall use reasonable efforts to implement the provisions of and to administer this Master Agreement in accordance with the intent of the parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

9.2 Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any government authority ("Governmental Charges") on or with respect to the Product or a Transaction arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or a Transaction at and from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product and are, therefore, the responsibility of the Seller). In the event Seller is required by law or regulation to remit or pay Governmental Charges which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, Buyer may deduct the amount of any such Governmental Charges from the sums due to Seller under Article 6 of this Master Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

ARTICLE TEN: MISCELLANEOUS

10.1 Term of Master Agreement. The term of this Master Agreement shall commence on the Effective Date and shall remain in effect until ten (10) years from the Effective Date, unless terminated pursuant to Article Five; provided, however, that such expiration or termination shall not affect or excuse the performance of either Party under any provision of this Master Agreement that by its terms survives any such expiration or termination and, provided further, that this Master Agreement and any other documents executed and delivered hereunder shall remain in effect with respect to the Transaction(s) entered into prior to the effective date of such termination until both Parties have fulfilled all of their obligations with respect to such Transaction(s), or such Transaction(s) that have been terminated pursuant to Article Five of this Master Agreement.

10.2 Representations and Warranties. On the Effective Date and the date of entering into each Transaction, each Party represents and warrants to the other Party that:

- (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (ii) it has all regulatory authorizations necessary (including in the case of City all necessary authorizations from the SFPUC and/or San Francisco Board of Supervisors) for it to legally perform its obligations under this Master Agreement and each Transaction (including any Confirmation executed in accordance with Section 2.1);
- (iii) the execution, delivery and performance of this Master Agreement and each Transaction (including any Confirmation executed in accordance with Section 2.1) are within its powers, have been duly authorized by all necessary action (including in the case of City, all necessary authorizations from the SFPUC and/or San Francisco Board of Supervisors) and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
- (iv) this Master Agreement, each Transaction (including any Confirmation executed in accordance with Section 2.1), and each other document executed and delivered in accordance with this Master Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses.
- (v) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
- (vi) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Master Agreement and each Transaction (including any Confirmation executed in accordance with Section 2.1);

- (vii) no Event of Default or Potential Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Master Agreement and each Transaction (including any Confirmation executed in accordance with Section 2.1);
- (viii) it is acting for its own account, has made its own independent decision to enter into this Master Agreement and each Transaction (including any Confirmation executed in accordance with Section 2.1), and as to whether this Master Agreement and each such Transaction (including any Confirmation executed in accordance with Section 2.1) is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Master Agreement and each Transaction (including any Confirmation executed in accordance with Section 2.1);
- (ix) it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code;
- (x) it has entered into this Master Agreement and each Transaction (including any Confirmation executed in accordance with Section 2.1) in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Products referred to in the Transaction to which it is a Party;
- (xi) with respect to each Transaction (including any Confirmation executed in accordance with Section 2.1) involving the purchase or sale of a Product, it is a producer, processor, commercial user or merchant handling the Product, and it is entering into such Transaction for purposes related to its business as such; and
- (xii) the material economic terms of each Transaction are subject to individual negotiation by the Parties.

10.3 Title and Risk of Loss. Title to and risk of loss related to the Product shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Quantity of the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.

10.4 Hold Harmless and Indemnification. Each Party shall indemnify, defend, and hold harmless the other Party from and against any Claims arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to Product is vested in such Party as provided in Section 10.3. Further, each Party shall indemnify, defend and hold harmless the other Party against any Governmental Charges for which such Party is responsible under Article Nine.

10.5 Assignment. Neither Party shall assign this Agreement or its rights, duties, or obligations hereunder without the prior written consent of the other Party, which consent may not be unreasonably withheld, conditioned or delayed. Without limiting the foregoing, either Party may assign this Agreement to an Affiliate or transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial

arrangement with the consent of the other Party by providing advance written notice to the other Party; if the other Party does not object in writing within twenty (20) Days of receipt of the notice of assignment in connection with any financing, approval to the assignment shall be deemed granted.

10.6 Dispute Resolution; Choice of Law/Venue.

- (a) Negotiation; Dispute Resolution. The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of the Agreement by negotiation. The status of any dispute or controversy notwithstanding, each Party shall proceed diligently with the performance of its obligations under the Agreement in accordance with and subject to, the terms of the Agreement. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. Neither Party will be entitled to legal fees or costs for matters resolved under this section.
- (b) Governing Law; Venue. The Agreement shall be deemed to be made in, and shall be construed, enforced and performed in accordance with the laws of the State of California. For any action or proceeding relating to the Agreement, each Party submits to the exclusive jurisdiction of the federal courts located in San Francisco, California, or if such federal courts do not have jurisdiction, to the exclusive jurisdiction of the state courts of the State of California located in San Francisco, California, and each Party expressly waives any objection it may have to such jurisdiction (including sovereign immunity) or the convenience of such forum.

10.7 Notices. All notices, requests, statements or payments shall be made as specified in the Cover Sheet. Notices (other than scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service, facsimile, or email. Notice shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its addresses by providing notice of same in accordance herewith.

10.8 General.

- (a) This Master Agreement (including the exhibits, schedules and any written supplements hereto), any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmation executed in accordance with Section 2.1) constitute the entire agreement between the Parties relating to the subject matter. Notwithstanding the foregoing, any collateral, credit support or margin agreement or similar arrangement between the Parties shall, upon designation by the Parties, be deemed part of the Agreement and shall be incorporated herein by reference.
- (b) This Master Agreement shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one party or the other as

a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

- (c) Except to the extent herein provided for, no amendment or modification to this Master Agreement shall be enforceable unless reduced to writing and executed by both Parties. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Master Agreement, such amendment will not in any way affect outstanding Transactions under this Master Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Master Agreement.
- (d) This Master Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Master Agreement).
- (e) Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.
- (f) If a Change in Law results in material changes to the Parties' obligations with regard to any Product sold hereunder and that Change in Law has the effect of changing the transfer and sale procedure set forth in this Agreement so that the implementation of this Agreement becomes impossible or impracticable (including compliance with the RPS or otherwise modifies Buyer's right to Green Attributes), the Parties shall work in good faith to revise this Agreement in a manner that maintains to the greatest extent practicable the original intent of the Parties under the Agreement and the economic benefits and burdens of the Agreement originally agreed to by the Parties, so that the Parties may perform their obligations regarding the purchase and sale of Products or the City can comply with its RPS obligations. In the event the Parties cannot reach agreement on any such amendments to this Master Agreement or any such Transaction within ninety (90) days following notice of the Change in Law (or such longer period as may be mutually agreed to by the Parties), to the extent practicable and lawful, the Parties shall perform their obligations hereunder with regard to any Product hereunder or compliance with RPS obligations in accordance with the Applicable Law immediately prior to the Change in Law; provided, however, that notwithstanding the foregoing or anything to the contrary herein, Parties shall not be obligated to perform any obligation hereunder to the extent that doing so would cause the Parties to be materially adversely affected. If the Parties cannot reach a good faith agreement on amendments, the Parties will submit the matter for resolution by a mutually agreed-upon alternative dispute resolution process as contemplated by Section 10.6(a).
- (g) The headings used herein are for convenience and reference purposes only. All rights pursuant to (i) Article 5 (Events of Default; Remedies), (ii) Article 7 (Limitations), (iii) Section 10.4 (Hold Harmless and Indemnification), (iv) Section 10.6 (Dispute Resolution; Choice of Law/Venue), and (v) Section 10.9 (Audit) shall also survive termination of this Master Agreement or any Transaction.

- (h) This Master Agreement shall be binding on each Party's successors and permitted assigns.
- (i) Severability. Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

10.9 Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Master Agreement. If requested, a Party shall provide to the other Party statements evidencing the Quantity delivered at the Delivery Point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived. Each Party shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under the Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of the Agreement shall have the same rights conferred upon City by this Section.

10.10 Forward Contract. The Parties acknowledge and agree that all Transactions constitute "forward contracts" within the meaning of the United States Bankruptcy Code.

10.11 Submitting False Claims; Monetary Penalties. Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

10.12 Conflict of Interest. Through its execution of this Master Agreement, Party B acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not

know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Master Agreement.

10.13 Proprietary or Confidential Information

- (a) Party B understands and agrees that, in the performance of this Master Agreement or in contemplation thereof, Party B may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Party B agrees that all private and confidential information disclosed by City to Party B shall be held in confidence and used only in performance of the Agreement. Party B shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.
- (b) City understands and agrees that, in the performance of this Master Agreement or in contemplation thereof, City may have access to private or confidential information which may be owned or controlled by Party B and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to Party B. Party B acknowledges that City is a public agency subject to the disclosure requirements of the Public Records Laws. If documents or information submitted to City contain Party B's proprietary and confidential information that Party B wishes City to keep confidential, Party B must clearly mark such information "CONFIDENTIAL AND PROPRIETARY" and identify the specific lines containing such information (the "Confidential Information"). If City claims that such Confidential Information of Party B falls within one or more Public Records Laws exemptions, City shall so notify Party B and shall only disclose such Confidential Information to third parties to the extent required by California law (including, without limitation, the California Constitution, the Public Records Laws, and the California Open Meetings Act) as set forth in this Section 10.13 after having given Party B a reasonable opportunity to seek a protective order or other similar remedy in order to maintain the confidentiality of such Confidential Information. In the event of a third party request for City to disclose such Confidential Information, City shall make reasonable efforts to provide notice to Party B prior to disclosure.
- (c) Notwithstanding the foregoing, nothing shall restrict any Party from using or disclosing information related to the Agreement if such information (i) is generally available to the public, (ii) is required to be disclosed in response to any summons, subpoena, request from a regulatory body, or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator rule, (iii) is obtained from a non-confidential source that disclosed such information in a manner that did not violate its contractual, legal, or fiduciary obligations in making such disclosure, or (iv) is furnished to the non-disclosing Party's Affiliates, and to each of such person's auditors, attorneys, advisors or lenders which are required to keep the information that is disclosed in confidence. Notwithstanding the foregoing, a Party may disclose any one or more of the commercial terms of a Transaction (other than the name of the other Party unless

otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.

- (d) In accordance with §67.24(e) of the S.F. Admin. Code, contracts, contractors' bids, responses to RFPs and all other records of communications between City and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

10.14 Nondisclosure of Private Information. Party B has read and agrees to the terms set forth in SF Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Party B agrees that any failure of Party B to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against Party B pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar Party B.

10.15 Nondiscrimination; Penalties.

- a. Party B Shall Not Discriminate. In the performance of this contract, Party B agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Party B, in any of Party B's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Party B.
- b. Subcontracts. Party B shall not subcontract its responsibilities under the Agreement. The Parties acknowledge and agree that Party B may enter into one or more contracts with third parties for the supply of all or part of the Product ultimately delivered to City, and that by entering into such contracts Seller shall not be deemed to have subcontracted its responsibilities under the Agreement.
- c. Nondiscrimination in Benefits. Party B does not as of the date of this contract and will not during the term of this contract, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners

and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the S.F. Administrative Code.

- d. Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the S.F. Administrative Code are incorporated in this Section by reference and made a part of this contract as though fully set forth herein. Party B shall comply fully with and be bound by all of the provisions that apply to this contract under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Party B understands that pursuant to §12B.2(h) of the S.F. Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this contract may be assessed against Party B and/or deducted from any payments due Party B.

10.16 Compliance with Americans with Disabilities Act. Party B acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Party B shall provide the services specified in the Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Party B agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under the Agreement and further agrees that any violation of this prohibition on the part of Party B, its employees, agents or assigns will constitute a material breach of the Agreement.

10.17 Limitations on Contributions. Through execution of this Master Agreement, Party B acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services or for the furnishing of any material, supplies or equipment to the City, whenever such transaction would require approval by a City elective officer of the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for the contract until the later of either (1) the termination of negotiations for such contract or (2) three months after the date the contract is approved by the City elective officer or the board on which that City elective officer serves.

10.18 Prohibition on Political Activity with City Funds. In accordance with San Francisco Administrative Code Chapter 12.G, Party B may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this contract. Party B agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Party B violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this contract, and (ii) prohibit Party B from bidding on or receiving any new City contract for a period of two years.

10.19 Use of City Opinion. Party B shall not quote, paraphrase, or otherwise refer to or use any opinion of City, its officers or agents, regarding Party B or Party B's performance under this contract without prior written permission of the SFPUC.

10.20 Modification or Amendment. The Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as the Agreement, except that on behalf of the City, the General Manager of the San Francisco Public Utilities Commission may approve in writing modifications and waivers that do not materially change the benefits and burdens of the Agreement as between the City and Party B.

10.21 Compliance with Laws. Party B shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of its obligations under the Agreement, and, subject to Section 10.8(f) of this Master Agreement, shall at all times comply with such applicable laws, local codes, ordinances and regulations as they may be amended from time to time. City shall provide notice to Party B of any such amendment to the City's Charter, codes, ordinances and regulations.

10.22 Compliance Reporting. Upon the request of City, Party B shall provide all information reasonably necessary for City to timely comply with compliance reporting requirements, including but not limited to RPS, Power Content label disclosures, Resource Adequacy, and carbon emissions to the appropriate Governmental Entities, and as otherwise required by Applicable Law with respect to any Product.

10.23 Mobile-Sierra.

- a. Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of the Agreement, whether proposed by a Party (to the extent that any waiver in subsection (b) below is unenforceable or ineffective as to such Party), a non-party or FERC acting *sua sponte*, shall be the "public interest" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) and clarified by NRG Power Marketing LLC v. Maine Pub. Util. Comm'n, 558 U.S. (2010) (commonly known as the "Mobile-Sierra" doctrine).
- b. In addition, and notwithstanding the foregoing subsection (a), to the fullest extent permitted by Applicable Law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of the Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by Applicable Law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of the Agreement, notwithstanding any subsequent changes in Applicable Law or market conditions that

may occur. In the event it were to be determined that Applicable Law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection (b) shall not apply, provided that, consistent with the foregoing subsection (a), neither Party shall seek any such changes except solely under the “public interest” application of the “just and reasonable” standard of review and otherwise as set forth in the foregoing section (a).