File No. 151123 Committee Item No. 28
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

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Committee: Budget & Finance Committee **Date** November 18, 2015

Board of Supervisors Meeting **Date** _____

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Completed by: Linda Wong **Date** November 13, 2015
Completed by: Linda Wong **Date** _____

[Purchase and Sale of Electricity and Related Products and Services for CleanPowerSF - San Francisco Public Utilities Commission]

Ordinance conditionally authorizing the San Francisco Public Utilities Commission (SFPUC) to enter into one or more agreements requiring expenditures of $10,000,000 or more for electric power and related products and services to launch the City's community choice aggregation program, CleanPowerSF, and authorizing the General Manager of the SFPUC to deviate from certain otherwise applicable requirements of City law in such agreements.

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
Additions to Codes are in *single-underline italics Times New Roman font*.
Deletions to Codes are in ~~*strikethrough italics Times New Roman font*~~.
Board amendment additions are in double-underlined Arial font.
Board amendment deletions are in ~~strikethrough Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Findings.

San Francisco Community Choice Aggregation Program

(a) State law allows cities and counties to develop Community Choice Aggregation (CCA) programs, through which local governments may choose to supply electricity to serve the needs of participating customers within their jurisdictions while the existing utility continues to provide services such as customer billing, transmission and distribution.

(b) For many years, the City has considered developing a CCA program to allow San Francisco residents and businesses the option to receive cleaner, more sustainable electricity at rates comparable to the incumbent utility. See Board of Supervisors (BOS) Ordinance Nos. 86-04, 147-07, 232-09, 45-10, 200-12 and 78-14; and BOS Resolution Nos. 348-12, and 331-13.

(c) The Public Utilities Commission (PUC) has developed a CCA program called CleanPowerSF. On May 12, 2015, in PUC Resolution 15-0112, on file with the Clerk of the Board of Supervisors in File No. 151123, the PUC approved initial not-to-exceed rates and a rate-setting methodology for CleanPowerSF.

(d) In May 2015, the City enacted Ordinance No. 75-15. Ordinance No. 75-15 authorized the General Manager of the PUC to use certain pro forma contracts, such as the Western System Power Pool (WSPP) agreement and the Edison Electric Institute (EEI) agreement to purchase electricity and authorized the General Manager to deviate from certain requirements under City law in such contracts. That ordinance also authorized the PUC within specified parameters to approve agreements with terms in excess of 10 years or requiring expenditures of $10,000,000 or more, for renewable and greenhouse-gas-free energy supplies from facilities in California.

PUC Competitive Processes for Power and Related Products to Launch CleanPowerSF, Short Listing of Bidders and Approval of Contract Negotiations

(e) On August 11, 2015, the PUC issued a Request for Offers (RFO) for power supplies to launch CleanPowerSF. The RFO requested bids for energy to support the first phase of CleanPowerSF that would initially be 30 to 50 megawatts (MW).

(f) The RFO sought proposals for three types of products: firmed and shaped renewable and conventional energy with a term of three to five years (Bid Option 1); firmed and shaped or as available renewable energy with a term of one to 25 years (Bid Option 2); and resource adequacy capacity (RA Capacity).

(g) The PUC received six bids from respondents offering Bid Option 1 products; 52 bids from respondents offering Bid Option 2 products; and six bids from respondents offering RA Capacity. PUC staff reviewed the bids to ensure their compliance with the minimum bid requirements, and an evaluation team reviewed the bids against the RFO evaluation criteria.

(h) The evaluation team recommended the following respondents for further consideration and negotiations:

(1) for Bid Option 1 products: Calpine Energy Services; L.P., Constellation; and Morgan Stanley;

(2) for Bid Option 2 products: Calpine Energy Services, L.P.; E.ON; EDF Renewable Development, LLC; First Solar; FTP Power LLC; dba Sustainable Power Group (sPower); Iberdrola Renewables; Republic Services of Sonoma County, Inc.; 8minutenergy; Centaurus Renewable Energy LLC/Clenera, LLC; and

(3) for RA Capacity: Calpine Energy Service, L.P.; Constellation; and EWP Renewable Development Corporation.

(i) On October 27, 2015, in PUC Resolution 15-0222, on file with the Clerk of the Board of Supervisors in File No. 151123, the PUC approved the pool of qualified respondents recommended by the evaluation team, authorized the General Manager to negotiate energy supply contracts with one or more of the respondents, and authorized the General Manager to execute energy supply contracts with one or more of the qualified respondents subject to specified conditions. The PUC authorized the General Manager to submit the contracts to the Board of Supervisors for its review, if required.

(j) PUC Resolution 15-0222 imposed the following conditions, among others:

(1) contract pricing must be consistent with the rate setting priorities set forth in PUC Resolution 15-0112;

(2) contractors must maintain an investment grade credit rating, or provide equivalent credit support during the duration of the contract;

(3) contracts for Bid Option 1 products may not exceed five years;

(4) contracts for Bid Option 2 products may not exceed 25 years;

(5) contracts for RA Capacity may not exceed five years; and

(6) the total cost of all CleanPowerSF energy supply contracts entered into pursuant to PUC Resolution 15-0222 may not exceed $36 million a year.

(k) PUC Resolution 15-0222 also provides:

(1) The PUC intends to review the expected costs of CCA service and consider authorizing the General Manager to finalize the schedule of rates and charges for the initial offering, prior to commencement of the opt-out process;

(2) The contracts will not be effective until the PUC has reviewed the CleanPowerSF business plan and risk assessment and adopted business practice policies for CleanPowerSF;

(3) The General Manager will report to the PUC on the final schedule of rates and charges for the initial offering, prior to commencement of the opt-out process; and

(4) Before making any future decisions to construct or cause the construction of specific renewable energy projects subject to the California Environmental Quality Act (CEQA), the PUC will consider any environmental review documents prepared by the City or another lead agency in compliance with CEQA and, if it approves such projects, the PUC will make or adopt any required CEQA findings as part of such approval actions.

(l) If the City defaults or elects to terminate an agreement, the PUC may be required to make termination payments under Bid Option 1 product contracts, and such termination payments could be in the tens of millions of dollars.

(m) In order to secure this potential exposure the PUC issued a request for proposals in August 2015 to obtain an irrevocable letter of credit to secure such termination payments.

(n) After a review of responsive proposals from qualified commercial banks the PUC determined to negotiate the terms of a letter of credit with JPMorgan Chase Bank, National Association.

Need for Further Contracting Authority for Bid Option 1 Products.

(o) Based on its review of the competitive process responses and program needs, the PUC in its expert judgment has determined that in order to obtain the best service for the best price, it may require the ability to enter into contracts for Bid Option 1 products and related letters of credit that exceed $10,000,000.

Section 2. Authorizations.

(a) Pursuant to its authority under Charter Section 9.118, the Board of Supervisors hereby authorizes the General Manager to (i) enter agreements for Bid Option 1 products with one or more of the three bidders specified in PUC Resolution 15-0222 (Calpine Energy Services, L.P., Constellation, and Morgan Stanley), and (ii) enter into one or more credit agreements with JPMorgan Chase Bank for one or more letters of credit to secure termination payments under any contract for Bid Option 1 products, in either case requiring expenditures of $10,000,000 or more, including amendments to such contracts with an impact of greater than $500,000.

(b) The Board of Supervisors hereby extends to contracts authorized pursuant to Section 2(a)(i) above the authorization to use pro forma contracts set forth in Section 2(c) of Ordinance No. 75-15, and the waivers of required City Contracting Provisions set forth in Section 2(d) of Ordinance No. 75-15.

(c) The authorization in Section 2(a)(i) and authorization and waivers in Section 2(b) above apply only to contracts authorized by PUC Resolution 15-0222 that meet all of the requirements set forth in PUC Resolution 15-0222. The authorization in Section 2(a)(ii) applies only for letters of credit to secure termination payments in contracts authorized by PUC Resolution 15-0222 that meet all of the requirements set forth in PUC Resolution 15-0222.

(d) The authorization in Section 2(a) and the authorization and waivers in Section 2(b) are subject to all other requirements of Ordinance No. 75-15.

(e) The cost of procurement contracts entered into under Section 2 shall be subject to the Charter budget and fiscal provisions.

Section 3. Effective Date.

This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____
JEANNE M. SOLE
Deputy City Attorney

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FILE NO. 151123

LEGISLATIVE DIGEST

[Purchase and Sale of Electricity and Related Products and Services for CleanPowerSF - San Francisco Public Utilities Commission]

Ordinance conditionally authorizing the San Francisco Public Utilities Commission (SFPUC) to enter into one or more agreements requiring expenditures of $10,000,000 or more for electric power and related products and services to launch the City's community choice aggregation program, CleanPowerSF, and authorizing the General Manager of the SFPUC to deviate from certain otherwise applicable requirements of City law in such agreements.

Existing Law

Ordinance No. 75-15 authorized the General Manager of the SFPUC to (1) use certain pro forma contracts to purchase electricity; (2) deviate from certain requirements under City law in such contracts; and (3) within specified parameters, approve agreements with terms in excess of ten years or requiring expenditures of $10,000,000 or more, for renewable and greenhouse-gas-free energy supplies from facilities in California.

Amendments to Current Law

The ordinance authorizes the General Manager of the SFPUC to enter into certain contracts for electric power and related products to launch the City's community choice aggregation (CCA) program, CleanpowerSF, and extends to such contracts the authorizations in Ordinance No. 75-15. The General Manager is authorized to enter into (1) contracts for power with Calpine Energy Services, L.P., Constellation, and Morgan Stanley, and (2) one or more credit agreements with JPMorgan Chase Bank for one or more letters of credit to secure termination payments for certain CCA contracts, in either case requiring expenditures of $10,000,000 or more including amendments to such contracts with an impact of greater than $500,000.

Background Information

After undertaking competitive processes for electric power and related products to launch CleanPowerSF, the SFPUC in its expert judgment determined that in order to obtain the best services for the best prices, it requires the additional authority set forth in the ordinance.

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Item 28 File 15-1123	Department: Public Utilities Commission (PUC)

EXECUTIVE SUMMARY

Legislative Objectives

The proposed ordinance authorizes the PUC General Manager to: (1) enter into agreements with Calpine Energy Services, Constellation, and Morgan Stanley to provide electricity to CleanPowerSF, exceeding $5 million per year, without further Board of Supervisors approval; and (2) enter into an agreement with JPMorgan Chase Bank for one or more letters of credit, exceeding $10 million, without further Board of Supervisors approval.

Key Points

- The goal of CleanPowerSF is to provide San Francisco electricity customers with renewable energy at rates comparable to those currently being offered by PG&E.
- The Board of Supervisors previously authorized PUC to enter into CleanPowerSF contracts for up to $5 million per year without further Board of Supervisors approval. PUC now wants authority to enter into contracts exceeding $5 million per year with Calpine Energy Services, Constellation, and Morgan Stanley. Under the proposed contracts, these providers will provide electricity at a fixed price to meet all levels of CleanPowerSF demand.
- The PUC also wants to enter into a credit agreement with JPMorgan Chase, selected through a competitive process, to provide a letter of credit as financial security to these contracts in the event that the City defaults or terminates the agreement.

Fiscal Impact

- First full-year CleanPowerSF revenues are estimated to be $29.3 million in FY 2016-17, which PUC estimates are sufficient to cover CleanPowerSF program costs, including the costs of electricity purchases, annual fee for the letter of credit, and other program costs

Recommendations

- Amend the proposed ordinance to reduce the total expenditure cap from $36 million to $35 million per year to be consistent with PUC Resolution 15-0112
- Amend the proposed ordinance to set an expenditure cap of $30 million per year per Bid Option 1 contract if PUC enters into a Bid Option 1 transaction with only one of the three approved providers. If PUC enters into Bid Option 1 transactions with more than one of the three approved providers, the total expenditure cap should be also $30 million per year for all Bid Option 1 contracts with all providers.
- Amend the proposed ordinance to state that PUC's authority to enter into Bid Option 1 contracts without further Board of Supervisors approval is one-time for the specific purpose of entering into a three- to five-year contract with each of one or more of the three approved Bid Option 1 providers - Calpine Energy Services, Constellation, and Morgan Stanley.

- Amend the proposed ordinance to state that the total amount of the letter(s) of credit shall not exceed $40,000,000.
- Amend the proposed ordinance to require the PUC to submit annual reports to the Board of Supervisors that include annual program costs, the rates charged by PUC to CleanPowerSF customers to recover costs, and comparison of CleanPowerSF rates to PG&E rates
- Approval of the proposed ordinance, as amended, is a policy matter for the Board of Supervisors because the proposed ordinance waives the Board of Supervisors authority under Charter Section 9.118, authorizing the PUC to enter into contracts of $10,000,000 or more without further Board of Supervisors approval.

MANDATE STATEMENT

Section 9.118(b) of the City's Charter requires approval by the Board of Supervisors for contracts with an expected term longer than ten years or requiring expenditures of $10 million or more.

BACKGROUND

State law allows cities and counties to develop Community Choice Aggregation (CCA) programs, instead of using private utilities. Under CCA programs, local governments may choose to supply electricity to serve the needs of participating customers within their jurisdictions while the existing private utility (PG&E in San Francisco) continues to provide various services including billing, transmission, and distribution.

The San Francisco Public Utilities Commission (PUC) is implementing the CCA ("Clean Power SF") program in phases. During the first phase, customers located within a select geographic region will be automatically enrolled in the CleanPowerSF program and will have two months from their enrollment date to opt-out of participating in the program at no cost. Residential customers opting out of the program after two months will pay a nominal termination fee of $5 and non-residential customers opting out of the program after two months will pay a termination fee of $25. Customers that remain in the program will be offered a standard energy product that will consist of between 33 and 50 percent renewable energy. Customers citywide (outside of the geographic area being automatically enrolled) will be able to advance enroll into the program. All participants will be given the opportunity to opt-up to a premium product, consisting of 100 percent renewable energy during the first phase.[1]

Phase One will be a minimum of 30 MW (average demand) growing to approximately 50 MW average per year within six months of program launch, with approximately 20,000 to 75,000 residential and commercial accounts. Enrollment notifications to customers are planned to commence in mid-January 2016 and PUC anticipates that enrollment will begin in mid-April 2016.

In order to implement the CleanPowerSF program, the Board of Supervisors previously appropriated $4,000,000 from the Hetch Hetchy Power Enterprise's fund balance to provide short-term operating capital needed for the initial start-up of CleanPowerSF (Ordinance No. 120-15). The Board of Supervisors also authorized the PUC General Manager to enter into future contracts, using pro forma contracts, to purchase and sell electricity generated by renewable and greenhouse-gas-free sources without Board of Supervisors approval. (Ordinance No. 75-15)

[1] The PUC has set a goal of 50 megawatts (MW) of electricity use per year under the first phase of the CleanPowerSF program (approximately 75,000 electricity accounts). The program will be expanded to add accounts and increase the use of electricity in additional phases. The additional phases will be implemented based on sufficiency and cost of renewable electricity resources, PUC's ability to implement the program efficiently on a larger scale, and the sufficiency of credit, collateral support and working capital.

PUC issued a Request for Offers (RFO) in August 2015 to purchase electricity to support the first phase of the CCA ("CleanPowerSF") program. Respondents were asked to bid on one, two, or all three of the following options:

1. Bid Option 1: Deliveries of a mix of renewable and conventional energy over a three- to five-year term, delivered for a set price on a schedule that matches the City's demand profile. Some of the energy content may come from sources (such as natural gas or hydroelectric) that can be dispatched on demand, whereas some may come from sources (such as wind and solar power) with variable output that depends on natural conditions that cannot be controlled.
2. Bid Option 2: Deliveries of renewable energy over a term of one to twenty-five years. May include a mix of sources that are available on demand (such as geothermal and biomass) and variable sources (such as wind and solar). Distinct from Bid Option 1 because deliveries are not required to match the demand profile.
3. Resource Adequacy Capacity: Electric utilities are required by State law to have generating capacity available to serve 115% of peak electrical demand, so SPUC is obligated to have contracts in place with power plants that are available to deliver electricity to the grid on demand.

DETAILS OF PROPOSED LEGISLATION

The proposed ordinance conditionally authorizes the PUC General Manager to enter into one or more agreements requiring expenditures of $10 million or more for electric power and related products and services to launch CleanPowerSF.

Specifically, the proposed ordinance authorizes the General Manager to:

(1) Enter into agreements for Bid Option 1 products with one or more of the three providers selected through a competitive process and approved by the Public Utilities Commission (PUC Resolution 15-0222) - Calpine Energy Services, Constellation, and Morgan Stanley; and

(2) Enter into an agreement with JPMorgan Chase Bank for one or more letters of credit.

The ordinance gives the General Manager the authority to enter into these agreements without further Board of Supervisors approval even if each agreement provides for total expenditures of $10 million or more.

Bid Option 1 Contract Provisions

Currently, PUC may enter into contracts to purchase or sell electricity as part of the CleanPowerSF program without further Board of Supervisors approval if the PUC uses standard contract forms and meets the criteria contained in Ordinance 75-15. Under Ordinance 75-15, each contract is limited to expenditures of $5 million per year or $125 million over 25 years.

Under the proposed ordinance, SFPUC may enter into Bid Option 1 contracts exceeding expenditures of $5 million per year with one or more of the three approved electricity providers. Each contract for Bid Option 1 is limited to 3 to 5 years.

Electricity provided by Bid Option 1 providers is expected to make up 50 to 75 percent of total annual electricity provided to CleanPowerSF in Phase One.

Bid Option 1 Contract Rates

The proposed ordinance authorizes the PUC General Manager to enter into Bid Option 1 contracts with one or more of the three approved providers if they meet the conditions of PUC Resolution 15-0222. PUC Resolution 15-0222 states that contracts must meet the rate-setting criteria listed in Public Utilities Commission Resolution 15-0112.

PUC Resolution 15-0112 provides that CleanPowerSF rates will initially be set at the PG&E rates for comparable products, based on PG&E's March 1, 2015 rates, less pass-through customer charges. These rates may be adjusted periodically to the extent necessary to reflect changes to PG&E's rates for comparable products.

PUC Resolutions 15-0222 and 15-0112 do not set a not-to-exceed amount for Bid Option 1 contacts. Rather, PUC Resolution 15-0222 states that the total volume of electricity that PUC may purchase under all Bid Option 1 and Bid Option 2 contracts shall not exceed 50 Megawatts (MW) per year over the term of the contract.

According to PUC Resolution 15-0222, the total cost of all electricity purchased under Bid Options 1, 2 and 3 contracts may not exceed $35 million per year.

Letter of Credit

The proposed ordinance authorizes PUC to enter into one or more letters of credit with JPMorgan Chase Bank, selected by PUC through a competitive Request for Proposals (RFP) process. According to Mr. Michael Hyams, CleanPowerSF Program Director, these letters of credit are necessary to provide financial security to the electricity providers entering into Bid Option 1 contracts with PUC.

The Bid Option 1 contracts require the providers to provide electricity at a fixed price to meet all levels of CleanPowerSF demand. Therefore, the providers must have sufficient capacity to meet variations in electricity demand on a 24-hour,7-day per week basis. In order to have sufficient capacity, the providers must develop their own electricity generating capacity and/or purchase electricity from subcontractors at a fixed price. In order to protect their investment in developing capacity or committing to subcontracts, the providers require a form of financial security through a letter of credit that will make them whole in the event that the City defaults or terminates the contract without cause. The City would be liable for the future contract costs for the remaining term of the contract, minus the resale value of the undelivered electricity.

PUC will pay an annual fee to JPMorgan Chase Bank for the letter(s) of credit. PUC has not yet negotiated with JPMorgan Chase Bank the specific terms of the annual fee, which are estimated from $500,000 to $600,000 per year. These fees will be paid from CleanPowerSF revenues and are included in the "operating costs" shown in the Table below .

The letter of credit will only be drawn upon in an instance of the City defaulting on the contract or terminating the contract without cause. According to Mr. Hyams, PUC will minimize the risk of drawing on the letter(s) of credit by implementing practices to ensure the sustainability of CleanPowerSF. These practices include (a) setting moderate enrollment goals of approximately

75,000 accounts, using 50 MW of electricity per year, and (b) requiring that contract pricing is consistent with PG&E rates so that customers do not pay more for CleanPowerSF than they would pay for comparable PG&E services. These practices are included in PUC Resolutions 15-0112 and 15-0222, which are referenced in the proposed ordinance.

FISCAL IMPACT

First full-year CleanPowerSF revenues are estimated to be $29.3 million in FY 2016-17, which PUC estimates are sufficient to cover CleanPowerSF program costs, including the costs of electricity purchases under Bid Options 1,2, and 3 contracts, annual fee for the letter of credit, and other program costs, as shown in the Table below.

Table: CleanPowerSF Sources and Uses of Funds

	FYE 2016 (May-June)	FYE 2017	FYE 2018	FYE 2019	FYE 2020	FYE 2021
SOURCES						
Electricity Sales Revenue	$318,255	$29,329,172	$35,657,497	$36,715,244	$37,804,722	$38,926,885
Hetch Hetchy Loan	4,000,000	0	0	0	0	0
Total Sources	**$4,318,255**	**$29,329,172**	**$35,657,497**	**$36,715,244**	**$37,804,722**	**$38,926,885**
USES						
Energy Supply	$1,790,856	$21,781,116	$24,776,174	$25,815,577	$26,907,892	$27,853,541
Operating Costs	2,263,490	5,956,291	6,320,048	6,448,131	6,580,192	7,229,073
Contingency/Rate Stabilization Reserve	263,908	70,182	2,014,546	1,904,805	1,585,592	0
Hetch Hetchy Loan Repayment	0	0	1,000,000	1,000,000	1,000,000	1,000,000
SuperGreen Programs/Projects	0	85,666	110,813	110,813	103,551	91,714
Add'l Reserve for Growth, Discounts, Etc.	0	0	0	0	191,578	2,752,557
Total Uses	**$4,318,255**	**$29,329,172**	**$35,657,497**	**$36,715,244**	**$37,804,722**	**$38,926,885**
Operating Reserve	$1,419,487	$2,855,403	$4,291,320	$5,727,237	$7,163,154	$7,163,154
Contingency/ Rate Stabilization Reserve	$263,908	$334,090	$2,348,636	$4,253,441	$5,839,033	$5,839,033

Source: PUC

POLICY CONSIDERATION

Contract Expenditures Caps

The Board of Supervisors previously authorized the PUC General Manager to enter into contracts for electricity purchases for CleanPowerSF if pro forma contracts, such as the Western System Power Pool Agreement, were used and each contract did not exceed $5 million per year or $125 million over 25 years. Under the proposed ordinance, PUC would use the pro forma contracts for Bid Option 1 contracts with one or more of three approved providers - Calpine Energy Services, Constellation, and Morgan Stanley - but the term of each contract would be limited to three to five years.

Under the proposed ordinance, the amount of each Bid Option 1 contract could exceed $5 million per year but the ordinance does not set an expenditure cap for each contract. The proposed ordinance sets a total expenditure cap for all Bid Option 1, 2, and 3 contracts of $36 million per year. The Budget and Legislative Analyst recommends reducing the total expenditure cap to $35 million per year to be consistent with PUC Resolution 15-0112.

The Budget and Legislative Analyst recommends amending the proposed ordinance to set an expenditure cap of $30 million per year per Bid Option 1 transaction if PUC enters into a Bid Option 1 contract with only one of the three approved providers. If PUC enters into Bid Option 1 transactions with more than one of the three approved providers, the total expenditure cap should be also $30 million per year for all Bid Option 1 contracts with all providers.[2]

One-time Approval

The proposed ordinance should also be amended to state that PUC's authority to enter into Bid Option 1 contracts without further Board of Supervisors approval is one-time for the specific purpose of entering into a three- to five-year contract with each of one or more of the three approved Bid Option 1 providers - Calpine Energy Services, Constellation, and Morgan Stanley.

Letter of Credit

According to Mr. Hyams, PUC estimated the amount of the letter of credit to cover PUC's liability in the event of default or termination without cause by the City based on the impact of a 30 percent reduction in electricity prices over 5 years. According to Mr. Hyams, the total amount of the letter(s) of credit will not be more than $40,000,000. Therefore, the proposed ordinance should be amended to reflect a not to exceed amount for the letter(s) of credit of $40,000,000.

Policy Matter

Ordinance 75-15 required the PUC to submit annual reports to the Board of Supervisors that include annual program costs, the rates charged by PUC to CleanPowerSF customers to recover costs, and comparison of CleanPowerSF rates to PG&E rates. However, the proposed ordinance

[2] According to Mr. Hyams, the contracts consist of two parts: (1) the master agreement, using the pro forma contracts and setting the general terms; and (2) the transaction confirmation, setting the volume of electricity to be purchased and the purchase price.

does not contain the requirement for PUC to submit annual reports to the Board of Supervisors. Therefore, the proposed ordinance should be amended to require the PUC to submit annual reports to the Board of Supervisors that include annual program costs, the rates charged by PUC to CleanPowerSF customers to recover costs, and comparison of CleanPowerSF rates to PG&E rates.

Because the proposed ordinance waives the Board of Supervisors authority under Charter Section 9.118, authorizing the PUC to enter into contracts of $10,000,000 or more without further Board of Supervisors approval, approval of the proposed ordinance is a policy matter for the Board of Supervisors.

RECOMMENDATIONS

1. Amend the proposed ordinance to reduce the total expenditure cap from $36 million to $35 million per year to be consistent with PUC Resolution 15-0112
2. Amend the proposed ordinance to set an expenditure cap of $30 million per year per Bid Option 1 contract if PUC enters into a Bid Option 1 transaction with only one of the three approved providers. If PUC enters into Bid Option 1 transactions with more than one of the three approved providers, the total expenditure cap should be also $30 million per year for all Bid Option 1 contracts with all providers.
3. Amend the proposed ordinance to state that PUC's authority to enter into Bid Option 1 contracts without further Board of Supervisors approval is one-time for the specific purpose of entering into a three- to five-year contract with each of one or more of the three approved Bid Option 1 providers - Calpine Energy Services, Constellation, and Morgan Stanley.
4. Amend the proposed ordinance to state that the total amount of the letter(s) of credit shall not exceed $40,000,000.
5. Amend the proposed ordinance to require the PUC to submit annual reports to the Board of Supervisors that include annual program costs, the rates charged by PUC to CleanPowerSF customers to recover costs, and comparison of CleanPowerSF rates to PG&E rates
6. Approval of the proposed ordinance, as amended, is a policy matter for the Board of Supervisors because the proposed ordinance waives the Board of Supervisors authority under Charter Section 9.118, authorizing the PUC to enter into contracts of $10,000,000 or more without further Board of Supervisors approval.

San Francisco
Water Power Sewer
Services of the San Francisco Public Utilities Commission

525 Golden Gate Avenue, 13th Floor
San Francisco, CA 94102
T 415.554.3155
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TO: **Angela Calvillo, Clerk of the Board**

FROM: **Patrick Caceres, Policy and Government Affairs Manager**

DATE: **November 3, 2015**

SUBJECT: **Authorizing Agreements for the Purchase and Sale of Electricity and Related Products and Services for CleanPowerSF – Public Utilities Commission**

Attached please find an original and one copy of a proposed ordinance authorizing the Public Utilities Commission (PUC) to enter into one or more agreements with specified entities requiring expenditures of $10,000,000 or more for power and related products and services to launch San Francisco's community choice aggregation program, CleanPowerSF, and authorizing the General Manager of the PUC to deviate from certain otherwise applicable requirements of City law in such agreements.

The following is a list of accompanying documents (2 sets):

1. Board of Supervisors Ordinance
2. BOS Ordinance No. 86-04
3. BOS Ordinance No. 147-07
4. BOS Ordinance No. 232-09
5. BOS Ordinance No. 45-10
6. BOS Ordinance No. 200-12
7. BOS Ordinance No. 78-14
8. BOS Resolution No. 348-12
9. BOS Resolution No. 331-13
10. PUC Resolution No. 15-0112
11. BOS Ordinance No. 75-15
12. CS-1032 Request for Offers
13. CS-1032 Pre-Submittal Presentation
14. PUC Resolution No. 15-0222
15. Ethics Forms 126

Please contact Patrick Caceres at 554-0706 if you need any additional information on these items.

Edwin M. Lee
Mayor

Ann Moller Caen
President

Francesca Vietor
Vice President

Vince Courtney
Commissioner

Anson Moran
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Services of the San Francisco Public Utilities Commission

SAN FRANCISCO PUBLIC UTILITIES COMMISSION
POWER ENTERPRISE

Request for Offers

Agreement Number: CS-1032

COMMUNITY CHOICE AGGREGATION POWER SUPPLIES

Release Date: August 11, 2015
Response Date: September 3, 2015

Contract Administration Bureau
SAN FRANCISCO PUBLIC UTILITIES COMMISSION
525 Golden Gate Avenue, 8th Floor
San Francisco, California 94102

1. Introduction and Background

The City and County of San Francisco ("City"), acting by and through its Public Utilities Commission, Power Enterprise ("SFPUC"), plans to launch the first phase of CleanPowerSF, the City's Community Choice Aggregation Program ("CCA Program") in early 2016. CleanPowerSF will offer two products:

- A default product ("Default Product") consisting of a minimum of 33%, and up to 50%, renewable energy with a target total retail rate for the CCA customer (CleanPowerSF and Pacific Gas and Electric Co. ("PG&E") charges combined) equal to or less than the comparable PG&E bundled retail rate; and

- A voluntary, premium product ("Premium Product") consisting of 100% renewable energy with a target total retail rate for the CCA customer equal to or less than the comparable Green Tariff bundled retail rate that will be offered by PG&E.

Phase I of CleanPowerSF implementation will be a minimum of 30 MW (average demand) growing to approximately 50 MW six months after launch, with approximately 20,000 to 75,000 residential and commercial accounts. Enrollment notifications to customers are planned to commence in November 2015 and SFPUC anticipates that enrollment will begin in late February/March 2016. The annual energy requirement is expected to be 300 to 440 GWh with an expected peak demand of approximately 75 MW.[1]

The SFPUC will expand CleanPowerSF in subsequent phases over a multi-year period. Upon full implementation, the SFPUC projects that peak demand for CleanPowerSF may be as high as 600 MW with annual energy sales of approximately 3,500 GWh, and approximately 300,000 retail accounts. These projections assume that 20% of eligible customer load will elect to opt-out of the CleanPowerSF program and remain with PG&E, the default retail provider.

As described more fully below, this RFO for Power Supplies seeks bids for energy and resource adequacy supplies as follows:

- **Bid Option 1**: Shaped energy that meets CleanPowerSF Phase I energy volumes, annual GHG emissions standard, and annual renewable energy content

[1] See Attachment B with detail regarding hourly, monthly and annual load projections to be used by bidders in preparing bids.

requirements with a term of three (3) to five (5) years with deliveries commencing no later than March 1, 2016.[2] The renewable energy resources must meet the eligibility criteria for the California Renewables Portfolio Standard ("RPS") Portfolio Content Category 1 ("PCC 1") (Cal.Pub.Util.Code §399.16(b)(1)).[3]

- **Bid Option 2**: Renewable energy produced and delivered by new or existing generating facilities with a term of one (1) to twenty-five (25) years. Bid Option 2 proposals should also include, to the extent available, the Resource Adequacy capacity for any generating facilities that have achieved or are expected to achieve full capacity deliverability status. All renewable energy deliveries must meet eligibility criteria for RPS PCC 1.

- **Resource Adequacy Capacity ("RA")**: RA capacity satisfying applicable requirements for CleanPowerSF's Phase 1 loads for the following capacity products: System RA (NP 15), Local RA, and a sufficient quantity of Flexible RA (from qualified generating resources) located within NP 15. RA products are to be provided/scheduled over a minimum term of one (1) year commencing in the first Quarter of 2016. Local RA is to be provided/scheduled from resources located within the PG&E "Greater Bay Area" and the "Other PG&E" local capacity areas, as specified in the Bid Workbook (Attachment B-3).

Respondents may bid on one, two, or all three options and products above and may submit more than one bid for each of the three products. Each bid may include several different pricing structures and project terms as provided for in the Bid Workbook (Attachment B). For example, Bid Option 1 proposals may include varying percentages or volumes of renewable energy in accordance with the minimum requirements of this RFO and such proposals may reflect varying prices in consideration of the total proposed renewable energy content. Respondents are encouraged, but are not required, to submit offers for RA capacity in concert with a Bid Option 1 proposal. Respondents should review the instructions provided in the Bid Workbooks (Attachment B) for additional information regarding the organization and submittal of the bid variations.

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[2] Respondents submitting bids under Bid Option 1 must be able to commit to deliveries starting March 1, 2016 to ensure that CleanPowerSF's launch schedule can be met. The SFPUC reserves the right to request updated bids for a later start date in the event of unforeseen changes to the program launch schedule.

[3] California Public Utilities Code §§ 399.11, et. seq.; See, California Energy Commission, *Renewable Portfolio Standard Eligibility Guidebook (Eighth Edition), adopted June 10, 2015.* Publication No. CEC-300-2015-001-ED8-CMF.

The SFPUC anticipates entering into contracts with one or more winning Respondents through this RFO.

CleanPowerSF's financial obligations under the contract(s) executed as a result of this RFO will be backed by either a guaranty of an investment grade-rated entity or a letter of credit from an investment grade-rated bank.

1.1 The SFPUC

The SFPUC is a City department that provides retail drinking water and sewer services to San Francisco, wholesale water to three (3) other Bay Area Counties, and the full suite of retail electricity services to customers in San Francisco and to San Francisco's municipal operations. The SFPUC supplies drinking water to 2.5 million customers in the four (4) Bay Area counties of Alameda, Santa Clara, San Mateo and San Francisco and GHG-free and renewable electricity to 2,300 customers in and around San Francisco. Headquartered at 525 Golden Gate Avenue in San Francisco, the SFPUC has approximately 2,300 employees with a combined annual operating budget of approximately $700 million. The SFPUC's mission is to provide our customers with high quality, efficient and reliable water, power, and sewer services in a manner that is inclusive of environmental and community interests, and that sustains the resources entrusted to our care.

The SFPUC is comprised of three (3) separate enterprises: Water, Wastewater, and Power. The SFPUC Power Enterprise (AA-/A+ long-term bond ratings from Fitch/Standard and Poor's) is responsible for managing retail and wholesale power sales, transmission and power scheduling, energy efficiency programs, street lighting services, utilities planning for redevelopment projects, energy resource planning efforts and various other energy services.

The San Francisco Board of Supervisors adopted Ordinance 86-04 in 2004 authorizing the establishment of a CCA in San Francisco. The goals of CleanPowerSF are to provide clean, affordable and reliable electricity services to San Francisco residents and businesses and to advance the City's Greenhouse Gas Reduction ("GHG") Goals.[4]

The San Francisco Public Utilities Commission adopted Resolution 15-0112 in May 2015 establishing initial "not-to-exceed" rates and charges based on comparable PG&E retail electricity rates, providing for further review of CleanPowerSF costs, and requiring

[4] See San Francisco Environment Code Chapter 9.

Commission authorization for the General Manager to finalize retail rates at levels not to exceed comparable PG&E rates and commence the opt-out process for CleanPowerSF. Necessary Commission approvals and authorizations are a condition precedent to any SFPUC, City, or CleanPowerSF obligations under any agreements that may result from this RFO and the SFPUC reserves the right to discontinue any and all actions on contract negotiation, execution, or approval if the San Francisco Public Utilities Commission fails to issue necessary approvals and authorizations. The SFPUC anticipates that the San Francisco Public Utilities Commission will consider the final CleanPowerSF rate schedule in October 2015.

2. Attachments

The following attachments are included with this RFO:

- Attachment A: Product Specifications
- Attachment B: Bid Workbooks (must be submitted with the bid)
- Attachment C: City Form Contract Provisions
- Attachment D: Shaped Power Purchase and Sale Terms
- Attachment E: Renewable Energy Power Purchase and Sale Terms

Electronic versions of Attachments B, C, D and E are available at:
http://www.sfwater.org/bids/bidlist.aspx?bidtype=2

3. RFO Timeline and Instructions to Respondents

3.1 The RFO timeline is as follows:

RFO Issued	August 11, 2015
Pre-Bid Conference Call	August 19, 2015
Deadline for Questions	August 24, 2015
Responses Due	September 3, 2015
Interviews (Bid Option 1)	September 16, 2015
Notification of Shortlist	September 22, 2015
SFPUC Approval to Execute Contract(s)	October 13, 2015
Best and Final Offer	October 14-31, 2015
Target Contract Execution Date	October 31, 2015

Contracts resulting from this RFO may require additional City approvals which the City anticipates will occur in the Fourth Quarter of 2015. If additional City approvals are

required, the Best and Final Offer and Target Contract Execution Date will be adjusted accordingly.

3.2 Pre-Bid Conference Call

A pre-bid conference call will be held on August 19, 2015 at 3 p.m. Questions regarding the RFO will be addressed on this conference call and any new information will be provided at that time. While SFPUC staff may provide oral clarifications, explanations, or responses to any inquiries, the SFPUC is not bound by any oral representation. If any new and/or substantive information is provided in response to questions raised on the pre-bid conference call, such information will be memorialized in a written addendum to this RFO.

All requests for information concerning the RFO, whether submitted before or after the pre-bid conference call, must be directed to RFP@sfwater.org. All inquiries should include the number and title of the RFO. Substantive replies will be memorialized in written addenda to be made part of this RFO. No questions or requests for interpretation will be accepted after August 24, 2015.

3.3 Bid Documents: The submission of a bid shall be deemed a representation and certification by the Respondent that:

- Respondent has read and understands the information provided by the SFPUC in this RFO and the information is the basis for the submission of Respondent's bid;
- Respondent has the financial and technical capability to successfully undertake and complete the responsibilities and obligations described in the bid submitted by Respondent;
- The SFPUC has the right to make any inquiry of Respondent or any third party it deems appropriate to substantiate or supplement information supplied by Respondent, and Respondent hereby grants the SFPUC permission to make these inquiries, and Respondent agrees to provide any and all requested documentation or information in a timely manner.

No request for modification of any bid shall be considered by the SFPUC after the submission of a bid on the grounds that the Respondent was not fully informed of any fact or condition stated in this RFO.

3.4 Addenda/Clarifications

Respondents are responsible for reviewing all portions of this RFO. Respondents are to promptly notify the SFPUC, in writing, if the Respondent discovers any ambiguity, discrepancy, omission, or other error in the RFO. Any such notification should be directed to the SFPUC promptly after discovery, but in no event later than five working days prior to the date for receipt of proposals. Modifications and clarifications will be made by addenda as provided below.

Any interpretation of, or change in, the RFO will be made by addendum and shall become a part of the RFO and of any Agreement awarded. Addenda will be posted on the Contract Administration Bureau webpage at: http://contracts.sfwater.org.

The SFPUC will make reasonable efforts to post in a timely manner any modifications to the RFO on the Contract Administration Bureau webpage. The Respondent shall be responsible for ensuring that its bid reflects any and all addenda posted by the SFPUC prior to the bid due date regardless of when the bid is submitted. The SFPUC will not be responsible for any other explanation or interpretation.

3.5 Bid Submissions

All bids shall be submitted electronically by uploading documents to the following file share link: https://sfpuc.sharefile.com/r-r6562c261df14dada. Please include "CCA Power Supplies RFO, Agreement No. CS-1032" in the subject line. Bids must be submitted no later than 5:00 p.m. on Tuesday, September 3, 2015. All bids received after that time will be rejected. Respondents whose bids are selected for the RFO shortlist may be invited to submit optional supplemental materials.

Attachment B to this RFO must be completed and submitted in Excel spreadsheet format with the bid in order for the bid to be considered.

3.6 Amendment or Withdrawal of Bids

A Respondent may amend or withdraw its bid at any time before the expiration of the time for the submission of bids by (1) delivering a redlined version of the bid submittal in the same manner as specified for the original bid submittal, or (2) delivery of a written request for withdrawal, signed by, or on the behalf of, the Respondent.

3.7 Rights of the SFPUC

This RFO does not commit the SFPUC to enter into a contract with any Respondent nor does it obligate the SFPUC to pay for any costs incurred in preparation and submission of bids or in anticipation and execution of a contract. The SFPUC reserves the right to:

- Make the selection of bids based on its sole discretion;
- Reject any and all bids;
- Request any and all respondents to provide additional information under this RFO;
- Prior to the submission deadline for bids, modify all or any portion of the selection procedures, including deadlines for accepting responses, the specifications or requirements for any supplies to be provided under this RFO, or the requirements for contents or format of the bids;
- In its sole discretion and without notice, suspend, or terminate this RFO without liability to any Respondent;
- Issue subsequent Requests for Offers or Proposals;
- Remedy technical errors in the RFO process or documents;
- Approve or disapprove the use of particular subcontractors;
- Negotiate with any or all of the Respondents;
- Accept a bid or bids that are not the lowest price offer;
- Waive informalities and irregularities in the bids; and/or
- Enter into a contract with another Respondent in the event the originally selected Respondent(s) defaults or fails to execute a contract with the SFPUC.

This RFO does not constitute an offer to buy or create an obligation for the SFPUC, CleanPowerSF, and/or City to enter into an agreement with any entity, and the SFPUC, CleanPowerSF, and City shall not be bound by the terms of any bid until the parties have entered into a fully executed agreement.

Failure by the SFPUC to object to an error, omission, or deviation in the bid will in no way modify the RFO or excuse the Respondent from full compliance with the specifications of the RFO or any contract awarded pursuant to this RFO. No waiver by the City of any provision of this RFO shall be implied from any failure by the City to recognize or take action in response to a failure by a Respondent to observe any provision of this RFO.

No Respondent responding to this RFO shall obtain any claim or right of action against the SFPUC by reason of any aspect of the RFO, and defects or abnormalities contained herein, and defects or abnormalities in the selection process, the rejection of any bid, the acceptance of any bid, any statements, representation, acts or omissions of the SFPUC, the exercise of any SFPUC discretion set forth in or with respect to any of the foregoing, and any and all other matters arising out of all or any of the foregoing.

4. Bid Requirements

This section sets forth the guidelines for the content and format of bids. Each Respondent may submit one or more bids in response to this RFO.

4.1 Bid Option 1 – Shaped Renewable and Conventional Energy.

Bid Option 1 consists of shaped energy products consistent with the quantities, delivery periods, and renewable content quantities specified in the Bid Workbook. The selected supplier shall be responsible for delivery to the North-of-Path 15 ("NP 15") trading hub, as defined by the California Independent System Operator ("CAISO"), and shall be responsible for scheduling energy via inter-scheduling coordinator trades with CleanPowerSF's designated scheduling coordinator. The proposed term length for the product shall be no less than three (3) years but no greater than five (5) years in duration with deliveries commencing no later than March 1, 2016. Optional term extensions may be proposed.

Respondents must describe whether they intend that the energy supplies will be sourced from units owned by the Respondent, obtained under contract from specified sources and/or supplied from unspecified/market sources. Where possible, all specified generating sources planned to be used in fulfilling delivery of the proposed power supplies must be identified by the Respondent or be identified as "to be determined" in its bid. Following short-list selection, bidders must include such information, including the following information related to each specified generating resource: location (city and county), fuel source, and CA RPS ID# (if applicable).[5] In order to ensure that the energy supplies conform to the City's policy goals for renewable energy and carbon reductions, the City will require liquidated damages for failure to comply with the renewable energy and carbon content requirements as set forth in Attachment D.

[5] Respondents selected will also be required to provide this information for actual energy supplied.

4.1.1 Mandatory Bid Criteria – Bid Option 1. Failure to meet all of the following criteria shall be grounds for bid rejection.

- Respondents will be responsible for transferring the specified energy quantities to CleanPowerSF at the NP 15 delivery point through the CAISO inter-scheduling coordinator trading process and for managing the Respondent's market exposure and costs for imbalances between its actual deliveries and the specified energy quantities.
- Respondents shall serve as their own scheduling coordinator ("SC") or make arrangements for a third party SC at no cost to CleanPowerSF.
    - The Respondent must be a CAISO-certified SC, or must identify a third party CAISO-certified SC that will be responsible for SC activities under the bid. At the time of bid submittal, the third party SC must submit a letter verifying the business relationship between the Respondent and the SC, and describe the scope of services to be provided under the bid.
- All renewable resources in the supply mix must be RPS eligible resources that meet PCC 1 delivery requirements and are generated in the calendar year specified as set forth in Attachment A.
    - All renewable resources used to serve Premium Product demand must meet the PCC1 delivery requirements and also be Green-e eligible, as described below (See Section 4.1.2 below for more details). For purposes of this RFO, Respondents must source 25% of the specified PCC1 renewable energy volumes from Green-e Energy eligible resources.
- The carbon content of the shaped energy product delivered to the SFPUC each year must be no more than the annual values set forth in Attachment A, using the prescribed calculation methodology. Achievement of this objective is to be fulfilled through the use of both renewable energy resources and carbon-free generating sources, such as hydroelectric resources located within California and the Pacific Northwest, to the extent that such power supplies are directly deliverable to California.
- For purposes of this RFO, neither coal-fueled generation, nor nuclear generation will be permissible supply options – inclusion in any proposed supply portfolio of specified purchases relying on such fuel sources will be grounds for rejection.
- The pricing structure must include a fixed $/MWh price for each year of the proposed contract term and shall specify the $/MWh premium for renewable energy supplies ("Renewable Energy Premium"). Prices bid shall be all-inclusive. Respondents may propose alternative pricing structures by providing a detailed narrative description of the pricing structure and additional pricing tables in the Bid Worksheet, Attachment B-1 (Exhibit B).
- Bids must have a contract term of three (3) to five (5) years, not including optional

extension terms (if offered).

- Delivery must commence no later than March 1, 2016.
- Total energy volumes (not adjusted for losses, and as further specified in Attachment B-1).
    - Approximately 300 GWh in 2016, increasing to approximately 440 GWh in 2017 and subsequent years of contract (final energy volumes will be provided by SFPUC before bidders are required to submit their best and final offer).

4.1.2 Green-e Certification – Bid Option 1.

CleanPowerSF's Premium Product will consist of 100% renewable, Green-e Energy eligible supplies and Respondents will be required to source a minimum of 25% of all specified renewable energy volumes from Green-e Energy eligible resources to accommodate customer participation in this voluntary program. Respondents should review the currently effective Green-e Energy National Standard for information regarding the eligibility criteria for such resources. A copy of the Green-e Energy National Standard as well as additional information regarding the Green-e Energy program can be accessed via the following web link: http://www.green-e.org/getcert_re_stan.shtml#standard.

4.2 Bid Option 2 – Renewable Energy

Respondents may submit renewable energy bids under Bid Option 2 as follows:

- **Firmed and Shaped Renewable Energy** – Firmed and shaped renewable energy (and capacity, if applicable) supplied by the seller to the SFPUC at the delivery point. Deliveries shall be equivalent to 100% of the volumes specified by the Respondent in its Bid Workbook (Attachment B-2). Bids shall provide fixed hourly quantities delivered in the form of standard blocks of energy (e.g., 24x7, 6x16) or hourly quantities delivered in accordance with an alternative delivery shape (e.g., a prototypical solar profile) specified by Respondent. All renewable energy deliveries must meet eligibility criteria for RPS PCC 1 and may be sourced from new or existing generating facilities. The proposed hourly block sizes shall be specified in Attachment B-2. Bids may be for all or part of a facility's output, all or part of the output of multiple facilities. Both energy-only and fully deliverable products will be considered by the SFPUC with the expected value of any RA capacity accounted for in the evaluative process. Where possible, all specified generating sources planned to be used in fulfilling delivery of the proposed power supplies must be identified by the Respondent

or be identified as "to be determined" in its bid (Attachment B-1, Exhibit B). Following short-list selection, bidders must include such information, including the following information related to each specified generating resource: location (city and county), fuel source, and CA RPS ID# (if applicable).[6]

- **Unit Contingent, As-Available Renewable Energy** – Renewable energy (and capacity, if applicable) supplied by the seller to the SFPUC at the delivery point in hourly amounts equal to all or a specified fraction of a specific facility's energy production with guaranteed minimum and maximum energy delivery requirements. All renewable energy deliveries must meet eligibility criteria for RPS PCC 1 and may be sourced from a new or existing renewable generating facility. Both energy-only and fully deliverable products will be considered by the SFPUC with the expected value of any RA capacity accounted for in the evaluative process. Bids may be for all or part of a facility's output. The proposed hourly production forecast and annual volumes delivered shall be identified in the attached Bid Workbook (Attachment B-2). Respondents must identify the generating facility, including generator name, fuel source and location at the time of submittal.

Respondents may submit bids for generating facilities that have not achieved commercial operation under Bid Option 2. For such facilities, Respondents must provide requested information regarding the project development status of the facility, as further described below.

4.2.1 Mandatory Bid Criteria – Bid Option 2. Failure to meet all of the following criteria shall be grounds for bid rejection.

- The selected Respondent will be responsible for transferring the specified energy quantities to CleanPowerSF at either the NP 15 delivery point or the generator node through the CAISO inter-scheduling coordinator trading process and for managing the Respondent's market exposure and costs for imbalances between its actual deliveries and the specified energy quantities.
- Respondents shall serve as their own SC or make arrangements for a third party SC at no cost to CleanPowerSF.
- For bids proposing to deliver energy in 2016, the Respondent must be a CAISO-certified SC, or must identify a third party CAISO-certified SC that will be

[6] Respondents selected will also be required to provide this information for actual energy supplied.

responsible for SC activities under the bid. At the time of bid submittal, the third party SC must submit a letter verifying the business relationship between the Respondent and the SC, and describe the scope of services to be provided under the bid.

- For bids proposing to deliver energy beginning in 2017 or 2018, Respondent and SFPUC will establish a mutually agreeable schedule for providing this information.
- All renewable resources in the supply mix must be RPS eligible resources that meet PCC 1 delivery requirements and are generated in the calendar year specified as set forth in Attachment A.
- The bids shall include two pricing options:
    - A fixed $/MWh price, for each year of the proposed contract term, for delivery to the generator node; *AND*
    - A fixed $/MWh price, for each year of the proposed contract term, for delivery to the NP 15 trading hub, as defined by the CAISO.
    - The prices shall remain unchanged throughout the contract term and shall not be adjusted by period escalators or time of delivery multipliers/factors.
    - Respondents may propose alternative pricing structures by providing a detailed narrative description of the pricing structure and additional pricing tables in the Bid Worksheet, Attachment B-2.
- The term shall be no less than one (1) year but no more than twenty five (25) years (not including optional extension terms).
- A delivery commencement date no sooner than March 1, 2016 and no later than April 30, 2018.
- A minimum hourly quantity of no less than one (1) MW.
- Total annual deliveries shall be at least 5,000 MWh and no more than 100,000 MWh.
- Bids may be for all or part of a facility's output, all or part of the output of multiple facilities, or for a fixed output schedule that is met using one or multiple facilities.

4.2.2 Operating Track Record and Projects Under Development – Bid Option 2. In addition to the Mandatory Bid Criteria set forth in Section 4.2.1 above, Respondents proposing to supply energy from projects that are currently operating shall provide a summary of historical generation, noting any significant issues or extended unexpected outages. Respondents shall submit historical monthly generation (in megawatt-hours) for the last two years of plant operation (if applicable) and capacity factor (expressed as a percentage, based on monthly generation in MWh and rated

capacity in MW). The information should be annotated to explain any below-average or atypical generation figures.

Respondents proposing to supply energy from projects that have not yet achieved commercial operation shall provide documentation with the bid submittal demonstrating:

- Site control for the entire proposed delivery term.
- Progress in transmission or distribution interconnection for the project that is equivalent to a completed System Impact Study, Phase I Study, or passed Wholesale Distribution Tariff/CAISO Fast Track screen.
- If the project is bid as fully/partially deliverable or energy only.
- If the project is bid as fully or partially deliverable, the Respondent shall also indicate:
    - The date by which the project will have full or partial deliverability status ("FCDS/PCDS").
    - The project has received FCDS/PCDS or is in the Phase II process of the deliverability study; and
    - Evidence that all required Interconnection Financial Security has been posted for the project (Initial, Second, or Final) as required by the applicable Interconnection Process.
- The status of all required governmental approvals, permits and environmental reviews, including the applicable agency, the type of approval requested, and the anticipated date of approval or permit issuance.
- The financing plan for the project in sufficient detail for the SFPUC to effectively evaluate the viability of such arrangements.

4.2.3 Locational Preference – Bid Option 2. CleanPowerSF has a preference for renewable generating resources located within California and within the nine (9) San Francisco Bay Area Counties. California-based resources and resources located within the nine (9) San Francisco Bay Area Counties will receive higher evaluative preference when the SFPUC reviews responses to this RFO.

4.2.4 Green-e Energy Eligible – Bid Option 2. CleanPowerSF has a preference for renewable generating resources that are Green-e Energy eligible to meet its needs for customers that choose CleanPowerSF's Premium Product. Please refer to the Green-e National Standard in Section 4.1.2 (Bid Option 1) above for resource eligibility requirements.

4.3 Resource Adequacy Capacity

The SFPUC seeks bids for RA capacity satisfying applicable requirements for the following capacity products: System RA (NP 15), Local RA, and a sufficient quantity of Flexible RA (from qualified generating resources) located within NP 15. RA products are to be provided/scheduled over a minimum term of one (1) year commencing in the first Quarter of 2016. Local RA is to be provided/scheduled from resources located within the PG&E "Greater Bay Area" and the "Other PG&E" local capacity areas, as specified in Attachments A and B. Final RA volumes will be provided before bidders are required to submit their best and final offer.

4.3.1 Mandatory Bid Criteria – Resource Adequacy. Failure to meet all of the following criteria shall be grounds for bid rejection.

- Minimum RA quantity of one (1) MW and up to the RA quantities specified in Attachment B-3.
- Minimum delivery term of one (1) year and up to five (5) years with deliveries commencing no sooner than March 1, 2016.
- During each month of the proposed delivery term, RA capacity shall be priced on a fixed $/kW-month basis, for each year of the proposed contract term, with separate pricing provided for each requested RA product (in accordance with the Bid Workbook).

4.4 Bid Format

In addition to a description of the proposed energy supplies as described above, the bid must include the following sections:

- A description of the Respondent, its organization, key personnel, and operations, and provide similar information for any third parties that would be relied upon to provide the proposed services. If the Respondent is a Joint Venture ("JV"), include a description of the organization, relationships, and defined responsibilities of all Partners in the JV and any previous project-specific associations of the JV Partners.
- A description of Respondent's overall ability and qualifications to deliver the energy products described in the bid, including descriptions of projects or power purchase agreements which are generally similar to those addressed in respondent's bid.
- A description of Respondent's financial viability and credit support to be provided. The respondent or its guarantor must provide the following:

- Audited financial statements from the previous two years or a web link where such information is accessible.
- If available, the credit rating history of the Respondent (or its guarantor) for the previous two years from two of the following: Standard & Poor's, Moody's, or Fitch Investor Services.
- If the Respondent's (or its guarantor's) credit rating is below investment grade (below BBB-/Baa3), or falls below investment grade during the contract term, confirmation that the Respondent will provide equivalent credit support for the duration of the contract through cash collateral, a letter of credit, a first or second lien on the generating facilit(ies) or an alternative equivalent credit mechanism.

- For projects that have not yet reached a commercial operation date, Respondents shall provide development and performance assurance to the SFPUC to mitigate the risk of a project failing to come on-line in a timely manner or failing to fulfill its obligations for the term of the contract.
- A statement that Respondent agrees to fully comply with all applicable San Francisco, State, and Federal laws.
- The bid must be signed by a representative of the Respondent who is authorized to bind Respondent to the terms of the bid and the requirements in this RFO.

Failure to provide the required information may result in the rejection of the bid.

5. Contract Form

The SFPUC intends to negotiate and execute power purchase agreements with one or more selected respondents after the San Francisco Public Utilities Commission authorizes the SFPUC General Manager to enter into agreements with the selected Respondents. The SFPUC intends to use the most recent version of the Edison Electric Institute Master Power Purchase and Sale Agreement or the WSPP Agreement as the base agreement ("Form PPAs").[7] Attachment C to this RFO contains the City's standard contracting provisions as set forth in the San Francisco Municipal Code and Charter, and Attachments D and E contain terms and conditions for Option 1 Product and Option 2 Product, respectively.

[7] The Form PPAs are available at:

http://www.eei.org/resourcesandmedia/mastercontract/Pages/default.aspx and

http://www.wspp.org/documents.php

The SFPUC recognizes that certain terms and conditions in Attachments C, D or E may require modification, or additional terms and conditions may be required, to reflect the type of resource proposed, the term of the proposed delivery, the viability of the project, and other bid specific elements. If the Respondent proposes to take exception to the provisions in Attachments C through E, or proposes additional provisions, Respondent shall provide a description of the requested changes. In order for a bid to be compliant with this RFO, Respondent shall:

- provide the relevant section number and a description of the exception or describe the additional issue to be addressed;
- suggest an alternative proposal or proposals to address the issue;
- provide related draft agreement language; and,
- describe the rationale for the exception or addition and the proposed resolution.

In addition, Respondents selected for the RFO shortlist shall also provide a redlined version of the Attachments showing Respondent's proposed changes.

If a Respondent fails to provide exceptions to the Attachments C, D, or E in its bid submittal, it will be assumed the Respondent will accept all terms and conditions identified in the Attachments, without modification. The amount, type and specificity of exceptions, related counter-proposals and rationales will be considered in evaluating the bids. Bids that take substantial exceptions to the Attachments may be determined by the City, in its sole discretion, to be unacceptable and no longer considered for award. Bids that take fewer exceptions and/or that are more specific may be given preference.

6. Evaluation Process

The evaluation process will consist of two phases: (1) Written Bid and (2) Panel Interview. The Selection Panel will be comprised of individuals who are knowledgeable on the subject matter, and may include staff from the SFPUC, other City agencies, and/or other utilities or organizations.

7. Selection Criteria

Bids that do not meet the mandatory bid criteria and information requirements in Section 4 of this RFO will be rejected. The SFPUC will evaluate the bids provided in response to this RFO to establish a balanced, viable portfolio of supply for the CleanPowerSF program. Development of the portfolio will consider the following criteria:

- **Qualifications and Experience of the Respondent**. The experience and track record of the Respondent and key personnel; financial strength and viability of Respondent and if applicable, its partners; years of experience; and volume of energy supplied in the most recent calendar year (e.g., 2014).
- **Total Cost of Bid and Value to CleanPowerSF**. The impact of the proposed pricing in relation to the target CleanPowerSF rates (i.e., providing lowest total costs); contribution to CleanPowerSF long-term price stability and competitiveness; the value of the energy and non-energy attributes including capacity, time of delivery value associated with variable output resources, and environmental attributes; and the impact of the bid on CleanPowerSF's start-up costs, residual market exposure, financial risk and collateral requirements for SFPUC and the City.
- **Project Viability.** The SFPUC's evaluation shall consider the likelihood and reasonableness of a project's ability to deliver energy to the City by the proposed start date and within the proposed pricing terms. For projects that have not achieved a commercial operation date, documented development progress and the schedule for completing the balance of project development will be assessed, including construction and interconnection activities required to achieve commercial operation.[8]
- **Generating Resource Location and Compatibility with CleanPowerSF's Portfolio Needs**. The SFPUC's evaluation will consider the location of proposed resources; the proposed monthly energy output and capacity fit with CleanPowerSF's needs; and the proposal's contribution to the development of a diversified portfolio of renewable and other resources for CleanPowerSF (technologies, fuel types, resource locations, operating profiles). California-based renewable resources and renewable resources located within the nine (9) San Francisco Bay Area Counties are preferred.

The SFPUC reserves the right to consider other factors than those specified above and to request additional information from Respondents as needed to assist in selecting the proposal(s) for further consideration.

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[8] Where resources not yet operating are relied upon, support for stronger reliability and viability will be based on stage of development, degree of financial support, and includes documented development progress and the schedule for completing the balance of project development, construction and interconnection activities required to achieve commercial operation.

7. Oral Interviews

The SFPUC has decided to hold oral interviews for Bid Option 1. Only the top five (5) ranked Respondents for Bid Option 1 will be short listed as eligible for an interview. A panel composed of members of the selection committee will conduct the oral interview. Oral interviews for Bid Option 1 will be held on September 16, 2015. If the SFPUC experiences difficulty on the part of any Respondent in scheduling a time for the oral interview, it may result in disqualification from further consideration.

The interview evaluation process may include (and be scored based on) either or both a presentation and interview questions from the Selection Panel. Respondents may also be scored on follow up questions if clarification of Respondent's responses is necessary. The same set of interview questions will be used for all Respondents. The Selection Panel will evaluate each Respondent based on each Respondent's presentation and responses.

8. Protest Procedures

8.1 Protest of Non-Responsiveness Determination

After receipt of proposals, the SFPUC will conduct an Initial Screening of submitted proposals as set forth in Section 4 of this RFO. If staff determines that a proposal should be rejected because it is either non-responsive to RFO requirements or is otherwise unacceptable (i.e., fails to meet the minimum qualification requirements set forth in the RFO), then the City will issue a Preliminary Notice of Proposal Rejection to the applicable Respondent(s).

If a Respondent believes that the City has unfairly determined that its proposal should be rejected, Respondent may submit a written notice of protest within five (5) working days of the SFPUC's issuance of a Preliminary Notice of Proposal Rejection. Such notice of protest must be received by the SFPUC on or before the fifth (5th) working day following the SFPUC's issuance of the Preliminary Notice of Proposal Rejection. The notice of protest must include a written statement specifying in detail each and every one of the grounds asserted for the protest. The protest must be signed by an individual authorized to represent the Respondent, and must cite the law, rule, local ordinance, procedure or RFO provision on which the protest is based. In addition, the Respondent must specify facts and evidence sufficient for the SFPUC to determine the validity of the protest.

The City, at its discretion, may make a determination regarding a protest without requesting further documents or information from the Respondent who submitted the protest. Accordingly, the initial protest must include all grounds of protest and all supporting documentation or evidence reasonably available to the prospective Respondent at the time the protest is submitted. If the Respondent later raises new grounds or evidence that were not included in the initial protest, but which could have been raised at that time, then the City may not consider such new grounds or new evidence.

Upon receipt of a timely and proper protest, the City will review the protest and conduct an investigation as it deems appropriate. As part of its investigation, the City may consider information provided by sources other than Respondent. The City may also consider supplemental correspondence or other information relating to the original ground(s) of Protest submitted by a protesting Respondent to the extent the City determines that such information will assist it in resolving the Protest. At the completion of its investigation, the City will provide a written determination to the Respondent who submitted the protest.

Protests not received within the time and manner specified will not be considered.

If a Respondent does not protest a Preliminary Notice of Proposal Rejection within the time and in the manner specified, above, then the City's determination set forth in the Preliminary Notice will become final. A Respondent's failure to protest as specified above on or before the time specified above shall constitute a complete and irrevocable waiver of the ground(s) of protest and forfeit the Respondent's right to raise such ground(s) of protest later in the procurement process, in a Government Code Claim, or in other legal proceedings.

8.2 Protest of Agreement Award

As soon as the Respondent rankings are finalized, the Department will post final rankings on the SFPUC website (www.sfwater.org/contracts).

Within five (5) working days of the Department's posting of the Respondents ranking on the SFPUC website, any Respondent that has submitted a responsive proposal and believes that the City has unfairly selected another Respondent for award may submit a written notice of protest.

The notice of protest must include a written statement specifying in detail each and every one of the grounds asserted for the protest. The protest must be signed by an

individual authorized to represent the Respondent, and must cite the law, rule, local ordinance, procedure or RFO provision on which the protest is based. In addition, the Respondent must specify facts and evidence sufficient for the City to determine the validity of the protest. All protests must be received by the Department on or before the fifth (5th) working day following the Department's posting of the Respondent's ranking.

8.3 Delivery of Protests

If a protest is mailed, the protestor bears the risk of non-delivery within the deadlines specified herein. Protests should be transmitted by a means that will objectively establish the date the City received the protest. Protests or notice of protests made orally (e.g., by telephone) will not be considered. Protests must be delivered to:

San Francisco Public Utilities Commission
Contract Administration Bureau
Attn: Grace Tang
RE: Community Choice Aggregation Power Supplies (CS-1032)
525 Golden Gate Avenue, 8th Floor
San Francisco, CA 94102

9. Additional SFPUC Requirements

9.1 Respondent Proprietary Information

In accordance with San Francisco Administrative Code Section 67.24(e), bids, responses to RFOs and all other records of communications between the 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 entity's net worth or other proprietary financial data submitted for qualification for a contract or other benefits 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.

Proprietary data should be specifically identified on every applicable page of the Respondent's proposal; Respondents should mark or stamp applicable pages as "Confidential" or "Proprietary". The City does not acknowledge, warrant, represent, or guarantee that any information so designated will be treated as confidential or proprietary information if disclosure is required under any applicable state, federal, or City law or regulation.

9.2 The Campaign Reform Ordinance

Respondents must comply with Section 1.126 of the San Francisco Campaign and Governmental Code, which states:

> No person who contracts with the City and County of San Francisco for the rendition of personal services, for the furnishing of any material, supplies or equipment to the City, or for selling any land or building to the City, whenever such transaction would require approval by a City elective officer, or the board on which that City elective officer serves, shall make any contribution to such an officer, or candidates for such an office, or committee controlled by such officer or candidate at any time between commencement of negotiations for such contract until (1) the termination of negotiations for such contract; or (2) three months have elapsed from the date the contract is approved by the City elective officer, or the board on which that City elective officer serves.
>
> If a Proposer is negotiating for a contract that must be approved by an elected local officer or the board on which that officer serves, during the negotiation period the Proposer is prohibited from making contributions to:
>
> - The officer's re-election campaign;
> - A candidate for that officer's office; and
> - A committee controlled by the officer or candidate.
>
> The negotiation period begins with the first point of contact, either by telephone, in person, or in writing, when a Proposer approaches any city officer or employee about a particular contract, or a city officer or employee initiates communication with a potential Proposer about a contract. The negotiation period ends when a contract is awarded or not awarded to the Proposer. Examples of initial contacts include: (i) a vendor contacts a city officer or employee to promote himself or herself as a candidate for a contract; and (ii) a city officer or employee contacts a Proposer to propose that the Proposer apply for a contract. Inquiries for information about a particular contract, requests for documents relating to a RFP, and requests to be placed on a mailing list do not constitute negotiations.

Violation of Section 1.126 may result in the following criminal, civil, or administrative penalties:

1. Criminal: Any person who knowingly or willfully violates Section 1.126 is subject to a fine of up to $5,000 and a jail term of not more than six months, or both.
2. Civil: Any person who intentionally or negligently violates Section 1.126 may be held liable in a civil action brought by the civil prosecutor for an amount up to $5,000.
3. Administrative: Any person who intentionally or negligently violates section 1.126 may be held liable in an administrative proceeding before the Ethics Commission held pursuant to the Charter for an amount up to $5,000 for each violation.

Definitions.

"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, 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.

"CAISO" means the California Independent System Operator Corporation or the successor organization to the functions thereof.

"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.

"CEC" means the California Energy Commission.

"CPUC" means the California Public Utilities Commission.

"City Facilities" means any electric generation facilities owned, operated, or under contract to the City.

"CleanPowerSF" means the community choice aggregation program operated by City.

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

"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.

"Interconnection Financial Security" has the meaning set forth in the CAISO Tariff.

"MW" means megawatt.

"MWh" means megawatt-hour.

"Portfolio Content Category 1" means Renewable Energy that satisfies the requirements of Section 399.16(b)(1) of the California Public Utilities Code.

"Renewable Energy" means Energy and Green Attributes generated from an ERR that: (1) meets the requirements of Portfolio Content Category 1 as set forth in the California Public Utilities Code Section 399.16(b)(1), and (2) is generated in the same calendar year that it is delivered to City.

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

"RPS" or "Renewables Portfolio Standard" 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, and as administered by the CEC as set forth in the CEC RPS Eligibility Guidebook (7th Ed.), as may be subsequently modified by the CEC, and the California Public Utilities Commission ("CPUC") and as may be modified by subsequent decision of the CPUC or by subsequent legislation, and regulations promulgated with respect thereto.

"Renewable Energy Premium" means the additional price for Renewable Energy as compared to non-renewable resources under the contract.

"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.

"Replacement Price" means the price at which City, acting in a commercially reasonable manner, purchases at the Delivery Point a replacement for any Product specified in a Transaction but not delivered by Seller, plus (i) costs reasonably incurred by City in purchasing such substitute Product and (ii) additional transmission charges, if any, reasonably incurred by City to the Delivery Point, or at City's option, the market price at the Delivery Point for such Product not delivered as determined by City in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall City 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, City shall be considered to have purchased replacement Product to the extent City shall have entered into one or more arrangements in a commercially reasonable manner whereby City repurchases its obligation to sell and deliver the Product to another party at the Delivery Point.

"Scheduling Coordinator" or "SC" means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff for the purposes of undertaking the functions specified in "Responsibilities of a Scheduling Coordinator" as set forth in the CAISO Tariff.

"System Impact Study" has the meaning set forth in the CAISO Tariff.

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

San Francisco Water Power Sewer

Services of the San Francisco Public Utilities Commission

SAN FRANCISCO PUBLIC UTILITIES COMMISSION
Infrastructure Division with the Wastewater Enterprise

Request for Offers

Addendum One

to

Request for Offers

♦♦♦

Community Choice Aggregation Power Supplies

Agreement No. CS-1032

ADDENDUM ONE PUBLICATION DATE: August 20, 2015

♦♦♦

Contract Administration Bureau
SAN FRANCISCO PUBLIC UTILITIES COMMISSION
525 Golden
San Francisco, California 94102

Change Number 1

RFO Section 3.1, RFO Timeline, page 4, currently reads:

RFO Issued.....August 11, 2015
Pre-Bid Conference Call.....August 19, 2015
Deadline for Questions.....August 24, 2015
Responses Due.....September 3, 2015
Interviews (Bid Option 1).....September 16, 2015
Notification of Shortlist.....September 22, 2015
SFPUC Approval to Execute Contract(s).....October 13, 2015
Best and Final Offer.....October 14-31, 2015
Target Contract Execution Date.....October 31, 2015

Contracts resulting from this RFO may require additional City approvals which the City anticipates will occur in the Fourth Quarter of 2015. If additional City approvals are required, the Best and Final Offer and Target Contract Execution Date will be adjusted accordingly.

RFO Section 3.1, RFO Timeline, page 4, is revised to read:

RFO Issued.....August 11, 2015
Pre-Bid Conference Call.....August 19, 2015
Deadline for Questions.....August 24, 2015
Responses Due.....September 3, 2015
Shortlisting & Notification of Oral Interviews (Bid Option 1).....September 14, 2015
Interviews (Bid Option 1).....September 21, 2015
Proposers Recommended for Contract Award (all Bid Options).....September 22, 2015
SFPUC Approval to Execute Contract(s).....October 13, 2015
Best and Final Offer.....October 14-31, 2015
Target Contract Execution Date.....October 31, 2015

Contracts resulting from this RFO may require additional City approvals which the City anticipates will occur in the Fourth Quarter of 2015. If additional City approvals are required, the Best and Final Offer and Target Contract Execution Date will be adjusted accordingly.

Change Number 2

RFO Section 7, Oral Interviews, Page 18, first paragraph, currently reads:

The SFPUC has decided to hold oral interviews for Bid Option 1. Only the top five (5) ranked Respondents for Bid Option 1 will be short listed as eligible for an interview. A panel composed of members of the selection committee will conduct the oral interview. Oral interviews for Bid Option 1 will be held on September 16, 2015. If the SFPUC experiences difficulty on the part of any Respondent in scheduling a time for the oral interview, it may result in disqualification from further consideration.

RFO Section 7, Oral Interviews, Page 18, first paragraph, is revised to read

The SFPUC has decided to hold oral interviews for Bid Option 1. Only the top five (5) ranked Respondents for Bid Option 1 will be short listed as eligible for an interview. A panel composed of members of the selection committee will conduct the oral interview. Oral interviews for Bid Option 1 will be held on September 21, 2015. If the SFPUC experiences difficulty on the part of any Respondent in scheduling a time for the oral interview, it may result in disqualification from further consideration.

END OF DOCUMENT

San Francisco Water Power Sewer

cleanpowerSF

Request for Offers for

Community Choice Aggregation Power Supplies

Agreement Number: CS-1032

Pre-bid Conference Call

August 19, 2015

3:00 PM Pacific

You may review RFO materials at: http://www.sfwater.org/bids/
Please email questions you have about the RFO to: RFP@sfwater.org

San Francisco Water Power Sewer

Agenda

- Welcome
- About the SFPUC and CleanPowerSF
- RFO Overview
  - Description of Products Requested
- Proposal Requirements
  - Proposal Format, Evaluation Criteria and Schedule
- Questions

San Francisco Water Power Sewer

About the SFPUC

- The SFPUC is a department of the City and County of San Francisco, providing:
  - Great tasting water [**Water Enterprise**]
  - Award winning sewer services [**Wastewater Enterprise**]; and
  - Clean power to customers in San Francisco and municipal operations [**Power Enterprise**]
- Annual operating budget of approximately $700 million
- Power Enterprise
  - Responsible for full suite of retail services and wholesale power sales
  - AA-/A+ long-term bond ratings from Fitch/Standard and Poor's

San Francisco Water Power Sewer

About CleanPowerSF

- A program of the SFPUC adopted originally in 2004 by the San Francisco Board of Supervisors
- Created pursuant to state legislation:
  - Authorizes local governments to form "Community Choice Aggregation" (CCA) programs to buy/sell electricity on behalf of residents and businesses
  - Requires incumbent investor-owned utility (Pacific Gas and Electric Co.) to provide transmission, distribution and billing services
- SFPUC plans to phase-in service to City and targeting early 2016 launch

San Francisco Water Power Sewer

RFO Overview

- Seeking bids for energy, renewable energy and resource adequacy to meet Phase 1 supply requirements
  - Projected load to be 30-50 MW (avg.) and 300-440 GWh/yr
- Seeking renewable energy to meet 50% of projected Phase 1 annual sales (approx. 150-220 GWh/yr) with California RPS-certified resources that meet Portfolio Content Category 1 ("PCC 1") eligibility criteria
- CleanPowerSF's financial obligations under the contract(s) will be backed by either a guaranty of an investment grade-rated entity or a letter of credit from an investment grade-rated bank

San Francisco Water Power Sewer

Products Requested

Bid Option 1: Firmed and Shaped Energy

- Firmed Shaped Renewable and Conventional Energy

Bid Option 2: Renewable Energy

- Firmed and Shaped Renewable Energy
- Unit Contingent As-Available Renewable Energy

Resource Adequacy (RA) Capacity

- System RA, Local RA, and a sufficient quantity of Flexible RA (from qualified generating resources) located within NP 15

San Francisco Water Power Sewer

Energy Bid Option 1

Bid Option 1: Firmed and Shaped Energy

- Shaped energy products consistent with the quantities, delivery periods, and renewable content quantities specified in Bid Workbook [**Attachment B-1**]
- Term length 3 to 5 years
- Deliveries must commence no later than March 1, 2016
- All renewable resources in the supply mix must be RPS eligible and meet PCC 1 delivery requirements
- Minimum of 25% of renewable energy deliveries must *also* be Green-E Energy eligible
- Product carbon content must be no more than the annual values set forth in Attachment A, using the prescribed calculation methodology
- Neither coal-fueled, nor nuclear generation will be permissible
- Prices bid shall be all-inclusive and must include a fixed $/MWh price for each year of the term and specify $/MWh premium for renewables
- ***See RFO for complete list of bid requirements***

San Francisco Water Power Sewer

Energy Bid Option 2

Bid Option 2: Renewable Energy

- Firmed/Shaped *OR* As-Avail. Renewable Energy [**Attachment B-2**]
- Firmed/Shaped bids shall provide fixed hourly quantities as standard blocks of energy (24x7, 6x16) or an alternative delivery shape
- Contract terms shall be one (1) to twenty five (25) years
- Deliveries no sooner than March 1, 2016, no later than April 30, 2018
- Energy-only and fully deliverable resources acceptable
- Total annual deliveries shall be at least 5 GWh up to 100 GWh
- Must include 2 pricing options: (1) a fixed $/MWh price for delivery to the generator node; and (2) a fixed $/MWh price for delivery to NP 15
- Green-E Energy eligible resources *preferred*
- Resources in California and nine (9) Bay Area counties *preferred*
- Must provide operating track record and project development information requested in Section 4.2.2
- ***See RFO for complete list of bid requirements***

San Francisco Water Power Sewer

RA Capacity

RA Capacity

- System RA, Local RA, and Flexible RA (from qualified generating resources), located within NP 15
- Local RA is to be provided/scheduled from resources located within the PG&E "Greater Bay Area" and the "Other PG&E" local capacity areas
- Minimum RA quantity of 1 MW, up to RA quantities specified in Bid Workbook [**Attachment B-3**]
- Minimum delivery term of one (1) year and up to five (5) years
- Deliveries commencing no sooner than March 1, 2016
- Prices must be offered on a fixed $/kW-month basis, for each year of the proposed term
- Separate pricing shall be provided for each RA product
- ***See RFO for complete list of bid requirements***

San Francisco Water Power Sewer

Proposal Format

- Written Proposal, describing
  - Proposed products offered
  - Respondent organization, key personnel and operations
  - Respondent's overall ability and qualifications to deliver product(s) bid
  - Respondent's financial viability and credit support to be provided
  - A statement that Respondent agrees to fully comply with all applicable San Francisco, State and Federal laws
- Completed Bid Worksheet(s) (Attachments B-1, B-2 and/or B-3)
- Bid must be signed by an authorized representative, and delivered to SFPUC by 5:00 PM Pacific on Sept 3

San Francisco Water Power Sewer

Evaluation Criteria

The SFPUC will evaluate bids provided in response to this RFO to establish a balanced, viable portfolio of supply for the CleanPowerSF program. Development of the portfolio will consider criteria, ***including but not limited to***:

Qualifications and Experience

- Experience and track record (years of experience; volume of energy supplied)
- Financial strength and viability of Respondent

Total Cost of Bid and Value

- Proposal pricing
- Value of energy and non-energy attributes
- Impact on CleanPowerSF's start-up costs, residual market exposure, financial risk and collateral requirements

Project Viability

- Likelihood of project's ability to deliver energy to the City
- Documented project development progress and schedule for completion (new projects)

Resource Location and Portfolio Compatibility

- Monthly energy production and capacity fit
- Contribution to portfolio diversity
- Located in California or 9 Bay Area Counties

San Francisco Water Power Sewer

RFO Schedule

Activity	Date
RFO Issuance	August 11, 2015
Pre-bid Conference Call	August 19, 2015
Deadline for Questions	August 24, 2015
Responses Due	September 3, 2015
Shortlisting & Notification of Oral Interviews (Bid Option 1)	September 14, 2015
Interviews (Bid Option 1)	September 21, 2015
Proposers Recommended for Contract Award (all bidders)	September 22, 2015
SFPUC Approval to Execute Contracts*	October 13, 2015
Best and Final Offer	October 14-31, 2015
Target Contract Execution Date	October 31, 2015

*Contracts resulting from this RFO may require additional City approvals which the City anticipates will occur in the Fourth Quarter of 2015. If additional City approvals are required, the Best and Final Offer and Target Contract Execution Date will be adjusted accordingly.

San Francisco Water Power Sewer

cleanpowerSF

Questions?

Michael Hyams
San Francisco Public Utilities Commission
Interim Director, CleanPowerSF

Please email questions you have about the RFO to:
RFP@sfwater.org
Please refer to Agreement Number: CS-1032

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 15-0222

WHEREAS, Pursuant to the San Francisco Charter, the management and control of the Community Choice Aggregation (CCA) program is the responsibility of the San Francisco Public Utilities Commission (SFPUC) (Board of Supervisors Ord. No. 146-07, Section 1(a)); and

WHEREAS, The San Francisco Board of Supervisors established a CCA program in 2004 (Ordinance 86-04) and has implemented the program, called CleanPowerSF, through the work of the SFPUC in consultation with the San Francisco Local Agency Formation Commission (Ordinances 146-07, 147-07, and 232-09); and

WHEREAS, The goals of the CleanPowerSF program are to (1) provide electricity and related services at competitive rates while promoting long-term rate stability, energy security and reliability for San Francisco; (2) reduce, and eventually eliminate, the greenhouse gas emissions associated with the use of electricity in San Francisco; and (3) to the greatest extent possible and affordable, support the development of new clean energy infrastructure and new employment opportunities for San Franciscans; and

WHEREAS, On May 12, 2015 (Resolution 15-0112), the Commission set initial "not-to-exceed" rates, finding that the CleanPowerSF retail rates must be adequate to support CleanPowerSF's operations, including recovery of program reserves and allow for the Power Enterprise to be financially stable and in compliance with its reserve policies; and

WHEREAS, The Commission adopted a ratemaking methodology for the CleanPowerSF program that is intended to result in bills that are equal to or less than PG&E bills for customers enrolling in the default product at program launch; and

WHEREAS, A primary factor in ensuring that the "not-to-exceed" rates are equal to or less than PG&E's bills will be procuring competitively priced energy to support the CleanPowerSF program; and

WHEREAS, On August 11, 2015 SFPUC issued a Request for Offers (RFO), CS-1032, which stated that SFPUC seeks to procure a minimum of 30 megawatts (MWs) (average demand) growing to approximately 50 MW of electricity for the first phase of the CleanPowerSF program; and

WHEREAS, CS-1032, sought proposals for three types of products: Bid Option 1 (firmed and shaped energy), Bid Option 2 (renewable power), and Resource Adequacy (RA) Capacity; and

WHEREAS, Bid Option 1 requested proposals for shaped energy meeting CleanPowerSF Phase I energy volumes, an annual GHG emissions standard, and annual renewable energy content requirements with a term of three to five years; and

WHEREAS Bid Option 2 sought renewable energy produced and delivered by new or existing generating facilities with a term of one to 25 years, including, to the extent available, the RA Capacity for any generating facilities that have achieved or are expected to achieve full capacity deliverability status; and

WHEREAS, CS-1032 sought bids for a sufficient quantity of RA Capacity to satisfy the applicable requirements for CleanPowerSF's Phase 1 loads, with a minimum delivery term of one year and no more than five years; and

WHEREAS, CS-1032 stated that SFPUC would negotiate the purchase of electricity under both Bid Option 1 and Bid Option 2 using the industry standard agreements, including the Edison Electric Institute Master Agreement and the Western Systems Power Pool agreement, approved by the Board of Supervisors previously (Board of Supervisors Ord. No. 75-15); and

WHEREAS, The San Francisco Board of Supervisors approved the use of industry pro forma agreements to purchase electricity, and authorized the General Manager to execute certain contracts necessary to launch the CleanPowerSF program, subject to conditions (Board of Supervisors Ord. No. 75-15); and

WHEREAS, In order to satisfy the minimum requirements of CS-1032, respondents were required to: describe the company's organization, key persons, operations and third parties relied upon to provide the proposed services; describe its overall ability and qualifications to deliver each Bid Option; describe the respondent's (or its guarantor's) financial viability and credit support by providing audited financial statements, credit rating history for the previous two years; and

WHEREAS, The SFPUC received six proposals responsive to Bid Option 1, and on September 14, 2015, notified Calpine Energy Services, L.P., Constellation, and Morgan Stanley that they had been shortlisted for Bid Option 1; and

WHEREAS, The SFPUC received 52 proposals responsive to Bid Option 2, and on September 25, 2015, notified Calpine Energy Services, L.P., E.ON, EDF Renewable Development, LLC, First Solar, FTP Power LLC, dba Sustainable Power Group (sPower), Iberdrola Renewables, Republic Services of Sonoma County, Inc., 8minutenergy, Centaurus Renewable Energy, LLC / Clenera, LLC that their Bid Option 2 proposals were selected for further consideration; and

WHEREAS, The SFPUC received five proposals responsive to RA Capacity and on October 20, 2015 notified Calpine Energy Services, L.P., Constellation and EWP Renewable Corporation that their RA Capacity proposals were selected for further consideration; and

WHEREAS, The SFPUC is preparing a draft business plan and risk assessment that will be completed prior to a decision to launch the CleanPowerSF program; now, therefore be it

RESOLVED, That the Commission approves the pool of qualified respondents identified in this Resolution for Bid Option 1, Bid Option 2 and Resource Adequacy Capacity and authorizes the General Manager to negotiate energy supply contracts with one or more of the respondents; and be it

FURTHER RESOLVED, That the Commission conditionally authorizes the General Manager to execute energy supply contracts with one or more of the respondents, subject to the following conditions, and to submit the contracts to the Board of Supervisors for its review, if required:

(i) the contract pricing is consistent with the ratesetting priorities adopted by the Commission in Resolution 15-0112;(ii) , renewable energy supplied under a contract pursuant to

Bid Option 1 or Bid Option 2 is from resources eligible to be counted as California Renewables Portfolio Standard Portfolio Content Category 1 resources; (iii) counterparties to any contract must maintain investment grade credit rating or provide equivalent credit support for the duration of the contract through cash collateral, a letter of credit, a first or second lien on the generating facility or an alternative credit mechanism; (iv) the total volume of power procured under Bid Option 1 and Bid Option 2 shall not exceed 50 MWs (average);

(v) the duration of contracts under Bid Option 1 shall not exceed five years; (vi) the duration of contracts under Bid Option 2 shall not exceed 25 years; (vii) the duration of contracts for Resource Adequacy Capacity only shall not exceed 5 years(viii) the total quantity of Resource Adequacy Capacity shall not exceed the quantity required by state law for load of 50 MWs (average);

(ix) the total cost of all energy supply contracts shall not exceed $35 million/year; and be it

FURTHER RESOLVED, That the Commission intends to review the expected costs of CCA service and consider authorizing the General Manager to finalize the schedule of rates and charges for the initial offering, prior to commencement of the opt-out process; and be it

FURTHER RESOLVED, That the contracts will not be effective until the SFPUC has reviewed the CleanPowerSF business plan and risk assessment and adopted business practice policies for CleanPowerSF; and be it

FURTHER RESOLVED, that the General Manager will report to the SFPUC on the final schedule of rates and charges for the initial offering, prior to commencement of the opt-out process; and be it

FURTHER RESOLVED, That before making any future decisions to construct or cause the construction of specific renewable energy projects subject to the California Environmental Quality Act (CEQA) the SFPUC will consider any environmental review documents prepared by the City or another lead agency in compliance with CEQA and, if it approves such projects, the SFPUC will make or adopt any required CEQA findings as part of such approval actions.

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of October 27, 2015.

Donna Hood

Secretary, Public Utilities Commission

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. **15-0112**

WHEREAS, The San Francisco Board of Supervisors established a Community Choice Aggregation (CCA) program in 2004 (Ordinance 86-04) and has implemented the program through the work of the SFPUC in consultation with the San Francisco Local Agency Formation Commission (Ordinances 146-07, 147-07, and 232-09); and

WHEREAS, The complementary objectives of CCA are to reduce greenhouse gas emissions, and to provide the City's energy consumers with renewable electricity supplies all the while meeting or beating rates charged for comparable Pacific Gas and Electric Company's (PG&E) products, including, if approved after environmental review, the build-out of local energy resources such as energy efficiency and renewable power projects; and

WHEREAS, The SFPUC intends that CCA pursue several complementary goals, including affordable and competitive electricity rates, a diverse resource portfolio that is comprised of renewable resources, and high quality customer service; and,

WHEREAS, On May 4, 2015 the Environmental Review Officer determined that this action is statutorily exempt from CEQA under the Public Resources Code Section 21080(b)(8) and CEQA Guidelines Section 15273 (Rates, Tolls, Fares, and Charges) related to the establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, or other charges. This action constitutes the Approval Action for the program for the purposes of CEQA, pursuant to Section 31.04(h) of the San Francisco Administrative Code; and

WHEREAS, The SFPUC intends that CCA retail rates be adequate to support CCA's operations, future projects, and a financially independent program, taking into consideration CCA's goals; and

WHEREAS, Phase One of the CCA program will follow the state-mandated opt-out process, enrolling sufficient customers to meet the contracted volume of electricity not to exceed an average of approximately 30 MW, and, subject to electricity volume limits, any customer within San Francisco will be eligible to participate during Phase One; and

WHEREAS, Not-to-exceed CCA rates initially will be set at the PG&E rates for comparable products, based on PG&E's March 1, 2015 rates, less pass-through customer charges including its Power Charge Indifference Adjustment (PCIA) and the Franchise Fee Surcharge (FFS), and adjusted periodically to the extent necessary to reflect changes to PG&E's rates for comparable products, less pass-through customer charges including the PCIA and FFS ("not to exceed rates"); and

WHEREAS, PG&E's rates are authorized by the California Public Utilities Commission (CPUC); and

WHEREAS, The CPUC permits PG&E to levy the PCIA on the bills of customers who switch to the CCA, as the PCIA is a charge intended to recover PG&E's generation costs acquired prior to a customer's switch from its generation service; and

WHEREAS, The FFS is a surcharge imposed by PG&E on its customers to recover franchise fees charged by cities and counties; and

WHEREAS, The General Manager requests authority to adjust the initial CCA rates to reflect changes in applicable PG&E rates and pass-through customer charges including PCIA and FFS authorized by the State of California Public Utilities Commission according to Exhibit 1: Schedule of Community Choice Aggregation Electric Rates and Charges; and

WHEREAS, The rates for CCA will depend in part on the resource mix of power purchases, the level of reserves to be collected for supporting build-out of local renewable energy resources, administrative and financing costs, prices for electricity resources purchased by CCA independently or through third parties, and the participation of San Francisco residents and businesses; and

WHEREAS, CCA tariffs may include a feed-in tariff for purchasing local power resources. The prices for the feed-in tariff will be set according to market prices or at levels required to induce investments in local power resources; and

WHEREAS, Proposed initial CCA rates and charges are at a not-to-exceed PG&E level and the methodology for adjusting the initial rates periodically, establishes a ceiling for CCA rates. Final rates and charges may be lower and will be based on program cost of service; and

WHEREAS, Pursuant to Charter Section 16.112, a Notice of hearing on the proposal to adopt a schedule of rates was published in the official newspaper on April 13 – 17, 2015, and posted on the SFPUC website and at the San Francisco Public Library, as required, for a public hearing on May 12, 2015; and

WHEREAS, Charter section 8B.125 requires the Commission to set rates and charges, subject to rejection by the Board of Supervisors, within 30 days of submission; now, therefore be it

RESOLVED, This Commission hereby sets the initial not-to-exceed rates and charges as presented in Exhibit 1: Schedule of Community Choice Aggregation Electric Rates and Charges; and be it

FURTHER RESOLVED, The General Manager is directed to adjust the initial rates to not exceed PG&E rates, less the pass-through customer charges, including PCIA and FFS, in line with changes in applicable PG&E rates authorized by the State of California Public Utilities Commission according to Exhibit 1: Schedule of Community Choice Aggregation Electric Rates and Charges prior to commencement of the opt-out process. If so directed by the Commission, future periodic adjustments applying that methodology will be made to the CCA rates; and be it

FURTHER RESOLVED, The General Manager shall prepare a proposed net energy metering schedule for customers with eligible on-site renewable generation, such that those customers receive monthly bill credits or cash payment for electricity produced in excess of site requirements, trued up on an annual basis, and seek Commission approval; and be it

FURTHER RESOLVED, The General Manager shall prepare proposed feed-in tariffs according to market prices or at levels required to induce investments in local power resources, enabling the CCA to purchase local power supplies at prices that reflect market values or at prices set to induce additional supplies of local renewable resources, and seek Commission approval; and be it

FURTHER RESOLVED, This Commission hereby finds that adoption of this resolution will establish rates, and a methodology for future periodic adjustments, for the purpose of meeting operating expenses, including the recovery of program reserves and allow for the Power Enterprise to be financially stable and in compliance with its reserve policies, and that adoption of the resolution is exempt from environmental review requirements in accordance with California Public Resource Code Section 21080(b)(8); and be it

FURTHER RESOLVED, This Commission directs the General Manager to submit these not-to-exceed initial rates and charges, including the direction to adjust the initial rates prior to commencement of the opt-out process, and the methodology for that and any future periodic adjustments that the Commission may authorize, to the Board of Supervisors, as required by Charter Section 8B.125; and be it

FURTHER RESOLVED, Prior to authorizing the commencement of the opt-out process, this Commission will review the expected costs of CCA service and consider authorizing the General Manager to finalize the schedule of electric rates and charges for the initial offering to CCA customers, which rates may be lower than the not to exceed rates established by this Resolution; and be it

FURTHER RESOLVED, Customers who opt out of the CCA program will be assessed a termination fee as noted in Exhibit 2: CCA Termination Fee, which will be added to Schedule M-1: Miscellaneous Charges in the current SFPUC Rates and Schedules for Electric Service.

Tariff Title	Applies To Customers on Following PG&E Rate Schedules	Season	Hours Applied	PG&E Generation Rate ($)	PCIA & Franchise Fee	Standard NTE Rate ($)	Premium NTE Rate ($)	Billing Determinant
Non-Time of Use Residential	E1, E1L, EM, EML, ES, ESL, ESR, ESRL, ET, and ETL	Year round	All hours	0.09745	0.01234	0.08511	0.10511	kWh
Residential Time of Use (1)	E-6	Summer	Peak	0.25568	0.01234	0.24312	0.26312	kWh
			Part Peak	0.14323	0.01234	0.13089	0.15089	kWh
			Off Peak	0.09971	0.01234	0.08737	0.10738	kWh
		Winter	Part Peak	0.09104	0.01234	0.07870	0.09870	kWh
			Off Peak	0.07694	0.01234	0.06460	0.08460	kWh
Residential Time of Use (2)	E-7	Summer	Peak	0.49642	0.01234	0.48408	0.50408	kWh
			Off Peak	0.08192	0.01234	0.06958	0.08958	kWh
		Winter	Peak	0.32576	0.01234	0.31342	0.33342	kWh
			Off Peak	0.05661	0.01234	0.04427	0.06427	kWh
Residential Seasonal	E-8	Summer	All hours	0.20160	0.01234	0.18926	0.21926	kWh
		Winter	All hours	0.13475	0.01234	0.12241	0.14241	kWh
Experimental Residential Time-of-Use for Electric Vehicles	E-9A and E-9B	Summer	Peak	0.20458	0.01234	0.19224	0.21334	kWh
			Part Peak	0.12940	0.01234	0.11706	0.13706	kWh
			Off Peak	0.07512	0.01234	0.06278	0.08278	kWh
		Winter	Part Peak	0.10450	0.01234	0.09216	0.11216	kWh
			Off Peak	0.05953	0.01234	0.04719	0.06719	kWh
Electric Vehicle Time-of-Use Service	EVA, EVB	Summer	Peak	0.25761	0.01234	0.24527	0.26527	kWh
			Part Peak	0.17244	0.01234	0.16010	0.18010	kWh
			Off Peak	0.05650	0.01234	0.04416	0.06416	kWh
		Winter	Peak	0.07715	0.01234	0.06481	0.08481	kWh
			Part Peak	0.05441	0.01234	0.04207	0.06207	kWh
			Off Peak	0.05657	0.01234	0.04423	0.06423	kWh
Small General Service	A-1 A	Summer	All hours	0.12473	0.01100	0.11373	0.13373	kWh
		Winter	All hours	0.07817	0.01100	0.06717	0.08717	kWh
Small General Service	A-1 B	Summer	Peak	0.14538	0.01100	0.13438	0.15438	kWh
			Part Peak	0.13605	0.01100	0.12505	0.14505	kWh
			Off Peak	0.10765	0.01100	0.09665	0.11665	kWh
		Winter	Part Peak	0.08851	0.01100	0.07751	0.09751	kWh
			Off Peak	0.06869	0.01100	0.05769	0.07769	kWh
Small General Time-of-Use Service	A-6	Summer	Peak	0.24786	0.01100	0.23686	0.25686	kWh
			Part Peak	0.14678	0.01100	0.13578	0.15478	kWh
			Off Peak	0.09976	0.01100	0.08876	0.10876	kWh
		Winter	Part Peak	0.10985	0.01100	0.09885	0.11480	kWh
			Off Peak	0.08626	0.01100	0.07526	0.07726	kWh
Direct-Current General Service	A-15	Summer	All hours	0.12473	0.011	0.07373	0.13373	kWh
		Winter	All hours	0.07817	0.011	0.05814	0.08717	kWh
Medium General Demand Non-Time of Use - Secondary Voltage	A-10 A	Summer	All hours	0.11775	0.01121	0.10654	0.12654	kWh
		Winter	All hours	0.0878	0.01121	0.07659	0.09659	kWh
		Summer	Max Demand	4.34	0	4.34	4.34	kW
Med. General Demand Non-Time of Use - Primary Voltage		Summer	All hours	0.10824	0.01121	0.09703	0.11703	kWh
		Winter	All hours	0.08165	0.01121	0.07044	0.08998	kWh
		Summer	Max Demand	4.11	0	4.11	4.11	kW
Med. General Demand Non-Time of Use - Transmission		Summer	All hours	0.10174	0.01121	0.09053	0.11053	kWh
		Winter	All hours	0.07621	0.01121	0.06500	0.08499	kWh
		Summer	Max Demand	4.56	0	4.56	4.56	kW
Medium General Demand Time of Use - Secondary Voltage	A-10 B	Summer	Peak	0.1301	0.01121	0.11971	0.13889	kWh
			Part Peak	0.12206	0.01121	0.11167	0.13085	kWh
			Off Peak	0.09761	0.01121	0.08722	0.1064	kWh
		Winter	Part Peak	0.09856	0.01121	0.08817	0.10735	kWh
			Off Peak	0.0776	0.01121	0.06721	0.08639	kWh
		Summer	Max Demand	4.34	0	4.34	4.34	kW
Medium General Demand Time of Use - Primary Voltage		Summer	Peak	0.11972	0.01121	0.10933	0.12851	kWh
			Part Peak	0.11398	0.01121	0.10359	0.12277	kWh
			Off Peak	0.09202	0.01121	0.08163	0.10081	kWh
		Winter	Part Peak	0.08999	0.01121	0.07960	0.09878	kWh
			Off Peak	0.07281	0.01121	0.06242	0.0816	kWh
		Summer	Max Demand	4.11	0	4.11	4.11	kW
Medium General Demand Time of Use - Transmission		Summer	Peak	0.11518	0.01121	0.10479	0.12397	kWh
			Part Peak	0.10995	0.01121	0.09956	0.11874	kWh
			Off Peak	0.0901	0.01121	0.07971	0.09889	kWh
		Winter	Part Peak	0.08429	0.01121	0.07390	0.09308	kWh
			Off Peak	0.06853	0.01121	0.05814	0.07732	kWh
		Summer	Max Demand	4.56	0	4.56	4.56	kW

EXHIBIT 1: Schedule of Community Choice Aggregation Electric Rates and Charges

Tariff Title	Applies To Customers on Following PG&E Rate Schedules	Season	Hours Applied	PG&E Generation Rate ($)	PCIA & Franchise Fee	Standard NTE Rate ($)	Premium NTE Rate ($)	Billing Determinant
Medium General Demand Time of Use - Secondary	E-19	Summer	Peak	0.14556	0.00941	0.13615	0.15615	kWh
			Part Peak	0.09216	0.00941	0.08275	0.10275	kWh
			Off Peak	0.05720	0.00941	0.04779	0.06779	kWh
			Peak Demand	13.55	0.00	13.55	13.55	kW
			Part Peak Demand	2.94	0.00	2.94	2.94	kW
		Winter	Part Peak	0.08508	0.00941	0.07567	0.09567	kWh
			Off Peak	0.06120	0.00941	0.05179	0.07179	kWh
Medium General Demand Time of Use - Primary		Summer	Peak	0.13275	0.00941	0.12334	0.14334	kWh
			Part Peak	0.08633	0.00941	0.07692	0.09692	kWh
			Off Peak	0.05870	0.00941	0.04929	0.06929	kWh
			Peak Demand	14.06	0.00	14.06	14.06	kW
			Part Peak Demand	2.72	0.00	2.72	2.72	kW
		Winter	Part Peak	0.08110	0.00941	0.07169	0.09169	kWh
			Off Peak	0.06201	0.00941	0.05260	0.07260	kWh
Medium General Demand Time of Use - Transmission		Summer	Peak	0.07547	0.00941	0.06606	0.08606	kWh
			Part Peak	0.07083	0.00941	0.06142	0.08142	kWh
			Off Peak	0.05461	0.00941	0.04520	0.06520	kWh
			Peak Demand	17.03	0.00	17.03	17.03	kW
			Part Peak Demand	3.78	0.00	3.78	3.78	kW
		Winter	Part Peak	0.06918	0.00941	0.05977	0.07977	kWh
			Off Peak	0.05632	0.00941	0.04691	0.06691	kWh
Service to Max Demands 1,000 kW Time of Use - Secondary Voltage	E-20	Summer	Peak	0.13337	0.00941	0.12278	0.14278	kWh
			Part Peak	0.08722	0.00941	0.07781	0.09781	kWh
			Off Peak	0.05704	0.00887	0.04817	0.06817	kWh
			Peak Demand	13.35	0.00	13.35	13.35	kW
			Part Peak Demand	2.70	0.00	2.70	2.70	kW
		Winter	Part Peak	0.08048	0.00941	0.07107	0.09107	kWh
			Off Peak	0.06134	0.00887	0.05247	0.07247	kWh
Service to Max Demands 1,000 kW Time of Use - Primary Voltage		Summer	Peak	0.12727	0.00941	0.11786	0.13786	kWh
			Part Peak	0.08254	0.00941	0.07313	0.09313	kWh
			Off Peak	0.05667	0.00887	0.04780	0.06780	kWh
			Peak Demand	12.96	0.00	12.96	12.96	kW
			Part Peak Demand	2.57	0.00	2.57	2.57	kW
		Winter	Part Peak	0.06176	0.00941	0.05235	0.07235	kWh
			Off Peak	0.04384	0.00887	0.03497	0.05497	kWh
Service to Max Demands 1,000 kW Time of Use - Transmission		Summer	Peak	0.08797	0.00941	0.07856	0.09856	kWh
			Part Peak	0.04887	0.00941	0.03946	0.05946	kWh
			Off Peak	0.03257	0.00887	0.02370	0.04370	kWh
			Peak Demand	16.74	0.00	16.74	16.74	kW
			Part Peak Demand	3.53	0.00	3.53	3.53	kW
		Winter	Part Peak	0.07031	0.00941	0.06090	0.08090	kWh
			Off Peak	0.05647	0.00887	0.04760	0.06760	kWh
Customer-Owned Street and Highway Lighting Customer-Owned Street and Highway Lighting Electrolier Meter Rate Outdoor Area Lighting Services	LS-2, LS-3, OL-1	Year round	All hours	0.08711	0.0018	0.08531	0.10531	kWh
Traffic Control Service	TC-1	Year round	All hours	0.08826	0.01065	0.07431	0.09431	kWh
Agricultural Power	AG-1A	Summer	All hours	0.10564	0.01065	0.09499	0.11499	kWh
			Connected Load	1.48	-	1.48	1.48	kW
		Winter	All hours	0.08473	0.01065	0.07408	0.09408	kWh
			Connected Load	-	-	-	-	kW
	AG-1B	Summer	All hours	0.10654	0.01065	0.09589	0.11589	kWh
			Max Demand	2.22	0	2.22	2.22	kW
			Primary Voltage Disc.	0.78	0	0.78	0.78	kW
		Winter	All hours	0.08305	0.01065	0.0724	0.0924	kWh
			Max Demand	-	-	-	-	kW
Agricultural Power, Time-of-Use	AG-4A, AG-4D	Summer	Peak	0.16747	0.01065	0.15682	0.17682	kWh
			Part Peak	0.09661	0.00065	0.09661	0.09661	kWh
			Off Peak	0.07230	0.01065	0.06165	0.08165	kWh
			Connected Load	1.47	-	1.47	1.47	kW
		Winter	Part Peak	0.07662	0.01065	0.06597	0.08597	kWh
			Off Peak	0.06428	0.01065	0.05363	0.07363	kWh
			Connected Load	-	-	-	-	kW
	AG-4B, AG-4E	Summer	Peak	0.12810	0.01065	0.11745	0.13745	kWh
			Part Peak	0.09661	0.00065	0.09661	0.09661	kWh
			Off Peak	0.07325	0.01065	0.06260	0.08260	kWh
			Max Demand	2.54		2.54	2.54	kW
			Max Peak Demand	2.68		2.68	2.68	kW
			Primary Voltage Disc.	0.61		0.61	0.61	kW
			Max Part Peak Demand	-		-	-	kW
		Winter	Part Peak	0.07143	0.01065	0.06078	0.08078	kWh
			Off Peak	0.05978	0.01065	0.04913	0.07013	kWh
	AG-4C, AG-4F	Summer	Peak	0.14516	0.01065	0.13451	0.15451	kWh
			Part Peak	0.08218	0.01065	0.07153	0.09153	kWh
			Off Peak	0.05939	0.01065	0.04874	0.06874	kWh
			Max Peak Demand	6.07		6.07	6.07	kW
			Max Part Peak Demand	1.04		1.04	1.04	kW
			Primary Voltage Disc.	1.04		1.04	1.04	kW
			Max Demand	-		-	-	kW
			Trans. Volt. Disc.	1.97		1.97	1.97	kW
			Max Peak Demand	-		-	-	kW
		Winter	Part Peak	0.06574	0.01065	0.05514	0.07514	kWh
			Off Peak	0.05596	0.01065	0.04531	0.06531	kWh

EXHIBIT 1: Schedule of Community Choice Aggregation Electric Rates and Charges

Tariff Title	Applies To Customers on Following PG&E Rate Schedules	Season	Hours Applied	PG&E Generation Rate ($)	PCIA & Franchise Fee	Standard NTE Rate ($)	Premium NTE Rate ($)	Billing Determinant
Large Time-of-Use Agricultural Power	AG-5 A, AG-5 D	Summer	Peak	0.15475	0.01065	0.14410	0.16410	kWh
			Part Peak	-	0.01065	(0.01065)	(0.01065)	kWh
			Off Peak	0.07651	0.01065	0.06586	0.08586	kWh
			Connected Load	3.89	-	3.89	3.89	kW
		Winter	Part Peak	0.08013	0.01065	0.06948	0.08948	kWh
			Off Peak	0.06834	0.01065	0.05769	0.07769	kWh
	AG-5 B, AG-5 E	Summer	Peak	0.15069	0.01065	0.14004	0.16004	kWh
			Off Peak	0.05066	0.01065	0.04001	0.06001	kWh
			Max Demand	4.70	-	4.70	4.70	kW
			Max Peak Demand	5.75	-	5.75	5.75	kW
			Primary Voltage Disc. (per Max Demand)	1.43	-	1.43	1.43	kW
			Trans. Volt. Disc. Max Peak Demand	2.61	-	2.61	2.61	kW
		Winter	Part Peak	0.07151	0.01065	0.06086	0.08086	kWh
			Off Peak	0.04204	0.01065	0.03139	0.05139	kWh
	AG-5 C, AG-5 F	Summer	Peak	0.12392	0.01065	0.11327	0.13327	kWh
			Part Peak	0.07155	0.01065	0.06090	0.08090	kWh
			Off Peak	0.05206	0.01065	0.04141	0.06141	kWh
			Max Peak Demand	10.61	-	10.61	10.61	kW
			Max Part Peak Demand	2.00	-	2.00	2.00	kW
			Primary Voltage Disc. (per Max Demand)	2.17	-	2.17	2.17	kW
			Trans. Volt. Disc. Max Peak Demand	4.14	-	4.14	4.14	kW
			Trans. Volt. Disc. Max Part-Peak Demand	0.02	-	0.02	0.02	kW
		Winter	Part Peak	0.05790	0.01065	0.04725	0.06725	kWh
			Off Peak	0.04904	0.01065	0.03839	0.05839	kWh
Standby Service - Secondary Voltage		Year round	Reservation Charge	0.05400	-	0.05400	0.05400	kW
		Summer	Peak	0.10414	0.01065	0.09349	0.11479	kWh
			Part Peak	0.06726	0.01065	0.05661	0.07661	kWh
			Off Peak	0.04809	0.01065	0.03744	0.05744	kWh
		Winter	Part Peak	0.07518	0.01065	0.06453	0.08453	kWh
			Off Peak	0.07398	0.01065	0.06333	0.08333	kWh
Standby Service - Primary Voltage		Year round	Reservation Charge	0.44000	-	0.44000	0.44000	kW
		Summer	Peak	0.09415	0.01065	0.08350	0.10350	kWh
			Part Peak	0.06711	0.01065	0.05646	0.07646	kWh
			Off Peak	0.04826	0.01065	0.03761	0.05761	kWh
		Winter	Part Peak	0.06843	0.01065	0.05778	0.07778	kWh
			Off Peak	0.07120	0.01065	0.06055	0.08055	kWh
Standby Service - Transmission Voltage		Year round	Reservation Charge	0.34000	-	0.34000	0.34000	kW
		Summer	Peak	0.08145	0.01065	0.07080	0.09080	kWh
			Part Peak	0.07026	0.01065	0.05961	0.07961	kWh
			Off Peak	0.05750	0.01065	0.04685	0.06685	kWh
		Winter	Part Peak	0.07409	0.01065	0.06344	0.08344	kWh
			Off Peak	0.06940	0.01065	0.05875	0.07875	kWh

EXHIBIT 2:
CCA Termination Fees

Initial Implementation (4 notices; within 60 days of service start)	Fee
Residential	$0
Non-Residential	$0
Once Operational (after 60 days of service start)	
Residential	$5
Non-Residential	$25

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of May 12, 2015.

Donna Hood

Secretary, Public Utilities Commission

AMENDED IN BOARD
5/12/15

FILE NO. 150408 ORDINANCE NO. 75-15

[Purchase and Sale of Electricity and Related Products and Services - Public Utilities Commission]

Ordinance authorizing the Public Utilities Commission (PUC) to use pro forma agreements to purchase and sell electricity and related products and services to operate the City's municipal electric utility and community choice aggregation program; authorizing the General Manager of the PUC, in such agreements, to deviate from certain otherwise applicable requirements of City law, under certain circumstances; and authorizing the PUC, within specified parameters, to approve agreements with terms in excess of ten years or requiring expenditures of $10,000,000 or more for renewable and greenhouse-gas-free power and related products and services.

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
Additions to Codes are in *single-underline italics Times New Roman font*.
Deletions to Codes are in ~~*strikethrough italics Times New Roman font*~~.
Board amendment additions are in double-underlined Arial font.
Board amendment deletions are in ~~strikethrough Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Findings. The Board of Supervisors of the City and County of San Francisco hereby finds:

(a) For decades, the City and County of San Francisco (City), through its Public Utilities Commission (PUC), has operated a municipal electric utility that supplies clean greenhouse-gas-free electricity to San Francisco's municipal facilities, services, and customers.

(b) The PUC supplements electricity from its Hetch Hetchy hydroelectric facilities with 11 megawatts of renewable energy from City-owned facilities and with purchases of electricity from other sources. PUC makes many of these purchases using industry-standard pro forma contracts that the Board of Supervisors has authorized in advance. See Ordinance Nos. 54-92 and 39-01.

(c) The City has adopted aggressive goals for greenhouse gas reduction and use of renewable energy. In Ordinance No. 81-08, the Board of Supervisors articulated the goal of having a greenhouse-gas-free electric system by 2030, and meeting all City electricity needs with renewable and greenhouse-gas-free sources.

(d) State law allows cities and counties to develop Community Choice Aggregation (CCA) programs, through which local governments may choose to supply electricity to serve the needs of participating customers within their jurisdictions while the existing utility continues to provide services such as customer billing, transmission and distribution.

(e) For many years, the City has considered developing a CCA program to allow San Francisco residents and businesses the option to receive cleaner, more sustainable electricity at rates comparable to the incumbent utility. See Ordinance Nos. 86-04, 147-07, 232-09, 45-10, 200-12 and 78-14; and Resolution Nos. 348-12 and 331-13.

(f) In 2012, the Board of Supervisors approved a contract with Shell Energy North America that required Shell to procure all power needed for the early phases of the City's CCA program, called CleanPowerSF. See Resolution 348-12. The Shell contract was never executed.

(g) In response to interest from City leaders and community members, PUC is developing a new CCA program that would offer participating customers a choice of two levels of renewable energy service: a 100% renewable option and a 33%-50% renewable option. These options would be offered to groups of customers in phases, and over time would be

offered to all customers within San Francisco. PUC expects to implement this program expeditiously by purchasing energy using its in-house expertise and staff resources. At the same time, PUC would immediately begin the process of developing new local renewable energy resources that would over time replace purchased energy, if such projects are approved following any necessary environmental review.

(h) PUC anticipates that it will need to procure no less than 30 megawatts of renewable energy for the first phase of CCA service. To meet aggressive implementation date targets and secure the best possible prices and terms, PUC staff will need to negotiate a mix of electricity contracts with multiple renewable energy projects simultaneously in an expedited time frame.

(i) PUC already uses some standardized contracting methods to streamline its procurement practices. Increased ability to purchase power and related products and services using pro forma contracts that meet specified criteria will enable PUC to implement CCA expeditiously and capture maximum price benefits for CCA customers and customers of the City's municipal utility.

(j) Most utilities and the existing CCA programs, Marin Clean Energy and Sonoma Clean Power, use standardized contracts for their procurement practices.

(k) City law requires standard contract provisions to protect the City's interests, ensure accountability, and promote important social values. The Board of Supervisors may waive certain contract provisions by ordinance. When the PUC uses pro forma contracts for the purchase and sale of power and related products and services, it may be appropriate to waive some of the City's standard contract provisions, if the General Manager finds and documents in writing that doing so is in the best interest of the City.

Section 2. Approval of Pro Forma Contracts and Related Waivers of Certain Requirements of City Law.

(a) Background.

Utilities and energy suppliers use industry-standard pro forma contracts to ensure the availability of essential services in a timely and cost-effective manner. Using these agreements can help facilitate negotiations by focusing the parties on the elements that are most likely to differ from one transaction to another: e.g., price, quantity, location, and duration. These contracts provide standard terms and conditions that address common issues, but allow parties to determine which provisions to include in a particular contract. These contracts do not contain all contractual provisions required by local law.

(b) Specific Pro Forma Contracts.

(1) Western System Power Pool Agreement.

(A) The Western System Power Pool ("WSPP") is a group of more than 300 publicly-owned and private utilities, including Alameda Municipal Power, the City of Palo Alto, the City of Roseville, the Sacramento Municipal Utility District, and Silicon Valley Power, all of which operate publicly-owned utilities. The City, through PUC, is a member of the WSPP. The WSPP has developed an agreement that sets forth standard terms and conditions for the purchase and sale of power and related products and services. A copy of the current WSPP agreement is on file with the Clerk of the Board of Supervisors in File No. 150408 and available on the Board's website, and is incorporated herein by reference as though fully set forth. The WSPP agreement has been approved by the Federal Energy Regulatory Commission ("FERC"). The WSPP agreement is periodically updated and modified subject to the approval of FERC.

(B) The Board of Supervisors has previously authorized the General Manager to use the WSPP agreement for transactions with a duration of up to five years and waived for those transactions the requirements of section 12.F of the Administrative Code and Chapter 8 of the Environment Code (formerly Administrative Code Section 12I.5(b)). See Ordinance 54-92 and Ordinance 39-01, which are on file with the Clerk of the Board of Supervisors in File No. 150408.

(C) Using the WSPP Agreement, PUC routinely engages in short term transactions of five years or less in order to supplement power generated by Hetch Hetchy or sell excess power. These purchases are subject to the PUC's risk management procedures and policies, while sales of Hetch Hetchy energy are subject to the City's "water first" policy and requirements of the Raker Act. See Raker Act of 1913, ch. 4, 38 Stat. 242.

(2) The Edison Electric Institute Master Agreement.

(A) The Edison Electric Institute (EEI) in collaboration with more than 80 member utilities, affiliated and independent power marketers, merchant power, and end-use representatives, developed an agreement that sets forth standard terms and conditions for the purchase and sale of power and related products and services. The EEI agreement is updated as needed to reflect market changes. A copy of the current EEI agreement is on file with the Clerk of the Board of Supervisors in File No. 150408 and available on the Board's website, and is incorporated herein by reference as though fully set forth

(B) In Resolution 348-12, the Board of Supervisors authorized the General Manager to execute an agreement based on the EEI agreement with Shell Energy North America to provide services require to launch a CCA.

(3) Other Pro Forma Agreements.

(A) Feed-in-Tariff (FIT).

A FIT Program is a standard tariff for purchases of electricity from distributed generation facilities, such as a roof-top solar photovoltaic systems. The FIT establishes uniform rules for participation, standard-offer prices, and a form contract. Because the term of the contract is typically 10-20 years, a FIT can incentivize the development of local renewable resources by assuring project owners of a stable long-term revenue stream.

(B) City Standard Contracts.

PUC may find it beneficial and efficient to develop City-specific standard contracts for the purchase and sale of power and related products and services.

(c) Authorization to Use Pro Forma Contracts.

(1) The Board of Supervisors authorizes the use of the WSPP agreement and the EEI agreement, as those agreements may be modified over time, for the PUC's purchase and sale of power and related products and services, notwithstanding that the terms of those agreements may deviate from the City's standard contract forms; provided that if those agreements are modified in a manner that, in the judgment of the General Manager and the City Attorney, materially decreases the City's rights or materially increases its liabilities, then the General Manager shall seek approval from the Board of Supervisors to enter into any agreement that would be subject to such approval absent the authorization granted in this subsection 2(c).

(2) The Board of Supervisors authorizes the use of one or more pro forma contracts developed by PUC for the purchase and sale of power and related products and services; provided that if those agreements, in the judgment of the General Manager and the City Attorney, materially decrease the City's rights or materially increase its liabilities as compared to the forms of the WSPP agreement and EEI agreement authorized for use by this ordinance, then the General Manager shall seek approval from the Board of Supervisors to enter into any

agreement that would be subject to such approval absent the authorization granted in this subsection 2(c).

(3) The Board of Supervisors authorizes the use of a pro forma contract to support a FIT or similar mechanism to purchase electricity from distributed generation facilities that is consistent with industry standards; provided that if the contract contains terms that in the judgment of the General Manager and the City Attorney materially decrease the City's rights or materially increase its liabilities as compared to the forms of the WSPP agreement and EEI agreement authorized for use by this ordinance, then the General Manager shall seek approval from the Board of Supervisors to enter into any agreement that would be subject to such approval absent the authorization granted in this subsection 2(c).

(4) The authority granted in this subsection 2(c) shall be limited to agreements that do not exceed ten years or require expenditures by the City of ten million dollars or more.

(5) For purposes of the authorizations and waivers in this section, power and related products and services shall include power supplies, the conveyance or transmission of same, or ancillary services such as spinning reserve, voltage control, or load scheduling, as required for assuring reliable services in accordance with good utility practice and applicable laws.

(d) Waivers of Required City Contract Provisions.

(1) For purchase or sale of power and related products and services, where the General Manager finds and documents in writing both that the transaction represents the best opportunity available to the City to obtain essential services and products or dispose of excess power in a manner beneficial to the City, and that it is not feasible to add all standard City contract provisions to the agreement, the Board of Supervisors hereby grants waivers of the following standard contract provisions to the extent found necessary by the General

Manager, and finds such waivers to be reasonable and in the public interest, for purchases made using the pro forma contracts identified in subsection 2(c) above:

(A) Review of the City's support of the MacBride Principles (Admin. Code Chapter 12F);

(B) Increased participation by small and micro local businesses in City contracts (Admin. Code Chapter 14B);

(C) The competitive bidding requirement (Admin. Code Section 21.1);

(D) First source hiring requirements (Admin. Code Chapter 83); and

(E) The tropical hardwood and virgin redwood ban (Environ. Code Chapter 8).

(2) For purchase or sale of power and related products and services, where the General Manager finds and documents in writing both that the agreement represents the best opportunity available to the City to obtain essential services and products or dispose of excess power in a manner beneficial to the City, and that it is not feasible to add all standard City contract provisions to the agreement, the Board of Supervisors waives the requirement to include in the agreement references to the following City Code provisions to the extent found necessary by the General Manager and finds such waivers to be reasonable and in the public interest for transactions using the pro forma contracts identified in subsection 2(c) above:

(A) Public access to meeting and records for non-profit organizations (Admin. Code Section 12L.2);

(B) Sweatfree Contracting (Admin. Code Section 12U.4);

(C) Food service waste reduction (Environ. Code Section 1605).

(3) The waivers specified in subsection 2(d) shall apply only to procurement contracts using the pro forma contracts referenced in subsection 2(c) above, which include language requiring compliance with all applicable federal, state, and local laws.

Section 3. Authorization Pursuant to Charter Section 9.118(b) for Purchases of Renewable and Greenhouse-Gas-Free Energy.

(a) Background.

(1) PUC anticipates it will need at least 30 megawatts of renewable energy for the first phase of CCA service. Under the new program design, PUC will manage the supply portfolio for CCA customers, rather than contracting with a third party to purchase the energy needed for the program. This approach will be more cost-effective than paying a third party to enter into and manage contracts, but it will require PUC to negotiate and manage many contracts.

(2) PUC anticipates issuing competitive solicitations for renewable energy supplies and related services. It expects to enter into contracts of varying terms (up to 25 years) with multiple sellers for a variety of resource types including solar, wind, and geothermal. This approach will facilitate diversity of sellers and resource types while also reducing the risk of failure that would be present in relying on a single entity for all energy supply. Long term contracts of up to 25 years also encourage the development of local resources by limiting development risk and providing revenue certainty.

(3) This new approach requires negotiating a number of contracts in a short time period in order to meet the aggressive implementation schedule established for the program. The ability to enter into agreements quickly will also allow PUC to capture attractive pricing and finalize important terms in a time frame that is expected in commercial transactions.

(4) PUC's energy needs for serving the customers of its municipal utility are met almost entirely by Hetch Hetchy supplies. But there may be limited circumstances where purchases of renewable or greenhouse-gas-free supplies will be needed to ensure operations consistent with good utility practices or to comply with legal requirements. The ability to make these purchases in a timely manner will enable PUC to ensure the best prices and terms for its municipal utility energy supply.

(b) Authorizations.

(1) Pursuant to its authority under Charter Section 9.118, the Board of Supervisors authorizes the General Manager to purchase renewable and greenhouse-gas-free energy supplies from facilities in California using contracts with terms in excess of ten years or requiring expenditures of ten million dollars or more including amendments to such agreements with an impact of greater than $500,000, so long as the contract term, including any amendments, does not exceed 25 years or require expenditures in excess of five million per year or $125 million over the life of the contract, and further provided that such contracts are procured through a competitive process and approved by the PUC acting through its Commission at a public meeting.

(2) Waivers. For such purchases of renewable and greenhouse-gas-free energy supplies and capacity pursuant to the authority delegated in subsection 3(b)(1) that use the pro forma standard agreements described in subsection 2(c) above, the Board of Supervisors authorizes the waivers set forth in section 2(d) above.

(3) Contracts authorized under this subsection 3(b) for CCA shall be subject to a maximum aggregate limit of $500 million. PUC shall annually report to the Board of Supervisors the duration, product purchased and cost of contracts entered into pursuant to

this section 3(b). PUC shall also annually report the program costs, the rates charged to CCA customers to recover those costs, and a comparison of those CCA rates to PG&E rates.

(4) The cost of procurement contracts entered into under this section 3(b) for the City's municipal electric utility and CCA program shall be subject to the PUC's existing budget and appropriation process.

(5) For purposes of the authorizations and waivers in this section 3(b), power and related products and services shall include power supplies, the conveyance or transmission of same, or ancillary services such as spinning reserve, voltage control, or load scheduling, as required for assuring reliable services in accordance with good utility practice and applicable laws.

(6) That within 30 days of any agreements and/or contracts authorized by this legislation being fully executed by all parties, the final agreement or contract shall be provided to the Clerk of the Board for inclusion in the official file.

Section 4. Severability.

If any section, subsection, sentence, clause, phrase, or word of this ordinance, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this ordinance or application thereof would be subsequently declared invalid or unconstitutional.

Section 5. Effective Date. This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the

ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____
THERESA L. MUELLER
Deputy City Attorney

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 150408 **Date Passed:** May 19, 2015

Ordinance authorizing the Public Utilities Commission (PUC) to use pro forma agreements to purchase and sell electricity and related products and services to operate the City's municipal electric utility and community choice aggregation program; authorizing the General Manager of the PUC, in such agreements, to deviate from certain otherwise applicable requirements of City law, under certain circumstances; and authorizing the PUC, within specified parameters, to approve agreements with terms in excess of ten years or requiring expenditures of $10,000,000 or more for renewable and greenhouse-gas-free power and related products and services.

May 06, 2015 Budget and Finance Sub-Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

May 06, 2015 Budget and Finance Sub-Committee - RECOMMENDED AS AMENDED

May 12, 2015 Board of Supervisors - AMENDED

Ayes: 11 - Avalos, Breed, Campos, Christensen, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

May 12, 2015 Board of Supervisors - PASSED ON FIRST READING AS AMENDED

Ayes: 11 - Avalos, Breed, Campos, Christensen, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

May 19, 2015 Board of Supervisors - FINALLY PASSED

Ayes: 10 - Avalos, Breed, Campos, Christensen, Cohen, Farrell, Mar, Tang, Wiener and Yee
Excused: 1 - Kim

File No. 150408

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 5/19/2015 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Mayor

5/28/15
Date Approved

FILE NO. 140415 ORDINANCE NO. 78-14

[Feasibility Study of Implementing Community Choice Aggregation by Joining Marin Clean Energy]

Ordinance electing to study the feasibility of implementing a community choice aggregation program for the benefit of electric customers in San Francisco through an agreement with Marin Clean Energy.

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
Additions to Codes are in *single-underline italics Times New Roman font*.
Deletions to Codes are in ~~*strikethrough italics Times New Roman font*~~.
Board amendment additions are in double-underlined Arial font.
Board amendment deletions are in ~~strikethrough Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Background.

(a) For many years, the City has pursued implementation of CleanPowerSF a community choice aggregation (CCA) program, which would allow San Francisco citizens to receive cleaner, more sustainable electricity at rates comparable to Pacific Gas and Electric (PG&E) rates. See Ordinance Nos. 86-04, 147-07, 232-09, 45-10. Under CCA, the City would provide the electricity, and PG&E would continue to deliver the electricity. While customers could choose to opt out of the CCA program and remain with PG&E for all portions of electric service, many San Francisco citizens have expressed their desire to be part of a CCA program.

(b) In 2008, the City enacted Ordinance No. 81-08 (Environment Code, Chapter 9) that established the following greenhouse gas (GHG) emission limits for the City and County of San Francisco:

- by 2017, the City is to reduce GHG emissions 25% below 1990 levels, and
- by 2025, the City is to reduce GHG emissions 40% below 1990 levels, and

- by 2050, the City is to reduce GHG emissions 80% below 1990 levels.

(c) The 2013 update to the San Francisco Climate Action Strategy, which outlines thirty-five separate actions that would be necessary to meet the legislated GHG emission limits, states that "moving to 100% renewable electricity is the single biggest step the City can take to reduce GHG emissions."

(d) The Climate Action Strategy states that implementing 100% renewable electricity would account for 45.7% of all possible GHG emission reductions in San Francisco.

(e) State law provides that cities and counties may offer CCA service either directly or through a joint powers agency (JPA) with one or more other public entities. State law requires cities and counties to implement CCA programs through an ordinance. California Public Utilities Code, Section 366.2(c)(12).

(f) Marin Clean Energy (MCE) is a JPA governed by a 13-member Board of Directors representing the public entities that have joined MCE. MCE operates a CCA program that has been providing service to customers since May 2010. In addition to customers in Marin County, MCE has expanded to offer service in other counties, and currently provides service to the City of Richmond. MCE has established a process for evaluating requests from other jurisdictions to join MCE.

(g) PG&E's electricity portfolio was only 19% renewable in 2012, but both the City's proposal for CleanPowerSF and MCE's "deep green" CCA service provide 100% renewable electricity service.
http://www.pge.com/myhome/edusafety/systemworks/electric/energymix/index.shtml.

(h) Under the City's Charter, the San Francisco Public Utilities Commission has exclusive management and control of energy programs like CCA, including independent

authority to determine whether the City works with MCE to offer CCA service in San Francisco.

Section 2. CCA Service through Marin Clean Energy.

(a) MCE currently serves approximately 124,000 customers. It offers two types of service—a "light green" service that is 50% renewable energy and a "deep green" service that is 100% renewable energy. MCE states that its purpose is "to address climate change by reducing energy related greenhouse gas emissions and securing energy supply, price stability, energy efficiencies and local economic and workforce benefits. It is the intent of MCE to promote the development and use of a wide range of renewable energy sources and energy efficiency programs, including but not limited to solar and wind energy production at competitive rates for customers." (http://marincleanenergy.org/sites/default/files/key-documents/ MCEGeneralPresentation1.15.14_0.pdf.)

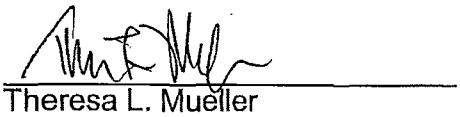
(b) MCE has established a process to consider requests by other cities and counties to join the JPA and receive service from MCE. MCE will evaluate such requests and consider executing an agreement with the requesting entity to fund an analysis of the impacts of expanding MCE to include the new entity. For larger jurisdictions with more than 40,000 customers, MCE may require additional information and analysis. After completion of the analysis, the MCE Board of Directors will consider approval of the request. If MCE approves the request, the entity requesting membership must then authorize CCA service through MCE.

Section 3. Election to Implement CCA. In view of the potential benefits of CCA service to San Francisco electric customers, including the potential contribution of a CCA to San Francisco's ability to meet its GHG emission limits, the Board of Supervisors elects to work with MCE to study the feasibility of the City implementing a CCA program by either joining

MCE or otherwise working with MCE to provide CCA service. The Board of Supervisors urges the Public Utilities Commission to review the analysis that MCE provides, and to compare the benefits of MCE's CCA service to those of CleanPowerSF, including price, the potential resource mix of power purchases, and the ability to fund construction of local renewable energy resources. When this comparison is complete, the Board of Supervisors urges the Public Utilities Commission to take all necessary and appropriate steps to implement the CCA program that offers most advantages to San Francisco electric customers.

Section 4. Effective Date. This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: 
Theresa L. Mueller
Deputy City Attorney

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City and County of San Francisco
Tails
Ordinance

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 140415 **Date Passed:** May 20, 2014

Ordinance electing to study the feasibility of implementing a community choice aggregation program for the benefit of electric customers in San Francisco through an agreement with Marin Clean Energy.

May 08, 2014 Government Audit and Oversight Committee - RECOMMENDED AS COMMITTEE REPORT

May 13, 2014 Board of Supervisors - PASSED, ON FIRST READING

Ayes: 11 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

May 20, 2014 Board of Supervisors - FINALLY PASSED

Ayes: 11 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

File No. 140415

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 5/20/2014 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

UNSIGNED
Mayor

5/29/2014
Date Approved

I hereby certify that the foregoing ordinance, not being signed by the Mayor within the time limit as set forth in Section 3.103 of the Charter, or time waived pursuant to Board Rule 2.14.2, became effective without his approval in accordance with the provision of said Section 3.103 of the Charter or Board Rule 2.14.2.

Angela Calvillo
Clerk of the Board

FILE NO. 130829 RESOLUTION NO. 331-13

[Urging the Public Utilities Commission to Set Not to Exceed Rates for CleanPowerSF Without Any Further Delay]

Resolution reiterating the Board of Supervisor's support for CleanPowerSF, citing the Board's role as the preeminent policymaking body in San Francisco, urging the Public Utilities Commission to set not-to-exceed rates for CleanPowerSF without any further delay, and promising further action if the Public Utilities Commission fails to set rates.

WHEREAS, The San Francisco Board of Supervisors unanimously established a Community Choice Aggregation (CCA) program in 2004 (File No. 040236), now called CleanPowerSF; and

WHEREAS, The Board of Supervisors unanimously approved a CCA Governance Structure in 2007 (File No. 070777); and

WHEREAS, Again in 2007, a supermajority of The Board of Supervisors adopted a Community Choice Aggregation Program Description, Revenue Bond Action Plan, and Draft Implementation Plan, which established key aspects of the CCA Program and enacted further implementation measures (File No. 070501); and

WHEREAS, In 2009 the Board of Supervisors unanimously approved the issuance of a Request for Proposals (RFPs) for Community Choice Aggregation Services (File No. 091161); and

WHEREAS, The San Francisco Public Utilities Commission (SFPUC), in response to direction from the Board of Supervisors, issued two RFPs seeking suppliers to provide key services for CleanPowerSF, and on February 8, 2011, the SFPUC authorized the General Manager to negotiate with one or more creditworthy firms for power supply services for CleanPowerSF; and

WHEREAS, SFPUC staff has negotiated a draft contract that would achieve the Board's goals by: (1) mitigating program risks by using a phase-in approach, (2) offering customers a 100% renewable product, (3) requiring a $13.5 million initial appropriation to fund program reserves, and (4) allowing for development of new renewable resources to be added into the electricity portfolio as a customer revenue stream is established; and

WHEREAS, In December, 2011, the SFPUC approved Resolution 11-0194, which endorsed the negotiated contract, and submitted a $19.5 million appropriation request to the Board of Supervisors for CleanPowerSF; and

WHEREAS, In September, 2012, a supermajority of the Board of Supervisors authorized the PUC to launch the CleanPowerSF program, and authorized the General Manager of the PUC to execute the negotiated contract for a term of up to five years for all services required to launch CleanPowerSF (File No. 111340); and

WHEREAS, Also in September, 2012, a supermajority of the Board of Supervisors appropriated $19,500,000 of Hetch Hetchy funds to support CleanPowerSF's CCA program, and added Administrative Code Sections 10.100.372 and 10.100.373 to establish the CleanPowerSF Customer Fund and the CleanPowerSF Reserve Fund (File No. 111371); and,

WHEREAS The San Francisco Public Utilities Commissioners have reviewed the CleanPowerSF program, including the proposed not-to-exceed rates, at 18 separate meetings between September, 2012 and August, 2013; and

WHEREAS The Public Utilities Commissioners considered CleanPowerSF's proposed not-to-exceed rates at a joint meeting of the SFPUC and the San Francisco Local Agency Formation Commission (LAFCo) on March 25th, 2013; and

WHEREAS The Public Utilities Commissioners reviewed CleanPowerSF's proposed not-to-exceed rates in a "Commission Workshop" during the SFPUC's meeting on April 23, 2013; and

WHEREAS The Public Utilities Commissioners again considered CleanPowerSF's proposed not-to-exceed rates on May 14, 2013 and voted to continue the matter to a later date; and

WHEREAS, On July 9th, 2013, at another joint meeting of the SFPUC and LAFCo, the LAFCo board including four members of the Board of Supervisors voted unanimously to urge the SFPUC to approve PUC staff's recommended not-to-exceed rates, while the Public Utilities Commissioners voted, both at the joint LAFCo meeting and the Commission's regularly scheduled meeting, to continue consideration of the rates to a later date; and

WHEREAS, On August 13, 2013, the Public Utilities Commissioners voted three to two to reject a motion approving the recommended CleanPowerSF not-to-exceed rates; and

WHEREAS, According to its presentation to the PUC, the San Francisco Rate Fairness Board, a voter-mandated adjunct of the PUC, has met nine times since January, 2012 to consider CleanPowerSF, with six meetings from November 2, 2012 to March 15, 2013, focusing on the not-to-exceed rates; and

WHEREAS, The Rate Fairness Board determined that CleanPowerSF's "Proposed Phase 1 Program rates are technically fair" and the "decision to proceed with [the] Phase 1 Program is a policy choice;" and

WHEREAS, The Board of Supervisors is the preeminent policymaking body of the City and County of San Francisco; and

WHEREAS, Over the course of nine years and numerous changes in the Board's composition, The San Francisco Board of Supervisors has consistently and overwhelmingly expressed its policy directive in support of CleanPowerSF; and

WHEREAS, Irrespective of the particular policy decision, the Board of Supervisors must protect and defend its authority to make policy decisions; and

WHEREAS, In failing to set not-to-exceed rates for CleanPowerSF, the Public Utilities Commission is contradicting the policy directives of the Board of Supervisors and neglecting its own obligations under Charter Section 8B.125 to "set rates, fees and other charges in connection with providing the utility services under its jurisdiction;" and

RESOLVED, The Board of Supervisors refuses to acquiesce its policymaking authority to the Executive bureaucracy; and, be it

FURTHER RESOLVED, The Board of Supervisors urges the Public Utilities Commission to approve not-to-exceed rates for CleanPowerSF without any further delay; and, be it

FURTHER RESOLVED, If the Public Utilities Commissioners fail to set not-to-exceed rates, or hereafter fail in any way to timely implement CleanPowerSF, the Board of Supervisors shall, whether at the Board Chamber or the ballot, exercise every means at its disposal to enact its policy objective and preserve its role as the elected policymaking body of San Francisco.

City and County of San Francisco
Tails
Resolution

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 130829 **Date Passed:** September 17, 2013

Resolution reiterating the Board of Supervisor's support for CleanPowerSF, citing the Board's role as the preeminent policymaking body in San Francisco, urging the Public Utilities Commission to set not-to-exceed rates for CleanPowerSF without any further delay, and promising further action if the Public Utilities Commission fails to set rates.

September 10, 2013 Board of Supervisors - CONTINUED

Ayes: 11 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

September 17, 2013 Board of Supervisors - ADOPTED

Ayes: 9 - Avalos, Breed, Campos, Chiu, Cohen, Kim, Mar, Wiener and Yee

Noes: 2 - Farrell and Tang

File No. 130829

I hereby certify that the foregoing Resolution was ADOPTED on 9/17/2013 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Unsigned
Mayor

September 26, 2013
Date Approved

I hereby certify that the foregoing resolution, not being signed by the Mayor within the time limit as set forth in Section 3.103 of the Charter, or time waived pursuant to Board Rule 2.14.2, became effective without his approval in accordance with the provision of said Section 3.103 of the Charter or Board Rule 2.14.2.

Angela Calvillo
Clerk of the Board

FILE NO. 111340 RESOLUTION NO. 348-12

[Approval of the CleanPowerSF Program Including Local Sustainability Services and a Contract with Shell Energy North America.]

Resolution authorizing the Public Utilities Commission, subject to conditions, to launch the CleanPowerSF program, approving local sustainability services for CleanPowerSF customers, and authorizing the General Manager of the Public Utilities Commission to execute a contract with Shell Energy North America for a term of up to five ~~four~~ years ~~and six months~~ for services required to launch the CleanPowerSF program; and delegating authority to non-materially amend or modify the contract.

I. History and Background

WHEREAS, Public Utilities Code Section 366.2 allows public agencies to aggregate the electrical load of interested electricity consumers within their jurisdictional boundaries. Pursuant to this law, the City has established a Community Choice Aggregation (CCA) program known as CleanPowerSF to provide electric power to the residents and businesses located within its jurisdiction. The San Francisco Board of Supervisors established the City's CCA program in May 2004 (Ordinance 86-04). The Ordinance found that CCA would allow the City to increase the scale and cost-effectiveness of renewable energy, conservation and energy efficiency in San Francisco and to increase local control over electricity prices and resources. To implement the program, Ordinance No. 86-04 directed the development of a draft Implementation Plan (IP) and the preparation of a draft Request for Proposals (RFP) to solicit an electricity supplier for the program. In December 2004, the Board of Supervisors created a Citizens Advisory Task Force (Task Force) to advise the City regarding the draft Implementation Plan and the draft RFP; and

WHEREAS, Mayor Gavin Newsom signed a Declaration of Mayor or Chief County Administrator Regarding Investigation, Pursuit or Implementation of Community Choice Aggregation on December 16, 2005; and

WHEREAS, After an extensive process that involved public meetings of the San Francisco Local Agency Formation Commission (LAFCo~~O~~), the Task Force, the San Francisco Public Utilities Commission (SFPUC) and interested parties and advocacy groups, the Board of Supervisors approved a Draft Implementation Plan (Draft IP) in June 2007 setting forth goals and policies for the City's CCA program (Ordinance 147-07). Ordinance No. 147-07 directed the issuance of a Request For Information (RFI) and a subsequent Request for Proposals (RFP) to solicit input and bids from interested parties regarding the development of the program. Ordinance No. 147-07 stated that the RFI responses and other information obtained in implementing the program might suggest changes to the Draft IP to improve its viability, and allowed for such changes. As required by Ordinance No. 147-07, SFPUC issued an RFI in November 2007. In April 2009, SFPUC issued a request for qualifications ("RFQ") from potential electricity suppliers. SFPUC, in consultation with LAFCo~~O~~, used the information obtained from these solicitations to prepare an RFP; and

WHEREAS, The Board of Supervisors approved the issuance of an RFP in October 2009 (Ordinance 232-09). Like Ordinance 147-07, Ordinance No. 232-09 provided that RFP responses and other information obtained in implementing the program might suggest changes to Draft IP that would improve the viability of the City's CCA program, and allowed for such changes. In November 2009, SFPUC issued the RFP. The City received five responses to its RFP and, in January 2010, identified Power Choice, LLC as the highest ranked proposer. The City engaged in negotiations with Power Choice, LLC for electricity supply and other services; and

WHEREAS, In January 2010, SFPUC prepared a revised Implementation Plan (IP) and Statement of Intent to file with the California Public Utilities Commission (CPUC) in accordance with Ordinance 147-07. As anticipated in Ordinances 147-07 and 232-09, the Implementation Plan was revised to allow more flexibility in the resources that may be used to make up the CleanPowerSF supply portfolio, and to specify that the SFPUC may roll out the program in phases if phasing allows it to maximize demand-side management programs and renewable energy impacts, synergies with local ordinances and other customer programs, cost of service and customer load characteristics, and other operational considerations. The Board of Supervisors held a hearing on the IP in the Budget and Finance Committee on February 17, 2010, and forwarded the Ordinance adopting the IP to the full Board of Supervisors with a recommendation for approval. The Board of Supervisors considered and voted on the Ordinance adopting the revised IP at its public meetings on February 23, 2010 and March 2, 2010. On March 2, 2010, The Board of Supervisors finally approved the Ordinance and authorized the filing of the IP with the CPUC (Ordinance 45-10). The IP was certified by the CPUC on May 18, 2010; and

WHEREAS, The SFPUC authorized the General Manager to execute a service agreement with Pacific Gas and Electric Company (PG&E) on May 11, 2010. The General Manager executed the Community Choice Aggregation Service Agreement (the Service Agreement) with PG&E on May 27, 2010. In May 2012, the City and PG&E agreed to extend the Service Agreement until December 31, 2018. The Service Agreement is a contract that governs the business relationship between PG&E and the City with respect to CleanPowerSF. Among other things, the Service Agreement includes provisions for audits, dispute resolution, events of default, billing and payment terms and indemnity. The Service Agreement incorporates by reference PG&E's CCA tariffs that set forth the operational and financial duties of aggregators and PG&E in establishing and conducting CCA service; and

WHEREAS, Negotiations with Power Choice, LLC, were unsuccessful, and on August 5, 2010, the SFPUC issued a second RFP seeking an electricity supplier for the program. No bidders met the minimum qualifications of that RFP, and on February 8, 2011, in Resolution 11-0027, the SFPUC a) authorized the General Manager to negotiate with one or more creditworthy firms to create a program that most closely achieves the City's goals and b) directed the General Manager to direct SFPUC staff to develop a process and scope of work, together with stakeholders and consultants, to request bids for renewable generation and green resource commitments to further the adopted City goals for CCA as described in Ordinance 147-07. Shortly thereafter, SFPUC engaged in negotiations with Shell Energy North America (Shell) for electricity supply and Noble Americas for customer care and billing services; and

WHEREAS, Work began on November 16, 2011, in accordance with the SFPUC Task Order: Modeling and Conceptual Framework for CCA Deployment to study deployment options and prepare RFPs for a ~~potential~~ build-out of in-City renewable energy resources, comprised of both demand reduction and new renewable generation, and ~~assess their~~ to study and prepare associated financing ~~alternative~~ mechanisms (including 2001 proposition H bonds and use of collateral), ~~SFPUC~~ management and integration of local supplies by the SFPUC, levelized costs, and jobs potential, and to develop associated contract term sheets ~~and RFPs~~, all to be used if the City approves a local build-out after environmental review; and

WHEREAS, In Ordinance No. 232-09 the Board of Supervisors authorized approval by resolution for future CleanPowerSF approvals; and

II. CleanPowerSF Program

WHEREAS, Enrollment in the CleanPowerSF program will be launched in phases to groups of customers, to ~~allow for~~ mitigate the risks inherent in purchasing power, and to better integrate into CleanPowerSF a proposed build-out of local and regional energy resources ~~if~~

~~these programs~~ when and if component installations of this build-out are approved by the City~~, and to mitigate the risks inherent in purchasing power~~. The first phase will follow the state-mandated opt-out process, enrolling sufficient customers to meet the volume of electricity specified in the Shell agreement, not to exceed an average of approximately 30 MW, and any customer within San Francisco will be eligible to participate in that enrollment phase; and

WHEREAS, the Shell agreement does not preclude a build-out of local and regional energy resources, if such build-out is approved by the City after any necessary environmental review, because the Shell agreement allows the City to replace purchases from Shell with other resources (subject to making Shell whole for any losses) and because program roll out will be phased; and

A. Program Characteristics and Local Sustainability Services

WHEREAS, The CleanPowerSF program will ~~initially~~ offer customers one or more products, consistent with the contracted Shell purchases, ~~and will leverage~~ which support the ~~potential~~ development of new renewable and efficiency resources, if such programs are approved by the City, to achieve high rates of customer acceptance create local jobs, promote locally owned power production and to balance generation sources. These ~~initial~~ products will allow for development of new renewable resources to be integrated into the electricity portfolio as a customer revenue stream, revenue bond financing, and other financing mechanisms are established, if a program for developing renewable resources is planned and approved by the City~~;~~, and upon completion of any necessary environmental review; and

WHEREAS, The Board of Supervisors believes the integration of a large-scale local build-out of renewable energy and efficiency resources, as described in Ordinance No. 147-07, if such a program is planned and approved by the City, may facilitate establishing a successful CleanPowerSF program that will be price competitive, attractive to electricity

customers, financially robust, productive of clean energy jobs, and of sufficient scale and rapid construction to achieve significant greenhouse gas reductions, with the understanding that such a program must first be planned and approved by the City with any necessary environmental review; and

WHEREAS, The CleanPowerSF program will offer local sustainability services to CleanPowerSF customers including:

1. incentives for the installation of solar projects on properties of participating CleanPowerSF customers pursuant to the GoSolarSF Program, and

2. augmented energy efficiency programs for the benefit of participating CleanPowerSF customers; and

3. study ~~of~~and possible development of a local build-out of renewable energy facilities~~.~~, if the City approves such a program after necessary environmental review. The SFPUC has indicated its commitment to studying and, if the City approves such a program, developing a local build-out of renewable energy facilities as a component of CleanPowerSF, and anticipates immediate commencement of that build-out, if such program is approved by the City, when (i) consultant studies and RFP preparation have been concluded, (ii) sufficient revenues are generated or identified to commence the build-out, (iii) SFPUC has completed environmental analysis of the physical impacts of any specific build-out projects where required and made appropriate findings, and (iv) the SFPUC approves a plan, budget, and timeline for the local build-out; and

WHEREAS, The SFPUC ~~will commence~~ has commenced studies and RFP preparation for a local build-out of renewable energy facilities consistent with ~~the~~ Ordinance No. 147-07 and environmental review requirements of the California Environmental Quality Act, California Public Resources Code Section 21000 et. seq. (CEQA); and

WHEREAS, the SFPUC and the Board of Supervisors will explore ~~use of~~ sources of revenue such as 2001 proposition H bonds, municipal bonds, power purchase agreements, public agency loans and/or other favorable financing and contractual mechanisms for local and regional renewable energy generation and also energy demand reduction projects in CleanPowerSF, with the understanding that ~~to the extent that~~ such projects must be ~~are~~ planned and approved by the City and subjected to any necessary environmental review; and

WHEREAS, before any specific local build-out programs or projects are approved, the SFPUC will undertake all necessary CEQA review of the proposed programs or projects identified in the study process and of their alternatives, including a no project alternative, and shall obtain all requisite approvals; and

B. Cost Overview

WHEREAS, The SFPUC approved in Resolution 11-0194 and submitted to the Board of Supervisors an appropriation request for $19.5 million, which is on file with the Clerk of the Board of Supervisors in File No. 111371. The request includes

1. $13 million as collateral and reserves required under the Shell agreement,
2. $6 million for local sustainability services for CleanPowerSF customers as follows (half to be used in 2013 and half to be used in 2014):
    a. $2,000,000 dollars for energy efficiency programs;
    b. $2,000,000 dollars for GoSolarSF incentives; and
    c. $2,000,000 dollars for studies of local build-out of renewable energy facilities, and
3. $500,000 for start-up costs and costs related to the Noble Americas contract for customer billing, data management and other administrative services; and

WHEREAS, The $19.5 million is in addition to a total of $6 million that already has been appropriated to CleanPowerSF through September 2011, including $1 million in July 2011; and

WHEREAS, In the event the CleanPowerSF Program is discontinued or terminated all unspent amounts appropriated, including any of the $6,000,000 for local sustainability services for CleanPowerSF customers, will be de-appropriated and returned to Hetch Hetchy Power Enterprise fund balance reserves; and

III. Rates for CleanPowerSF Customers

WHEREAS, CleanPowerSF rates will be approved by the SFPUC and Board of Supervisors through the process established in section 8B.125 of the City's Charter, including review by the Rate Fairness Board, and the SFPUC must determine that those rates are sufficient to cover the cost of power and services provided by Shell as well as other costs required for the program prior to launching the program; and

WHEREAS, The SFPUC staff will 1) propose rates to the Rate Fairness Board that will cover all costs to provide service to CleanPowerSF customers, including the cost of power it expects Shell to provide, based on market information and consultation with Shell, the cost of the services it expects Noble Americas to provide, and the costs of solar incentives, energy efficiency programs, and studies to guide development of local renewable facilities and 2) include in that proposal a discount for low income customers; the Rate Fairness Board will consider the rate proposal, and may report to the SFPUC regarding its analysis; the SFPUC will establish rates for CleanPowerSF and submit those rates to the Board of Supervisors for its approval or rejection; and

WHEREAS, The SFPUC will review the power prices proposed by Shell before it authorizes the General Manager to complete a power purchase transaction, in order to

determine that the rates established by the SFPUC and Board of Supervisors will be adequate to recover all costs of providing service to customers; and

WHEREAS, If the SFPUC determines that the adopted CleanPowerSF rates are not adequate to cover all costs of providing service to CleanPowerSF customers, it will not authorize the General Manager to complete a power purchase transaction and launch the program; and

WHEREAS, The SFPUC will recommend the inclusion of a component into CleanPowerSF rates to begin recovering the reserves required for this program within the contract period so that customers of CleanPowerSF will bear the costs of the program; and

IV. Low Income Customers and CleanPowerSF Program Accessibility.

WHEREAS, The SFPUC will include in its CCA rates a discount for low income customers that is commensurate with discounts typically provided to PG&E customers for electric service; and

WHEREAS, CleanPowerSF rates should be structured to include a component for a hardship fund to support additional discounts for low income customers that require additional financial assistance to participate in the program; and

WHEREAS, The SFPUC should explore various ways of funding the cost of such a discount, including by voluntary donations from other CleanPowerSF customers through their monthly bills, similar to the current California Alternative Rates for Energy (CARE) program offered through PG&E; and

WHEREAS, The overall electric bills of CleanPowerSF low income customers can be further reduced by targeting energy efficiency services and GoSolarSF incentives to low income customers; and

WHEREAS, These and other mechanisms can be used to minimize barriers to participation in CleanPowerSF by low income residents while maintaining the financial viability of the program; and

WHEREAS, Unless the SFPUC can ensure, using these and other mechanisms, that low income CleanPowerSF customers will be offered rates similar to rates for low income customers served by PG&E, the SFPUC shall exclude low income customers in the initial phases of the CleanPowerSF program; and

V. Contract with Shell

WHEREAS, The SFPUC, in consultation with LAFCo~~O~~, has negotiated the key terms of a contract with Shell for electricity necessary for commencement of the CleanPowerSF Program, and to serve as the primary power purchasing component of the program over its first up to five ~~four and one-half~~ years. The draft contract is on file with the Clerk of the Board of Supervisors in File No.111340 and declared to be a part of this resolution as if set forth fully herein; and

WHEREAS, The draft Shell contract consists of three parts: (i) a Master Agreement (setting forth general terms and conditions and providing that Shell and the City may enter into transactions to buy particular amounts, quantities and types of electric products); (ii) a Security Agreement (giving Shell control over the account that holds the receipts received from CleanPowerSF customers and a first priority security interest in that account); and (iii) a Confirmation (specifying the price, quantity and type of product for specific electricity purchase transactions); and

WHEREAS, Shell represents and warrants that no new facilities are required to be constructed in order for Shell to meet its supply obligations under the contract; and

WHEREAS, the contract requires Shell to provide energy to the City with an average carbon content equal to or less than the average carbon content of energy supplied by PG&E to its customers; and

WHEREAS, Shell will provide and the City will purchase the following for up to five ~~four and one half~~ years: (i) electricity to serve CleanPowerSF customers; (ii) scheduling coordinator services to go along with the power supplied; and

WHEREAS, The contract allows the City and Shell to enter into additional Confirmations for procurement of additional electricity services; and

WHEREAS, The contract requires the City to provide $13 million for startup costs and program reserves, consisting of the following:

1. $7 million to be held in an escrow account subject to joint instructions by the City and Shell, as partial collateral for a termination payment in the event the City defaults and Shell terminates the agreement. The termination payment is intended to cover reasonable risk and costs that might be incurred by Shell should the program cease operations during the contract period. This amount may be reduced in subsequent years of the contract if market conditions and the progressive completion over time of the contract reduce Shell's exposure to potential financial losses (see Sections 2.3(f) and 5.3);

2. $4.5 million to fund a Program Reserve to be deposited into the customer revenues secured account, controlled by Shell. The Program Reserve is intended to provide security to Shell that there will be sufficient cash on hand in the customer revenues secured account to cover Shell's monthly bills. The City must restore the balance of the Program Reserve to at least $4.5 million within five Business Days of a notice by Shell that the Program Reserve is below this amount (see Sections 2.3(d) and 5.2);

3. $1.5 million to be held by the City in an Operating Reserve, to ensure short-term unanticipated costs associated with startup and initial program expenses do not create

long-term program stability issues (for example, additional costs associated with bringing in additional customers, or delays in receipt of revenues, in the event that opt-out rates are higher than anticipated); and

WHEREAS, Shell will not have a right to collect the termination payment or the Program Reserve unless and until the City executes a Confirmation and all other conditions are satisfied; and

WHEREAS, The draft contract does not specify the amount or price of the electricity to be provided by Shell; these will be determined before the program is launched, after Shell has obtained prices for the electricity it will provide; and

WHEREAS, The contract includes terms that are non-standard for City contracts, including a modification to the standard appropriation of funds language (see Section 8.2(c)):

1. if Shell terminates the contract as a result of a City default, the General Manager must seek an appropriation or supplemental appropriation to fully fund the applicable termination payment, but approval of such appropriation is within the sole discretion of the SFPUC and/or the Board of Supervisors;

2. a failure by the City to pay the full termination payment is an event of default under the Agreement;

3. the contract does not include standard City language stating that the contractor assumes the risk of a failure on the part of the City to appropriate additional funds; and

WHEREAS, Consistent with standard energy industry practice, it is not an event of default for Shell to fail to deliver a product it is required to provide under the agreement. If Shell fails to deliver a product it contracted to provide:

1. the City may purchase a replacement product and charge to Shell the difference between the price of such purchase and the contract price (see Section 4.1);

2. in the case of renewable energy and resource adequacy capacity, if penalties are imposed on the City as a result of Shell's failure to perform, Shell must reimburse the City for the penalties (see Sections 4.2 (a) and 4.3);

3. in the case of bundled renewable energy, if on an annual basis Shell fails to deliver at least 90% of the product it contracted to provide, in addition to any payments made by Shell described in (i) and (ii) above, Shell must pay the City 25% of the contract price for every MWh Shell failed to deliver (see Section 4.2(b)); and

WHEREAS, The contract imposes the following financial requirements on the City and makes it an event of default if the City fails to meet them within the relevant cure periods:

1. All receipts from CleanPowerSF customers served by Shell must be deposited in an account controlled by Shell, but owned by the City (see Sections 2.3 (i) and 7.4);

2. Disbursements from the customer receipts account must be made by Shell in accordance with a pre-established waterfall, pursuant to which on a monthly basis, Shell gets paid first, the Program Reserve is retained, and any amount remaining is transferred to the City (which the City intends to deposit in the CPSF Customer Fund) (see Section 7.3);

3. The CleanPowerSF program must be financially healthy, but the City has a sixty day cure period to restore financial health if end of the month financial reports indicate there is a problem (see Section 5.1);

4. The termination payment is calculated as the difference between the contract price and the market price of any product the City commits to buy pursuant to a Confirmation; but the termination payment is capped at $15 million unless the City terminates the CleanPowerSF program at a time when the program is healthy (see Sections 6.2, 6.3, 6.4, 6.5); and

WHEREAS, The SFPUC approved the draft contract with Shell on December 13, 2011, in Resolution No. 11-0194, and authorized the General Manager to execute the contract, subject to conditions; and

VI. Contract with Noble Americas

WHEREAS, In Resolution 11-0194, on December 13, ~~2012~~ 2011, the Public Utilities Commission authorized the General Manager to negotiate an agreement with Noble Americas (Noble) for customer care and billing services to support CleanPowerSF and directed the General Manager to submit the final contract to the Public Utilities Commission for approval; and

WHEREAS, SFPUC staff, in concert with LAFCo staff, has negotiated an agreement with Noble for customer care and billing services, which is on file with the Clerk of the Board of Supervisors in File No. 111340; and

WHEREAS, Noble will provide services that include: managing the electronic data exchange with PG&E, maintaining customer information and billing administration systems, providing reports on energy use and billing, preparing settlement quality meter data, tracking opt-out notices, maintaining a customer care operation center and creating a plan for eventually transitioning the services to CleanPowerSF; and

WHEREAS, Noble will make commercially reasonable efforts to locate a customer care center in San Francisco in order to provide local jobs; and

WHEREAS, Other key terms of the Noble agreement include the following:

1. the term is 4.5 years and the guaranteed maximum cost is $9 million dollars;

2. the total monthly fees charged by Noble for the CleanPowerSF program will be at least $25,000 per month;

3. the City can cancel the agreement without charge prior to the start up date, but if the cancellation occurs after that date, CleanPowerSF will pay a cancellation fee based on milestones, up to a maximum amount of $250,000; and

4. the agreement will become effective after satisfaction of specified conditions, including, appropriation of necessary funds and approval by the SFPUC; and

VII. Conditions for Contract Effectiveness and CleanPowerSF Program Launch

WHEREAS, Even after approval by the Board of Supervisors and execution by the General Manager, the Shell contract will not become effective until satisfaction of conditions established by the contract as well as those established by the SFPUC and the Board of Supervisors; and

WHEREAS, The Shell contract establishes conditions that must be satisfied before it becomes effective, including but not limited to the following: (i) the conditions placed by the City on the launch of CleanPowerSF have been satisfied; (ii) the City has directed PG&E to deposit the payments from CleanPowerSF customers for amounts due to the City for CleanPowerSF services into a customer receipts account controlled by Shell; (iii) the City has entered into an agreement that gives Shell control of the customer receipts account, has granted Shell a first priority lien on the amounts in the account, and has appropriated and deposited $4.5 million in the account; (iv) the City has appropriated and placed $7 million dollars into an escrow account as collateral for a termination payment to Shell in the event of a City default; (v) the CPUC has accepted an amendment to the City's implementation plan and statement of intent filed with the CPUC pursuant to California Public Utilities Code Section 366.3, that identifies Shell as the primary supplier of power for CleanPowerSF; and (vi) the City has posted the CCA Bond required by the CPUC and advised Shell of the amount thereof; and

WHEREAS, The SFPUC in its December 2011 resolution established the following conditions which must be satisfied before the Shell contract becomes effective: (i) CleanPowerSF rates are approved by the SFPUC and Board of Supervisors through the process established in section 8B.125 of the City's Charter, and the SFPUC has determined that those rates are sufficient to cover the cost of power and services provided by Shell as well as other costs required for the program, (ii) the CPUC has made its final determination of the CCA bond amount required by Public Utilities Code Section 366.2 and the SFPUC has the resources and all necessary authorizations to obtain the bond, (iii) all appropriations required by the CCA supplier contracts have been authorized, ~~and~~ (iv) the SFPUC Power Enterprise has rates in place to be financially stable and in compliance with its reserve policies, and (v) a contract for customer billing, data management and other administrative services with Noble Americas or another entity has been approved; and

WHEREAS, This action is not considered a "project" as defined in the California Environmental Quality Act, California Public Resources Code Section 21000 et seq. ("CEQA") for the reasons set forth in the memorandum prepared by the Bureau of Environmental Management for the SFPUC dated July –18, 2012. Said memorandum is on file with the Clerk of the Board of Supervisors in File No. 111340 and is incorporated herein by reference; now, therefore, be it

RESOLVED, That any proposed projects for local build-out of renewable energy facilities will be subject to SFPUC and Board of Supervisors review of environmental impacts and compliance with the CEQA prior to Board of Supervisors approval of appropriations or financing of such projects; and, be it

FURTHER RESOLVED, That the SFPUC ~~should~~ and the City will work with stakeholders to establish favorable bond capacity and financing mechanisms, including 2001 proposition H bonds and use of collateral, for the local build-out of new renewable generation

projects and demand reduction as components of CleanPowerSF, if such programs are planned and approved by the City; and, be it

~~FURTHER RESOLVED, That the Board of Supervisors intends that the steps to study, plan, prepare RFPs and submit for City approval a local renewables build-out be commenced as soon as practicable; and be it~~

FURTHER RESOLVED, That because a timely integration of the local build-out of renewables and efficiency, if such build-out is approved by the City, would enhance the economic and structural characteristics of CleanPowerSF, and planning and RFP preparation for such build-out is planned to be completed by SFPUC consultants by November of 2012, and that, to the extent such work is completed on time, RFP's should be released in accordance with SFPUC Task Order Title: Modeling and Conceptual Framework for CCA Deployment, to solicit bids for the local build-out work identified in that task order, on or before February 1, 2013; and, be it

FURTHER RESOLVED that the Board of Supervisors supports expenditure by the SFPUC of six million dollars for CleanPowerSF participating customers, including $2,000,000 for energy efficiency, $2,000,000 for studies related to local build-out activities, and $2,000,000 for GoSolarSF, which will further environmental quality and local job creation but would only be expended if the CleanPowerSF program is launched; and, be it

FURTHER RESOLVED, That the Board of Supervisors directs the SFPUC to give priority to low-income CleanPowerSF customers for receipt of energy efficiency and GoSolarSF services and to undertake an aggressive outreach campaign to such customers for these services; and be it

FURTHER RESOLVED, That the Board of Supervisors strongly urges the SFPUC to minimize barriers to participation in CleanPowerSF for low income residents while maintaining

the financial viability of the program and urges the San Francisco Public Utilities Commission to balance these objectives in establishing rates for CleanPowerSF; and be it

FURTHER RESOLVED, That the Board of Supervisors strongly urges the SFPUC to provide an appropriate rate discount for low income CleanPowerSF customers and to incorporate into all CleanPowerSF rates a component for a hardship fund to support additional discounts for low income customers that require additional financial assistance to participate in the program; and, be it

FURTHER RESOLVED, That the Board of Supervisors directs the SFPUC to undertake an extensive public education and outreach campaign, in multiple languages, and with particular attention to low-income communities, to ensure that prior to the opt-out process targeted residents in each phase are fully aware of the program, its features and its costs; and, be it

FURTHER RESOLVED, That the Board of Supervisors strongly urges the SFPUC to eliminate the CleanPowerSF departure charge for a CleanPowerSF residential customer returning to PG&E service for at least a 6 month period, and after that time period, to set the charge at no more than a de minimis amount of five dollars; and be it

FURTHER RESOLVED, That, pursuant to Charter Sec. 8B125, the Board will consider rejecting rates that do not reflect the policies described in this resolution to address the needs of low-income and monolingual communities; and be it

FURTHER RESOLVED, That the Board of Supervisors, subject to all conditions set forth in the contract and this resolution and all conditions adopted by the SFPUC, authorizes the General Manager of the Public Utilities Commission to execute ~~approves~~ the contract with Shell in substantially the form on file with the Clerk of the Board of Supervisors, with such additions or modifications as may be acceptable to the General Manager of the Public Utilities

Commission and the City Attorney, and that do not materially decrease the intended public benefits to the City; and, be it

FURTHER RESOLVED, That the Board of Supervisors authorizes the General Manager, in consultation with the City Attorney, and on approval of the SFPUC, to amend or modify the Shell contract, including the Master Agreement, the Security Agreement, and any Confirmations, to the extent that such amendment or modification does not materially change the terms or decrease the intended public benefits to the City; and, be it

FURTHER RESOLVED, That the Board of Supervisors authorizes the General Manager to execute an initial Confirmation to purchase power from Shell provided that (1) the amount of electricity procurement shall not exceed an average of 30 MWs, (2) the conditions set forth in the Shell contract are satisfied, and (3) the conditions imposed by the SFPUC and the Board of Supervisors on effectiveness of the contract and program launch are satisfied; and, be it

FURTHER RESOLVED, That the Board of Supervisors authorizes the General Manager to enter into additional Confirmations, on approval of the SFPUC, so long as the Charter does not require approval by the Board of Supervisors and the SFPUC has determined that CleanPowerSF rates approved by the SFPUC and Board of Supervisors through the process established in section 8B.125 of the City's Charter, are sufficient to cover the cost of additional power and services provided by Shell pursuant to the additional Confirmation, as well as other costs required for the program.

City and County of San Francisco
Tails
Resolution

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 111340 **Date Passed:** September 18, 2012

Resolution authorizing the Public Utilities Commission, subject to conditions, to launch the CleanPowerSF program, approving local sustainability services for CleanPowerSF customers, and authorizing the General Manager of the Public Utilities Commission to execute a contract with Shell Energy North America for a term of up to five years for services required to launch the CleanPowerSF program; and delegating authority to non-materially amend or modify the contract.

September 12, 2012 Budget and Finance Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE

September 12, 2012 Budget and Finance Committee - RECOMMENDED AS AMENDED

September 18, 2012 Board of Supervisors - AMENDED

September 18, 2012 Board of Supervisors - ADOPTED AS AMENDED

Ayes: 8 - Avalos, Campos, Chiu, Cohen, Kim, Mar, Olague and Wiener

Noes: 3 - Chu, Elsbernd and Farrell

File No. 111340

I hereby certify that the foregoing Resolution was ADOPTED AS AMENDED on 9/18/2012 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

UNSIGNED
Mayor

9/28/12
Date Approved

Date: September 28, 2012

I hereby certify that the foregoing resolution, not being signed by the Mayor within the time limit as set forth in Section 3.103 of the Charter, became effective without his approval in accordance with the provision of said Section 3.103 of the Charter.

Angela Calvillo
Clerk of the Board

Amended at Board. 9/18/12

FILE NO. 111371 ORDINANCE NO. 200-12

RO#13002
SA#02

[Administrative Code – CleanPowerSF Funds and Appropriating $19,500,000 of Available Fund Balance to Support Required Reserves and Creating Special Funds for the CleanPowerSF Program at the Public Utilities Commission.]

Ordinance appropriating $19,500,000 of Hetch Hetchy fund balance at the Public Utilities Commission to support CleanPowerSF Community Choice Aggregation program consistent with the contractual requirements and budgetary authorizations as approved by the San Francisco Public Utilities Commission and the Board of Supervisors, placing the $6,000,000 appropriated for CleanPowerSF sustainability services on Budget and Finance Committee Reserve pending detailed appropriation plans for those sustainability services, and adding Administrative Code Sections 10.100.372 and 10.100.373 to establish the CleanPowerSF Customer Fund and the CleanPowerSF Reserve Fund.

Note: Additions are *single-underline italics Times New Roman*; deletions are ~~*strikethrough italics Times New Roman*~~. Board amendment additions are double underlined. Board amendment deletions are ~~strikethrough normal~~.

Be it ordained by the People of the City and County of San Francisco:

Section 1. The sources of funding outlined below are herein appropriated to reflect the funding available in Fiscal Year 2012-2013.

SOURCES Appropriation

Fund	Index Code/ Project Code	Subobject	Description	Amount
5TAAAAAA –	TBD	99999B	Available Fund Balance	$19,500,000

Hetch Hetchy		
Total SOURCES Appropriation		**$19,500,000**

Section 2. The uses of funding outlined below are herein appropriated in FY 2012-2013 for CleanPowerSF and reflect the projected uses of funding to support the Public Utilities Commission's contractual obligations under the CleanPowerSF Community Choice Aggregation Program.

USES Appropriation

Fund	Index Code/ Project Code	Subobject	Description	Amount
5TXXXXX – Community Choice Aggregation	CUH978	097XX	Lockbox Reserves – Working Capital	$4,500,000
5TXXXXX – Community Choice Aggregation	CUH978	097XX	Operating Reserves– Working Capital	$1,500,000
5TXXXXX – Community Choice Aggregation	CUH978	097XX	Security Reserves– Energy Cost, Termination Contingency	$7,000,000
5TXXXXX –	CUH978	067XX	FY 2012-13 CCA Program	$3,000,000

Fund	Index Code/ Project Code	Subobject	Description	Amount
Community Choice Aggregation			Incentives, $1M each for GoSolarSF for CCA Customers, CCA-Owned Generation and Energy Conservation & Efficiency for CCA Customers	
5TXXXXX – Community Choice Aggregation	CUH978	067XX	FY 2013-14 CCA Program Incentives, $1M each for GoSolarSF for CCA Customers, CCA-Owned Generation and Energy Conservation & Efficiency for CCA Customers	$3,000,000
5TXXXXX – Community Choice Aggregation	CUH978	097XX	Operating Reserves – Customer Services	$500,000
Total USES Appropriation				**$19,500,000**

Section 3. (a) The $6,000,000 appropriated for GoSolarSF for CCA Customers, CCA-Owned Generation and Energy Conservation & Efficiency for CCA Customers (CleanPowerSF sustainability services) are hereby placed on Budget and Finance Committee Reserve pending detailed appropriation plans for CleanPowerSF sustainability services.

(b) Incentives for Energy Conservation & Efficiency services and GoSolarSF incentives funded with the $4,000,000 appropriation shall be offered first to low-income CleanPowerSF customers.

(c) The SFPUC will recommend the inclusion of a component into CleanPowerSF rates to begin recovering the reserves required for this program within the contract period so that customers of CleanPowerSF will bear the costs of the program; and

Section. 4. Adding Section 10.100.372 to the Administrative Code, establishing the San Francisco Public Utilities Commission's CleanPowerSF Customer Fund.

Section 10.100.372 CleanPowerSF Customer Fund

(a) Establishment of Fund. The Public Utilities Commission's CleanPowerSF Customer Fund is hereby established as a category eight fund for the purpose of serving as a depository and operating fund used to procure clean and greenhouse gas free electric power for customers of the CleanPowerSF Community Choice Aggregation Program.

(b) Use of Fund. All monies deposited into the fund shall be expended for implementation, operation and maintenance of the CleanPowerSF Community Choice Aggregation Program. Allowable uses shall include the cost of electric energy, customer service costs, administrative costs and other related CleanPowerSF operating and maintenance costs as well as customer rate stabilization reserves.

(c) Administration of Fund. The General Manager of the San Francisco Public Utilities Commission is authorized to accept customer deposits into this fund and approve payments from this fund for electric energy provided through CleanPowerSF as well as associated costs, including reimbursement

of CleanPowerSF Reserve Fund advances related to working capital or other CleanPowerSF related needs. Establishment of this fund is subject to final approval of the San Francisco Controller.

Section 5. Adding Section 10.100.373 to the Administrative Code, establishing the San Francisco Public Utilities Commission's CleanPowerSF Reserve Fund.

Section 10.100.373 CleanPowerSF Reserve Fund

(a) Establishment of Fund. The San Francisco Public Utilities Commission's CleanPowerSF Reserve Fund is hereby established as a category two fund for the purpose of serving as a fund to hold reserves for unanticipated fluctuations in the cost of energy, customer service payments, working capital needs, CCA Program Incentives for GoSolarSF for CCA Customers, CCA-Owned Generation and Energy Conservation & Efficiency for CCA Customers and other charges.

(b) Use of Fund. All monies deposited into the Reserve Fund shall be expended or otherwise utilized, to the extent appropriated above and therefore, for the implementation and operation of the CleanPowerSF Community Choice Aggregation Program to offer GoSolarSF for CCA Customers, CCA-Owned Generation and Energy Conservation & Efficiency for CCA Customers, and for termination costs in the event the program is discontinued.

(c) Administration of Fund. The General Manager of the San Francisco Public Utilities Commission is authorized to transfer moneys from the CleanPowerSF Reserve Fund to the CleanPowerSF Customer Fund as needed by that fund to smooth fluctuations in cash receipts and cash payments. Funds from the CleanPowerSF Reserve Fund that represent advances for working capital needs for the CleanPowerSF Community Choice Aggregation Program shall be administered consistent with the Board of Supervisor's approved power purchase contract between the San Francisco Public Utilities Commission and the CleanPowerSF power provider(s). Establishment of this fund is subject to final approval of the San Francisco Controller.

Section 6. The enumerated amounts are hereby appropriated and can only be used as required for CleanPowerSF program contractual requirements and budgetary authorizations as approved by the San Francisco Public Utilities Commission and the Board of Supervisors.

Section 7. The Controller is authorized to record transfers between funds and adjust the accounting treatment of sources and uses appropriated in this ordinance as necessary to conform with Generally Accepted Accounting Principles.

Section 8. In the event the CleanPowerSF Program is discontinued or terminated all unspent appropriation, including any of the $6,000,000 related to CCA Program Incentives for GoSolarSF for CCA Customers, CCA-Owned Generation and Energy Conservation & Efficiency for CCA Customers shall be hereby de-appropriated and returned to Hetch Hetchy Power Enterprise fund balance reserves.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____
Deputy City Attorney

FUNDS AVAILABLE
Ben Rosenfield, Controller

By: _____

Date: ~~July 17, 2012~~
September 20, 2012

City and County of San Francisco
Tails
Ordinance

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 111371 **Date Passed:** September 25, 2012

Ordinance appropriating $19,500,000 of Hetch Hetchy fund balance at the Public Utilities Commission to support CleanPowerSF Community Choice Aggregation program consistent with the contractual requirements and budgetary authorizations as approved by the San Francisco Public Utilities Commission and the Board of Supervisors, placing the $6,000,000 appropriated for CleanPowerSF sustainability services on Budget and Finance Committee Reserve pending detailed appropriation plans for those sustainability services, and adding Administrative Code Sections 10.100.372 and 10.100.373 to establish the CleanPowerSF Customer Fund and the CleanPowerSF Reserve Fund.

September 12, 2012 Budget and Finance Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE

September 12, 2012 Budget and Finance Committee - RECOMMENDED AS AMENDED

September 18, 2012 Board of Supervisors - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

September 18, 2012 Board of Supervisors - PASSED ON FIRST READING AS AMENDED

Ayes: 8 - Avalos, Campos, Chiu, Cohen, Kim, Mar, Olague and Wiener

Noes: 3 - Chu, Elsbernd and Farrell

September 25, 2012 Board of Supervisors - FINALLY PASSED

Ayes: 8 - Avalos, Campos, Chiu, Cohen, Kim, Mar, Olague and Wiener

Noes: 3 - Chu, Elsbernd and Farrell

File No. 111371

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 9/25/2012 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Unsigned

Mayor

10/5/12

Date Approved

Date: October 5, 2012

I hereby certify that the foregoing resolution, not being signed by the Mayor within the time limit as set forth in Section 3.103 of the Charter, became effective without his approval in accordance with the provision of said Section 3.103 of the Charter.

Angela Calvillo
Clerk of the Board

File No.
111371

[Adopting Implementation Plan for CleanPowerSF.]

Ordinance adopting a revised Implementation Plan for the City's Community Choice Aggregation program, CleanPowerSF, and authorizing the filing of the Implementation Plan with the California Public Utilities Commission.

NOTE: Additions are *single-underline italics Times New Roman*; deletions are ~~*strike-through italics Times New Roman*~~. Board amendment additions are double-underlined; Board amendment deletions are ~~strikethrough normal~~.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Background

A. Ordinance 86-04 established and elected to implement a Community Choice Aggregation (CCA) program pursuant to Public Utilities Code Sections 218.3, 331.1, 366, 366.2, 381.1, 394, and 394.25, finding that CCA provides a means by which the City may help ensure the provision of clean, reasonably priced, and reliable electricity to San Francisco customers. Ordinance 86-04 further found that a CCA Program could provide a means for the City to increase the scale and cost-effectiveness of conservation, energy-efficiency and renewable energy in San Francisco. Ordinance 86-04 directed City departments to develop a draft Implementation Plan (IP) and to prepare a draft Request For Proposals (RFP) to solicit an electricity supplier for the program.

B. Ordinance 147-07 continued implementation of a CCA program by adopting a June 6, 2007 Program Description and Revenue Bond Action Plan and Draft Implementation Plan (Draft IP) and setting forth requirements for the CCA program based on the Draft IP. The Ordinance stated that "The Board of Supervisors expects to consider modifications to the Draft IP as the development of the CCA Program progresses. In particular, the Board of Supervisors expects that the City will gain additional material information regarding the

suppliers, costs, and financing mechanisms, among other things, from the Request for Information (RFI) that will be issued following adoption of this ordinance as well as from other work performed in connection with the CCA Program." (Page 7, lines 11-16.) The Ordinance directed the San Francisco Public Utilities Commission (SFPUC), in consultation with the Local Agency Formation Commission (LAFCO) to "draft for approval by the Board of Supervisors and submission to the CPUC a revised IP that is consistent with this ordinance, the companion ordinance adopting a CCA Governance Structure [Ordinance 146-07] and all applicable requirements. The revised IP should reflect additional information received through the RFI/RFP process." (Page 8, lines 5-9).

C. As required by Ordinance 147-07, the SFPUC issued a Request for Information (RFI) from potential suppliers in November 2007. In April 2009, the PUC issued a Request for Qualifications (RFQ) from potential suppliers.

D. Ordinance 232-09 authorized the issuance of an RFP for services related to the provision of electricity, finding it reasonable to allow some flexibility in meeting the CCA RFP requirements and program criteria set forth in Ordinances 86-04 and 147-07 in order to encourage robust responses to the RFP and to facilitate a successful CCA program.

E. The SFPUC issued the RFP on November 5, 2009 and received five responses. The independent review panel ranked highest the proposal from Power Choice, LLC. On February 9, 2010, in Resolution 10-0020, the SFPUC authorized the SFPUC General Manager to begin negotiating a contract with Power Choice, LLC for necessary services for CleanPowerSF customers.

F. Public Utilities Code Sections 366.2(c)(3) and (4) require a CCA program to develop an IP "detailing the process and consequences of aggregation" and to include with the IP a "statement of intent" (SI) affirming that the program will provide for universal access, reliability, equitable treatment of all customers classes, and adherence to state law. Public

Utilities Code Sections 366.2(c)(3) and (4) require the IP to address the following subjects: organizational structure of the CCA program, its operations and funding; ratesetting and other costs to participants; provisions for disclosure and due process in setting rates; methods for entering and terminating agreements with other entities; rights and responsibilities of program participants; description of third parties who will be supplying electricity, including information about the supplier's financial, technical, and operational capabilities; and termination of the program. The IP is to be adopted at a public hearing and filed with the California Public Utilities Commission (CPUC).

G. As directed by Ordinance 147-07, the SFPUC, in consultation with LAFCO, has revised the Draft IP to reflect the results of the RFI/RFP process and to reflect the other work of SFPUC and LAFCO in connection with the CCA program.

H. On February 9. 2010, in Resolution 10-0019, the SFPUC authorized the SFPUC General Manager to seek the approval of the Board of Supervisors to file a revised IP with the CPUC.

Section 2. Key Elements of the Revised Implementation Plan and Statement of Intent.

A. CleanPowerSF will seek to exceed State of California requirements for Renewable Portfolio Standards (RPS) and sets a goal of a 51% renewable portfolio by 2017. CleanPowerSF will meet its renewable goals, to the extent feasible, through new, preferably local, renewable sources of electricity generation and the use of demand side management efforts, including energy efficiency and conservation programs. Any decisions regarding construction of new facilities will only be reached after environmental review, including review under the California Environmental Quality Act.

B. CleanPowerSF intends to offer its customers stable and competitive rates with provisions for low-income ratepayer assistance. CleanPowerSF is committed to equitable treatment of all classes of customers. The program may offer customized rates to particular

customers where such opportunities are demonstrated to be of benefit to the entire program and therefore all CleanPowerSF customers.

C. To the extent beneficial for its customers, CleanPowerSF may roll out service to groups of its customers in phases, the details of any such phasing to be determined by the contract that the program signs with its electricity supplier.

D. In accordance with the City Charter and Ordinance 146-07, SFPUC will manage and control CleanPowerSF, and LAFCO will continue to advise the Board of Supervisors and SFPUC regarding the operation and management of the program.

E. In accordance with City Charter Section 8B.125, rates for CleanPowerSF services will be set by the SFPUC, subject to rejection by the Board of Supervisors. Before rates are set, the Rate Fairness Board will review the proposed rates and make a recommendation to the SFPUC regarding such proposed rates. Customers will be given notice and an opportunity to be heard before final rates are determined. Rates will cover electricity supply, capital, administrative and other costs of CleanPowerSF.

F. In accordance with Public Utilities Code Section 366.2(c)(2), electricity customers in San Francisco will be automatically enrolled in CleanPowerSF unless they opt out of the program. CleanPowerSF will provide all electricity customers in San Francisco two notices regarding the program within 60 days prior to their automatic enrollment and two additional notices within 60 days or two billing cycles after the start of service. The notices will include the terms and conditions of CleanPowerSF's service and an opportunity to opt out of the program.

G. CleanPowerSF intends to contract with a third party for electricity supply, account and billing services, and other services. The third party supplier will assist in developing plans for new renewable resources and new demand side management programs, including energy efficiency and conservation and may participate in the development of such

projects that CleanPowerSF decides to implement. Any decisions regarding construction of new facilities will only be reached after environmental review, including review under the California Environmental Quality Act. Eligible third party suppliers of electricity and other services have been identified using a competitive solicitation process and ranked using an independent review process. After SFPUC staff, in consultation with LAFCO, has negotiated a contract with a third party supplier, the contract will be reviewed and approved by the SFPUC and, if required under applicable City law, the Board of Supervisors.

H. As required by Public Utilities Code Section 366.2(c)(4), CleanPowerSF affirms its intent to satisfy all applicable requirements of California law and to provide universal access to CleanPowerSF service, reliable service, and equitable treatment of all classes of customers.

Section 3. Adoption of the Implementation Plan.

A. The Board of Supervisors finds that the Draft IP and the program requirements set forth in Ordinance 147-07 should be revised in accordance with Section 2 of this ordinance to reflect the information obtained from the RFI/RFQ/RFP solicitation process and the additional information learned by the SFPUC and LAFCO through their implementation of the CCA program.

B. The Board of Supervisors adopts the IP described in this ordinance as the IP for CleanPowerSF and authorizes the General Manager of the SFPUC, in consultation with the Executive Officer of the LAFCO, to file with the CPUC an IP that is consistent with this ordinance.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____
Thomas J. Long
Deputy City Attorney

City and County of San Francisco
Tails
Ordinance

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 100161 **Date Passed:** March 02, 2010

Ordinance adopting a revised Implementation Plan for the City's Community Choice Aggregation Program, CleanPowerSF, and authorizing the filing of the Implementation Plan with the California Public Utilities Commission.

February 23, 2010 Board of Supervisors - PASSED, ON FIRST READING

Ayes: 10 - Avalos, Campos, Chiu, Chu, Daly, Dufty, Elsbernd, Mar, Maxwell and Mirkarimi
Excused: 1 - Alioto-Pier

March 02, 2010 Board of Supervisors - FINALLY PASSED

Ayes: 10 - Avalos, Campos, Chiu, Chu, Daly, Dufty, Elsbernd, Mar, Maxwell and Mirkarimi
Excused: 1 - Alioto-Pier

File No. 100161

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 3/2/2010 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

3-12-10

Mayor Gavin Newsom

Date Approved

FILE NO. 091161

Amendment of the Whole
In Committee
10/16/2009

ORDINANCE NO. 232-09

[Approving Issuance of an RFP for Clean Power SF.]

Ordinance approving issuance of a Request for Proposals for Community Choice Aggregation (CCA) Services for the San Francisco CCA program, commonly known as CleanPowerSF.

NOTE: Additions are *single-underline italics Times New Roman*; deletions are ~~*strike-through italics Times New Roman*~~. Board amendment additions are double-underlined; Board amendment deletions are ~~strikethrough normal~~.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Background.

A. Ordinance 86-04 established a Community Choice Aggregation (CCA) program pursuant to Public Utilities Code Sections 218.3, 331.1, 366, 366.2, 381.1, 394, and 394.25, finding that CCA provides a means by which the City may help ensure the provision of clean, reasonably priced, and reliable electricity to San Francisco customers. Ordinance 86-04 further found that a CCA Program could provide a means for the City to increase the scale and cost-effectiveness of conservation, energy-efficiency and renewable energy in San Francisco and directed City departments to investigate the use of bonds issued under Section 9.107.8 of the Charter to augment CCA. Ordinance 86-04 also stated that the Board of Supervisors would review and approve a Draft Request for Proposals (RFP) for a CCA program and established certain requirements for the RFP.

B. Ordinance 147-07 set forth requirements for the CCA program based on a June 6, 2007 Program Description and Revenue Bond Action Plan and Draft Implementation Plan. (Draft IP) The Ordinance stated that "The Board of Supervisors expects to consider modifications to the Draft IP as the development of the CCA Program progresses. In

particular, the Board of Supervisors expects that the City will gain additional material information regarding the suppliers, costs, and financing mechanisms, among other things, from the Request for Information (RFI) that will be issued following adoption of this ordinance as well as from other work performed in connection with the CCA Program." (Page 7, lines 11-16.)

C. As required by Ordinance 147-07, the Public Utilities Commission (PUC) issued a Request for Information (RFI) from potential suppliers in November 2007. In April 2009 the PUC issued a Request for Qualifications (RFQ) from potential suppliers.

D. At a joint meeting on September 25, 2009, the PUC and the San Francisco Local Agency Formation Commission (LAFCo) considered documents submitted by their respective staffs related to issuance of an RFP, which documents are on file with the Clerk of the Board of Supervisors in File No. 091161.

E. The PUC and LAFCo directed their respective staffs to work together to finalize expeditiously an RFP seeking suppliers to implement a CCA program for San Francisco. The PUC and LAFCo directed that the RFP clearly identify all CCA program goals, state a strong preference that all proposers meet all program goals, and ensure that any qualified proposals that meet all CCA program goals will receive more points than proposals that do not meet all CCA program goals.

F. Ordinance 146-07 provides that the LAFCo may consider and make recommendations to the PUC and Board of Supervisors regarding the RFP. The LAFCo intends to consider the Draft RFP on October 16, 2009, and provide recommendations to the Board of Supervisors by separate LAFCo Resolution.

Section 2. Approvals.

A. The Board of Supervisors finds that it is reasonable to allow some flexibility in meeting the CCA RFP requirements and program criteria set forth in Ordinances 86-04 and

147-07, consistent with the direction provided by the PUC and LAFCo on September 25, 2009, in order to encourage robust responses and to facilitate a successful CCA program.

B. The Board of Supervisors authorizes the General Manager of the PUC, in consultation with the Executive Officer and the Chair of the LAFCo, to issue an RFP for services to implement CleanPower SF.

C. The Board of Supervisors authorizes further approvals which may be required under this Ordinance or Ordinances 86-04, 146-07, and 147-07, to be made by Resolution of the Board of Supervisors to the extent otherwise permitted by law.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____
THERESA L. MUELLER
Deputy City Attorney

City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails

Ordinance

File Number: 091161 **Date Passed:**

Ordinance approving issuance of a Request for Proposals for Community Choice Aggregation (CCA) Services for the San Francisco CCA program, commonly known as CleanPowerSF.

October 27, 2009 Board of Supervisors — PASSED, ON FIRST READING

Ayes: 10 - Alioto-Pier, Avalos, Campos, Chiu, Chu, Dufty, Elsbernd, Mar, Maxwell, Mirkarimi
Absent: 1 - Daly

November 3, 2009 Board of Supervisors — FINALLY PASSED

Ayes: 11 - Alioto-Pier, Avalos, Campos, Chiu, Chu, Daly, Dufty, Elsbernd, Mar, Maxwell, Mirkarimi

File No. 091161

I hereby certify that the foregoing Ordinance was FINALLY PASSED on November 3, 2009 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

11-10-09
Date Approved

Mayor Gavin Newsom

FILE NO. 070501

Amendment of the Whole
in Board
6/12/07

ORDINANCE NO. 147-07

[Adopting Community Choice Aggregation Draft Implementation Plan and Adopting Further Implementation Measures.]

Ordinance adopting a Community Choice Aggregation Program Description and Revenue Bond Plan and Draft Implementation Plan, establishing key aspects of the Community Choice Aggregation Program, and adopting further implementation measures.

Note: Additions are single-underline italics Times New Roman; deletions are ~~strikethrough italics Times New Roman~~. Board amendment additions are double underlined. Board amendment deletions are ~~strikethrough normal~~.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Findings

(a) San Francisco's Efforts to Become a CCA.

1. Pursuant to California Public Utilities Code Section 366.2, a city may become a Community Choice Aggregator (CCA) to provide electric power and related services to the electric customers located within its jurisdiction. As a CCA, the City and County of San Francisco (San Francisco) would aggregate the electric power loads of its citizens and businesses in accordance with state law. San Francisco would provide electric generation and related services to electric customers while responsibility for transmission, distribution, meter-reading, and billing for those customers would remain with Pacific Gas and Electric Company (PG&E).

2. Pursuant to Section 9.107.8 of the Charter the Board of Supervisors may provide for the issuance of revenue bonds to "finance or refinance the acquisition, construction, installation, equipping, improvement or rehabilitation of equipment or facilities for renewable

energy and energy conservation" without the voter approval otherwise required for the issuance of revenue bonds.

3. In Ordinance 86-04 the Board of Supervisors established a Community Choice Aggregation (CCA) program pursuant to Public Utilities Code Sections 218.3, 331.1, 366, 366.2, 381.1, 394, and 394.25, finding that CCA provides a means by which the City may help ensure the provision of clean, reasonably priced, and reliable electricity to San Francisco customers. Ordinance 86-04 further found that a CCA Program could provide a means for the City to increase the scale and cost-effectiveness of conservation, energy-efficiency and renewable energy in San Francisco and directed City departments to investigate the use of bonds issued under Section 9.107.8 of the Charter to augment CCA.

4. The Public Utilities Code requires that a prospective CCA adopt an Implementation Plan (IP) "detailing the process and consequences of aggregation." Sections 366.2(c)(3) and (4) set forth a number of detailed requirements for the contents of such a plan. This IP is to be adopted in a public hearing and filed with the California Public Utilities Commission (CPUC).

5. Local Power, a local advocacy organization, and the San Francisco Public Utilities Commission (SFPUC) submitted proposed CCA Implementation Plans to the Local Agency Formation Commission (LAFCO) in the summer of 2005. LAFCO referred Local Power's plan to the Board of Supervisors "with recommendation" and adopted a subsequent resolution reflecting elements of the SFPUC's plan. The Budget Analyst submitted a report comparing Local Power's plan to SFPUC's plan in 2006, and SF LAFCO commissioned a report by Nixon Peabody in November of 2005 analyzing the use of revenue bonds to augment CCA, and also analyzing the City Charter to evaluate the option of a CCA Board of Control as a legal mechanism to implement the startup of CCA. LAFCO accepted the recommendations of Nixon Peabody's report, referring it to the Board of Supervisors, after which it was approved

by a March 8, 2006 resolution of the CCA Task Force, created in 2004 by the Board of Supervisors to advise the Board of Supervisors and Mayor on the CCA IP and subsequent Request For Proposals (RFP). Finally, the Mayor's office hosted a working group including Supervisors, SFPUC staff, Department of the Environment (SFE) staff and interested parties and advocacy groups, including Local Power, Greenpeace, and the Sierra Club, to develop the CCA IP dated April 17, 2007. This document was updated with technical corrections and is now dated June 6, 2007. The document adopted by this ordinance is a two-part document which 1) describes the process the City will pursue in becoming a CCA and 2) includes a Draft Implementation Plan attached as Appendix A to be completed in accordance with the process described and adopted pursuant to Public Utilities Code Section 366.2. This document is adopted by this ordinance as a Community Choice Aggregation Program Description and Revenue Bond Action Plan and Draft Implementation Plan.

6. This IP discusses the legal and factual background of CCA, sets forth goals and policies for the CCA Program, and delineates further steps necessary for completing the start-up of San Francisco's CCA Program. It provides for both issuing an RFP and advising the Board of Supervisors and Mayor on the best response to the CCA RFP. This creates a basis on which to approve a multi-decade energy services contract that will include investing $1.2 billion of revenue bonds, to the extent feasible, into new green power facilities for San Francisco, most of them physically located within the City and County of San Francisco. This document, the San Francisco CCA Program Description and Revenue Bond Action Plan and Draft Implementation Plan, dated June 6, 2007, with Appendices and Attachments, is on file with the Clerk of the Board in File No. 070501, and is declared to be a part of this ordinance as if set forth fully herein.

7. The Board of Supervisors intends to approve a final IP, a subsequent CCA RFP as per Ordinance 86-04, a new supplier contract, and a Binding Notice of Intent to take

customers to be submitted as per CPUC Decisions D.04-12-046 (December 15, 2004) and D. 05-12-041 (December 16, 2005) in Rulemaking R.03-10-003.

8. In the event that the SFPUC does not act in within the timeframe set forth hereafter for the issuance of a Request For Information (RFI), LAFCO may recommend to the Board of Supervisors issuance of a LAFCO drafted RFI. Upon closure of the RFI response period, the SFPUC, in consultation with LAFCO, should prepare the RFP in a timely manner. In the event that the SFPUC fails to submit a draft RFP to LAFCO for consideration in a timely manner, LAFCO may recommend to the Board of Supervisors issuance of a LAFCO drafted RFP. The time period for issuance of the RFP shall not be less than sixty (60) days. In the event that the SFPUC fails to act in good faith in review of RFP responses and recommending a supplier based thereon, LAFCO may recommend a supplier to the Board of Supervisors.

(b) Key Aspects of the CCA Program.

1. A CCA RFP will set as a bidding requirement that each qualifying energy supplier must include within its proposed rates, including all costs, a rollout of 360 Megawatts (MW) of renewable electric resources, comprised of at least 31 MW of solar photovoltaic cells, 72 MW of local renewable distributed generation such as fuel cells, and 107MW of local energy efficiency and conservation measures, along with investment in a 150 MW wind turbine farm, all of which may be financed with City revenue bonds issued without voter approval pursuant to Charter Section 9.107.8, to the extent feasible.

2. Upon approval by the Board of Supervisors, the City will issue revenue bonds pursuant to Charter Section 9.107.8, to the extent feasible, to finance the 360 Megawatt rollout.

3. The CCA supplier must bid electric generation rates that will "meet or beat" current PG&E generation rates for each rate class; these electric generation rates charged to CCA

customers shall include the CCA supplier's power costs, the administrative costs and profit of the supplier, the repayment of revenue bonds or other funding of the roll-out, and all other City CCA-related costs. Thereafter the CCA supplier shall commit to a structured long-term rate intended to meet or beat PG&E's electric rates. Such structured rates may be in the form of tiered rates: an indexed generation rate that can never exceed that of the incumbent utility, a rate that increases at a fixed annual percentage or any other such tier(s) as the RFP respondent CCA supplier deems economically sound to its business model. Bids must also include the ultimate CCA electric bill rates, which will also include the Cost Responsibility Surcharge that will be imposed by the CPUC.

4. The supplier will be a single contractor, providing all required services at its own risk, and may hire subcontractors to provide services and work connected to any components of its CCA portfolio. The supplier will be required to provide appropriate financial assurances (payment/performance bonds, guarantees, or letters of credit) to secure its performance, and also to cover the cost of any re-entry fees in the event that a worst-case program failure scenario occurs, and customers are involuntarily returned to service provided by PG&E.

5. The term of the contract with the supplier or the revenue bond repayment term is not set a priori by the plan, but is expected to be fifteen years or longer for a viable revenue bond repayment. The SFPUC will seek input from prospective suppliers and establish contract durations and financing terms in the RFP.

6. The CCA Program is committed to universal access; therefore all the electric customers within the City and County of San Francisco will have an opportunity to become CCA customers, except ineligible customers as defined by state regulation such as those who receive Direct Access service. The City may consider opportunities to sell available SFPUC

capacity to the CCA, or otherwise seek to make existing or new capacity available, whether Hetch Hetchy capacity or in-city solar capacity.

7. The CCA Program is committed to reliably serving its generation customers. This will occur in two ways. First, the emphasis on in-city generation as a major element of this plan may provide opportunities to decrease the impacts of blackouts at the individual customer and neighborhood levels. Second, the City's CCA will be required to meet Resource Adequacy Requirements (RAR) established by the CPUC. However, the San Francisco CCA will not be able to directly react or respond to the vast majority of interruptions of electric power that occur due to distribution or transmission level problems which remain the responsibility of PG&E under state law.

8. The CCA Program is committed to providing equitable treatment of all classes of CCA customers. There will be no discrimination among customer classes in setting CCA rates. However the CCA will seek opportunities to site renewable generation at customer sites or to offer particular customers customized CCA rates, where such opportunities are demonstrated to be of benefit to the entire CCA program and therefore all CCA customers. In addition, the CCA Program will include provisions for low-income ratepayer assistance.

9. The CCA Program is committed to meeting or in some cases exceeding applicable State of California requirements for Load Serving Entities (LSE's) for Renewable Portfolio Standards (RPS), RAR, and Greenhouse Gas Emissions, and sets a goal of a 51% Renewable Portfolio Standard by 2017 that includes energy efficiency, solar photovoltaics and renewable distributed generation, rather than the 20% by 2017 RPS that PG&E is required to attain under state law.

10. The CCA Program may be able to secure funds for energy efficiency programs that are currently administered by PG&E. PG&E collects these funds from its customers

through a Public Goods Surcharge. San Francisco, through SFE, currently partners with PG&E to implement energy efficiency programs in San Francisco using a portion of these funds. Direct control of these funds by the CCA Program would maximize the local benefits of funds contributed by local customers. The City will aggressively pursue allocation of these existing ratepayer funds to the City's CCA Program.

Section 2. As set forth herein and to the extent consistent with all applicable laws, the Board of Supervisors adopts the attached document dated June 6, 2007 as a CCA Program Description and Revenue Bond Action Plan and Draft Implementation Plan. Modifications to this document and additional work will be required before submission of a revised IP to the CPUC at the appropriate time.

The Board of Supervisors expects to consider modifications to the Draft IP as the development of the CCA Program progresses. In particular, the Board of Supervisors expects that the City will gain additional material information regarding the suppliers, costs, and financing mechanisms, among other things, from the Request for Information (RFI) that will be issued following adoption of this ordinance as well as from other work performed in connection with the CCA Program.

Section 3. The Board of Supervisors establishes the following next steps toward implementation of a CCA Program:

(a) The SFPUC should issue a RFI to solicit input from interested parties regarding the development and implementation of a CCA Program within 20 days of the effective date of the adoption of this ordinance.

(b) The SFPUC, in consultation with LAFCO, should begin drafting a Program Basis Report and RFP to solicit potential CCA suppliers as described in Sections 4(A)-(G) of Ordinance 86-04, and the Draft IP. The RFP should also contain specific reference to the recently enacted AB 32 (The Global Warming Solutions Act) in order that respondents may

leverage financial incentives provided therein. The Program Basis Report and RFP should incorporate information from the RFI.

(c) The SFPUC and City Attorney should continue monitoring/participating in legislative and regulatory activities that may impact the CCA Program.

(d) The SFPUC, in consultation with LAFCO, should draft for approval by the Board of Supervisors and submission to the CPUC a revised IP that is consistent with this ordinance, the companion ordinance adopting a CCA Governance Structure and all applicable requirements. The revised IP should reflect additional information received through the RFI/RFP process.

Section 4. Before making a final commitment to proceed with offering CCA service to San Francisco customers, the Board of Supervisors will consider projected costs, risks and benefits of this program to CCA customers, SFPUC and other city agencies, and the City's general fund. In addition, the Board of Supervisors must ensure that the provision of CCA service to San Francisco customers can be reasonably expected to deliver significant benefits at a reasonable cost.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____
Deputy City Attorney

City and County of San Francisco
Tails
Ordinance

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 070501 **Date Passed:**

Ordinance adopting a Community Choice Aggregation Program Description and Revenue Bond Action Plan and Draft Implementation Plan, establishing key aspects of the Community Choice Aggregation Program, and adopting further implementation measures.

June 12, 2007 Board of Supervisors — AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE

Ayes: 11 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Jew, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval

June 12, 2007 Board of Supervisors — PASSED ON FIRST READING AS AMENDED

Ayes: 9 - Ammiano, Daly, Dufty, Elsbernd, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval
Noes: 2 - Alioto-Pier, Jew

June 19, 2007 Board of Supervisors — FINALLY PASSED

Ayes: 9 - Ammiano, Daly, Dufty, Elsbernd, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval
Noes: 2 - Alioto-Pier, Jew

File No. 070501

I hereby certify that the foregoing Ordinance was FINALLY PASSED on June 19, 2007 by the Board of Supervisors of the City and County of San Francisco.

Kay Gulbengay
Interim Clerk of the Board

JUN 28 2007
Date Approved

Mayor Gavin Newsom

FILE NO. 040236 ORDINANCE NO. 86-04

[Ordinance establishing a Community Choice Aggregation Program to allow San Francisco to aggregate the electrical load of San Francisco electricity consumers and to accelerate renewable energy, conservation and energy efficiency.]

Ordinance establishing a Community Choice Aggregation Program in accordance with California Public Utilities Code Sections 218.3, 331.1, 366, 366.2, 381.1, 394, and 394.25, allowing San Francisco to aggregate the electrical load of electricity consumers within San Francisco and to accelerate the introduction of renewable energy, conservation and energy efficiency into San Francisco's portfolio of energy resources.

Note: Additions are *single-underline italics Times New Roman*; deletions are ~~*strikethrough italics Times New Roman*~~. Board amendment additions are double underlined. Board amendment deletions are ~~strikethrough normal~~.

Be it ordained by the People of the City and County of San Francisco:

Section 1. FINDINGS

The Board of Supervisors of the City and County of San Francisco hereby finds and declares as follows:

A. On September 24, 2002, the Governor signed into law Chapter 838 which authorizes any California city, county, or city and county, whose governing board so elects, to combine the electricity loads of its residents and businesses in a community-wide electricity buyers' program known as Community Choice Aggregation.

B. Community Choice Aggregation is a method by which the City and County of San Francisco can help to ensure the provision of clean, reasonably priced and reliable electricity to San Francisco retail electricity customers.

C. San Francisco voters approved Proposition H in the November 6, 2001 General Municipal Election, adding Section 9.107.8 to the Charter, authorizing the Board to provide for the issuance of Proposition H revenue bonds ("H Bonds"), without further voter approval, for the purpose of financing or refinancing the acquisition, construction, installation, equipping, improvement or rehabilitation of equipment or facilities for renewable energy and energy conservation.

D. The City has a public mandate and an urgent public health and environmental justice-based need to facilitate the rapid and large-scale development of renewable energy and conservation resources within the jurisdiction of San Francisco as part of a plan to retire old, inefficient and highly polluting fossil-fueled electricity generation plants currently located within San Francisco, as well as a social, ecological and economic need for stable electricity prices, reliability, reasonable electricity rates and sustainability.

E. In December, 2002, San Francisco adopted an Electricity Resource Plan calling for the development of 107 Megawatts of load reduction through electricity load management and efficiency measures, 31 Megawatts of in-City solar energy, 72 Megawatts of small-scale distributed generation such as fuel cells in San Francisco and 150 Megawatts of new wind energy imports by 2012, as well as new natural gas powered generation needed to close over 420 megawatts of power generating facilities at Hunters Point and Potrero power stations.

F. In March, 2002, San Francisco also adopted Resolution 158-02 directing the City to commit to a greenhouse gas pollution reduction of 20% below 1990 levels by the year 2012.

G. In September, 2003, the Local Agency Formation Commission accepted a report from R.W. Beck indicating that Community Choice Aggregation may be a feasible method of

benefiting consumers and developing renewable energy resources, conservation programs and energy efficiency.

H. Photovoltaic energy facilities and equipment, energy efficiency and energy conservation technologies provide viable and cost-effective means of reducing San Francisco's peak electricity needs in a pollution-free manner and provide an alternative to the development of fossil fuel electricity generation facilities beyond what is needed to retire older power plants in San Francisco.

I. As a Community Choice Aggregator, the City could have a significant additional means of increasing the scale and cost-effectiveness of conservation, energy efficiency and renewable energy in San Francisco.

J. Community Choice Aggregation provides a means of exercising local control over electricity prices, resources and quality of service, and designing local energy systems to protect against future blackouts and rate shocks.

K. It is important that the City and County of San Francisco act expeditiously to implement a Community Choice Aggregation regime in order to properly engage the CPUC in rulemaking related to Community Choice Aggregation.

Section 2. BACKGROUND

Under California law (Public Utilities Code § 366.2 and other sections of Chapter 838 of 2002, formerly AB117), for San Francisco to implement Community Choice Aggregation so that it may find a new electric service provider for the residents and businesses within its jurisdiction, the Board of Supervisors must proceed via a series of ordinances. The Public Utilities Code further provides the following:

A. The California Public Utilities Commission (CPUC) must establish rules by which any entity can seek to provide electricity aggregation service, now being undertaken in Rulemakings 03-10-003 and 01-08-028;

B. All electrical corporations must cooperate with entities investigating, pursuing or implementing Community Choice Aggregation, and provide them with billing and electrical load data, subject to rules established by the CPUC;

C. A Community Choice Aggregator may apply to become the administrator for cost-effective energy efficiency and conservation programs for its retail electric customers;

D. A Community Choice Aggregator must develop an Implementation Plan detailing the process and consequences of aggregation, which must be adopted by the Board of Supervisors at a duly noticed public hearing by ordinance;

E. Potential Community Choice Aggregation customers must be fully informed of the program and be given ample opportunity to opt out pursuant to Section 366.2(c)(11) of the Public Utilities Code;

Section 3. COMMUNITY CHOICE AGGREGATION IMPLEMENTATION PLAN

The San Francisco Public Utilities Commission and the San Francisco Department of the Environment (collectively, "Departments") shall develop a Draft Implementation Plan for a Community Choice Aggregation (CCA) program for San Francisco for consideration by the Board of Supervisors.

A. Within 6 months of the effective date of this ordinance, the Departments shall submit a Draft Implementation Plan and schedule to the Board of Supervisors with a report on any CPUC or other developments that might impact the City's effort to proceed with implementation of a Community Choice Aggregation. The Board of Supervisors may, by motion, extend the deadline for submission of the Draft Implementation Plan. In developing its

report to the Board of Supervisors, the Departments shall, at a minimum, address the following topics:

1. The appropriate scope and organizational structure for the program, its operations, and its funding;

2. City ratesetting mechanisms and other costs to participants;

3. The benefits of the program to San Francisco customers;

4. How the program can meet or exceed the renewable portfolio standard required of Pacific Gas & Electric Company under state law;

5. How the program can meet or exceed consumer protection standards required of Pacific Gas & Electric Company by the CPUC, including provisions for disclosure and due process in setting rates and allocating costs among participants and rights and responsibilities of program participants, including credit issues and shutoff procedures;

6. How the program will provide information about any third parties that will be supplying electricity or providing other services under the program, including information about financial, technical and operational capabilities;

7. Termination of the program;

8. What functions of the program should be performed by entities other than the City, including an Electric Service Provider (ESP) or its subcontractors;

9. Appropriate contract and bid requirements, including:

I. A desired portfolio of resources that exceeds goals for energy efficiency, renewable energy, peak shaving and load management provided for in the City's adopted Electricity Resource Plan;

II. Recommended contract periods designed to optimize meeting or exceeding Electricity Resource Plan goals and to provide a reasonable repayment schedule for debt;

III. A requirement that bids include proposals for rate design, with all costs and profits associated with providing the various components of its proposed service package, including the costs of designing, building, operating and maintaining all renewable energy, conservation and energy efficiency installations, as well as any capital, insurance and other costs associated with fulfilling the commitments made in its bid.;

IV. Recommended bid evaluation mechanisms that will encourage respondents to compete based on the environmental and local economic benefits of their proposed portfolio of energy resources; and

V. Recommended contract provisions that will provide financial incentives to the City's Electric Service Provider, if one is selected, to accelerate deployment of and/or expand the energy efficiency and renewable energy components of its proposed energy portfolio.

B. With the assistance of City finance staff, the Departments shall determine how Proposition H Bonds may be used to augment CCA by providing financing for renewable energy and conservation projects, including a bond-repayment schedule based on anticipated revenues collected from monthly electric bills and other sources.

C. With the assistance of the City Attorney, the Departments shall continue to participate in any applicable proceedings at the CPUC on adopting rules for implementing community choice aggregation and other relevant proceedings.

D. The Departments shall collect electrical load data, including, but not limited to, data detailing electricity needs and patterns of usage, as determined by the California Public Utilities Commission, and in accordance with procedures established by the California Public Utilities Commission. Such data may include, but are not limited to, the following:

1. Energy consumption for each customer class for a given period of time;

2. Residential and nonresidential load shapes and most recent hourly load shapes;

3. Dynamic and static load profiles posted daily at PG&E's website by rate categories;

4. Number of current IOU customers;

5. Sum of customer non-coincident demand (kW or MW). (This data is used for calculating group diversity factors. The degree of diversity affects the utility's system requirements.);

6. Coincident peak demand (kW or MW) including the time of day and date (This data is used to determine the size of procurement contracts as well as revenue allocation and rate design.);

7. Electric load (kW or MW) for each hour of the year (8760 hourly loads) based on the most recent 12 months of load research. (This data provides information on the basic load shape for customer classes within a specific community or area of the community.);

8. Energy billing determinants (kWh) for each season and time of use period that applies to the tariff schedule (e.g. summer peak, summer partial peak, summer off-peak, winter peak, winter partial peak, winter off-peak, etc); and

9. Any other data the Departments deem necessary.

E. The Departments shall provide a copy of the report to the San Francisco Local Agency Formation Commission for review and comment to the Board of Supervisors.

F. The Board of Supervisors may adopt and/or amend the Draft Implementation Plan at a duly noticed public hearing by ordinance.

Section 4. COMMUNITY CHOICE AGGREGATION SOLICITATION PROCESS

Within 9 months of the effective date of this ordinance, provided the Board of Supervisors has adopted a CCA Implementation Plan pursuant to Section 3, the Departments shall submit to the Board of Supervisors for review and approval a Draft Request for Proposals (RFP) for a Community Choice Aggregation (CCA) program for San Francisco for use by prospective Electric Service Providers in submitting proposals to implement the City's adopted Implementation Plan. The Board of Supervisors may, by motion, extend the deadline for submission of the Draft RFP.

A. The Draft RFP shall include the following:

1. All appropriate billing and load data collected from PG&E pursuant to Section 2 of this ordinance;

2. Notice of the CPUC's findings regarding any cost recovery that must be paid by customers participating in the City's CCA to prevent a shifting of costs, based on a ninety day Implementation Plan certification process pursuant to Section 366.2(c)(7) of the Public Utilities Code; and

3. Any subsidies or financing available from the CPUC, the California Energy Commission, the federal government or the City.

B. Notification of the RFP shall be posted in at least one industry-recognized national publication upon its adoption by the Board.

C. The RFP shall solicit bids from Electric Service Providers pursuant to section 366.2(c) of the Public Utilities Code.

D. The RFP shall require that bids by prospective Electric Service Providers shall include a proposed rate design, with all costs and profits associated with providing the various components of its proposed service package, including the costs of designing, building, operating and maintaining all renewable energy, conservation and energy efficiency installations, as well as any capital, insurance and other costs associated with fulfilling the

commitments made in its bid, to be reflected in a per kilowatt hour rate schedule that is comparable to PG&E's rate schedule and consistent with the resource portfolio requirements and rate-setting mechanisms contained in the City's adopted Implementation Plan.

E. The RFP shall require that qualifying Electric Service Providers post a bond or demonstrate insurance sufficient to cover the cost of reentry fees in the event that customers are involuntarily returned to service provided by PG&E, pursuant to section 394.25(e) of the Public Utilities Code, and shall bid an insured electricity rate schedule, similar in structure to that appearing on monthly PG&E bills, which conforms to the City's rate-setting mechanism as adopted in its Implementation Plan, pursuant to 366.2.(c)(3) of the Public Utilities Code.

F. The RFP shall specify that no bid shall be accepted as qualified that does not meet the requirements of the state's Renewables Portfolio Standard law, section 399.12 of the Public Utilities Code.

G. Bidders responding to the City's RFP may have recourse to the use of Proposition H bonds to finance renewable energy and conservation projects that meet the requirements of the city's Implementation Plan, and may include in their bids a proposed schedule for the board to authorize the issuance of Proposition H bonds, as well as a bond-repayment schedule to repay its proposed renewable energy and conservation facilities, based on anticipated revenues collected from monthly electric bills through a proposed rate design and other eligible funding sources, in order to meet the City's energy resource portfolio requirements and rate-setting mechanism as outlined in this ordinance and elaborated by the Draft Implementation Plan.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____
Joseph P. Como
Deputy City Attorney

City and County of San Francisco

Tails

Ordinance

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 040236 **Date Passed:**

Ordinance establishing a Community Choice Aggregation Program in accordance with California Public Utilities Code Sections 218.3, 331.1, 366, 366.2, 381.1, 394, and 394.25, allowing San Francisco to aggregate the electrical load of electricity consumers within San Francisco and to accelerate the introduction of renewable energy, conservation and energy efficiency into San Francisco's portfolio of energy resources.

May 11, 2004 Board of Supervisors — PASSED ON FIRST READING

Ayes: 10 - Alioto-Pier, Daly, Dufty, Gonzalez, Hall, Ma, Maxwell, McGoldrick, Peskin, Sandoval
Excused: 1 - Ammiano

May 18, 2004 Board of Supervisors — FINALLY PASSED

Ayes: 9 - Daly, Dufty, Gonzalez, Hall, Ma, Maxwell, McGoldrick, Peskin, Sandoval
Absent: 2 - Alioto-Pier, Ammiano

File No. 040236

I hereby certify that the foregoing Ordinance was FINALLY PASSED on May 18, 2004 by the Board of Supervisors of the City and County of San Francisco.

Gloria L. Young
Clerk of the Board

MAY 27 2004

Date Approved

Mayor Gavin Newsom

San Francisco
Water Power Sewer
Services of the San Francisco Public Utilities Commission

525 Golden Gate Avenue, 13th Floor
San Francisco, CA 94102
T 415.554.3155
F 415.554.3161
TTY 415.554.3488

TO: **Angela Calvillo, Clerk of the Board**

FROM: **Patrick Caceres, Policy and Government Affairs Manager**

DATE: **November 11, 2015**

SUBJECT: **Draft Letter of Credit Agreement with JP Morgan**

Please find attached the initial drafts of the documents relating to the Standby Letter of Credit from JP Morgan. The current Draft Letter of Credit Agreement with JP Morgan is being negotiated at this time. This not the final draft and the Agreement is presently under review by the SFPUC, City Attorney's Office and Bond Counsel. These documents are approved to form by the City Attorney's Office to submit to the Board.

Edwin M. Lee
Mayor

Ann Moller Caen
President

Francesca Vietor
Vice President

Vince Courtney
Commissioner

Anson Moran
Commissioner

Ike Kwon
Commissioner

Harlan L. Kelly, Jr.
General Manager

[MW Draft: 10/30/15
Doc # 72158825]

J.P.Morgan

[_____], 2016

Public Utilities Commission
of the City and County of San Francisco
CleanPowerSF

Fee Agreement

City and County of San Francisco
Public Utilities Commission
525 Golden Gate Avenue, 13th Floor
San Francisco, California 94102
Attention: Chief Financial Officer
& Assistant General Manager, Business Services

Ladies and Gentlemen:

Reference is made to the Reimbursement Agreement, dated as of [_____], 2016 (the "***Agreement***"), between the Public Utilities Commission of the City and County of San Francisco (the "***Commission***") and JPMorgan Chase Bank, National Association (the "***Bank***"), relating to the provision by the Bank of standby letters of credit (each, a "**Letter of Credit**") to support the Commission's obligations under power purchase agreements entered into in connection with San Francisco's community choice aggregation. Any capitalized term below that is defined in the Agreement shall have the same meaning when used herein. This letter agreement ("***this Fee Agreement***") is the Fee Agreement described in the Agreement.

In order to induce the Bank to enter into the Agreement and to issue the Letters of Credit, the Commission agrees to make the following payments to the Bank at the following times:

(1) A facility fee (the "***Facility Fee***") for each Letter of Credit which shall be determined on a daily basis by multiplying (a) the Stated Amount of such Letter of Credit at 5:00 p.m., New York City time, on each day, by (b) the applicable Facility Fee Rate (as defined below) in effect for such day for the applicable tenor of such Letter of Credit, expressed as a decimal, and by (c) a fraction equal to 1/360. As used herein, "***Facility Fee Rate***" means, for a Letter of Credit, the per annum percentage set forth in the grid below, expressed as a decimal, opposite the level that contains the lowest Rating (it being understood that Level 1 contains the highest Ratings and Level 6 contains the lowest Ratings):

[Remainder of page intentionally left blank; pricing grid follows.]

LEVEL	S&P RATING	FITCH RATING	COMMITMENT FEE RATE
Level 1:	A+ or above	A+ or above	1.600%
Level 2:	A	A	1.750%
Level 3:	A-	A-	1.950%
Level 4:	BBB+	BBB+	2.200%
Level 5:	BBB	BBB	2.500%
Level 6:	BBB- or below	BBB- or below	2.900%

As used herein, the "***Rating***" means, with respect to a Rating Agency, the lowest long-term, unenhanced rating assigned by such Rating Agency to any Bonds. Notwithstanding the foregoing, (a) in the event that the Rating is withdrawn, suspended or otherwise unavailable from any Rating Agency for any reason and/or (b) upon the occurrence and during the continuance of an Event of Default, the Facility Fee Rate shall be increased in both cases by 1.00% per annum from the Facility Fee Rate in effect immediately prior thereto. Any change in the Facility Fee Rate resulting from a change in the Rating shall be and become effective as of and on the date of the announcement of the change in the Rating. References to the Rating above is a reference to the rating category of the Rating Agencies as presently determined by the respect Rating Agency and in the event of adoption of any new or changed rating system by a Rating Agency, the Ratings from such Rating Agency shall be deemed to refer to the rating category under the new rating system which most closely approximates the applicable rating category as currently in effect.

The Facility Fee shall accrue for each Letter of Credit from and including the Closing Date to and including the date on which such Letter of Credit terminates in accordance with its terms (the "**Termination Date**"). The Facility Fee shall be payable quarterly in arrears on the first Business Day of April, July, October and January of each calendar year (each, a "***Payment Date***") and on the Termination Date.

(2) In the event the Commission terminates or permanently reduces a Letter of Credit before its Termination Date, whether by replacement or otherwise, the Commission shall pay or cause to be paid to the Bank a non-refundable termination/reduction fee (the "***Termination/Reduction Fee***") equal to the Facility Fee that would have been payable to the Bank pursuant to this Fee Agreement but for the termination or permanent reduction of the Letter of Credit for the period from and including the date on which the Letter of Credit is terminated or permanently reduced (the "**Termination/Reduction Date**") to and including the Termination/Reduction Date assuming (i) a rate per annum equal to the rate per annum at which the Facility Fee is calculated immediately prior to the termination or permanent reduction of the Letter of Credit and (ii) the Stated Amount in effect immediately prior to the termination or permanent reduction of the Letter of Credit[1].

(3) A fee of $750 in respect of each Drawing made under each Letter of Credit, which fee shall be earned on the date such Drawing is honored by the Bank and, unless paid to the Bank at the time each Drawing is reimbursed, shall be paid in arrears on the first Payment Date that occurs after the date such drawing is honored by the Bank.

---

[1] At the time of Closing, will the Commission have sufficient information to create a declining Stated Amount balance for each Letter of Credit? If not, the Commission and the Bank can discuss alternatives.

(4) A transfer fee equal to $3,000 upon each transfer of a Letter of Credit in accordance with its terms. A transfer shall be deemed to have occurred whenever the beneficiary is replaced, substituted or changed as a result of sale, assignment, merger, consolidation, reorganization or an act of law. A transfer shall not be deemed to have occurred solely as a result of a change in the legal name of the beneficiary.

(5) At the time any amendment, modification, waiver, supplement, restatement or consent is sought in respect of any Basic Document by any person other than the Bank, a minimum fee of $3,000 plus attorneys' fees and expenses, which fee shall be earned and payable whether or not any such amendment, modification, waiver, supplement or restatement is executed or consent granted. Notwithstanding the preceding sentence, in connection with an extension only of a Letter of Credit, aside from legal fees and expenses incurred, no such minimum fee will be due and payable.

(6) Not later than five Business Days following the Closing Date, the fees and expenses of counsel to the Bank in connection with the preparation of this Fee Agreement, the Agreement and the Letters of Credit, which fees shall not exceed $42,500 and which expenses shall be paid on an as incurred basis.

All amounts paid pursuant to this Fee Agreement shall be non-refundable and payable in immediately available funds. Computations of the Facility Fee and the Termination/Reduction Fee shall be made on the basis of a 360 day year and actual days elapsed. All amounts paid pursuant to this Fee Agreement shall be paid in the manner and to the account set forth in the Agreement.

This Fee Agreement may not be amended or waived except by an instrument in writing signed by the Bank and the Commission.

The provisions of Section 7.14 of the Agreement shall be incorporated by this reference into this Fee Agreement as if such provisions were set forth in their entirety except that references to "this Agreement" shall mean this Fee Agreement and references to "hereunder" or "hereof" shall mean under this Fee Agreement or of this Fee Agreement.

This Fee Agreement may be executed in any number of counterparts, each of which shall be an original, and all of which, when taken together, shall constitute one agreement. Delivery of an executed signature page of this Fee Agreement by electronic transmission shall be effective as delivery of a manually executed counterpart hereof.

This Fee Agreement is delivered to the Commission on the understanding that neither this Fee Agreement nor any of its terms shall be disclosed, directly or indirectly, to any financial institution unless such disclosure is made to such financial institution in accordance with the terms of the California Public Records Act.

[Remainder of page intentionally left blank.]

Please confirm that the foregoing is our mutual understanding by signing and returning to the Bank an executed counterpart of this Fee Agreement. This Fee Agreement shall become effective as of the date first above referenced upon our receipt of an executed counterpart of this Fee Agreement from the Commission.

Very truly yours,

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION

By: _____
Name: James G. Millard
Title: Executive Vice President

Accepted and agreed to
as of the date first
written above by:

PUBLIC UTILITIES COMMISSION OF THE
CITY AND COUNTY OF SAN FRANCSICO

By:_____
Name: Harlan L. Kelly, Jr.
Title: General Manager

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney of the City and
County of San Francisco

By:_____
Name: Mark D. Blake
Title: Deputy City Attorney

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REIMBURSEMENT AGREEMENT

Dated as of [*], 2016,

between

PUBLIC UTILITIES COMMISSION OF
THE CITY AND COUNTY OF SAN FRANCISCO

and

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION

Relating to

CleanPowerSF

REIMBURSEMENT AGREEMENT

(This Table of Contents is not a part of this Reimbursement Agreement and is only for convenience of reference)

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This **REIMBURSEMENT AGREEMENT**, dated as of [*], 2016 (together with any amendments or supplements hereto, this *"Agreement"*), is between the PUBLIC UTILITIES COMMISSION OF THE CITY AND COUNTY OF SAN FRANCISCO (together with its successors and assigns, the *"Commission"*) and JPMORGAN CHASE BANK, NATIONAL ASSOCIATION (together with its successors and assigns, the *"Bank"*).

WITNESSETH:

WHEREAS, pursuant to the charter of the City and County of San Francisco (the *"City"*), the management and control of the City's community choice aggregation program (the *"CCA Program"*) is the responsibility of the Commission (Board of Supervisors Ordinance No. 146-07, Section 1(a));

WHEREAS, pursuant to Ordinance 86-04 of the Board of Supervisors of the City (the *"Board"*) established the CCA Program, called CleanPowerSF, and pursuant to Ordinances Ordinances146-07, 147-07 and 232-09 implemented the CCA Program through the work of the Commission in consultation with the San Francisco Local Agency Formation Commission (Board of Supervisors);

WHEREAS, pursuant to Section 5 of Ordinance 147-07 of the Board, the Board adopted a Draft Implementation Plan and Statement of Intent for the CCA Program (the *"Draft IP Plan"*);

WHEREAS, since its adoption in 2004, the Draft IP Plan has been revised on several occasions, most recently by the Updated Implementation Plan and Statement of Intent submitted to the California Public Utilities Commission on July 27, 2015 (together with all future amendments and modifications thereto, the *"IP Plan"*);

WHEREAS, pursuant to the IP Plan, the Commission desires to purchase power on behalf of CleanPowerSF by entering into power purchase agreements (each, a *"PPA"*) with providers of power (each, a *"PPA Counterparty"*);

WHEREAS, in order to secure the Commission's termination obligations under a PPA, the Commission is required to deliver to the applicable PPA Counterparty a standby letter of credit in substantially the form attached hereto as Exhibit A (each, a *"Letter of Credit"*);

WHEREAS, in connection therewith, the Commission has requested that the Bank issue Letters of Credit in an aggregate original stated amount not to exceed $40,000,000 to the PPA Counterparties listed on Schedule 1; and

WHEREAS, the Bank is willing to issue Letters of Credit to the PPA Counterparties listed on Schedule 1 upon the terms and conditions provided herein.

NOW THEREFORE, in consideration of the premises and the mutual agreements herein contained, the Commission and the Bank agree as follows:

ARTICLE 1

DEFINITIONS

Section 1.1 **Definitions**. As used in this Agreement:

"Agreement" has the meaning set forth in the introductory paragraph hereof.

"Annual Budget" means the budget or budgets prepared by the Commission in substantially the form that has been previously presented to the Bank.

"Applicable Law" means (i) all applicable common law and principles of equity and (ii) all applicable provisions of all (A) constitutions, statutes, rules, regulations and orders of all governmental and non-governmental bodies, (B) Governmental Approvals and (C) orders, decisions, judgments and decrees of all courts (whether at law or in equity) and arbitrators.

"Authorized Representative" means each of the General Manager of the San Francisco Public Utilities Commission, Assistant General Manager and Chief Financial Officer, Business Services, Deputy Chief Financial Officer, Financial Services, Debt Manager, Financial Planning, Utility Specialist, Financial Planning, Controller of the City and County of San Francisco, Director of Public Finance, and any other individual designated from time to time as a *"Designated Representative"* in a certificate executed by the General Manager of the San Francisco Public Utilities Commission and delivered to the Bank.

"Bank" has the meaning set forth in the introductory paragraph hereof.

"Bank Agreement" means any credit agreement, liquidity agreement, standby bond purchase agreement, reimbursement agreement, direct purchase agreement, bond purchase agreement, or other agreement or instrument (or any amendment, supplement or other modification thereof) under which, directly or indirectly, any Person or Persons undertake(s) to make or provide funds to make payment of, or to purchase or provide credit enhancement for, bonds or notes of the Commission secured by or payable from Revenues on parity with, or subordinate to the payment of, the Obligations.

"Bank Rate" means for any Term Loan a rate of interest per annum (i) for any day commencing on the date such Term Loan is made up to and including the ninetieth (90th) day succeeding the date such Term Loan is made, equal to the Base Rate from time to time in effect and (ii) for any day commencing on the ninety-first (91st) day succeeding the date such Term Loan is made and thereafter, equal to the Base Rate from time to time in effect *plus* one percent (1.00%); *provided, further, however,* that immediately and automatically upon the occurrence of an Event of Default (and without any notice given with respect thereto) and during the continuance of such Event of Default, *"Bank Rate"* will mean the Default Rate.

"Base Rate" means, for any day, the rate of interest per annum equal to the highest of: (i) the Prime Rate plus one and one half percent (1.5%), (ii) the Federal Funds Rate plus two percent (2.0%), and (iii) seven and one half percent (7.5%). Each determination of the Base Rate by the Bank shall be conclusive and binding on the Commission absent manifest error. Each change in the

Base Rate will take effect simultaneously with the corresponding change or changes in the Prime Rate or the Federal Funds Rate, as the case may be.

"Basic Documents" means, at any time, each of the following documents and agreements as in effect or as outstanding, as the case may be, at such time: (a) the Master Trust Indenture, (b) this Agreement, (c) the Fee Agreement and (d) the PPAs and any and all future renewals and extensions or restatements of, or amendments or supplements to, any of the foregoing.

"Board" has the meaning set forth in the recitals hereof.

"Bonds" has the meaning set forth in the Master Trust Indenture.

"Business Day" means a day which is not (a) a Saturday, Sunday or legal holiday on which banking institutions in New York, New York or San Francisco, California are authorized by law to close or (b) a day on which the New York Stock Exchange or the Federal Reserve Bank is closed.

"CCA Program" has the meaning set forth in the recitals hereof.

"Change in Law" means the occurrence, after the Closing Date, of any of the following: (a) the adoption or taking effect of any Law, including, without limitation Risk-Based Capital Guidelines, (b) any change in any Law or in the enforcement, administration, interpretation, implementation or application thereof by any Governmental Authority or compliance by the Bank or any Participant therewith or (c) the making or issuance of any request, rule, ruling, guideline, regulation or directive (whether or not having the force of law) by any Governmental Authority; *provided* that, notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act (or any other statute referred to therein or amended thereby) and all laws, requests, rules, regulations, policies, rulings, guidelines, regulations, standards or directives thereunder or issued in connection therewith and any interpretation, application or promulgation implementing, invoking or in any way the Dodd-Frank Wall Street Reform and Consumer Protection Act and (ii) all laws, requests, rules, rulings, standards, policies, guidelines, regulations or directives promulgated by, or in response to requests, guidelines or directives published by, the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities will, in each case, be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

"Charter" has the meaning set forth in the recitals hereof.

"City" has the meaning set forth in the recitals hereof.

"Closing Date" means the date on which the Letters of Credit are issued, which, subject to the satisfaction of the conditions precedent set forth in Section 3.1 hereof, is expected to be [_____], 2016.

"Code" means the Internal Revenue Code of 1986, as amended from time to time, including regulations, rulings and judicial decisions promulgated thereunder.

"Commission" has the meaning set forth in the introductory paragraph hereof.

"Debt" of any Person means, at any date, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business, (d) all obligations of such Person as lessee under capital leases, (e) all debt of others secured by a Lien on any asset of such Person, whether or not such debt is assumed by such Person, (f) all Guarantees by such Person of debt of other Persons, (g) all obligations of such Person under any Swap Contract and (h) all obligations of such Person to reimburse or repay any bank or other Person in respect of amounts paid or advanced under a letter of credit, credit agreement, liquidity facility or other instrument.

"Default" means any condition or event which with the giving of notice or lapse of time or both would, unless cured or waived, become an Event of Default.

"Default Rate" means, for any day, a per annum rate of interest equal to the sum of the Base Rate from time to time in effect *plus* three percent (3.0%).

"Designated Jurisdiction" means any country or territory to the extent that such country or territory itself is the subject of any Sanction.

"Draft IP Plan" has the meaning set forth in the recitals hereof.

"Draw Date" has the meaning set forth in Section 2.4(a) hereof.

"Drawing" has the meaning set forth in Section 2.3 hereof.

"Employee Plan" means an employee benefit plan covered by Title IV of ERISA and maintained for employees of the Commission.

"Environmental Laws" means any and all federal, state and local statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or other governmental restrictions relating to the environment or to emissions, discharges or releases of pollutants, contaminants, petroleum or petroleum products, chemicals or industrial, toxic or hazardous substances or wastes into the environment including, without limitation, ambient air, surface water, ground water or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, petroleum or petroleum products, chemicals or industrial, toxic or hazardous substances or wastes or the clean-up or other remediation thereof.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, or any successor statute thereto.

"Event of Default" has the meaning set forth in Section 6.1 hereof.

"Excluded Taxes" means, with respect to the Bank or any Participant, (a) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it

(in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which the Bank or such Participant is organized or in which its principal office is located and (b) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which the Commission is located.

"Federal Funds Rate" means, for any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; *provided* that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to the Bank on such day on such transactions as determined by the Bank. Each determination of the Federal Funds Rate by the Bank shall be deemed conclusive and binding on the Commission absent manifest error.

"Fee Agreement" means the Fee Agreement dated the Closing Date between the Commission and the Bank, as supplemented and amended from time to time.

"Fiscal Year" has the meaning set forth in the Master Trust Indenture.

"Fitch" means Fitch Ratings, Inc.

"GAAP" means generally accepted accounting principles in the United States of America from time to time as set forth in (a) the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and (b) statements and pronouncements of the Government Accounting Standards Board, as modified by the opinions, statements and pronouncements of any similar accounting body of comparable standing having authority over accounting by governmental entities.

"Governmental Approval" means an authorization, consent, approval, license or exemption of, registration or filing with, or report to, any Governmental Authority.

"Governmental Authority" means the government of the United States or any other nation or any political subdivision thereof or any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, central bank, service, district or other instrumentality of any governmental entity or other entity exercising executive, legislative, judicial, taxing, regulatory, fiscal, monetary or administrative powers or functions of or pertaining to government, or any arbitrator, mediator or other Person with authority to bind a party at law.

"Guarantees" means, for any Person, all guarantees, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations of such Person to purchase, to provide funds for payment, to supply funds to invest in any other Person or otherwise to assure a creditor of another Person against loss.

"Hetch Hetchy Project" means the Hetch Hetchy Water and Power Project, including the O'Shaughnessy Dam, the Hetch Hetchy Reservoir, the Canyon and Mountain Tunnels, the Kirkwood, Moccasin and Holms Powerhouses, Cherry Lake and its dam, Lake Eleanor and its dam, the related water storage and transportation and hydro-electric generating facilities down to and including the Moccasin Powerhouse, all located in Yosemite National Park, Stanislaus National Forest and Tuolumne County, the rights to which were granted to the City by the Raker Act of 1913, and the related transmission facilities down to the City of Newark.

"Indemnified Taxes" means Taxes other than Excluded Taxes.

"Investment Policy" means the investment guidelines of the City as in effect on the date hereof, as such investment guidelines may be amended from time to time in accordance with State laws.

"IP Plan" has the meaning set forth in the recitals hereof.

"Law" means any treaty or any Federal, regional, state and local law, statute, rule, ordinance, regulation, code, license, authorization, decision, injunction, interpretation, policy, guideline, supervisory standard, order or decree of any court or other Governmental Authority.

"Letter of Credit" has the meaning set forth in the recitals hereof.

"Lien" means, with respect to any asset, (a) any lien, charge, claim, mortgage, security interest, pledge or assignment of revenues of any kind in respect of such asset or (b) the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such asset.

"Master Trust Indenture" means the Trust Indenture, dated as of May 1, 2015, between the Commission and U.S. Bank National Association, as trustee for the holders from time to time of the Commission's power revenue bonds.

"Material Litigation" shall have the meaning assigned to such term in Section 4.5.

"Maximum Rate" means the maximum non-usurious interest rate that may, under applicable federal law and applicable state law, be contracted for, charged or received under such laws.

"Obligations" means all obligations of the Commission to the Bank or any Participant arising under or in relation to this Agreement and the Fee Agreement, including repayment of Drawings and Term Loans.

"*Operation and Maintenance Expenses"* means the costs of the proper operation, maintenance and repair of the Power Enterprise and taxes, assessments or other governmental charges lawfully imposed on the Power Enterprise or the Revenues, or payments in lieu thereof, as determined in accordance with GAAP (as defined in the Master Trust Indenture). Operation and Maintenance Expenses shall include the payment of pension charges and proportionate payments to such compensation and other insurance or outside reserve funds as the Commission may establish or the Board may require with respect to employees of the Power Enterprise, as provided

in Section 16.103(a) of the Charter. Operation and Maintenance Expenses shall also include repairs and maintenance costs that constitute operating expenses in accordance with GAAP (as defined in the Master Trust Indenture). Operation and Maintenance Expenses shall not include (a) any allowance for amortization, depreciation or obsolescence, (b) operation and maintenance expenses of the Water Enterprise, (c) operation and maintenance expenses of the Wastewater Enterprise, (d) operation and maintenance expenses of any Separate System, (e) any expense for which, or to the extent to which, the Commission is or will be paid or reimbursed from or by any source that is not included or includable as Revenues, (e) losses from any sale or other disposition of Power Enterprise assets, and (g) non-cash losses and costs that may be required or permitted under GAAP (as defined in the Master Trust Indenture) to be expensed, including deferred expenses and unrealized mark-to-market losses.

"Other Revenue Documents" has the meaning set forth in Section 5.1(c)(i) hereof.

"Other Taxes" means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Basic Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Basic Document.

"Participant" has the meaning set forth in Section 7.3(b) hereof.

"Participation" has the meaning set forth in Section 7.3(b) hereof.

"Payment Account" means the payment account for the Bank set forth in Section 7.2 hereof.

"Person" means an individual, a firm, a corporation, a partnership, a limited liability company, an association, a trust or any other entity or organization, including a government or political subdivision or any agency or instrumentality thereof.

"Power Enterprise" means the Commission's Power Enterprise established and existing as of the date of the Master Trust Indenture to provide electric power and related services to the City and its departments, agencies and commissions as well as other customers both in and outside of the City, including that portion of the Hetch Hetchy Project used for power generation, and all other power generation, transmission and distribution facilities and related facilities, streetlights, property and rights constituting a part of the Power Enterprise, together with any and all additions, improvements, betterments, renewals, replacements and repairs thereto and extensions thereof, but shall not include: (a) the Water Enterprise, (b) the Wastewater Enterprise, or (c) any Separate System.

"Power Enterprise Debt" means Debt of the Commission secured by, and payable from, Revenues.

"PPA" has the meaning set forth in the recitals hereof.

"PPA Counterparty" has the meaning set forth in the recitals hereof.

"Prime Rate" means on any day, the rate of interest in effect for such day as publicly announced from time to time by the Bank as its "prime rate." The *"prime rate"* is a rate set by the Bank based upon various factors including the Bank's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such rate announced by the Bank shall take effect at the opening of business on the day specified in the public announcement of such change.

"Principal Payment" has the meaning set forth in Section 2.4(b) hereof.

"Property" means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, whether now owned or hereafter acquired.

"Qualified Counterparty" means a party other than the Commission which is the party to a Swap Agreement and, at the time of execution and delivery of the Swap Agreement, (a) (i) whose senior debt obligations are or claims-paying ability is rated in one of the three highest rating categories of each of at least two Rating Agencies (without regard to any gradations within a rating category) or (ii) whose obligations under the Swap Agreement are guaranteed for the entire term of the Swap Agreement by a Person whose senior debt obligations are or claims-paying ability is rated in one of the three highest rating categories of each of at least two Rating Agencies (without regard to any gradations within a rating category) and (b) which is otherwise qualified to act as the party to a Swap Agreement with the Commission under any applicable law.

"Rating Agency" and *"Rating Agencies"* means, individually or collectively, as applicable, Fitch and S&P.

"Refundable Credits" means amounts payable by the Federal government to the Commission under direct-pay subsidy programs substantially similar to the Build America Bond program under Section 54AA of the Code.

"Reimbursement Obligations" means any and all obligations of the Commission to reimburse the Bank for Drawings under the Letters of Credit and all obligations to repay the Bank for any Term Loan, including in each instance all interest accrued thereon.

"Revenues" means all revenues, rates and charges received and accrued by the Commission for electric power and energy and other services, facilities and commodities sold, furnished or supplied by the Power Enterprise, together with income, earnings and profits therefrom (including interest earnings on the proceeds of any Bonds pending application thereof), as determined in accordance with GAAP (as defined in the Master Trust Indenture). Revenues shall include payments to the Power Enterprise on or with respect to loans from any Separate System maintained by the Commission. Revenues shall not include (a) proceeds from the issuance of any obligations for borrowed money, (b) amounts loaned to the Power Enterprise, (c) Swap Agreement Receipts, (d) proceeds from taxes, (e) customer deposits while retained as such, (f) contributions in aid of construction, (g) gifts, (h) grants, (i) insurance or condemnation proceeds that are properly allocable to a capital account, (j) non-cash revenues or gains that may be required or permitted under GAAP (as defined in the Master Trust Indenture), including mark-to-market gains and deferred revenues, (k) money received by the Commission as the proceeds of the sale of any portion of the properties of the Power Enterprise, (l) amounts by their terms not available for the payment of Operation and

Maintenance Expenses or principal and interest on the Bonds, (m) Refundable Credits; (n) revenues of any Separate System, (n) Water Enterprise revenues as defined in the document or agreement governing the then-outstanding senior lien obligations of the Water Enterprise for borrowed money, and (o) Wastewater Enterprise revenues as defined in the document or agreement governing the then-outstanding senior lien obligations of the Wastewater Enterprise for borrowed money.

"Risk-Based Capital Guidelines" means (i) the risk-based capital guidelines in effect in the United States, including transition rules, and (ii) the corresponding capital regulations promulgated by regulatory authorities outside the United States including transition rules, and any amendments to such regulations.

"S&P" means Standard & Poor's Ratings Services, a Standard & Poor's Financial Services LLC business.

"Sanction(s)" means any international economic sanction administered or enforced by the United States Government (including, without limitation, OFAC), the United Nations Security Council, the European Union, Her Majesty's Treasury or other relevant sanctions authority.

"Separate System" means any electric power or energy generation, transmission, distribution or other facilities, property and rights that may be hereafter purchased, constructed or otherwise acquired by the Commission where the revenues derived from the ownership and operation of which shall be pledged to the payment of bonds or other obligations for borrowed money issued or incurred to purchase, construct or otherwise acquire such facilities, property and rights and shall not be included in Revenues and the operation and maintenance expenses with respect to which shall not be included in Operation and Maintenance Expenses.

"Series" has the meaning set forth in the Master Trust Indenture.

"State" means the State of California.

"Stated Amount" has the meaning set forth in Section 2.1 hereof.

"Stated Expiration Date" means, with respect to a Letter of Credit, the date on which such Letter of Credit is scheduled to expire and terminate in accordance with its terms, which, initially, shall be five years from the date of issuance.

"Swap Agreement" means any financial instrument that: (a) is entered into by the Commission with a party that is a Qualified Counterparty at the time the instrument is entered into; (b) is entered into with respect to all or a portion of a Series of Bonds; (c) is for a term not extending beyond the final maturity of the Series of Bonds or portion thereof to which it relates; (d) provides that the Commission shall pay to such Qualified Counterparty an amount accruing at either a fixed rate or a variable rate, as the case may be, on a notional amount equal to or less than the principal amount of the Series of Bonds or portion thereof to which it relates, and that such Qualified Counterparty shall pay to the Commission an amount accruing at either a variable rate or fixed rate, as appropriate, on such notional amount; (e) provides that one party shall pay to the other party any net amounts due under such instrument; and (f) has been designated to the Trustee in the Supplemental Trust Indenture (as defined in the Master Trust Indenture) authorizing the

issuance of the related Series of Bonds or portion thereof or in a Certificate (as defined in the Master Trust Indenture) of the Commission as a Swap Agreement with respect to such Bonds.

"Swap Agreement Receipts" means the regularly scheduled net amounts required to be paid by a Qualified Counterparty to the Commission pursuant to a Swap Agreement.

"Taxes" means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, fines, additions to tax or penalties applicable thereto.

"Term Loan" and *"Term Loans"* each has the meaning set forth in Section 2.4(a) hereof.

"Term Loan Maturity Date" has the meaning set forth in Section 2.4(b) hereof.

"2014 Audited Financial Statements" has the meaning set forth in Section 4.6

"Unpaid Drawing" has the meaning set forth in Section 2.3 hereof.

"Wastewater Enterprise" means the municipal sanitary waste and storm water collection, treatment and disposal system, as located partially within and partially without the City, and all additions, betterments, and extensions to said sanitary waste and storm water system.

"Water Enterprise" means the municipal water supply, storage and distribution system of the Commission, as located partially within and partially without the City, including all of the presently existing municipal water system of the City, and all additions, betterments, and extensions to said water system, but excluding any water supply, storage or distribution facilities which constitute part of the Hetch Hetchy Project.

The foregoing definitions are equally applicable to both the singular and plural forms of the defined terms. Any capitalized terms used herein which are not specifically defined herein have the same meanings herein as in the Master Trust Indenture. All references in this Agreement to times of day are references to New York City time unless otherwise expressly provided herein. Unless otherwise inconsistent with the terms of this Agreement, all accounting terms are interpreted and all accounting determinations hereunder are made in accordance with GAAP.

ARTICLE 2

LETTERS OF CREDIT

Section 2.1 **Issuance of Letter of Credits**. Upon the terms, subject to the conditions and relying upon the representations and warranties set forth in this Agreement or incorporated herein, the Bank agrees to issue at the request and for the account of the Commission a Letter of Credit to each PPA Counterparty with a stated amount (*"Stated Amount"*) in the amount set forth opposite the name of the PPA Counterparty on Schedule 1; provided, that the maximum stated amount of all Letters of Credit in the aggregate shall not exceed $40,000,000.

Section 2.2 **Letter of Credit Drawings**. Each PPA Counterparty is authorized to make Drawings under the Letter of Credit issued to such PPA Counterparty in accordance with its terms.

The Commission authorizes the Bank to make payments under each Letter of Credit in the manner therein provided. The Commission irrevocably approves reductions of the Stated Amount as provided in each Letter of Credit.

Section 2.3 **Reimbursement**. Subject to the provisions of Section 2.4 hereof, the Commission agrees to pay, or to cause to be paid, to the Bank (i) on each date on which the Bank honors any demand for payment under any Letter of Credit (each such payment by the Bank being referred to as a *"Drawing"*) a sum equal to the amount so paid under the applicable Letter of Credit (any amount so paid until reimbursed being referred to as an *"Unpaid Drawing"*), plus (ii) interest on the amount of each such Unpaid Drawing from and including the date such Drawing is paid until the Bank is reimbursed in full for such Drawing equal to the Default Rate. Subject to the provisions of Section 2.4 hereof respecting Term Loans (each of which Term Loans when made will constitute reimbursement of a Unpaid Drawing in an amount equal to the amount of such Term Loan), the Commission is obligated, without notice of a Drawing or demand for reimbursement (which notice is waived by the Commission), to reimburse the Bank for all Drawings on the same day as made. The Commission and the Bank agree that the reimbursement in full of each Drawing on the day such Drawing is made is intended to be a contemporaneous exchange for new value given to the Commission by the Bank. If a Drawing is reimbursed at or prior to 4:00 p.m. New York City time on the same day on which it is made, no interest will be payable on such Drawing.

Section 2.4 **Term Loans.**

(a) If (i) the representations and warranties of the Commission contained in Article Four of this Agreement are true and correct as of the date the Bank honors payment of a Drawing (the *"Draw Date"*), (ii) no Material Litigation shall be pending on the Draw Date; (iii) no event has occurred and is continuing on the Draw Date which has or is having a material adverse effect on the Commission's obligations under this Agreement, the Fee Agreement or the Indenture or the ability of the Commission to perform its obligations in connection herewith or therewith; (iv) no Default or Event of Default has occurred and is continuing on the Draw Date; and (v) the Drawing made on such Draw Date is not reimbursed in full on or before 4:00 p.m. New York City time on the Draw Date, the amount of such Drawing which remains unpaid shall automatically without further action be converted to a term loan (individually, a *"Term Loan"* and, collectively, the *"Term Loans"*) on the applicable Draw Date and such Unpaid Drawing (or unpaid portion thereof) shall be deemed paid with the proceeds of such Term Loan. Unless the Commission has otherwise previously advised the Bank in writing, payment by the Bank of any Drawing under a Letter of Credit will be deemed to constitute a representation and warranty by the Commission that on the date of such Drawing (w) the representations and warranties of the Commission contained in Article Four hereof are true and correct on the applicable Draw Date, (x) no Material Litigation shall be pending on the applicable Draw Date, (y) no event has occurred and is continuing on the applicable Draw Date which has or is having a material adverse effect on the Commission's obligations under this Agreement, the Fee Agreement or the Indenture or the ability of the Commission to perform its obligations in connection herewith or therewith and (z) no Default or Event of Default has occurred and is continuing on the applicable Draw Date.

(b) The Commission agrees to pay to the Bank an amount equal to the unpaid principal amount of each Term Loan made by the Bank, together with interest thereon from and including the Draw Date on which such Term Loan is made to but excluding the date the Bank is reimbursed therefor in full at a rate per annum equal to the Bank Rate; *provided* that, from and after the

occurrence of an Event of Default, each Term Loan will bear interest at the Default Rate. Interest on the unpaid balance of each Term Loan must be paid to the Bank monthly in arrears on the first Business Day of each calendar month during the term of such Term Loan (commencing with the first such date to occur after the applicable Draw Date) and on the seventh anniversary of such Draw Date (the *"Term Loan Maturity Date"*). Each Term Loan must be repaid in equal (or as nearly as possible) semiannual installments (each such installment referred to as a *"Principal Payment"*), such Principal Payments to commence on the date that is six months following the applicable Draw Date and on each six month anniversary thereafter and with the final installment being due and payable on the Term Loan Maturity Date therefor; *provided* that if the Commission elects to prepay a Term Loan in part, such prepayment will be applied to the remaining Principal Payments in inverse order of the due dates of such Principal Payments.

(c) The Authority may prepay any Term Loan in whole, or in part in a minimum amount of $500,000 and in integral multiples of $100,000 in excess thereof, in each case without penalty, on two Business Days' prior written notice, such prepayment to be applied as set forth in paragraph (b) above.

Section 2.5 **Fees.** The Commission agrees to pay and perform its obligations provided for in the Fee Agreement, including the payment of all fees and expenses provided for therein in the amounts and on the dates set forth therein. The terms and provisions of the Fee Agreement are incorporated herein by reference. All references to amounts due under this Agreement will be deemed to include all amounts and obligations (including, but not limited to, fees and expenses) due under the Fee Agreement. All fees paid under this Agreement and the Fee Agreement will be fully earned when due and nonrefundable when paid.

Section 2.6 **Termination or Replacement of a Letter of Credit.** If the beneficiary of a Letter of Credit so agrees, the Commission may terminate or replace the Letter of Credit issued to such beneficiary prior to the expiration thereof upon not less than thirty (30) days' prior written notice to the Bank and upon payment in full on or prior to such termination or replacement date of all Obligations owing in respect of such Letter of Credit.

Section 2.7 **Computation of Interest and Fees.** Fees payable hereunder and under the Fee Agreement will be calculated on the basis of a year of 360 days and the actual number of days elapsed. Interest payable hereunder will be calculated on the basis of a year of 365 and the actual number of days elapsed. Interest will accrue during each period during which interest is computed from and including the first day thereof to but excluding the last day thereof.

Section 2.8 **Payment Due on Non-Business Day to Be Made on Next Business Day. If** any sum becomes payable pursuant to this Agreement on a day which is not a Business Day, the date for payment thereof will be extended, without penalty, to the next succeeding Business Day, and such extended time will be included in the computation of interest and fees.

Section 2.9 **Default Rate.** If any Obligation is not paid when due, such Obligation will bear interest until paid in full at a rate per annum equal to the Default Rate, payable on demand. Upon the occurrence and during the continuance of an Event of Default, the Obligations of the Commission hereunder will bear interest at the Default Rate, which interest will be payable by the Commission to the Bank upon demand therefor and be calculated on the basis of a 365 day year and actual days elapsed.

Section 2.10 **Source of Funds**. All payments made by the Bank under each Letter of Credit will be made from funds of the Bank and not from the funds of any other Person.

Section 2.11 **Extension of Stated Expiration Date**. If the Commission on any date which is not more than one hundred twenty (120) days nor less than sixty (60) days prior to the Stated Expiration Date (as the same may be extended from time to time) of any Letter of Credit submits to the Bank a written request for an extension of the Stated Expiration Date of such Letter of Credit for a period as specified in such written request, the Bank shall make reasonable efforts to respond to such request within thirty (30) days after receipt of all information necessary, in the Bank's reasonable judgment, to permit the Bank to make an informed credit decision. If the Bank fails to definitively respond to such request within such period of time, the Bank will be deemed to have refused to grant the extension requested. The Bank may, in its sole and absolute discretion, decide to accept or reject any such proposed extension, and no extension will become effective unless the Bank has consented thereto in writing. The consent of the Bank, if granted, is conditioned upon the preparation, execution and delivery of documentation in form and substance reasonably satisfactory to the Bank and consistent with this Agreement. If such an extension request is accepted by the Bank in its sole and absolute discretion, the then current Stated Expiration Date for the Letter of Credit will be extended to the date agreed to by the Commission and the Bank.

Section 2.12 **Taxes**.

(a) *Payments Free of Taxes.* Any and all payments by or on account of any obligation of the Commission hereunder or under the Fee Agreement must be made free and clear of and without reduction or withholding for any Indemnified Taxes or Other Taxes; *provided* that if the Commission is required by Applicable Law to deduct any Indemnified Taxes (including any Other Taxes) from such payments, then (i) the sum payable will be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Bank or any Participant receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Commission shall make such deductions and (iii) the Commission shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with Applicable Law.

(b) *Payment of Other Taxes by the Commission.* Without limiting the provisions of paragraph (a) above, the Commission shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with Applicable Law.

(c) *Indemnification by the Commission.* The Commission shall indemnify the Bank and each Participant, within thirty (30) days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) paid by the Bank or such Participant and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate stating the amount of such payment or liability delivered to the Commission by the Bank or any Participant will be conclusive absent manifest error. In addition, the Commission shall indemnify the Bank and each Participant, within thirty (30) days after demand therefor, for any incremental Taxes that may become payable by the Bank or such Participant as a result of any failure of the Commission to pay any Taxes when due to

the appropriate Governmental Authority or to deliver to the Bank or such Participant pursuant to paragraph (d) below, documentation evidencing the payment of Taxes.

(d) *Evidence of Payments.* As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Commission to a Governmental Authority, the Commission shall deliver to the Bank or the applicable Participant the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Bank or such Participant, as applicable.

(e) *Treatment of Certain Refunds.* If the Bank or any Participant determines, in its sole discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified pursuant to this Section (including additional amounts paid by the Commission pursuant to this Section), it shall pay to the applicable indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, under this Section with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Bank or such Participant, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); *provided* that the applicable indemnifying party, upon the request of the Bank or such Participant, as applicable, agrees to repay the amount paid over pursuant to this Section (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Bank or such Participant in the event the Bank or such Participant is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (e), in no event will the Bank or any Participant be required to pay any amount to an indemnifying party pursuant to this paragraph (e) the payment of which would place the Bank or such Participant in a less favorable net after-Tax position than the Bank or such Participant would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. This paragraph will not be construed to require the Bank or any Participant to make available its tax returns (or any other information relating to its taxes which it deems confidential) to the Commission or any other Person.

(f) *Survival.* Without prejudice to the survival of any other agreement of the Commission hereunder, the agreements and obligations of the Commission contained in this Section will survive the termination of this Agreement and the Letters of Credit and the payment in full of the Obligations.

Section 2.13 **Increased Costs.**

(a) *Increased Costs Generally.* If any Change in Law:

(i) imposes, modifies or deems applicable any reserve, liquidity ratio, special deposit, insurance premium, fee, financial charge, monetary burden, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or advances, loans or other credit extended or participated in by, the Bank or any Participant, or funding any Drawing under any Letter of Credit or maintaining any Letter of Credit, or complying with any term of this Agreement, or against assets held by, or deposits with or for the account of, the Bank or such Participant;

(ii) subjects the Bank or any Participant to any Tax of any kind whatsoever with respect to this Agreement, the Fee Agreement or any Letter of Credit or changes the basis of taxation of payments to the Bank or such Participant in respect thereof (except for Indemnified Taxes or Other Taxes covered by Section 2.12 and the imposition of, or any change in the rate of, any Excluded Tax payable by the Bank or any Participant);

(iii) subject credits or commitments to extend credit extended by the Bank or any Participant to any assessment or other cost imposed by the Federal Deposit Insurance Corporation or any successor thereto; or

(iv) imposes on the Bank or any Participant any other condition, cost or expense affecting this Agreement, the Fee Agreement or any Letter of Credit;

and the result of any of the foregoing is to increase the cost to the Bank or such Participant related to funding any Drawing under any Letter of Credit or issuing or maintaining the Letters of Credit or its participation therein, as the case may be, or to reduce the amount of any sum received or receivable by the Bank or such Participant hereunder or under the Fee Agreement (whether of principal, interest or any other amount), then, upon written request of the Bank or such Participant as set forth in paragraph (c) of this Section, the Commission shall promptly pay to the Bank or such Participant, as the case may be, such additional amount or amounts as will compensate the Bank or such Participant, as the case may be, for such additional costs incurred or reduction suffered.

(b) *Capital Requirements.* If the Bank or any Participant determines that any Change in Law affecting the Bank or such Participant or the Bank's or such Participant's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on the Bank's or such Participant's capital or liquidity or on the capital or liquidity of the Bank's or such Participant's holding company, if any, as a consequence of this Agreement, the Fee Agreement or any Letter of Credit, to a level below that which the Bank or such Participant or the Bank's or such Participant's holding company could have achieved but for such Change in Law (taking into consideration the Bank's or such Participant's policies and the policies of the Bank's or such Participant's holding company with respect to capital adequacy), then from time to time, upon written request of the Bank or such Participant as set forth in paragraph (c) of this Section, the Commission will pay to the Bank or such Participant such additional amount or amounts as will compensate the Bank or such Participant or the Bank's or such Participant's holding company for any such reduction suffered. Notwithstanding the foregoing, the amount that any Participant will be entitled to receive under this Section 2.13(b) will in no event exceed the amount that the Bank would have been entitled to receive under this Section 2.13(b) had such Participant's funding obligation been a direct obligation of the Bank.

(c) *Certificates for Reimbursement.* A certificate of the Bank or a Participant setting forth the amount or amounts necessary to compensate the Bank or such Participant or the Bank's or such Participant's parent or holding company, as the case may be, as specified in paragraph (a) or (b) of this Section and delivered to the Commission, will be conclusive absent manifest error. The Commission shall pay the Bank or such Participant, as the case may be, the amount shown as due on any such certificate within thirty (30) days after receipt thereof.

(d) *Delay in Requests.* Failure or delay on the part of the Bank or any Participant to demand compensation pursuant to this Section will not constitute a waiver of the Bank's or such Participant's right to demand such compensation; *provided* that the Commission is not required to compensate the Bank or such Participant pursuant to this Section for any increased costs incurred or reductions suffered more than one hundred eighty (180) days prior to the date that the Bank or such Participant, as the case may be, notifies the Commission of the Change in Law giving rise to such increased costs or reductions, and of the Bank's or such Participant's intention to claim compensation therefor (except that (i) if the Change of Law giving rise to such increased costs or reductions is retroactive, then the one hundred eighty day period referred to above will be extended to include the period of retroactive effect thereof and (ii) if the Bank or any such Participant had no actual knowledge of the action resulting in such increased costs as of the date six months prior to the date of notice to the Commission, then the six-month period referred to above will not apply).

(e) *Survival.* Without prejudice to the survival of any other agreement of the Commission hereunder, the agreements and obligations of the Commission contained in this Section will survive the termination of this Agreement and the Letter of Credit and the payment in full of the obligations of the Commission thereunder and hereunder.

Section 2.14 **Maximum Rate; Payment of Fee.** Anything in Section 2.3, 2.4, 2.5 or 2.9 hereof to the contrary notwithstanding, the amount of interest payable hereunder for any interest period will not exceed the Maximum Rate. If for any interest period the applicable interest rate would exceed the Maximum Rate, then (i) such interest rate will not exceed but will be capped at such Maximum Rate and (ii) in any interest period thereafter that the applicable interest rate is less than the Maximum Rate, any Obligation hereunder will bear interest at the Maximum Rate until the earlier of (x) payment to the Bank of an amount equal to the amount which would have accrued but for the limitation set forth in this Section and (y) the latest Term Loan Maturity Date. Upon the latest Term Loan Maturity Date or, if no Term Loan is outstanding on the last Letter of Credit expiration date, in consideration for the limitation of the rate of interest otherwise payable hereunder, to the extent permitted by Applicable Law, the Commission shall pay to the Bank a fee in an amount equal to the amount which would have accrued but for the limitation set forth in this Section that has not previously been paid to the Bank in accordance with the immediately preceding sentence.

Section 2.15 **Security of Obligations.** Notwithstanding any other provision of this Agreement to the contrary, all obligations to the Bank under this Agreement and the Fee Agreement, are limited obligations of the Commission payable solely from Revenues available to the Commission from time to time pursuant to Section 5.5(k) of the Master Trust Indenture (Eleventh, for any other lawful purpose of the Commission). The Obligations are Subordinate Obligations (as defined in the Master Trust Indenture).

Section 2.16 **Method of Payment; Etc.** All payments to be made by the Commission under this Agreement or the Fee Agreement must be made to the Payment Account not later than 4:00 p.m. New York City time on the date when due and must be made in lawful money of the United States of America in freely transferable and immediately available funds. Any payment received after such time shall be deemed to be received on the next succeeding Business Day for purposes of calculating any interest payable in respect thereof.

ARTICLE 3

CONDITIONS PRECEDENT

Section 3.1 **Conditions Precedent to Issuance.** As conditions precedent to the obligation of the Bank to issue the Letters of Credit, each of the following conditions precedent must have been fulfilled to the satisfaction of the Bank and its counsel:

(a) *Opinions.* The Bank has received (i) an opinion of the City Attorney of the City dated the Closing Date and addressed to the Bank (or on which the Bank may rely) to the effect that (A) the Commission is duly organized and validly existing as a commission of the City pursuant to the Charter with full legal power and authority to execute and deliver the Basic Documents; (B) the Basic Documents are valid and binding agreements of the Commission enforceable against the Commission in accordance with their respective terms, subject to bankruptcy, insolvency, moratorium or other laws affecting creditors' rights, to general principles of equity and to limitations on remedies against public agencies; (C) no authorization, approval, consent or order of any agency or body having jurisdiction over the Commission is required in connection with the CCA Program, the IP Plan or the execution and delivery of the Basic Documents which has not been obtained; (D) the execution, delivery and performance of the Basic Documents do not conflict with any law or material agreements to which the Commission is a party or cause a default under any material documents to which the Commission is a party; and (E) no litigation is pending or, to the best knowledge of the City Attorney, threatened against the Commission threatening its existence or power, the CCA Program, the IP Plan or the power and authority of the Commission to enter into and perform its obligations under the Basic Documents or in which a final adverse decision could materially adversely affect the business, operations or financial condition of the Commission, such opinion (or, in lieu thereof, a reliance letter) to be addressed to the Bank, dated the Closing Date and in form and substance satisfactory to the Bank; and (ii) an opinion of Orrick Herrington & Sutcliffe LLP, special counsel to the Commission, dated the Closing Date and addressed to the Bank to the effect that (1) the Commission is duly organized and validly existing as a commission of the City pursuant to the Charter with full legal power and authority to execute, deliver and perform the Basic Documents; and (2) the Basic Documents are valid and binding agreements of the Commission enforceable in accordance with their respective terms, subject to bankruptcy, insolvency, moratorium or other laws affecting creditors' rights, to general principles of equity and to limitations on remedies against public agencies.

(b) *Documents.* The Bank has received executed copies of the Basic Documents certified by the Secretary of the Commission, the Clerk of the Board or any Authorized Representative or the Board, as applicable, as being complete and in full force and effect on and as of the Closing Date.

(c) *Defaults; Representations and Warranties.* On and as of the Closing Date, the representations of the Commission set forth in Article Four hereof are true and correct in all material respects on and as of the Closing Date with the same force and effect as if made on and as of such date and no Default or Event of Default has occurred and is continuing or would result from the execution and delivery of this Agreement and the Fee Agreement.

(d) *No Litigation.* No action, suit, investigation or proceeding is pending or, to the knowledge of the Commission, threatened (i) in connection with the CCA Program, the IP Plan or

the Basic Documents or any transactions contemplated thereby or (ii) against or affecting the Commission, the result of which could have a material adverse effect on the business, operations or condition (financial or otherwise) of the Commission or its ability to perform its obligations under the Basic Documents.

(e) *No Material Adverse Change.* Since the date of the 2014 Audited Financial Statements, (i) no material adverse change has occurred in the status of the business, operations or condition (financial or otherwise) of the Commission or its ability to perform its obligations under the Basic Documents and (ii) no law, regulation, ruling or other action (or interpretation or administration thereof) of the United States, the State of California or any political subdivision or authority therein or thereof is in effect or has occurred, the effect of which would be to prevent the Bank from fulfilling its obligations under this Agreement or the Letters of Credit.

(f) *Certificate.* The Bank has received (i) certified copies of all proceedings of the Commission authorizing the execution, delivery and performance of the Basic Documents and the transactions contemplated thereby and (ii) a certificate or certificates of one or more Authorized Representatives dated the Closing Date certifying the accuracy of the statements made in Section 3.1(c), (d) and (e) hereof and further certifying the name, incumbency and signature of each individual authorized to sign this Agreement, the Fee Agreement and the other documents or certificates to be delivered by the Commission pursuant hereto or thereto, on which certification the Bank may conclusively rely until a revised certificate is similarly delivered, and that the conditions precedent set forth in this Section 3.1 have been satisfied.

(g) *Payment of Fees.* The Bank has received all fees and expenses due and payable to the Bank and/or its legal counsel pursuant to the Fee Agreement or alternative arrangements satisfactory therefor have been made with the Bank.

(h) *Financial Statements.* The Bank has received the 2014 Audited Financial Statements, internally prepared quarterly budget reports of the Commission for the most recent fiscal quarter end and a copy of the current quarterly budgeting status report, if not previously provided.

(i) *Other Matters.* The Bank has received such other statements, certificates, agreements, documents and information with respect to the Commission and matters contemplated by this Agreement as the Bank may have requested.

The execution and delivery of this Agreement by the Bank signifies its satisfaction with the conditions precedent set forth in this Section 3.1.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES

In order to induce the Bank to issue the Letters of Credit, the Commission represents and warrants to the Bank as follows:

Section 4.1 **Organization, Powers, Etc.** The Commission (a) is a commission of the City and County of San Francisco organized and existing under the Charter; (b) has the full legal

right, power and authority to (i) own and operate the Power Enterprise and control its properties and to carry on its business as now conducted and as contemplated to be conducted, including without limitation, by the CCA Program and the IP Plan, (ii) execute, deliver and perform its obligations under the Basic Documents and (iii) provide for the security of this Agreement and the Fee Agreement pursuant to the Charter and the Master Trust Indenture; and (c) has complied with all Laws in all matters related to such actions of the Commission as are contemplated by the CCA Program, the IP Plan and the Basic Documents.

Section 4.2 **Authorization, Absence of Conflicts, Etc.** The adoption of the CCA Program, the implementation of the IP Plan and the execution, delivery and performance by the Commission of the Basic Documents (a) have been duly authorized by all necessary action on the part of the Commission, (b) do not and will not conflict with, or result in a violation of, any Laws, including the Charter, or any order, writ, rule or regulation of any court or governmental agency or instrumentality binding upon or applicable to the Commission which violation would result in a material adverse impact on the Commission and (c) do not and will not conflict with, result in a violation of, or constitute a default under, any resolution, agreement or instrument to which the Commission is a party or by which the Commission or any of its property is bound which, in any case, would result in a material adverse impact on the Commission.

Section 4.3 **Binding Obligations; Security.**

(a) The Basic Documents are valid and binding obligations of the Commission (assuming due authorization, execution and delivery by the other parties thereto) enforceable against the Commission in accordance with their respective terms, except to the extent, if any, that the enforceability thereof may be limited by (i) any applicable bankruptcy, insolvency, reorganization, moratorium or other similar law of the State or Federal government affecting the enforcement of creditors' rights generally heretofore or hereafter enacted, (ii) the fact that enforcement may also be subject to the exercise of judicial discretion in appropriate cases and (iii) the limitations on legal remedies against public agencies of the State, if any.

(b) The obligations of the Commission under this Agreement and under the Fee Agreement are revenue obligations and are not secured by the taxing power of the Commission or the City and are payable as to both principal and interest from, and are secured solely by a pledge of, Revenues with the priority set forth in Section 5.5(k) of the Master Trust Indenture. The Revenues constitute a trust fund for the security and payment of the interest on and principal of the obligations of the Commission under this Agreement and under the Fee Agreement.

Section 4.4 **Governmental Consent or Approval.** No consent, approval, permit, authorization or order of, or registration or filing with, any court or government agency, authority or other instrumentality not already obtained, given or made is required on the part of the Commission for the adoption of the CCA Program, the implementation of the IP Plan or the execution, delivery and performance by the Commission of the Basic Documents.

Section 4.5 **Absence of Material Litigation.** There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, arbitrator or governmental or other board, body or official pending or, to the best knowledge of the Commission, threatened against or affecting the Commission questioning the validity of the Charter, the adoption of the CCA Program, the implementation of the IP Plan or the execution, delivery and performance by the

Commission of the Basic Documents or any proceeding taken or to be taken by the Commission or the Board in connection therewith, or seeking to prohibit, restrain or enjoin the adoption of the CCA Program, the implementation of the IP Plan or the execution, delivery and performance by the Commission of the Basic Documents, or which, if adversely determined, could reasonably be expected to result in any material adverse change in the financial condition, operations or prospects of the Commission, or wherein an unfavorable decision, ruling or finding would in any way materially adversely affect the transactions contemplated by the Basic Documents (any such action or proceeding being herein referred to as *"Material Litigation"*).

Section 4.6 **Financial Condition**. The audited financial statements of the Power Enterprise as at and for the period ended June 30, 2014 (the "*2014 Audited Financial Statements*"), and all other financial statements of the Power Enterprise furnished to the Bank were prepared in accordance with GAAP applied on a consistent basis throughout the periods involved and are subject to certification by independent certified public accountants of nationally recognized standing or by independent certified public accountants otherwise acceptable to the Bank. The 2014 Audited Financial Statements were audited by KPMG LLP. The audited financial statements of the Power Enterprise for fiscal year 2015 will be prepared by KPMG LLP or a similar qualified independent auditing firm. The data on which such financial statements and budget reports are based were true and correct. The 2014 Audited Financial Statements and the budget reports present fairly the net position of the Power Enterprise as of the date they purport to represent and the revenues, expenses and changes in fund balances and in net position for the periods then ended. Since June 30, 2014, no material adverse change has occurred in the business, operations or condition (financial or otherwise) of the Power Enterprise.

Section 4.7 **Incorporation of Representations and Warranties**. The representations and warranties of the Commission set forth in the Basic Documents (other than this Agreement and the Fee Agreement) are true and accurate in all material respects on the Closing Date, as fully as though made on the Closing Date. The Commission makes, as of the Closing Date, each of such representations and warranties to, and for the benefit of, the Bank, as if the same were set forth at length in this Section 4.7 together with all applicable definitions thereto. No amendment, modification or termination of any such representations, warranties or definitions contained in the Basic Documents (other than this Agreement and the Fee Agreement) will be effective to amend, modify or terminate the representations, warranties and definitions incorporated in this Section 4.7 by this reference, without the prior written consent of the Bank.

Section 4.8 **Accuracy and Completeness of Information**. The IP Plan, the Basic Documents and all certificates, financial statements, documents and other written information furnished to the Bank by or on behalf of the Commission on or prior to the Closing Date in connection with the transactions contemplated hereby were, as of their respective dates, complete and correct in all material respects to the extent necessary to give the Bank true and accurate knowledge of the subject matter thereof and did not contain any untrue statement of a material fact.

Section 4.9 **No Default**.

(a) No Default or Event of Default under this Agreement has occurred and is continuing that is or would, with the passage of time or the giving of notice, or both, constitute a default by the Commission in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any Basic Document to which it is a party.

(b) No "event of default" has occurred and is continuing under any other material mortgage, indenture, contract, agreement or undertaking to which the Commission is a party or which purports to be binding on the Commission or on any of its property.

Section 4.10 **No Proposed Legal Changes**. There is no amendment or, to the knowledge of the Commission, proposed amendment to the Constitution of the State, any State law or the Charter or any administrative interpretation of the Constitution of the State, any State law, or the Charter, or any judicial decision interpreting any of the foregoing, the effect of which could reasonably be expected to have a material adverse effect on the CCA Program, the IP Plan or the ability of the Commission to perform its obligations under the Basic Documents.

Section 4.11 **Compliance with Laws, Etc**. The Commission is in compliance with the Investment Policy and all Laws applicable to the Commission, non-compliance with which might have a material adverse effect on the security for the obligations under this Agreement and the Fee Agreement or the validity and enforceability of the Basic Documents. In addition, no benefit plan maintained by the Commission for its employees is subject to the provisions of ERISA, and the Commission is in compliance with all Laws in respect of each such benefit plan.

Section 4.12 **Environmental Matters**. In the ordinary course of its business, the Commission conducts an ongoing review of Environmental Laws on the business, operations and the condition of its property, in the course of which it identifies and evaluates associated liabilities and costs (including, but not limited to, any capital or operating expenditures required for clean-up or closure of properties currently or previously owned or operated, any capital or operating expenditures required to achieve or maintain compliance with environmental protection standards imposed by law or as a condition of any license, permit or contract, any related constraints on operating activities, including any periodic or permanent shutdown of any facility or reduction in the level of or change in the nature of operations conducted thereat and any actual or potential liabilities to third parties, including employees, and any related costs and expenses). On the basis of such review, the Commission does not believe that Environmental Laws are likely to have a material adverse effect on the ability of the Commission to perform its obligations under the Basic Documents.

Section 4.13 **Regulation U**. The Commission is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System).

Section 4.14 **Liens**. The Master Trust Indenture creates a valid Lien on and pledge of the Revenues, subject only to the provisions of the Master Trust Indenture permitting the application thereof for purposes and on the terms and conditions set forth therein, of the obligations of the Commission under this Agreement and the Fee Agreement, and no filings, recordings, registrations or other actions are necessary on the part of the Commission, the Bank or any other Person to create or perfect such Lien.

Section 4.15 **Sovereign Immunity**. The Commission is not entitled to immunity from legal proceedings to enforce the Basic Documents (including, without limitation, immunity from service of process or immunity from jurisdiction of any court otherwise having jurisdiction) and is subject to claims and suits for damages in connection with its obligations under the Basic Documents.

Section 4.16 **Usury**. The terms of the Basic Documents regarding the calculation and payment of interest and fees do not violate any applicable usury laws.

Section 4.17 **Insurance**. As of the Closing Date, the Commission maintains such insurance, including self-insurance, as is required by Section 5.1(k) hereof.

Section 4.18 **ERISA**. The Commission does not maintain or contribute to, and has not maintained or contributed to, any Employee Plan that is subject to Title IV of ERISA.

Section 4.19 **Sanctions Concerns and Anti-Corruption Laws**.

(a) Neither the Commission, nor, to the knowledge of the Commission, any director, officer, employee, agent, affiliate or representative thereof, is an individual or entity that is, or is owned or controlled by any individual or entity that is (i) currently the subject or target of any Sanctions, (ii) included on OFAC's List of Specially Designated Nationals, HMT's Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any similar list enforced by any other relevant sanctions authority or (iii) located, organized or resident in a Designated Jurisdiction.

(b) The Commission has conducted its business in compliance with the United States Foreign Corrupt Practices Act of 1977 and other similar anti-corruption legislation in other jurisdictions, and have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

ARTICLE 5

COVENANTS

Section 5.1 **Affirmative Covenants**. So long as any Letter of Credit and/or Obligation remains outstanding, the Commission shall perform and observe the covenants set forth below, unless the Bank otherwise consents in writing:

(a) *Accounting and Reports*. The Commission shall maintain a standard system of accounting in accordance with GAAP consistently applied and furnish to the Bank:

(i) as soon as practicable and, in any event, within one hundred eighty (180) days after the end of each Fiscal Year of the Commission, a statement of net position of the Power Enterprise as at the end of such Fiscal Year and statements of income, changes in fund balances and cash flows for the Fiscal Year then ended, all in reasonable detail and prepared in accordance with GAAP consistently applied, accompanied by (A) a report and opinion of the Commission's independent accountants (which will be of nationally recognized standing or an independent certified public accountant otherwise acceptable to the Bank), which report and opinion will have been prepared in accordance with generally accepted auditing standards and (B) a compliance certificate, substantially in the form of Exhibit B hereto, signed by an Authorized Representative stating that no Event of Default or Default has occurred or if any Event of Default or Default has occurred, specifying the nature of such Event of Default or Default, the period of its existence, the nature and status

thereof and any remedial steps taken or proposed to correct such Event of Default or Default;

(ii) at the time the Commission delivers the financial statements pursuant to subsection (i) above, the independent public accountants' report on internal controls over financial reporting of the Power Enterprise;

(iii) as soon as practicable and, in any event, within forty-five (45) days after the end of each the first three fiscal quarters of the Commission, the budgetary status report for the Power Enterprise for the fiscal quarter then ended;

(iv) as soon as practicable but, in any event, within ten (10) days after the issuance thereof, copies of any prospectus, official statement, offering circular, placement memorandum or similar document, and any supplements thereto and updates and amendments thereof (including any filings made pursuant to Rule 15c2-12 under the Securities Act of 1933, as amended), that the Commission makes available in connection with the offering for sale of any bonds or notes secured by Revenues of which it is the issuer and copies of any other financial reports or other written information distributed generally to holders of bonds or notes issued by the Commission;

(v) within ten (10) days after the publication thereof, a copy of the Commission's Annual Budget for the Power Enterprise for the next Fiscal Year and such additional period as may be covered by such Annual Budget, which budget shall include all obligations due under the Basic Documents for the next Fiscal Year and such additional period as may be covered by such Annual Budget; and

(vi) with reasonable promptness, such other data regarding the financial position or business of the Power Enterprise or its property as the Bank may reasonably request from time to time.

As and to the extent that any financial statement, audit report or other filing described in this Section 5.1(a) (x) has been filed electronically in accordance with the terms thereof with any nationally recognized municipal securities information repository and with the Municipal Securities Rulemaking Board, or posted to the Commission's website, as applicable, (y) is available without charge or other restriction and (z) the Commission has provided written notice thereof to the Bank, the requirements of Section 5.1(a) hereof with respect thereto will be deemed satisfied.

(b) *Access to Records.* At any reasonable time and from time to time, during normal business hours and, so long as no Event of Default has occurred and is continuing, on at least five (5) Business Days' notice, the Commission shall permit the Bank or any of its agents or representatives to visit and inspect any of the properties of the Commission and the other assets of the Commission, to examine the books of account of the Commission (and to make copies thereof and extracts therefrom), and to discuss the affairs, finances and accounts of the Commission with, and to be advised as to the same by, its officers, all at such reasonable times and intervals as the Bank may reasonably request.

(c) *Compliance with Documents and Other Revenue Documents; Operation and Maintenance of Power Enterprise.*

(i) The Commission shall perform and comply with each covenant set forth in the Basic Documents and any other agreements, instruments or documents evidencing obligations of the Commission secured by Revenues and owing to a bank, investment bank, broker dealer or other similar financial institution or any affiliate thereof (the foregoing documents (exclusive of the Basic Documents) being referred to herein as *"Other Revenue Documents"*). By the terms of this Agreement, the Bank is hereby made a third party beneficiary of the covenants set forth in each of the Basic Documents (other than this Agreement and the Fee Agreement) and in each Other Revenue Document, and each such covenant, together with the related definitions of terms contained therein, is incorporated by reference in this Section 5.1(c) with the same effect as if it were set forth herein in its entirety. The Commission shall take, or cause to be taken, all such actions as may be reasonably requested by the Bank to strictly enforce the obligations of the other parties to any of the Basic Documents and any Other Revenue Documents, as well as each of the covenants set forth therein.

(ii) The Commission covenants that it will maintain and preserve the Power Enterprise in good repair and working order at all times from the Revenues available for such purposes, in conformity with standards customarily followed for municipal water and power systems of like size and character. The Commission will from time to time make all necessary and proper repairs, renewals, replacements and substitutions to the properties of the Power Enterprise, so that at all times business carried on in connection with the Power Enterprise shall and can be properly and advantageously conducted in an efficient manner and at reasonable cost, and will operate the Power Enterprise in an efficient and economical manner and shall not commit or allow any waste with respect to the Power Enterprise.

(d) *Defaults*. The Commission shall notify the Bank of any Default or Event of Default of which the Commission has knowledge, as soon as possible and, in any event, within three (3) Business Days of acquiring knowledge thereof, setting forth the details of such Default or Event of Default and the action which the Commission has taken and proposes to take with respect thereto.

(e) *Compliance with Laws*. The Commission shall comply in all material respects with all Laws binding upon or applicable to the Commission (including Environmental Laws) and material to the Basic Documents.

(f) *Litigation Notice.* The Commission shall promptly give notice to the Bank of any action, suit or proceeding actually known to it at law or in equity or by or before any court, governmental instrumentality or other agency which, if adversely determined, would materially impair the ability of the Commission to implement the IP Plan or perform its obligations under any Basic Document.

(g) *Bank Agreements.* In the event that Commission shall enter into or otherwise consent to any amendment, supplement or other modification of any Bank Agreement after the Closing Date which Bank Agreement contains additional or more restrictive covenants or additional or more restrictive events of default or additional or improved remedies *("Improved Provisions,"* which for the avoidance of doubt does not include pricing, termination fees and

provisions related to interest rates but does include improved term-out provisions), then the Commission shall provide the Bank with a copy of such Bank Agreement and the Improved Provisions shall automatically be deemed incorporated into this Agreement and the Bank shall have the benefit of the Improved Provisions until such time as the Bank Agreement containing such Improved Provisions terminates. The Commission shall promptly cooperate with the Bank to enter into an amendment of this Agreement to include such Improved Provisions.

(h) *Further Assurances.* The Commission shall execute, acknowledge where appropriate and deliver, and cause to be executed, acknowledged where appropriate and delivered, from time to time, promptly at the request of the Bank, all such instruments and documents as are usual and customary or advisable to carry out the intent and purpose of the Basic Documents.

(i) *Notices.* The Commission shall promptly furnish, or cause to be furnished, to the Bank (i) notice of the occurrence of any "default" or "event of default" or "termination event" under any Basic Document (other than this Agreement and the Fee Agreement) or any Other Revenue Document, (ii) copies of any communications received from any Governmental Authority with respect to the transactions contemplated by the Basic Documents or any other Power Enterprise Debt which are not restricted or prohibited from being shared with the Bank under the law or the direction of a court of competent jurisdiction or other Governmental Authority, (iii) notice of any proposed substitution of any Letter of Credit, (iv) notice of any proposed amendment to any Basic Document and copies of all such amendments promptly following the execution thereof and (v) notice of the passage of any state or local Law not of general applicability to all Persons of which the Commission has knowledge, which could reasonably be expected to have a material adverse effect on the Commission's ability to perform its obligations under the Basic Documents or to result in a material adverse effect on the enforceability or validity of any Basic Document.

(j) *Maintenance of Insurance.* The Commission shall maintain, or cause to be maintained, at all times, insurance on and with respect to its properties with responsible and reputable insurance companies; *provided, however,* that the Commission may maintain self-insurance general liability on its properties not covered by the public entity property insurance program policy, for worker's compensation and vehicle liability and, with the consent of the Bank, such other self-insurance as it deems prudent. Such insurance must include casualty, liability and workers' compensation and be in amounts and with deductibles and exclusions customary and reasonable for governmental entities of similar size and with similar operations as the Commission. The Commission shall, upon request of the Bank, furnish evidence of such insurance to the Bank. The Commission shall also procure and maintain at all times adequate fidelity insurance or bonds on all officers and employees handling or responsible for any Revenues or funds of the Power Enterprise, such insurance or bond to be in an aggregate amount at least equal to the maximum amount of such Revenues or funds at any one time in the custody of all such officers and employees or in the amount of one million dollars ($1,000,000), whichever is less. The insurance described above may be provided as part of any comprehensive fidelity and other insurance and not separately for the Power Enterprise.

(k) *Preservation of Security.* The Commission shall take any and all actions necessary to preserve the pledge of Revenues set forth in the Master Trust Indenture.

(l) *Rates*. The Commission shall fix, establish, maintain and collect rates and charges for electric power and energy and other services, facilities and commodities sold, furnished or supplied through the facilities of the Power Enterprise, which shall be fair and nondiscriminatory and adequate to provide the Commission with Revenues in each Fiscal Year sufficient to pay, to the extent not paid from other available moneys, any and all amounts the Commission is obligated to pay or set aside from the Revenues by law or contract in such Fiscal Year, including, without limitation and without duplication, amounts payable to the Bank under this Agreement and the Fee Agreement.

(m) *Budget*. The Commission shall include in each annual budget of the Commission all amounts reasonably anticipated to be necessary to pay all obligations due to the Bank hereunder and under the Fee Agreement. If the amounts so budgeted are not adequate for the payment of the obligations due hereunder and under the Fee Agreement, the Commission shall take such action as may be necessary to cause such annual budget to be amended, corrected or augmented so as to include therein the amounts required to be paid to the Bank during the course of the Fiscal Year to which such annual budget applies.

(n) *Payment of Taxes, Etc.* The Commission shall pay and discharge, or cause to be paid and discharged, all taxes, assessments and other governmental charges which may hereafter be lawfully imposed upon the Commission on account of the Power Enterprise or any portion thereof and which, if unpaid, might impair the security of this Agreement and the Fee Agreement, but nothing herein contained will require the Commission to pay any such tax, assessment or charge so long as it in good faith contests the validity thereof. The Commission shall duly observe and comply with all valid material requirements of any Governmental Authority relative to the Power Enterprise or any part thereof.

(o) *Notice of Rating Change.* The Commission shall use its best efforts to notify the Bank as soon as practicable of any suspension, reduction or withdrawal in the senior long-term rating of any Power Enterprise Debt.

Section 5.2 **Negative Covenants**. So long as any Letter of Credit and/or Obligation remains outstanding, the Commission shall not, unless the Bank otherwise consents in writing:

(a) *Amendments*. Amend, supplement or modify the Master Trust Indenture, except that the Commission may amend, supplement or modify the Master Trust Indenture in a manner not having an adverse effect on (i) the ability of the Commission to pay when due amounts owing to the Bank or any Participant under this Agreement or the Fee Agreement or (ii) the pledge of Revenues or the priority of payments from Revenues. The Commission agrees to deliver to the Bank copies of all such amendments, modification, supplements or other changes at least ten (10) Business Days prior to the effective date of any such amendment, modification, supplement or other change. The Bank shall, within five (5) Business Days, inform the Commission in writing if, in its reasonable discretion, such amendment, modification, supplement or other change requires the prior written consent of the Bank in accordance with this Section 5.2(a). Notwithstanding the foregoing, the Commission, without the Bank's prior written consent, may perform ministerial duties, make such provisions for the purpose of curing any ambiguity, inconsistency or omission, or of curing or correcting any defective provision, as the Commission may deem necessary or desirable, in any case which do not materially adversely affect the security, rights or remedies of the Bank under any Basic Document.

(b) *Merger, Disposition of Assets.* Consolidate or merge with or into any Person or sell, lease or otherwise transfer all or substantially all of its assets to any Person.

(c) *Abandon.* Take any action to abandon the Power Enterprise or any significant portion thereof.

(d) *Preservation of Corporate Existence, Etc.* Take any action to terminate its existence as a body politic and corporate and a political subdivision of the State or its rights and privileges as such entity within the State.

(e) *Liens.* Create or suffer to exist or permit any Lien on the Revenues other than the Liens created or permitted by the Master Trust Indenture.

(f) *Sovereign Immunity.* Assert the defense of any future right of sovereign immunity in a legal proceeding to enforce or collect upon the obligations of the Commission under any Basic Document or the transactions contemplated thereby.

(g) *Power Enterprise.* Construct, operate or maintain, and shall not within the scope of its powers permit any other public or private corporation, political subdivision, district or agency or any Person whatsoever to construct, operate or maintain, within the City or any part thereof, any system or utility competitive with the Power Enterprise. The Commission shall have in effect, or cause to have in effect, at all times an ordinance or resolution requiring all customers of the Power Enterprise to pay the fees, rates and charges applicable to the services and facilities furnished by the Power Enterprise. The Commission shall not provide any service of the Power Enterprise free of charge to any Person, except (i) for free use by the City and its agencies, (ii) to the extent that any such free use is required by the terms of any existing contract or agreement and (iii) for incidental insignificant free use so long as such free use does not prevent the Commission from satisfying the other covenants of this Agreement.

(h) *Preservation of Existence, Etc.* Take any action to accomplish a merger of the Power Enterprise with any other entity or enterprise, unless and until the Commission has provided a method for segregating the Revenues from the revenues of said other entity or enterprise in a manner that will, or shall otherwise, preserve the Lien on the Revenues for the payment of the Obligations and has obtained an opinion of counsel from a firm nationally recognized in the practice of municipal financing that such merger will not, in and of itself, cause the pledge of Revenues set forth in the Master Trust Indenture to be no longer valid. If the Commission does effect such a merger, the Commission shall provide written notice thereof to the Bank and shall deliver a copy of the aforementioned opinion to the Bank.

(i) *Use of Proceeds.* Use the proceeds of any credit extension (including Drawings and Term Loans), whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose, in each case in violation of, or for a purpose which violates, or would be inconsistent with, Regulation T, U or X of the Board of Governors of the Federal Reserve System.

ARTICLE 6

DEFAULTS

Section 6.1 **Events of Default and Remedies.** If any of the following events occurs, each such event will be an *"Event of Default"*:

(a) the Commission fails to pay, or cause to be paid, as and when due, (i) any Reimbursement Obligation or (ii) any Obligation (other than a Reimbursement Obligation) hereunder or under the Fee Agreement and, in such case, such failure continues for five (5) Business Days;

(b) any representation or warranty made by or on behalf of the Commission in this Agreement or in any other Basic Document or in any certificate or statement delivered hereunder or thereunder is incorrect or untrue in any material respect when made or deemed to have been made or delivered;

(c) the Commission defaults in the due performance or observance of any of the covenants set forth in Section 5.1(c), 5.1(d), 5.1(g), 5.1(k), 5.1(l) or 5.2 hereof;

(d) the Commission defaults in the due performance or observance of any other term, covenant or agreement contained in this Agreement or any other Basic Document and such default remains unremedied for a period of thirty (30) days after the occurrence thereof;

(e) the Commission or the City and County of San Francisco, directly or indirectly, (i) has entered involuntarily against it an order for relief under the United States Bankruptcy Code, as amended, (ii) becomes insolvent or does not pay, or is unable to pay, or admits in writing its inability to pay, its debts generally as they become due, (iii) makes an assignment for the benefit of creditors, (iv) applies for, seeks, consents to, or acquiesces in, the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for it or any substantial part of its Property, (v) institutes any proceeding seeking to have entered against it an order for relief under the United States Bankruptcy Code, as amended, to adjudicate it insolvent or seeking dissolution, winding up, liquidation, reorganization, arrangement, marshalling of assets, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or fails to file an answer or other pleading denying the material allegations of any such proceeding filed against it, (vi) takes any corporate action in furtherance of any matter described in clauses (i) through (v) above or (vii) fails to contest in good faith any appointment or proceeding described in Section 6.1(f) of this Agreement;

(f) a custodian, receiver, trustee, examiner, liquidator or similar official is appointed for the Commission or the City and County of San Francisco or any substantial part of its Property, or a proceeding described in Section 6.1(e)(v) is instituted against the Commission or the City and County of San Francisco and such proceeding continues undischarged, undismissed and unstayed for a period of thirty (30) days;

(g) a debt moratorium, debt restructuring, debt adjustment or comparable restriction is imposed on the repayment when due and payable of the principal of or interest

on any Debt of the Commission by the Commission or any Governmental Authority with appropriate jurisdiction;

(h) any material provision of this Agreement, the Charter or any other Basic Document at any time for any reason ceases to be valid and binding on the Commission as a result of any legislative or administrative action by a Governmental Authority with competent jurisdiction or is declared in a final non-appealable judgment by any court with competent jurisdiction to be null and void, invalid or unenforceable, or the validity or enforceability thereof is publicly contested by the Commission, or the Commission publicly contests the validity or enforceability of any obligation to pay Power Enterprise Debt, including, without limitation, the Master Trust Indenture, or any Authorized Representative publicly repudiates or otherwise denies in writing that it has any further liability or obligation under or with respect to any provision of this Agreement, the Charter, any other Basic Document or any operative document related to Power Enterprise Debt, including, without limitation, the Master Trust Indenture;

(i) dissolution or termination of the existence of the Commission;

(j) the Commission (i) defaults on the payment of the principal of or interest on any Power Enterprise Debt beyond the period of grace, if any, provided in the instrument or agreement under which such Power Enterprise Debt was created or incurred or (ii) defaults in the observance or performance of any agreement or condition relating to any Power Enterprise Debt, including, without limitation, any Bank Agreement, or contained in any instrument or agreement evidencing, securing or relating thereto, or any other default, event of default or similar event occurs or condition exists, the effect of which default, event of default or similar event or condition is to permit (determined without regard to whether any notice is required) any such Power Enterprise Debt to become immediately due and payable in full as the result of the acceleration, mandatory redemption or mandatory tender of such Power Enterprise Debt;

(k) the Commission (i) defaults on the payment of the principal of or interest on any Debt (other than Power Enterprise Debt) aggregating in excess of $10,000,000 beyond the period of grace, if any, provided in the instrument or agreement under which such Debt (other than Power Enterprise Debt) was created or incurred or (ii) defaults in the observance or performance of any agreement or condition relating to any Debt (other than Power Enterprise Debt) aggregating in excess of $10,000,000, or contained in any instrument or agreement evidencing, securing or relating thereto, or any other default, event of default or similar event occurs or condition exists, the effect of which default, event of default or similar event or condition is to permit (determined without regard to whether any notice is required) any such Debt to become immediately due and payable in full as the result of the acceleration, mandatory redemption or mandatory tender of such Debt (other than Power Enterprise Debt);

(l) any final, nonappealable judgment or judgments, writ or writs or warrant or warrants of attachment, or any similar process or processes, in an aggregate amount not less than $10,000,000 are entered or filed against the Commission or against any of its Property and remain unpaid, unvacated, unbonded and unstayed for a period of sixty (60) days;

(m) (i) the Commission shall default in the due performance or observance of any material term, covenant or agreement contained in the Master Trust Indenture (and the same shall not have been cured within any applicable cure period or (ii) any "event of default" under the Master Trust Indenture has occurred;

(n) either of Fitch and S&P (i) downgrades its long-term unenhanced rating of any senior lien Power Enterprise Debt of the Commission to below "A-" (or its equivalent), "A3" (or its equivalent), or "A-" (or its equivalent), respectively, and such rating remains below "A-" (or its equivalent), "A3" (or its equivalent), or "A-" (or its equivalent) for sixty (60) days, or (ii) suspends or withdraws its rating of the same; or

(o) the passage of any Law has occurred which could reasonably be expected to have a material adverse effect on the Commission's ability to perform its obligations under this Agreement or the other Basic Documents or to result in a material adverse effect on the enforceability or validity of this Agreement or any of the other Basic Documents.

Section 6.2 **Remedies**. Upon the occurrence of any Event of Default the Bank may exercise any one or more of the following rights and remedies in addition to any other remedies herein or by law provided:

(a) declare all Obligations (including, without limitation, all Terms Loans) to be immediately due and payable, whereupon the same are immediately due and payable without any further notice of any kind, which notice is waived by the Commission; *provided, however,* that in the case of an Event of Default described in Section 6.1(e), (f) or (g) hereof, such acceleration will automatically occur (unless such automatic acceleration is waived by the Bank in writing); or

(b) (i) instruct the Commission to remit all Revenues received by it from time to time pursuant to Section 5.5(k) of the Master Trust Indenture to the Bank for deposit into a cash collateral account to be established and maintained by the Bank until the amount on deposit therein is equal to the aggregate then undrawn and unexpired amount of all outstanding Letters of Credit and (ii) to apply amounts on deposit in the cash collateral account to the repayment of Unpaid Drawings and other Obligations; *provided, however,* if amounts on deposit in the cash collateral account at any time exceed the aggregate then undrawn and unexpired amount of all outstanding Letters of Credit and if no Obligations then due remain unpaid, such excess shall be returned to the Commission by the Bank; or

(c) pursue any rights and remedies it may have under the Basic Documents; or

(d) pursue any other action available at law or in equity.

ARTICLE 7

MISCELLANEOUS

Section 7.1 **Amendments, Waivers, Etc**. No amendment or waiver of any provision of this Agreement, or consent to any departure by the Commission therefrom, will in any event be effective unless the same is in writing and signed by the Bank and an Authorized Representative of

the Commission, and then such waiver or consent is effective only in the specific instance and for the specific purpose for which given.

Section 7.2 **Notices**. All notices and other communications provided for hereunder must be in writing (including required copies) and sent by receipted hand delivery (including Federal Express or other receipted courier service), facsimile transmission or regular mail, as follows:

(a) if to the Commission:

City and County of San Francisco
Public Utilities Commission
Attention: Chief Financial Officer
525 Golden Gate Avenue, 13th Floor
San Francisco, California 94102
Telephone: (415) 554-3155
Facsimile: (415) 554-3161

(b) if to the Bank:

JPMorgan Chase Bank, N.A.
383 Madison Avenue, 8th Floor
Mail Code: NY1-M076
New York, New York 10179
Attention: James Millard, Executive Director, Public Finance -- Credit Origination
Telephone: (212) 270-2198
Telecopy: (917) 456-3538
Email: james.g.millard@jpmorgan.com

And, for compliance-related items, with a copy to:
public.finance.notices@jpmchase.com

In the case of communications to the Bank with respect to Drawings under the Letter of Credit:

JPMorgan Chase Bank, N.A.
JPM-Delaware Loan Operations
500 Stanton Christiana Road, Ops 2, Floor 03
Newark, DE 19713
Attention: Lorie Paulin
Telephone: 302-634-8789
Telecopy: 302-634-8459
Email/Fax: 12012443557@tls.ldsprod.com

In the case of payments to the Bank:

JPMorgan Chase Bank, N.A.
ABA: 021-000-021

A/C: 9008113381H2178
Reference: SFPUC CleanPowerSF

or such other account as the Bank may from time to time designate in writing to the Commission,

or, as to each Person named above, at such other address or telephone or telecopy number as is designated by such Person in a written notice to the parties hereto. All such notices and other communications will, when delivered, sent by facsimile transmission or mailed, be effective when deposited with the courier, sent by facsimile transmission or mailed, respectively, addressed as aforesaid, except that requests for Drawings submitted to the Bank will not be effective until received by the Bank.

Section 7.3 **Survival of Covenants; Successors and Assigns.**

(a) All covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto will survive the making of any Drawing or Term Loan hereunder and will continue in full force and effect until all of the Obligations hereunder are paid in full. Whenever in this Agreement any of the parties hereto is referred to, such reference will, subject to the last sentence of this Section, be deemed to include the successors and assigns of such party, and all covenants, promises and agreements by or on behalf of the Commission which are contained in this Agreement will inure to the benefit of the successors and assigns of the Bank. The Commission may not transfer its rights or obligations under this Agreement without the prior written consent of the Bank. The Bank may transfer or assign some or all of its rights and obligations under this Agreement and the Fee Letter with the prior written consent of the Commission (which consent may not be withheld unreasonably), *provided* that the Bank shall be responsible for all costs solely relating to such transfer or assignment. This Agreement is made solely for the benefit of the Commission and the Bank, and no other Person (including, without limitation, any PPA Counterparty) will have any right, benefit or interest under or because of the existence of this Agreement; *provided, further,* that the Commission's liability to any Participant will not in any event exceed that liability which the Commission would owe to the Bank but for such participation.

(b) Notwithstanding the foregoing, the Bank will be permitted to grant to one or more financial institutions (each a *"Participant"*) a participation or participations in all or any part of the Bank's rights and benefits and obligations under this Agreement, the Fee Agreement and the Letters of Credit on a participating basis but not as a party to this Agreement (a *"Participation"*) without the consent of the Commission. In the event of any such grant by the Bank of a Participation to a Participant, the Bank shall remain responsible for the performance of its obligations hereunder and under the Letters of Credit, and the Commission may continue to deal solely and directly with the Bank in connection with the Bank's rights and obligations under this Agreement, under the Fee Agreement and under the Letters of Credit. The Commission agrees that each Participant will, to the extent of its Participation, be entitled to the benefits of this Agreement as if such Participant were the Bank, *provided* that no Participant will have the right to declare, or to take actions in response to, an Event of Default under Section 6.1 hereof.

Section 7.4 **Unconditional Obligations.** The obligations of the Commission under this Agreement and under the Fee Agreement are absolute, unconditional, irrevocable and payable strictly in accordance with the terms of the Basic Documents under all circumstances whatsoever, including, without limitation, the following:

(a) any lack of validity or enforceability of any Basic Document or any Letter of Credit;

(b) any amendment or waiver of or any consent to departure from the terms of any Basic Document to which the Bank has not consented in writing;

(c) the existence of any claim, counterclaim, set-off, recoupment, defense or other right which any Person may have at any time against the Bank, the Commission, any PPA Counterparty or any other Person, whether in connection with any Basic Document or any transaction related thereto;

(d) any statement or any other document presented under any Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect;

(e) payment by the Bank under any Letter of Credit against presentation of a draft or certificate which does not comply with the terms of such Letter of Credit; and

(f) any other circumstances or happening whatsoever, whether or not similar to any of the foregoing.

Section 7.5 **Liability of Bank; Indemnification.**

(a) To the extent permitted by the law of the State, the Commission assumes all risks of the acts or omissions of the PPA Counterparties with respect to the use of the Letters of Credit or the use of proceeds thereunder; *provided* that this provision is not intended to and will not preclude the Commission from pursuing such rights and remedies as it may have against the PPA Counterparties under any other agreements. Neither the Bank nor any of its respective officers or directors will be liable or responsible for (i) the use of any Letter of Credit, the Drawings or the Term Loans or the transactions contemplated hereby and by the other Basic Documents or for any acts or omissions of any PPA Counterparty, (ii) the validity, sufficiency or genuineness of any documents determined in good faith by the Bank to be valid, sufficient or genuine, even if such documents, in fact, prove to be in any or all respects invalid, fraudulent, forged or insufficient, (iii) payments by the Bank against presentation of requests for Drawings or requests which the Bank in good faith has determined to be valid, sufficient or genuine and which subsequently are found not to comply with the terms of this Agreement or (iv) any other circumstances whatsoever in making or failing to make payment hereunder; *provided* that the Commission is not required to indemnify the Bank for any claims, losses, liabilities, costs or expenses to the extent, but only to the extent, caused by the gross negligence or willful misconduct of the Bank.

(b) To the extent permitted by the law of the State, the Commission indemnifies and holds harmless the Bank from and against any and all direct, as opposed to consequential, claims, damages, losses, liabilities, costs and expenses (including specifically reasonable attorneys' fees) which the Bank may incur (or which may be claimed against the Bank by any Person whatsoever)

by reason of or in connection with the execution, delivery and performance of the Basic Documents, the Letters of Credit and the transactions contemplated thereby; *provided* that the Commission is not required to indemnify the Bank to the extent, but only to the extent, any such claim, damage, loss, liability, cost or expense is caused by the Bank's willful misconduct or gross negligence as determined by a final order of a court of competent jurisdiction. The Bank is expressly authorized and directed to honor any demand for payment which is made under any Letter of Credit without regard to, and without any duty on its part to inquire into the existence of, any disputes or controversies between the Commission, any PPA Counterparty or any other Person or the respective rights, duties or liabilities of any of them or whether any facts or occurrences represented in any of the documents presented under any Letter of Credit are true and correct.

(c) To the fullest extent permitted by Applicable Law, the Commission shall not assert, and waives, any claim against the Bank, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, any Letter of Credit, any Basic Document or any agreement or instrument contemplated thereby, the transactions contemplated thereby or the use of the proceeds thereof.

(d) The obligations of the Commission under this Section 7.5 will survive the termination of this Agreement.

Section 7.6 **Expenses**. Upon receipt of a written invoice, the Commission shall promptly pay (i) the reasonable fees and expenses of counsel to the Bank incurred in connection with the preparation, execution and delivery and administration of this Agreement, the Letters of Credit, the Fee Agreement and the other Basic Documents as set forth in the Fee Agreement, (ii) the reasonable out-of-pocket expenses of the Bank incurred in connection with the preparation, execution and delivery and administration of this Agreement, the Letters of Credit, the Fee Agreement and the other Basic Documents (*provided* that such expenses to be paid in connection with the preparation and execution and delivery will not exceed the amount specified in the Fee Agreement), (iii) the fees and disbursements of counsel to the Bank with respect to advising the Bank as to its rights and responsibilities under the Basic Documents after the occurrence of a Default or an Event of Default and (iv) all costs and expenses, if any, in connection with the administration and enforcement of the Basic Documents, including in each case the fees and disbursements of counsel to the Bank. In addition, and notwithstanding the foregoing, the Commission agrees to pay, after the occurrence of an Event of Default, all costs and expenses (including attorneys' fees and costs of settlement) incurred by the Bank in enforcing any obligations or in collecting any payments due from the Commission hereunder or under the Fee Agreement by reason of such Event of Default or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "workout" or of any insolvency or bankruptcy proceedings. The obligations of the Commission under this Section 7.6 will survive the termination of this Agreement.

Section 7.7 **No Waiver; Conflict**. Neither any failure nor any delay on the part of the Bank in exercising any right, power or privilege hereunder, nor any course of dealing with respect to any of the same, will operate as a waiver thereof or preclude any other or further exercise thereof, nor will a single or partial exercise thereof, preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies herein provided are cumulative and not exclusive of any remedies provided by law. To the extent of any conflict between this

Agreement and any other Basic Documents, this Agreement will control solely as between the Commission and the Bank.

Section 7.8 **Modification, Amendment, Waiver, Etc.** No modification, amendment or waiver of any provision of this Agreement will be effective unless the same is in writing and signed in accordance with Section 7.1 hereof.

Section 7.9 **Dealings.** The Bank and its affiliates may accept deposits from, extend credit to and generally engage in any kind of banking, trust or other business with the Commission and/or any PPA Counterparty regardless of the capacity of the Bank hereunder or under any Letter of Credit.

Section 7.10 **Severability.** Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction, and all other remaining provisions hereof will be construed to render them enforceable to the fullest extent permitted by law. The parties shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic or legal effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

Section 7.11 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which constitutes an original, but when taken together constitute but one agreement, and any of the parties hereto may execute this Agreement by signing any such counterpart. This Agreement may be delivered by the exchange of signed signature pages by facsimile transmission or by e-mail with a pdf copy or other replicating image attached, and any printed or copied version of any signature page so delivered will have the same force and effect as an originally signed version of such signature page.

Section 7.12 **Table of Contents; Headings.** The table of contents and the section and subsection headings used herein have been inserted for convenience of reference only and do not constitute matters to be considered in interpreting this Agreement.

Section 7.13 **Entire Agreement.** This Agreement and the Fee Agreement represents the final agreement between the parties hereto with respect to the subject matter hereof and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties hereto as to such subject matter.

Section 7.14 **Governing Law Waiver of Jury Trial.**

(a) THIS AGREEMENT SHALL BE DEEMED TO BE A CONTRACT UNDER, AND FOR ALL PURPOSES SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO CONFLICTS OF LAWS PROVISIONS (OTHER THAN NEW YORK GENERAL OBLIGATIONS LAWS 5-1401 AND 5-1402); *PROVIDED*, THAT THE OBLIGATIONS OF THE COMMISSION HEREUNDER SHALL BE GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA WITHOUT REGARD TO CHOICE OF LAW RULES.

(b) TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE PARTIES HERETO WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THE BASIC DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREBY, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. IF AND TO THE EXTENT THAT THE FOREGOING WAIVER OF THE RIGHT TO A JURY TRIAL IS UNENFORCEABLE FOR ANY REASON IN SUCH FORUM, EACH OF THE PARTIES HERETO CONSENTS TO THE ADJUDICATION OF ALL CLAIMS PURSUANT TO JUDICIAL REFERENCE AS PROVIDED IN CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638, AND THE JUDICIAL REFEREE IS EMPOWERED TO HEAR AND DETERMINE ALL ISSUES IN SUCH REFERENCE, WHETHER FACT OR LAW. EACH OF THE PARTIES HERETO REPRESENTS THAT IT HAS REVIEWED THIS WAIVER AND CONSENT AND, FOLLOWING CONSULTATION WITH LEGAL COUNSEL ON SUCH MATTERS, KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS AND CONSENTS TO JUDICIAL REFERENCE. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT OR TO JUDICIAL REFERENCE UNDER CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638 AS PROVIDED HEREIN.

(c) The covenants and waivers made pursuant to this Section 7.14 are irrevocable and unmodifiable, whether in writing or orally, and are applicable to any subsequent amendments, renewals, supplements or modifications of this Agreement. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

Section 7.15 **Governmental Regulations**. The Commission shall (a) ensure that no Person who owns a controlling interest in or otherwise controls the Commission is or will be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control (*"OFAC"*), the Department of the Treasury or included in any Executive Order that prohibits or limits the Bank from making any advance or extension of credit to the Commission or from otherwise conducting business with the Commission and (b) ensure that the proceeds of Drawings under the Letters of Credit are not used to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto. Further, the Commission shall comply, and cause any of its subsidiaries to comply, with all applicable Bank Secrecy Act laws and regulations, as amended.

Section 7.16 **USA PATRIOT Act**. The Bank notifies the Commission that, pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the *"Act"*), it is required to obtain, verify and record information that identifies the Commission, which information includes the name and address of the Commission and other information that will allow the Bank to identify the Commission in accordance with the Act. The Commission agrees to provide such documentary and other evidence of the Commission's identity as may be requested by the Bank at any time to enable the Bank to verify the Commission's identity or to comply with any Applicable Law or regulation, including, without limitation, the Act.

Section 7.17 **Electronic Transmissions**. The Bank is authorized to accept and process any amendments, transfers, assignments of proceeds, Drawings, consents, waivers and all documents relating to the Letters of Credit which are sent to Bank by electronic transmission, including SWIFT, electronic mail, telex, telecopy, courier, mail or other computer generated

telecommunications and such electronic communication will have the same legal effect as if written and will be binding upon and enforceable against the Commission. The Bank may, but shall not be obligated to, require authentication of such electronic transmission or that the Bank receives original documents prior to acting on such electronic transmission.

Section 7.18 **Assignment to Federal Reserve Bank.** The Bank may assign and pledge all or any portion of the obligations owing to it hereunder to any Federal Reserve Bank or the United States Treasury as collateral security pursuant to Regulation A of the Board of Governors of the Federal Reserve System and any Operating Circular issued by such Federal Reserve Bank, *provided* that any payment in respect of such assigned obligations made by the Commission to the Bank in accordance with the terms of this Agreement will satisfy the Commission's obligations hereunder in respect of such assigned obligation to the extent of such payment. No such assignment will release the Bank from its obligations hereunder.

Section 7.19 **City Requirements.** The Bank agrees to the City's contracting requirements, as provided in Exhibit C attached hereto.

Section 7.20 **Arm's Length Transaction.** The transaction described in this Agreement is an arm's length, commercial transaction between the Commission and the Bank in which: (i) the Bank is acting solely as a principal (*i.e.*, as a lender) and for its own interest; (ii) the Bank is not acting as a municipal advisor or financial advisor to the Commission; (iii) the Bank has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 to the Commission with respect to this transaction and the discussions, undertakings and procedures leading thereto (irrespective of whether the Bank or any of its affiliates has provided other services or is currently providing other services to the Commission on other matters); (iv) the only obligations the Bank has to the Commission with respect to this transaction are set forth in this Agreement, the Fee Agreement and the Letters of Credit; and (v) the Bank is not recommending that the Commission take an action with respect to the transaction described in this Agreement and the other Basic Documents, and before taking any action with respect to the this transaction, the Commission should discuss the information contained herein with the Commission's own legal, accounting, tax, financial and other advisors, as the Commission deems appropriate.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Commission and the Bank have duly executed this Agreement as of the date first written above.

PUBLIC UTILITIES COMMISSION OF THE
CITY AND COUNTY OF SAN FRANCSICO

By:_____
Name: Harlan L. Kelly, Jr.
Title: General Manager

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney of the City and
County of San Francisco

By:_____
Name: Mark D. Blake
Title: Deputy City Attorney

ACKNOWLEDGED:

_____
Name: Nadia Sesay
Title: Director of Public Finance of the City
and County of San Francisco

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION

By:_____
Name: James G. Millard
Title: Executive Director

Master Power Purchase & Sale Agreement

Version 2.1 (modified 4/25/00)

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MASTER POWER PURCHASE AND SALES AGREEMENT

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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: _____ ("Effective Date"). The *Master Agreement*, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, 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 2.3 hereto) shall be referred to as the "Agreement." The Parties to this *Master Agreement* are the following:

Name ("_____" or "Party A")

All Notices:

Street: _____

City: _____ Zip: _____

Attn: Contract Administration
Phone: _____
Facsimile: _____
Duns: _____
Federal Tax ID Number: _____

Invoices:
Attn: _____
Phone: _____
Facsimile: _____

Scheduling:
Attn: _____
Phone: _____
Facsimile: _____

Payments:
Attn: _____
Phone: _____
Facsimile: _____

Wire Transfer:
BNK: _____
ABA: _____
ACCT: _____

Credit and Collections:
Attn: _____
Phone: _____
Facsimile: _____

With additional Notices of an Event of Default or Potential Event of Default to:
Attn: _____
Phone: _____
Facsimile: _____

Name ("Counterparty" or "Party B")

All Notices:

Street: _____

City: _____ Zip: _____

Attn: Contract Administration
Phone: _____
Facsimile: _____
Duns: _____
Federal Tax ID Number: _____

Invoices:
Attn: _____
Phone: _____
Facsimile: _____

Scheduling:
Attn: _____
Phone: _____
Facsimile: _____

Payments:
Attn: _____
Phone: _____
Facsimile: _____

Wire Transfer:
BNK: _____
ABA: _____
ACCT: _____

Credit and Collections:
Attn: _____
Phone: _____
Facsimile: _____

With additional Notices of an Event of Default or Potential Event of Default to:
Attn: _____
Phone: _____
Facsimile: _____

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Party A Tariff Tariff _____ Dated _____ Docket Number _____

Party B Tariff Tariff _____ Dated _____ Docket Number _____

Article Two

Transaction Terms and Conditions

[] Optional provision in Section 2.4. If not checked, inapplicable.

Article Four

Remedies for Failure to Deliver or Receive

[] Accelerated Payment of Damages. If not checked, inapplicable.

Article Five

Events of Default; Remedies

[] Cross Default for Party A:

[] Party A:_____ Cross Default Amount $_____

[] Other Entity:_____ Cross Default Amount $_____

[] Cross Default for Party B:

[] Party B:_____ Cross Default Amount $_____

[] Other Entity:_____ Cross Default Amount $_____

5.6 Closeout Setoff

[] Option A (Applicable if no other selection is made.)

[] Option B - Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows:_____

_____

[] Option C (No Setoff)

Article 8

Credit and Collateral Requirements

8.1 Party A Credit Protection:

(a) Financial Information:

[] Option A
[] Option B Specify: _____
[] Option C Specify: _____

(b) Credit Assurances:

[] Not Applicable
[] Applicable

(c) Collateral Threshold:

[] Not Applicable
[] Applicable

If applicable, complete the following:

Party B Collateral Threshold: $ _____; provided, however, that Party B's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party B has occurred and is continuing.

Party B Independent Amount: $_____

Party B Rounding Amount: $_____

(d) Downgrade Event:

[] Not Applicable
[] Applicable

If applicable, complete the following:

[] It shall be a Downgrade Event for Party B if Party B's Credit Rating falls below _____ from S&P or _____ from Moody's or if Party B is not rated by either S&P or Moody's

[] Other:
Specify:_____

(e) Guarantor for Party B:_____

Guarantee Amount:_____

8.2 Party B Credit Protection:

(a) Financial Information:

[] Option A
[] Option B Specify: _____
[] Option C Specify: _____

(b) Credit Assurances:

[] Not Applicable
[] Applicable

(c) Collateral Threshold:

[] Not Applicable
[] Applicable

If applicable, complete the following:

Party A Collateral Threshold: $ _____; provided, however, that Party A's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party A has occurred and is continuing.

Party A Independent Amount: $_____

Party A Rounding Amount: $_____

(d) Downgrade Event:

[] Not Applicable
[] Applicable

If applicable, complete the following:

[] It shall be a Downgrade Event for Party A if Party A's Credit Rating falls below _____ from S&P or _____ from Moody's or if Party A is not rated by either S&P or Moody's

[] Other:
Specify:_____

(e) Guarantor for Party A:_____

Guarantee Amount:_____

Article 10

Confidentiality — [] Confidentiality Applicable — If not checked, inapplicable.

Schedule M

[] Party A is a Governmental Entity or Public Power System
[] Party B is a Governmental Entity or Public Power System
[] Add Section 3.6. If not checked, inapplicable
[] Add Section 8.6. If not checked, inapplicable

Other Changes — Specify, if any: _____

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

Party A Name	Party B Name
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

DISCLAIMER: This Master Power Purchase and Sale Agreement was prepared by a committee of representatives of Edison Electric Institute ("EEI") and National Energy Marketers Association ("NEM") member companies to facilitate orderly trading in and development of wholesale power markets. Neither EEI nor NEM nor any member company nor any of their agents, representatives or attorneys shall be responsible for its use, or any damages resulting therefrom. By providing this Agreement EEI and NEM do not offer legal advice and all users are urged to consult their own legal counsel to ensure that their commercial objectives will be achieved and their legal interests are adequately protected.

GENERAL TERMS AND CONDITIONS

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 "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) otherwise becomes bankrupt or insolvent (however evidenced), (iv) 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 (v) is generally unable to pay its debts as they fall due.

1.4 "Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank 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.

1.5 "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.

1.6 "Call Option" means an Option entitling, but not obligating, the Option Buyer to purchase and receive the Product from the Option Seller at a price equal to the Strike Price for the Delivery Period for which the Option may be exercised, all as specified in the Transaction. Upon proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to sell and deliver the Product for the Delivery Period for which the Option has been exercised.

1.7 "Claiming Party" has the meaning set forth in Section 3.3.

1.8 "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 this Agreement.

1.9 "Confirmation" has the meaning set forth in Section 2.3.

1.10 "Contract Price" means the price in $U.S. (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of the Product, as specified in the Transaction.

1.11 "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.

1.12 "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 issues rating by S&P, Moody's or any other rating agency agreed by the Parties as set forth in the Cover Sheet.

1.13 "Cross Default Amount" means the cross default amount, if any, set forth in the Cover Sheet for a Party.

1.14 "Defaulting Party" has the meaning set forth in Section 5.1.

1.15 "Delivery Period" means the period of delivery for a Transaction, as specified in the Transaction.

1.16 "Delivery Point" means the point at which the Product will be delivered and received, as specified in the Transaction.

1.17 "Downgrade Event" has the meaning set forth on the Cover Sheet.

1.18 "Early Termination Date" has the meaning set forth in Section 5.2.

1.19 "Effective Date" has the meaning set forth on the Cover Sheet.

1.20 "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.

1.21 "Event of Default" has the meaning set forth in Section 5.1.

1.22 "FERC" means the Federal Energy Regulatory Commission or any successor government agency.

1.23 "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; 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 Schedule P.

1.24 "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.

1.25 "Guarantor" means, with respect to a Party, the guarantor, if any, specified for such Party on the Cover Sheet.

1.26 "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.

1.27 "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 A- from S&P or A3 from Moody's, 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.

1.28 "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.

1.29 "Master Agreement" has the meaning set forth on the Cover Sheet.

1.30 "Moody's" means Moody's Investor Services, Inc. or its successor.

1.31 "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.

1.32 "Non-Defaulting Party" has the meaning set forth in Section 5.2.

1.33 "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.

1.34 "Option" means the right but not the obligation to purchase or sell a Product as specified in a Transaction.

1.35 "Option Buyer" means the Party specified in a Transaction as the purchaser of an option, as defined in Schedule P.

1.36 "Option Seller" means the Party specified in a Transaction as the seller of an option , as defined in Schedule P.

1.37 "Party A Collateral Threshold" means the collateral threshold, if any, set forth in the Cover Sheet for Party A.

1.38 "Party B Collateral Threshold" means the collateral threshold, if any, set forth in the Cover Sheet for Party B.

1.39 "Party A Independent Amount" means the amount , if any, set forth in the Cover Sheet for Party A.

1.40 "Party B Independent Amount" means the amount , if any, set forth in the Cover Sheet for Party B.

1.41 "Party A Rounding Amount" means the amount, if any, set forth in the Cover Sheet for Party A.

1.42 "Party B Rounding Amount" means the amount, if any, set forth in the Cover Sheet for Party B.

1.43 "Party A Tariff" means the tariff, if any, specified in the Cover Sheet for Party A.

1.44 "Party B Tariff" means the tariff, if any, specified in the Cover Sheet for Party B.

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

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

1.47 "Product" means electric capacity, energy or other product(s) related thereto as specified in a Transaction by reference to a Product listed in Schedule P hereto or as otherwise specified by the Parties in the Transaction.

1.48 "Put Option" means an Option entitling, but not obligating, the Option Buyer to sell and deliver the Product to the Option Seller at a price equal to the Strike Price for the

Delivery Period for which the option may be exercised, all as specified in a Transaction. Upon proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to purchase and receive the Product.

1.49 "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.

1.50 "Recording" has the meaning set forth in Section 2.4.

1.51 "Replacement Price" means the price at which Buyer, acting in a commercially reasonable manner, purchases 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, or at Buyer's option, 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.

1.52 "S&P" means the Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.) or its successor.

1.53 "Sales Price" means the price at which Seller, acting in a commercially reasonable manner, resells at the Delivery Point 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, or at Seller's option, 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.

1.54 "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.

1.55 "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.

1.56 "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.

1.57 "Strike Price" means the price to be paid for the purchase of the Product pursuant to an Option.

1.58 "Terminated Transaction" has the meaning set forth in Section 5.2.

1.59 "Termination Payment" has the meaning set forth in Section 5.3.

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

1.61 "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.

ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS

2.1 Transactions. A Transaction shall be entered into upon agreement of the Parties orally or, if expressly required by either Party with respect to a particular Transaction, in writing, including an electronic means of communication. Each Party agrees not to contest, or assert any defense to, the validity or enforceability of the Transaction entered into in accordance with this Master Agreement (i) based on any law requiring agreements to be in writing or to be signed by the parties, or (ii) based on any lack of authority of the Party or any lack of authority of any employee of the Party to enter into a Transaction.

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), , the Party A Tariff, if any, and the Party B Tariff, if any, 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 2.3) shall form a single integrated agreement between the Parties. Any inconsistency between any terms of this Master Agreement and any terms of the Transaction shall be resolved in favor of the terms of such Transaction.

2.3 Confirmation. Seller may confirm a Transaction by forwarding to Buyer by facsimile within three (3) Business Days after the Transaction is entered into a confirmation ("Confirmation") substantially in the form of Exhibit A. If Buyer objects to any term(s) of such Confirmation, Buyer shall notify Seller in writing of such objections within two (2) Business Days of Buyer's receipt thereof, failing which Buyer shall be deemed to have accepted the terms as sent. If Seller fails to send a Confirmation within three (3) Business Days after the Transaction is entered into, a Confirmation substantially in the form of Exhibit A, may be forwarded by Buyer to Seller. If Seller objects to any term(s) of such Confirmation, Seller shall notify Buyer of such objections within two (2) Business Days of Seller's receipt thereof, failing which Seller shall be deemed to have accepted the terms as sent. If Seller and Buyer each send a Confirmation and neither Party objects to the other Party's Confirmation within two (2) Business Days of receipt, Seller's Confirmation shall be deemed to be accepted and shall be the

controlling Confirmation, unless (i) Seller's Confirmation was sent more than three (3) Business Days after the Transaction was entered into and (ii) Buyer's Confirmation was sent prior to Seller's Confirmation, in which case Buyer's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation. Failure by either Party to send or either Party to return an executed Confirmation or any objection by either Party shall not invalidate the Transaction agreed to by the Parties.

2.4 Additional Confirmation Terms. If the Parties have elected on the Cover Sheet to make this Section 2.4 applicable to this Master Agreement, 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 2.3 unless agreed to either orally or in writing by the Parties; provided that the foregoing shall not invalidate any Transaction agreed to by the Parties.

2.5 Recording. Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording ("Recording") of all telephone conversations between the Parties to this Master Agreement, and that any such Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees. The Recording, and the terms and conditions described therein, if admissible, shall be the controlling evidence for the Parties' agreement with respect to a particular Transaction in the event a Confirmation is not fully executed (or deemed accepted) by both Parties. Upon full execution (or deemed acceptance) of a Confirmation, such Confirmation shall control in the event of any conflict with the terms of a Recording, or in the event of any conflict with the terms of this Master Agreement.

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; provided, however, with respect to Options, the obligations set forth in the preceding sentence shall only arise if the Option Buyer exercises its Option in accordance with its terms. 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.

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 or, if "Accelerated Payment of Damages" is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, 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 or, if "Accelerated Payment of Damages" is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, 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 this Agreement if such failure is not remedied within three (3) 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;

(c) the failure to perform any material covenant or obligation set forth in this 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 is provided in Article Four) if such failure is not remedied within three (3) Business Days after written notice;

(d) such Party becomes Bankrupt;

(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 this 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;

(g) if the applicable cross default section in the Cover Sheet is indicated for such Party, the occurrence and continuation of (i) a default, event of default or other similar condition or event in respect of such Party or any other party specified in the Cover Sheet for such Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet), which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable or (ii) a default by such Party or any other party specified in the Cover Sheet for such Party in making on the due date therefor one or more payments, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet);

(h) with respect to such Party's Guarantor, if any:

(i) if any representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;

(ii) the failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure shall not be remedied within three (3) Business Days after written notice;

(iii) a Guarantor becomes Bankrupt;

(iv) the failure of a Guarantor's guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its

terms) prior to the satisfaction of all obligations of such Party under each Transaction to which such guaranty shall relate without the written consent of the other Party; or

(v) a Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any guaranty.

5.2 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 (i) to 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 this 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, as soon thereafter as is reasonably practicable).

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 this 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 this Agreement, so that all such amounts shall be netted out to a single liquidated amount (the "Termination Payment") payable by one Party to the other. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate.

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 and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within two (2) 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 two (2) 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 Closeout Setoffs.

Option A: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option B: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party or any of its Affiliates to the Non-Defaulting Party or any of its Affiliates under any other agreements, instruments or undertakings between the Defaulting Party or any of its Affiliates and the Non-Defaulting Party or any of its Affiliates and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option C: Neither Option A nor B shall apply.

5.7 Suspension of Performance. Notwithstanding any other provision of this Master Agreement, if (a) an Event of Default or (b) a Potential 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.

ARTICLE SIX: PAYMENT AND NETTING

6.1 Billing Period. Unless otherwise specifically agreed upon by the Parties in a Transaction, the calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments and, if "Accelerated Payment of Damages" is specified by the Parties in the Cover Sheet, payments pursuant to Section 4.1 or 4.2 and Option premium payments pursuant to Section 6.7). As soon as practicable after the end of each month, each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

6.2 Timeliness of Payment. Unless otherwise agreed by the Parties in a Transaction, all invoices under this Master Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month, or tenth (10th) 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 amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

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 this 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 two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the 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, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. 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 this Master Agreement, including any related damages calculated pursuant to Article Four (unless one of the Parties elects to accelerate payment of such amounts as permitted by 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 this Agreement.

6.7 Payment for Options. The premium amount for the purchase of an Option shall be paid within two (2) Business Days of receipt of an invoice from the Option Seller. Upon exercise of an Option, payment for the Product underlying such Option shall be due in accordance with Section 6.1.

6.8 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 agreement of the Parties, be netted into a single Transaction under which:

(a) the Party obligated to deliver the greater amount of Energy 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.

ARTICLE SEVEN: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN, 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 THIS 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 OR OTHERWISE. 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.

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

8.1 Party A Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.1(a) is specified on the Cover Sheet, Section 8.1(a) Option C shall apply exclusively. If none of Sections 8.1(b), 8.1(c) or 8.1(d) are specified on the Cover Sheet, Section 8.1(b) shall apply exclusively.

(a) Financial Information. Option A: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party B's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Party B's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as Party B diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party A may request from Party B the information specified in the Cover Sheet.

(b) Credit Assurances. If Party A has reasonable grounds to believe that Party B's creditworthiness or performance under this Agreement has become unsatisfactory, Party A will provide Party B with written notice requesting Performance Assurance in an amount determined by Party A in a commercially reasonable manner. Upon receipt of such notice Party

B shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party A. In the event that Party B fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party A plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold, then Party A, on any Business Day, may request that Party B provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold (rounding upwards for any fractional amount to the next Party B Rounding Amount) ("Party B Performance Assurance"), less any Party B Performance Assurance already posted with Party A. Such Party B Performance Assurance shall be delivered to Party A within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party B, at its sole cost, may request that such Party B Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party B's Independent Amount, if any, (rounding upwards for any fractional amount to the next Party B Rounding Amount). In the event that Party B fails to provide Party B Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.1(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party A as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party B to Party A, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party B, then Party A may require Party B to provide Performance Assurance in an amount determined by Party A in a commercially reasonable manner. In the event Party B shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party B shall deliver to Party A, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party A.

8.2 Party B Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.2(a) is specified on the Cover

Sheet, Section 8.2(a) Option C shall apply exclusively. If none of Sections 8.2(b), 8.2(c) or 8.2(d) are specified on the Cover Sheet, Section 8.2(b) shall apply exclusively.

(a) Financial Information. Option A: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party A's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Party's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as such Party diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party B may request from Party A the information specified in the Cover Sheet.

(b) Credit Assurances. If Party B has reasonable grounds to believe that Party A's creditworthiness or performance under this Agreement has become unsatisfactory, Party B will provide Party A with written notice requesting Performance Assurance in an amount determined by Party B in a commercially reasonable manner. Upon receipt of such notice Party A shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party B. In the event that Party A fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, 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.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party B plus Party A's Independent Amount, if any, exceeds the Party A Collateral Threshold, then Party B, on any Business Day, may request that Party A provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party A's Independent Amount, if any, exceeds the Party A Collateral Threshold (rounding upwards for any fractional amount to the next Party A Rounding Amount) ("Party A Performance Assurance"), less any Party A Performance Assurance already posted

with Party B. Such Party A Performance Assurance shall be delivered to Party B within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party A, at its sole cost, may request that such Party A Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party A's Independent Amount, if any, (rounding upwards for any fractional amount to the next Party A Rounding Amount). In the event that Party A fails to provide Party A Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.2(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party B as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party A to Party B, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party A, then Party B may require Party A to provide Performance Assurance in an amount determined by Party B in a commercially reasonable manner. In the event Party A shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party A shall deliver to Party B, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party B.

8.3 Grant of Security Interest/Remedies. To secure its obligations under this 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 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 terminated by either Party upon (thirty) 30 days' prior written notice; provided, however, that such 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 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 under Section 5.2 of this 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 for it to legally perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);

(iii) the execution, delivery and performance of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) are within its powers, have been duly authorized by all necessary action 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 accepted in accordance with Section 2.3), 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 accepted in accordance with Section 2.3);

(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 accepted in accordance with Section 2.3);

(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 accepted in accordance with Section 2.3) and as to whether this Master Agreement and each such Transaction (including any Confirmation accepted in accordance with Section 2.3) 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 accepted in accordance with Section 2.3);

(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 accepted in accordance with Section 2.3) 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 accepted in accordance with Section 2.3) involving the purchase or sale of a Product or an Option, 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 Indemnity. 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. 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 hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

10.6 Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

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 or facsimile. Notice by facsimile or hand delivery 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. This Master Agreement (including the exhibits, schedules and any written supplements hereto), the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmation accepted in accordance with Section 2.3) 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 this Agreement and shall be incorporated herein by reference. This 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. 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 Agreement, such amendment will not in any way affect outstanding Transactions under this 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 Agreement. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as "Regulatory Event") will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use their best efforts to reform this Agreement in order to give effect to the original intention of the Parties. The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights shall survive the termination of this Agreement for twelve (12) months. This Agreement shall be binding on each Party's successors and permitted assigns.

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.

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 Confidentiality. If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, neither Party shall disclose the terms or conditions of a Transaction under this Master Agreement to a third party (other than the Party's employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

SCHEDULE M

(THIS SCHEDULE IS INCLUDED IF THE APPROPRIATE BOX ON THE COVER SHEET IS MARKED INDICATING A PARTY IS A GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEM)

A. The Parties agree to add the following definitions in Article One.

"Act" means _____.[1]

"Governmental Entity or Public Power System" means a municipality, county, governmental board, public power authority, public utility district, joint action agency, or other similar political subdivision or public entity of the United States, one or more States or territories or any combination thereof.

"Special Fund" means a fund or account of the Governmental Entity or Public Power System set aside and or pledged to satisfy the Public Power System's obligations hereunder out of which amounts shall be paid to satisfy all of the Public Power System's obligations under this Master Agreement for the entire Delivery Period.

B. The following sentence shall be added to the end of the definition of "Force Majeure" in Article One.

If the Claiming Party is a Governmental Entity or Public Power System, Force Majeure does not include any action taken by the Governmental Entity or Public Power System in its governmental capacity.

C. The Parties agree to add the following representations and warranties to Section 10.2:

Further and with respect to a Party that is a Governmental Entity or Public Power System, such Governmental Entity or Public Power System represents and warrants to the other Party continuing throughout the term of this Master Agreement, with respect to this Master Agreement and each Transaction, as follows: (i) all acts necessary to the valid execution, delivery and performance of this Master Agreement, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the Act and the Public Power System's ordinances, bylaws or other regulations, (ii) all persons making up the governing body of Governmental Entity or Public Power System are the duly elected or appointed incumbents in their positions and hold such

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[1] Cite the state enabling and other relevant statutes applicable to Governmental Entity or Public Power System.

positions in good standing in accordance with the Act and other applicable law, (iii) entry into and performance of this Master Agreement by Governmental Entity or Public Power System are for a proper public purpose within the meaning of the Act and all other relevant constitutional, organic or other governing documents and applicable law, (iv) the term of this Master Agreement does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and applicable law, (v) the Public Power System's obligations to make payments hereunder are unsubordinated obligations and such payments are (a) operating and maintenance costs (or similar designation) which enjoy first priority of payment at all times under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law or (b) otherwise not subject to any prior claim under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law and are available without limitation or deduction to satisfy all Governmental Entity or Public Power System' obligations hereunder and under each Transaction or (c) are to be made solely from a Special Fund, (vi) entry into and performance of this Master Agreement and each Transaction by the Governmental Entity or Public Power System will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any obligation of Governmental Entity or Public Power System otherwise entitled to such exclusion, and (vii) obligations to make payments hereunder do not constitute any kind of indebtedness of Governmental Entity or Public Power System or create any kind of lien on, or security interest in, any property or revenues of Governmental Entity or Public Power System which, in either case, is proscribed by any provision of the Act or any other relevant constitutional, organic or other governing documents and applicable law, any order or judgment of any court or other agency of government applicable to it or its assets, or any contractual restriction binding on or affecting it or any of its assets.

D. The Parties agree to add the following sections to Article Three:

Section 3.4 Public Power System's Deliveries. On the Effective Date and as a condition to the obligations of the other Party under this Agreement, Governmental Entity or Public Power System shall provide the other Party hereto (i) certified copies of all ordinances, resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery and performance by Governmental Entity or Public Power System of this Master Agreement and (ii) an opinion of counsel for Governmental Entity or Public Power System, in form and substance reasonably satisfactory to the Other Party, regarding the validity, binding effect and enforceability of this Master Agreement against Governmental Entity or Public Power System in

respect of the Act and all other relevant constitutional organic or other governing documents and applicable law.

Section 3.5 No Immunity Claim. Governmental Entity or Public Power System warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, 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) jurisdiction of court (including a court located outside the jurisdiction of its organization), (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment.

E. If the appropriate box is checked on the Cover Sheet, as an alternative to selecting one of the options under Section 8.3, the Parties agree to add the following section to Article Three:

Section 3.6 Governmental Entity or Public Power System Security. With respect to each Transaction, Governmental Entity or Public Power System shall either (i) have created and set aside a Special Fund or (ii) upon execution of this Master Agreement and prior to the commencement of each subsequent fiscal year of Governmental Entity or Public Power System during any Delivery Period, have obtained all necessary budgetary approvals and certifications for payment of all of its obligations under this Master Agreement for such fiscal year; any breach of this provision shall be deemed to have arisen during a fiscal period of Governmental Entity or Public Power System for which budgetary approval or certification of its obligations under this Master Agreement is in effect and, notwithstanding anything to the contrary in Article Four, an Early Termination Date shall automatically and without further notice occur hereunder as of such date wherein Governmental Entity or Public Power System shall be treated as the Defaulting Party. Governmental Entity or Public Power System shall have allocated to the Special Fund or its general funds a revenue base that is adequate to cover Public Power System's payment obligations hereunder throughout the entire Delivery Period.

F. If the appropriate box is checked on the Cover Sheet, the Parties agree to add the following section to Article Eight:

Section 8.4 Governmental Security. As security for payment and performance of Public Power System's obligations hereunder, Public Power System hereby pledges, sets over, assigns and grants to the other Party a security interest in all of Public Power System's right, title and interest in and to [specify collateral].

G. The Parties agree to add the following sentence at the end of Section 10.6 - Governing Law:

> NOTWITHSTANDING THE FOREGOING, IN RESPECT OF THE APPLICABILITY OF THE ACT AS HEREIN PROVIDED, THE LAWS OF THE STATE OF _____[2] SHALL APPLY.

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[2] Insert relevant state for Governmental Entity or Public Power System.

SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS

"Ancillary Services" means any of the services identified by a Transmission Provider in its transmission tariff as "ancillary services" including, but not limited to, regulation and frequency response, energy imbalance, operating reserve-spinning and operating reserve-supplemental, as may be specified in the Transaction.

"Capacity" has the meaning specified in the Transaction.

"Energy" means three-phase, 60-cycle alternating current electric energy, expressed in megawatt hours.

"Firm (LD)" means, with respect to a Transaction, that either Party shall be relieved of its obligations to sell and deliver or purchase and receive without liability only to the extent that, and for the period during which, such performance is prevented by Force Majeure. In the absence of Force Majeure, the Party to which performance is owed shall be entitled to receive from the Party which failed to deliver/receive an amount determined pursuant to Article Four.

"Firm Transmission Contingent - Contract Path" means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product in the case of the Seller from the generation source to the Delivery Point or in the case of the Buyer from the Delivery Point to the ultimate sink, and (ii) such interruption or curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the applicable transmission provider's tariff. This contingency shall excuse performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of "Force Majeure" in Section 1.23 to the contrary.

"Firm Transmission Contingent - Delivery Point" means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission to the Delivery Point (in the case of Seller) or from the Delivery Point (in the case of Buyer) for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product, in the case of the Seller, to be delivered to the Delivery Point or, in the case of Buyer, to be received at the Delivery Point and (ii) such interruption or curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the applicable transmission provider's tariff. This transmission contingency excuses performance for the duration of the interruption or curtailment, notwithstanding the provisions of the definition of "Force Majeure" in Section 1.23 to the contrary. Interruptions or curtailments of transmission other than the transmission either immediately to or from the Delivery Point shall not excuse performance

"Firm (No Force Majeure)" means, with respect to a Transaction, that if either Party fails to perform its obligation to sell and deliver or purchase and receive the Product, the Party to which performance is owed shall be entitled to receive from the Party which failed to perform an

amount determined pursuant to Article Four. Force Majeure shall not excuse performance of a Firm (No Force Majeure) Transaction.

"Into _____ (the "Receiving Transmission Provider"), Seller's Daily Choice" means that, in accordance with the provisions set forth below, (1) the Product shall be scheduled and delivered to an interconnection or interface ("Interface") either (a) on the Receiving Transmission Provider's transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which Interface, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area; and (2) Seller has the right on a daily prescheduled basis to designate the Interface where the Product shall be delivered. An "Into" Product shall be subject to the following provisions:

1. Prescheduling and Notification. Subject to the provisions of Section 6, not later than the prescheduling deadline of 11:00 a.m. CPT on the Business Day before the next delivery day or as otherwise agreed to by Buyer and Seller, Seller shall notify Buyer ("Seller's Notification") of Seller's immediate upstream counterparty and the Interface (the "Designated Interface") where Seller shall deliver the Product for the next delivery day, and Buyer shall notify Seller of Buyer's immediate downstream counterparty.

2. Availability of "Firm Transmission" to Buyer at Designated Interface; "Timely Request for Transmission," "ADI" and "Available Transmission." In determining availability to Buyer of next-day firm transmission ("Firm Transmission") from the Designated Interface, a "Timely Request for Transmission" shall mean a properly completed request for Firm Transmission made by Buyer in accordance with the controlling tariff procedures, which request shall be submitted to the Receiving Transmission Provider no later than 30 minutes after delivery of Seller's Notification, provided, however, if the Receiving Transmission Provider is not accepting requests for Firm Transmission at the time of Seller's Notification, then such request by Buyer shall be made within 30 minutes of the time when the Receiving Transmission Provider first opens thereafter for purposes of accepting requests for Firm Transmission.

Pursuant to the terms hereof, delivery of the Product may under certain circumstances be redesignated to occur at an Interface other than the Designated Interface (any such alternate designated interface, an "ADI") either (a) on the Receiving Transmission Provider's transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which ADI, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area using either firm or non-firm transmission, as available on a day-ahead or hourly basis (individually or collectively referred to as "Available Transmission") within the Receiving Transmission Provider's transmission system.

3. Rights of Buyer and Seller Depending Upon Availability of/Timely Request for Firm Transmission.

A. Timely Request for Firm Transmission made by Buyer, Accepted by the Receiving Transmission Provider and Purchased by Buyer. If a Timely Request for Firm Transmission is made by Buyer and is accepted by the Receiving Transmission Provider

and Buyer purchases such Firm Transmission, then Seller shall deliver and Buyer shall receive the Product at the Designated Interface.

i. If the Firm Transmission purchased by Buyer within the Receiving Transmission Provider's transmission system from the Designated Interface ceases to be available to Buyer for any reason, or if Seller is unable to deliver the Product at the Designated Interface for any reason except Buyer's non-performance, then at Seller's choice from among the following, Seller shall: (a) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, require Buyer to purchase such Firm Transmission from such ADI, and schedule and deliver the affected portion of the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, or (b) require Buyer to purchase non-firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by Seller, or (c) to the extent firm transmission is available on an hourly basis, require Buyer to purchase firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of such hourly firm transmission from the Designated Interface or an ADI designated by Seller.

ii. If the Available Transmission utilized by Buyer as required by Seller pursuant to Section 3A(i) ceases to be available to Buyer for any reason, then Seller shall again have those alternatives stated in Section 3A(i) in order to satisfy its obligations.

iii. Seller's obligation to schedule and deliver the Product at an ADI is subject to Buyer's obligation referenced in Section 4B to cooperate reasonably therewith. If Buyer and Seller cannot complete the scheduling and/or delivery at an ADI, then Buyer shall be deemed to have satisfied its receipt obligations to Seller and Seller shall be deemed to have failed its delivery obligations to Buyer, and Seller shall be liable to Buyer for amounts determined pursuant to Article Four.

iv. In each instance in which Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI pursuant to Sections 3A(i) or (ii), and Firm Transmission had been purchased by both Seller and Buyer into and within the Receiving Transmission Provider's transmission system as to the scheduled delivery which could not be completed as a result of the interruption or curtailment of such Firm Transmission, Buyer and Seller shall bear their respective transmission expenses and/or associated congestion charges incurred in connection with efforts to complete delivery by such alternative scheduling and delivery arrangements. In any instance except as set forth in the immediately preceding sentence, Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI under Sections 3A(i) or (ii), Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with such alternative scheduling arrangements.

B. Timely Request for Firm Transmission Made by Buyer but Rejected by the Receiving Transmission Provider. If Buyer's Timely Request for Firm Transmission is rejected by the Receiving Transmission Provider because of unavailability of Firm Transmission from the Designated Interface, then Buyer shall notify Seller within 15 minutes after receipt of the Receiving Transmission Provider's notice of rejection ("Buyer's Rejection Notice"). If Buyer timely notifies Seller of such unavailability of Firm Transmission from the Designated Interface, then Seller shall be obligated either (1) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, to require Buyer to purchase (at Buyer's own expense) such Firm Transmission from such ADI and schedule and deliver the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, and thereafter the provisions in Section 3A shall apply, or (2) to require Buyer to purchase (at Buyer's own expense) non-firm transmission, and schedule and deliver the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by the Seller, in which case Seller shall bear the risk of interruption or curtailment of the non-firm transmission; provided, however, that if the non-firm transmission is interrupted or curtailed or if Seller is unable to deliver the Product for any reason, Seller shall have the right to schedule and deliver the Product to another ADI in order to satisfy its delivery obligations, in which case Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with Seller's inability to deliver the Product as originally prescheduled. If Buyer fails to timely notify Seller of the unavailability of Firm Transmission, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface, and the provisions of Section 3D shall apply.

C. Timely Request for Firm Transmission Made by Buyer, Accepted by the Receiving Transmission Provider and not Purchased by Buyer. If Buyer's Timely Request for Firm Transmission is accepted by the Receiving Transmission Provider but Buyer elects to purchase non-firm transmission rather than Firm Transmission to take delivery of the Product, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

D. No Timely Request for Firm Transmission Made by Buyer, or Buyer Fails to Timely Send Buyer's Rejection Notice.. If Buyer fails to make a Timely Request for Firm Transmission or Buyer fails to timely deliver Buyer's Rejection Notice, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

4. Transmission.

A. Seller's Responsibilities. Seller shall be responsible for transmission required to deliver the Product to the Designated Interface or ADI, as the case may be. It is expressly agreed that Seller is not required to utilize Firm Transmission for its delivery obligations hereunder, and Seller shall bear the risk of utilizing non-firm transmission. If Seller's scheduled delivery to Buyer is interrupted as a result of Buyer's attempted transmission of the Product beyond the Receiving Transmission Provider's system border, then Seller will be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for damages pursuant to Article Four.

B. Buyer's Responsibilities. Buyer shall be responsible for transmission required to receive and transmit the Product at and from the Designated Interface or ADI, as the case may be, and except as specifically provided in Section 3A and 3B, shall be responsible for any costs associated with transmission therefrom. If Seller is attempting to complete the designation of an ADI as a result of Seller's rights and obligations hereunder, Buyer shall co-operate reasonably with Seller in order to effect such alternate designation.

5. Force Majeure. An "Into" Product shall be subject to the "Force Majeure" provisions in Section 1.23.

6. Multiple Parties in Delivery Chain Involving a Designated Interface. Seller and Buyer recognize that there may be multiple parties involved in the delivery and receipt of the Product at the Designated Interface or ADI to the extent that (1) Seller may be purchasing the Product from a succession of other sellers ("Other Sellers"), the first of which Other Sellers shall be causing the Product to be generated from a source ("Source Seller") and/or (2) Buyer may be selling the Product to a succession of other buyers ("Other Buyers"), the last of which Other Buyers shall be using the Product to serve its energy needs ("Sink Buyer"). Seller and Buyer further recognize that in certain Transactions neither Seller nor Buyer may originate the decision as to either (a) the original identification of the Designated Interface or ADI (which designation may be made by the Source Seller) or (b) the Timely Request for Firm Transmission or the purchase of other Available Transmission (which request may be made by the Sink Buyer). Accordingly, Seller and Buyer agree as follows:

A. If Seller is not the Source Seller, then Seller shall notify Buyer of the Designated Interface promptly after Seller is notified thereof by the Other Seller with whom Seller has a contractual relationship, but in no event may such designation of the Designated Interface be later than the prescheduling deadline pertaining to the Transaction between Buyer and Seller pursuant to Section 1.

B. If Buyer is not the Sink Buyer, then Buyer shall notify the Other Buyer with whom Buyer has a contractual relationship of the Designated Interface promptly after Seller notifies Buyer thereof, with the intent being that the party bearing actual responsibility to secure transmission shall have up to 30 minutes after receipt of the Designated Interface to submit its Timely Request for Firm Transmission.

C. Seller and Buyer each agree that any other communications or actions required to be given or made in connection with this "Into Product" (including without limitation, information relating to an ADI) shall be made or taken promptly after receipt of the relevant information from the Other Sellers and Other Buyers, as the case may be.

D. Seller and Buyer each agree that in certain Transactions time is of the essence and it may be desirable to provide necessary information to Other Sellers and Other Buyers in order to complete the scheduling and delivery of the Product. Accordingly, Seller and Buyer agree that each has the right, but not the obligation, to provide information at its own risk to Other Sellers and Other Buyers, as the case may be, in order to effect the prescheduling, scheduling and delivery of the Product

"Native Load" means the demand imposed on an electric utility or an entity by the requirements of retail customers located within a franchised service territory that the electric utility or entity has statutory obligation to serve.

"Non-Firm" means, with respect to a Transaction, that delivery or receipt of the Product may be interrupted for any reason or for no reason, without liability on the part of either Party.

"System Firm" means that the Product will be supplied from the owned or controlled generation or pre-existing purchased power assets of the system specified in the Transaction (the "System") with non-firm transmission to and from the Delivery Point, unless a different Transmission Contingency is specified in a Transaction. Seller's failure to deliver shall be excused: (i) by an event or circumstance which prevents Seller from performing its obligations, 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 Seller; (ii) by Buyer's failure to perform; (iii) to the extent necessary to preserve the integrity of, or prevent or limit any instability on, the System; (iv) to the extent the System or the control area or reliability council within which the System operates declares an emergency condition, as determined in the system's, or the control area's, or reliability council's reasonable judgment; or (v) by the interruption or curtailment of transmission to the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Seller's performance. Buyer's failure to receive shall be excused (i) by Force Majeure; (ii) by Seller's failure to perform, or (iii) by the interruption or curtailment of transmission from the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Buyer's performance. In any of such events, neither party shall be liable to the other for any damages, including any amounts determined pursuant to Article Four.

"Transmission Contingent" means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is unavailable or interrupted or curtailed for any reason, at any time, anywhere from the Seller's proposed generating source to the Buyer's proposed ultimate sink, regardless of whether transmission, if any, that such Party is attempting to secure and/or has purchased for the Product is firm or non-firm. If the transmission (whether firm or non-firm) that Seller or Buyer is attempting to secure is from source to sink is unavailable, this contingency excuses performance for the entire Transaction. If the transmission (whether firm or non-firm) that Seller

or Buyer has secured from source to sink is interrupted or curtailed for any reason, this contingency excuses performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of "Force Majeure" in Article 1.23 to the contrary.

"Unit Firm" means, with respect to a Transaction, that the Product subject to the Transaction is intended to be supplied from a generation asset or assets specified in the Transaction. Seller's failure to deliver under a "Unit Firm" Transaction shall be excused: (i) if the specified generation asset(s) are unavailable as a result of a Forced Outage (as defined in the NERC Generating Unit Availability Data System (GADS) Forced Outage reporting guidelines) or (ii) by an event or circumstance that affects the specified generation asset(s) so as to prevent Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, and which is not within the reasonable control of, or the result of the negligence of, the Seller or (iii) by Buyer's failure to perform. In any of such events, Seller shall not be liable to Buyer for any damages, including any amounts determined pursuant to Article Four.

EXHIBIT A

MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER

This confirmation letter shall confirm the Transaction agreed to on _____, ___ between _____ ("Party A") and _____ ("Party B") regarding the sale/purchase of the Product under the terms and conditions as follows:

Seller: _____

Buyer: _____

Product:

[] Into _____, Seller's Daily Choice

[] Firm (LD)

[] Firm (No Force Majeure)

[] System Firm

(Specify System: _____)

[] Unit Firm

(Specify Unit(s): _____)

[] Other _____

[] Transmission Contingency (If not marked, no transmission contingency)

[]	FT-Contract Path Contingency	[]	Seller	[]	Buyer
[]	FT-Delivery Point Contingency	[]	Seller	[]	Buyer
[]	Transmission Contingent	[]	Seller	[]	Buyer
[]	Other transmission contingency				

(Specify: _____)

Contract Quantity: _____

Delivery Point: _____

Contract Price:

Energy Price: _____

Other Charges: _____

Delivery Period: _____

Special Conditions: _____

Scheduling: _____

Option Buyer: _____

Option Seller: _____

Type of Option: _____

Strike Price: _____

Premium: _____

Exercise Period: _____

This confirmation letter is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated _____ (the "Master Agreement") between Party A and Party B, and constitutes part of and is subject to the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

[Party A]	[Party B]
Name: _____	Name: _____
Title: _____	Title: _____
Phone No: _____	Phone No: _____
Fax: _____	Fax: _____

California AB32 Product Annex to the EEI Master Power Purchase & Sale Agreement

Version 1.0
7/16/12

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INTRODUCTION AND EXPLANATORY NOTES

Introduction. This Introduction and these Explanatory Notes concern the California AB32 Product Annex to the Edison Electric Institute (EEI) Master Power Purchase and Sale Agreement (the "EEI AB32 Annex" or the "Annex"). The Annex is for use with the EEI Master Power Purchase & Sale Agreement. The following notes explain certain selected concepts. They are intended to educate users, and are not part of the document itself, and do not create legal obligations between the Parties.

Program Implementation. The Annex is intended for use in trading AB32 cap and trade compliance products. Although at the time of publication of the Annex, the AB32 cap and trade program, including the California Air Resources Board ("CARB") accounting system, is not yet fully operational, the body of the Annex contemplates a program that is in full force and effect. Therefore, Exhibit A-1 is a form of transaction confirmation that may be used before the program begins, and it contains provisions relating to change in law and similar concepts that are likely to be applicable before, but not after, the program commences. Once the program is fully underway, Exhibit A-1 should no longer be necessary.

Early Action Offset Credits. The Offset Credits that may be traded under the Annex are intended to be issued by CARB pursuant to the Cap and Trade Regulations. At present, implementation, planning, roles, tracking system, and other issues remain outstanding with respect to changing existing early action offset credits (for example Climate Action Reserve ("CAR") Climate Reserve Tonnes ("CRTs")) into CARB offset credits, even if the path to conversion is indeed set forth in the rules. Consistent with the drafting philosophy of creating an Annex written for the long haul, as opposed to seeking to address issues likely to be present only at the commencement of the program, Exhibit A-2 is a form of offset confirmation that may be useful for Parties wishing simply to trade CAR CRTs.

Change in Law Risks.

Government Action and Program Interim Suspension. "Government Action" is action by a Governmental Authority that renders the mechanism for Delivery in any AB32 Transaction illegal, unconstitutional, unenforceable or impossible, such that neither Party can fulfill its obligations to purchase, sell or transfer AB32 Products. Government Action that is final and non-appealable allows for Cancellation of the applicable AB32 Transaction by either Party to the AB32 Transaction. Government Action that remains subject to likely appeal or further process is a "Program Interim Suspension". A Program Interim Suspension allows for Cancellation by either Party if the appeal or further process of the Government Action is not resolved within a Commercially Reasonable Period. The Parties can define the length of a Commercially Reasonable Period. If the Program Interim Suspension is resolved within a Commercially Reasonable Period, the Parties remain obligated to perform in good faith under the terms of the AB32 Transaction. Parties may also wish to consider the impact of a Program Interim Suspension on their obligations under Article 8 of the Master Agreement.

Regulatorily Continuing. If action by a Governmental Authority renders performance of an AB32 Transaction more difficult, time-consuming or costly, but does not render the mechanism for Delivery in such AB32 Transaction illegal, unconstitutional, unenforceable or

impossible, then the action is not Government Action. Action by a Governmental Authority does not constitute Government Action, does not give either Party to the affected AB32 Transaction a right of Cancellation, and the Parties are obligated to continue to perform the AB32 Transaction. The risks of the action are instead allocated to one Party or the other on the basis of whether the transaction is "Regulatorily Continuing". If the Parties designate the AB32 Transaction as Regulatorily Continuing, the seller has the obligation to ensure that the AB32 Transaction complies with the requirements of AB32 on the Delivery Date, including, if necessary, providing a replacement product. If the Parties do not designate the AB32 Transaction as Regulatorily Continuing, then the risk that the AB32 Product may fail to comply with the requirements of AB32 on the Delivery Date is borne by the Buyer so long as it complied with AB32 as of the Trade Date. If the Parties fail to elect whether the AB32 Transaction is Regulatorily Continuing, it will, by default, be Regulatorily Continuing. This is the opposite of the EEI RECs Annex, where the result of a failure to make an election is that the RECs Transaction is not Regulatorily Continuing. RECs are created by the physical action of a generation station at a point in time, and exist independently of regulation, even if they may have characteristics and uses assigned to them by regulators. By contrast, allowances, which are expected to be the most common AB32 Products, are created and initially distributed by a regulator. In an AB32 Transaction, presence or absence of the "Regulatorily Continuing" designation does not give either Buyer or Seller the right to cancel the Transaction if the program changes and the AB32 Product thus fails to comply on the Delivery Date. Rather, whether the transaction is "Regulatorily Continuing" determines which Party bears the risk of taking measures that are required to ensure that Delivery can be used for compliance with AB32.

Risks. Because the AB32 cap and trade system is the product of an administrative rule, which is subject to judicial review as well as "adjustments" by the California legislature or Congress or a federal agency, Parties should carefully assess their change in law risks.

Usage with Other Annexes.

If parties have both the RECs Annex and the EEI AB32 Annex in place, AB32 will likely prohibit a sale of RECs that is separate from the sale of energy from a resource that is a "Specified Source" within the meaning of AB32, and therefore may wish to include all of the RECs from an energy sale from the Specified Source, as such a sale of electricity would generally not, for example, currently include Allowances or offset credits.

Users of the Annex should also be careful with respect to language and terms of art used in supplemental provisions they may have added to their base EEI Agreement, such as market disruption event language, or provisions respecting options. Even when consistent, the terms can create ambiguities when used in combination with the Annex.

Parties should also refer in their Annex to any provisions of their EEI Master Agreement Cover Sheet and optional provisions that they may wish to not govern AB32 Transactions, for example Mobile-Sierra waivers.

CALIFORNIA AB32 PRODUCT ANNEX
to the
EEI MASTER POWER PURCHASE & SALE AGREEMENT

Name: _____, a _____ organized under the laws of the State of _____ ("Party A")

Name: _____, a _____ organized under the laws of the State of _____ ("Party B")

Effective Date of EEI Master Agreement between Party A and Party B: _____
Effective Date of this Annex: _____

Annex Cover Sheet Elections:

Party A Holding Account details: _____

Party B Holding Account details: _____

The addresses and contacts for notices, invoices, confirmations, payments, and wire transfer are as set forth on the EEI Master Agreement Cover Sheet unless otherwise set forth below:

Additional Notices:
Street: _____
City: _____
Attn: _____
Phone: _____
Facsimile: _____

Additional Notices:
Street: _____
City _____
Attn: _____
Phone: _____
Facsimile: _____

Invoices:
Attn: _____
Phone: _____
Facsimile: _____

Invoices:
Attn: _____
Phone: _____
Facsimile: _____

Confirmations:
Attn: _____
Phone: _____
Facsimile: _____

Confirmations:
Attn: _____
Phone: _____
Facsimile: _____

Payments:
Attn: _____
Phone: _____
Facsimile: _____

Payments:
Attn: _____
Phone: _____
Facsimile: _____

Wire Transfer:
BNK:
ABA:
ACCT:

Wire Transfer:
BNK:
ABA:
ACCT:

Outstanding AB32 Transactions. This Annex applies to the following pre-existing AB32 Transactions:

- ☐ Option A: All AB32 Transactions outstanding between the parties as of the Effective Date of this Annex. If no options are selected, Option A applies.
- ☐ Option B: The AB32 Transactions listed in Schedule 1 to this Annex only.
- ☐ Option C: None of the AB32 Transactions between the Parties that were executed prior to the Effective Date of this Annex.

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Applicability of Articles 8.1, 8.2, and, if applicable, the Collateral Annex

- ☐ Option A: Articles 8.1, 8.2 and, if applicable, the Collateral Annex, apply to all AB32 Transactions. – If no options are selected, Option A applies.
- ☐ Option B: Articles 8.1, 8.2 and, if applicable, the Collateral Annex, do not apply to any AB32 Transactions.
- ☐ Option C: Articles 8.1, 8.2 and, if applicable, the Collateral Annex, apply to all AB32 Transactions except those AB32 Transactions set forth in Schedule 2 as amended from time to time.

Elections for Paragraph 3.2 Payment Netting

- ☐ Option A (Payment Netting). If neither Option A nor Option B is checked, Option A applies.
- ☐ Option B (No Payment Netting).

Elections for Paragraph 7.1 Government Action

"Commercially Reasonable Period" means a period not to exceed __ days (thirty days if left blank).

Other Changes:

Specify, if any:

IN WITNESS WHEREOF, the Parties have caused this Annex to be duly executed in one or more counterparts (each of which shall be deemed an original, and all of which, taken together, shall constitute one and the same agreement) effective as of the Effective Date of this Annex. The Parties expressly acknowledge the validity of facsimile counterparts of this Annex, if any, which may be transmitted in advance of, or in lieu of, executed original documents.

Party A: _____

By:_____
Printed Name: _____
Title:_____

Party B: _____

By:_____
Printed Name: _____
Title:_____

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CALIFORNIA AB32 PRODUCT ANNEX TO THE EEI MASTER POWER PURCHASE & SALE AGREEMENT

WHEREAS, Party A and Party B have entered into an EEI Master Power Purchase & Sale Agreement (including any amendments, annexes or Cover Sheet thereto which are provided for and incorporated into the EEI Master Power Purchase & Sale Agreement, the "EEI Master Agreement"), which EEI Master Agreement governs the terms and conditions pursuant to which the Parties may enter into transactions relating to the purchase and sale of electric capacity, energy and other products related thereto; and

WHEREAS, the Parties desire to enter into this California AB32 Product Annex to the EEI Master Agreement (this "Annex") to provide terms and conditions under which the Parties may enter into Transactions relating to the purchase and sale of AB32 Products (as hereinafter defined; each such Transaction, an "AB32 Transaction");

NOW, THEREFORE, the Parties agree as follows:

PARAGRAPH ONE: GENERAL TERMS

1.1 Scope of Agreement. The Parties enter into this Annex to provide the terms and conditions pursuant to which they may enter into AB32 Transactions. This Annex and the Annex Cover Sheet Elections ("Annex Cover Sheet") supplement, form a part of, and are incorporated into, the EEI Master Agreement. Capitalized terms used but not defined in this Annex are defined in the EEI Master Agreement.

1.2 Application. The terms set forth in the EEI Master Agreement as supplemented and amended by this Annex apply to AB32 Transactions. Unless otherwise expressly amended by this Annex, all of the terms and conditions set forth in the EEI Master Agreement apply to AB32 Transactions. "Transaction" as used in the EEI Master Agreement includes AB32 Products. Except as otherwise provided in this Annex, the EEI Master Agreement shall apply equally to all Transactions without differentiation. By way of example only, an Event of Default under Section 5.1 of the EEI Master Agreement gives the Non-Defaulting Party the rights under Article Five of the EEI Master Agreement with respect to all Transactions. In the event of any inconsistency among or between the EEI Master Agreement and this Annex, this Annex will govern with respect to AB32 Transactions only.

PARAGRAPH TWO: DEFINITIONS

2.1 Definitions. With respect to AB32 Transactions, the following terms have the meanings below, and if the same term is defined in the EEI Master Agreement, the definition herein supersedes and replaces that in the EEI Master Agreement:

2.1.1 "AB32" means the California Global Warming Solutions Act of 2006 and the Cap and Trade Regulations, and, with respect to any AB32 Transaction that is Regulatorily Continuing, as each may be amended from time to time.

2.1.2 "AB32 Product" means the Allowance, Offset Credit, Early Action Offset Credit or Sector-Based Offset Credit to be delivered in a particular AB32 Transaction.

2.1.3 "AB32 Transaction" is defined in the Preamble.

2.1.4 "Allowance" means California GHG Allowances, as such term is defined in the Cap and Trade Regulations, and excludes Offset Credits and Sector Based Offset Credits.

2.1.5 "Annex Cover Sheet" is defined in Paragraph 1.1.

2.1.6 "Applicable Law" means all legally binding constitutions, treaties, statutes, laws, ordinances, rules, regulations, orders, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority or arbitrator that apply to AB32 or any one or both of the Parties or the terms hereof.

2.1.7 "Auction" is defined in the Cap and Trade Regulations.

2.1.8 "Cal EPA" means the California Environmental Protection Agency.

2.1.9 "Cancellation" is defined in Paragraph 7.1.1 of this Annex.

2.1.10 "Cap and Trade Regulations" means the Mandatory Greenhouse Gas Emissions Reporting and California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulations (CCR Title 17, Subchapter 10, Articles 2 and 5 respectively) promulgated by CARB pursuant to the California Global Warming Solutions Act of 2006.

2.1.11 "CAR" means the Climate Action Registry.

2.1.12 "CARB" means the California Air Resources Board.

2.1.13 "Carbon dioxide equivalent" or "CO2e" means the number of metric tons of CO_2 emissions with the same global warming potential as one metric ton of another Greenhouse Gas.

2.1.14 "CCR" means California Code of Regulations.

2.1.15 "CEC" means the California Energy Commission.

2.1.16 "Climate Reserve Tonnes" or "CRTs" means a climate reserve tonne that has been issued by CAR and that meets all of the requirements of and has been certified and verified in accordance with the applicable Protocol and includes any and all Emissions Rights.

2.1.17 "Commercially Reasonable Period" is defined on the Annex Cover Sheet.

2.1.18 "Compliance Offset Protocol" is defined in the Cap and Trade Regulations.

2.1.19 "Confirmation" is a document in the form of one of Exhibits A through A-2 hereto, or as otherwise agreed by the Parties, specifying the terms of an AB32 Transaction.

2.1.20 "CPUC" means the California Public Utilities Commission.

2.1.21 "Delivered" or "Delivery" means the transfer by Seller to Buyer of the Quantity of the AB32 Product to the Delivery Point in accordance with AB32.

2.1.22 "Delivery Date" means the date specified in the AB32 Transaction by which Seller shall Deliver AB32 Product to the Buyer.

2.1.23 "Delivery Point" is Buyer's Holding Account unless otherwise specified in the AB32 Confirmation.

2.1.24 "Early Action Offset Credit" is defined in the Cap and Trade Regulations.

2.1.25 "Early Action Offset Program" is defined in the Cap and Trade Regulations.

2.1.26 "Emission Rights" means any present or future right, interest, claim, credit, entitlement, benefit or allowance to emit present or future gases arising from, resulting from or in connection with any AB32 Product and includes any right that may be created under any present or future Applicable Law.

2.1.27 "Government Action" means for any particular AB32 Transaction an action by a Governmental Authority that is not a Party that renders Delivery or Receipt illegal, unconstitutional, unenforceable or impossible, including repeal of AB32 or the issuance by a Governmental Authority of an order, decision or other legally binding action that enjoins, stays or otherwise restrains the legal effectiveness and implementation of the Registry, AB32 or the legal ability of CARB to implement or enforce AB32, other than a sanction or penalty imposed specifically on a Party for the failure to comply with AB32, such that either Party cannot fulfill its obligations hereunder to Deliver or Receive AB32 Product, unless that part of AB32 that pertains to the AB32 Product has been replaced and superseded materially in its entirety with a compliance obligation for which the AB32 Product and its Delivery and Receipt is permitted pursuant to Applicable Law to be used for compliance therewith. Government Action specifically excludes an action of a court having jurisdiction over the bankruptcy of a Party.

2.1.28 "Governmental Authority" means any international, national, federal, provincial, state, municipal, county, regional or local government, administrative, judicial or regulatory entity operating under any Applicable Law and includes any department, commission, bureau, board, administrative agency or regulatory body of any government and includes FERC, the Cal EPA, CARB, CEC and CPUC.

2.1.29 "Greenhouse Gas" or "GHG" is defined in the Cap and Trade Regulations.

2.1.30 "Holding Account" means the account in the Registry that an entity receives when it registers with CARB or the appropriate Governmental Authority pursuant to the Cap and Trade Regulations.

2.1.31 "Offset Credit" means an offset credit issued by CARB pursuant to the Cap and Trade Regulations or by a program approved by CARB pursuant to Cap-and-Trade Regulations and that qualifies for compliance use on each Delivery Date and otherwise meets all requirements of the Cap and Trade Regulations and other applicable regulations and, if the AB32 Transaction is Regulatorily Continuing, as each may be amended from time to time.

2.1.32 "Offset Credit Registry" means (i) CARB or (ii) an Offset Credit Project Registry approved by CARB specified in the AB32 Transaction.

2.1.33 "Penalties" means, with respect to the performing Party, the present value of any alternative compliance payments, penalties, fines or fees imposed or assessed against the performing Party by CARB or Governmental Authority under AB32 on account of Delivery and Receipt not occurring on the Delivery Date, as determined by the performing Party in a commercially reasonable manner; provided that any of the same that are imposed or assessed against the performing Party due to the performing Party's pre-existing adverse compliance record shall not be included in such determination, and provided further that performing Party shall, redacted to comply with any obligations of confidentiality, provide a statement of calculation fairly allocating such amounts if the same are imposed or assessed due to the failure of other persons or entities in addition to the failure of the non-performing Party.

2.1.34 "Project" means an Offset Project as defined by the Cap and Trade Regulations in the case of Offset Credits, a sector based crediting program project in the case of Sector-Based Offset Credits, an Early Action Offset Project in the case of Early Action Offset Credits, and a project registered with the Offset Project Registry in the case of Registry Offset Credits as defined by the Cap and Trade Regulations.

2.1.35 "Program Interim Suspension" means Government Action reasonably expected to be the subject of appeal or further process.

2.1.36 "Quantitative Usage Limit" is defined in the Cap and Trade Regulations.

2.1.37 "Receipt" means Buyer's receipt of the transfer by Seller to Buyer of the Quantity of the AB32 Product to the Delivery Point in accordance with AB32.

2.1.38 "Registry" means the Compliance Instrument Tracking System Service or other system acceptable to both CARB for compliance with AB32 and to Buyer.

2.1.39 "Regulatorily Continuing" means the AB32 Product complies with AB32 as of the Delivery Date.

2.1.40 "Replacement Offset Credits" means Offset Credits generated by any Project meeting CARB requirements and having the same Vintage and pursuant to the same Compliance Offset Protocol as the Offset Credits in the AB32 Transaction.

2.1.41 "Replacement Price" means (i) the price at which Buyer, acting in a commercially reasonable manner, purchases, as a replacement for any AB32 Product specified in the AB32 Transaction but not Delivered by Seller, AB32 Product complying with the terms of the AB32 Transaction as of the Delivery Date and having the same Vintage as the AB32 Product not Delivered, plus Costs reasonably incurred by Buyer in purchasing such replacement AB32 Product, or (ii) absent a purchase, (A) the market price for such AB32 Product not Delivered, as determined by Buyer in a commercially reasonable manner, or if elected in the Confirmation by the Parties, (B) Penalties; provided, however, that in no event shall Buyer be required to change its utilization of its market positions to minimize Seller's liability.

2.1.42 "Sales Price" means (i) the price at which Seller, acting in a commercially reasonable manner, resells any AB32 Product not received by Buyer deducting from such proceeds any Costs reasonably incurred by Seller in reselling such AB32 Product and Delivering such AB32 Product to a third party purchaser thereof, or (ii) absent a sale, the market price for such AB32 Product complying with the terms of the AB32 Transaction as of the Delivery Date and having the same Vintage as the AB32 Product not received, as determined by Seller in a commercially reasonable manner; provided, however, that in no event shall Seller be required to change its utilization of its market positions to minimize Buyer's liability; and provided further that if Seller is unable after using commercially reasonable efforts to obtain a market price or resell all or a portion of the AB32 Product not received by Buyer, then the Sales Price with respect to such unsold AB32 Product shall be deemed equal to zero dollars ($0).

2.1.43 "Sector-Based Offset Credit" is defined in the Cap and Trade Regulations.

2.1.44 "Trade Date" means the date an AB32 Transaction is entered into by the Parties.

2.1.45 "Verifier" is defined in the Cap and Trade Regulations.

2.1.46 "Vintage" means a twelve-month compliance period specified under AB32, in which the AB32 Product is created or first valid for use under AB32.

10.12 2.2 Rules of Interpretation. Unless otherwise required by the context in which any term appears, (i) the singular includes the plural and vice versa; (ii) all references to a particular entity include a reference to such entity's successors and permitted assigns; (iii) all references to a particular market price index or publication include a reference to such index's or publication's successors, so long as doing so will not be contrary to either (A) the intentions of the Parties set forth in a provision of the EEI Master Agreement respecting market disruption language for Transactions with index-based pricing or (B) Applicable Law and (iv) a reference to a statute or to a regulation issued by a Governmental Authority means the statute or regulation in force as of the Trade Date, and in the case of an A32 Transaction that is Regulatorily Continuing, also as of the Delivery Date; and (v) the word "or" is not necessarily exclusive.

PARAGRAPH THREE: AMENDMENTS TO THE EEI MASTER AGREEMENT

3.1 Obligations and Deliveries. Sections 1.33, 2.4, 3.2 and 6.8 of the EEI Master Agreement shall not apply to AB32 Products or AB32 Transactions. Government Action is not a Regulatory Event within the meaning of Section 10.8 of the EEI Master Agreement.

3.2 Payment Netting.

Option A: Payment Netting with Payment for Power and AB32 Transactions on the same payment date. Section 6.2 of the EEI Master Agreement shall apply to AB32 Products, it being the intent of the Parties that monthly payments for other Transactions shall be netted with monthly payments for AB32 Products, all in accordance with Article 6 of the EEI Master Agreement, including Section 6.4 thereof. In addition to the netting of monthly payments in respect of AB32 Products and other Transactions, if an Early Termination Date is declared by the Non-Defaulting Party pursuant to Article 5 of the EEI Master Agreement, then all Settlement

Amounts and any other payments for all Transactions shall be netted in calculating the Early Termination Payment pursuant to the provisions of Section 5.3 of the EEI Master Agreement.

Option B: No Payment Netting with Payment for AB32 Transactions on the 5th Business Day following Delivery of AB32 Product. With respect to AB32 Products only, the first sentence of Section 6.2 shall be replaced with the following sentence: "Unless otherwise agreed by the Parties in an AB32 Transaction, all invoices under this EEI Master Agreement for AB32 Products shall be due and payable in accordance with each Party's invoice instructions on or before the later of the 5th Business Day following Delivery, or the 5th Business Day after receipt of the invoice by Buyer." Section 6.4 of the EEI Master Agreement shall apply to all Transactions; provided, however, for this limited purpose only, monthly payments for AB32 Products shall be netted only with monthly payments for other AB32 Products. If an Early Termination Date is declared by the Non-Defaulting Party, then all Settlement Amounts and any other payments for all Transactions shall be netted in calculating the Early Termination Payment pursuant to the provisions of Section 5.3 of the EEI Master Agreement.

PARAGRAPH FOUR: SUPPLEMENTS TO THE EEI MASTER AGREEMENT FOR TRANSACTIONS RELATING TO AB32 PRODUCTS

The following provisions apply to AB32 Products only.

4.1 Holding Accounts. Seller shall be responsible for all expenses associated with establishing and maintaining Seller's Holding Account, paying expenses associated with the issuance and transfer fees for the AB32 Product, and transferring the AB32 Product from Seller's Holding Account to the Delivery Point in accordance with the terms of the Transaction. In Section 3.1 and Section 9.2 of the EEI Master Agreement, "at and from" is revised to "from and after Receipt". Each Party will be responsible for the payment of any broker's fees incurred by it in connection with entering into any AB32 Transactions hereunder. If the AB32 Product is rejected by the Executive Officer as a result of Buyer exceeding its holding limit provided in Section 95920 of the Cap and Trade Regulations or Buyer failing to take any action with its Holding Account necessary for Receipt, Article 4 of the EEI Master Agreement applies, and Seller shall not have failed to make such Delivery.

4.2 Further Assurances. Each Party will provide to the other any reasonably requested information or documentation required to implement Delivery, cooperate to cause Delivery to occur, and comply with any and all applicable procedures and requirements of Applicable Law relating to the recording and transfer of the AB32 Product.

4.3 Indemnity. "Claims" as used in Sections 1.8 and 10.4 of the EEI Master Agreement include civil and criminal sanctions and penalties. Nothing in this Annex is limited by the penultimate sentence of Section 10.8 of the EEI Master Agreement or by the last sentence of Section 10.9 of the EEI Master Agreement.

4.4 Transfer of Ownership. When transferring AB32 Product in an AB32 Transaction, whether or not the particular AB32 Product constitutes property, (a) Seller transfers any and all, and the exclusive, Emission Rights relating to that AB32 Product, as well as the exclusive right

to claim ownership and use of the AB32 Product, and (b) Buyer gains the right, exclusive to the full extent applicable, to verify, certify and otherwise take advantage of the rights, claims, ownership and Emission Rights in the AB32 Product.

4.5 Non-Firm Quantities. If a Project may issue renewable energy certificates or other environmental attributes ("RECs") but doing so impairs or diminishes the quantity of Offset Credits that may be issued by the Project in an AB32 Transaction that is Non-Firm, for example in order to comply with CPUC Decision 08-08-028 p. B-2, Seller shall not issue or sell such RECs, unless otherwise provided in the Confirmation.

4.6 Offset Credits. With respect to Offset Credits, without limiting Paragraphs 5.1 and 5.2 of this Annex:

4.6.1 Seller disclaims any representation or warranty concerning the effect of any purchase or sale with respect to Buyer's Quantitative Usage Limit.

4.6.2 Seller will (a) select Verifiers in accordance with AB32 and (b) be responsible for all costs of Verifiers.

4.6.3 Seller shall ensure that no other person or entity not authorized by Buyer may claim the benefit or use of the Offset Credits or any part thereof or Emission Rights relating thereto.

4.6.4 Seller covenants that it will not at any time double claim, double report, or double count Delivered Offset Credits, and agrees that such covenant will survive Delivery, any termination of this Agreement and any Cancellation of any AB32 Transaction.

4.6.5 Seller represents and warrants that the Project is listed by an Offset Credit Registry, or Sector Based Crediting Program as that term is used in the Cap and Trade Regulations for Sector Based Offsets, and meets all of the requirements for Projects under AB32.

4.6.6 Seller shall cause permanent retirement in the original Offset Credit Registry with respect to any Offset Credit issued by CARB for early action.

4.6.7 Seller shall hold Buyer harmless with respect to all Offset Credits that are invalidated, rescinded or otherwise revoked by the Offset Credit Registry or by CARB pursuant to 17 CCR §95985 or otherwise, by providing Buyer within five Business Days, at Buyer's election, either Replacement Offset Credits or the Replacement Price.

4.6.8 Seller warrants and represents that Sector-Based Offset Credits first issued pursuant to a CARB-approved protocol for Reducing Emissions from Deforestation and Forest Degradation (REDD) Plans are issued with a buffer risk or contingency reserve addressing reversal.

4.7 Tariffs; Energy. Party A Tariff and Party B Tariff do not apply to AB32 Transactions unless specifically so stated in the AB32 Confirmation and provided under

Applicable Law. An AB32 Transaction may be entered into in connection with a Transaction for Energy. Delivery of AB32 Product can be with or independent of delivery of the Energy with which the AB32 Product is associated if so permitted under AB32 and Applicable Law.

PARAGRAPH FIVE: FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS

5.1 Mutual Representations and Warranties. On the Effective Date of this Annex and on each Trade Date, each Party represents and warrants to the other what it has represented and warranted in Section 10.2 of the EEI Master Agreement and also that: (i) it is an "eligible commercial entity" and an "eligible contract participant" within the meaning of United States Commodity Exchange Act §§1a(17) and 1a(18), respectively; (ii) the Parties enter into each AB32 Transaction intending it to be physically settled with Delivery of the AB32 Product and not to be financially settled or to otherwise constitute a "swap" within the meaning of Commodity Exchange Act §1a(47); and (iii) all applicable information, documents or statements that have been furnished in writing by or on behalf of it to the other Party in connection with this Agreement are true, accurate and complete in every material respect and do not omit a material fact that would otherwise make the information, document or statement misleading.

5.2 Warranties and Certain Covenants of Seller. With respect to each AB32 Transaction and the AB32 Product thereunder, Seller represents and warrants to Buyer that: (i) to the extent the AB32 Product constitutes property rights, Seller has good and marketable ownership to such AB32 Product; (ii) Seller has not, under any AB32 or otherwise, sold to any other person or entity, or retired for its own benefit the AB32 Product or any part thereof; (iii) the AB32 Product meets the specifications set forth in the AB32 Transaction; and (iv) the AB32 Product complies with AB32 as of the Trade Date, or would have complied with AB32 as of the Trade Date if the AB32 Product existed as of the Trade Date, and, for an AB32 Transaction that is Regulatorily Continuing, also as of the Delivery Date.

5.3 Attestations; Records. Seller is responsible for (a) the truthful and complete submission of all attestations that are required pursuant to AB32 under the AB32 Transactions and (b) the safe, secure, and accessible storage thereof. Except with respect to the retirement of Offset Credits converted into CARB Offset Credits for early action, Seller shall have no obligation to retire or otherwise submit AB32 Product to CARB or any other Governmental Authority for Buyer's AB32 compliance. Seller shall maintain all records relating to Allowances for two years from Delivery Date, and all records relating to Offset Credits or Sector-Based Offset Credits for nine years from Delivery Date. Upon Buyer's request, Seller shall provide copies of its documentation and records including all documents that Buyer is required to maintain or provide to CARB in accordance with AB32 with respect to the AB32 Transaction. Seller shall maintain adequate records to assist Buyer or CARB in meeting any present or future reporting, verification, transfer, registration, or retirement requirements associated with the AB32 Product. Nothing in this Annex limits or waives any obligations of Seller to keep records or provide attestations provided in AB32.

PARAGRAPH SIX: ADDITIONAL TERMS RESPECTING REMEDIES AND FORCE MAJEURE

6.1 Not a Penalty. The Parties intend that no remedy or amount due hereunder represents a penalty to the Defaulting Party or Non-Performing Party.

6.2 Registry Suspension Event. If a Party is unable to Deliver or receive AB32 Product due to the occurrence of a disruption in Deliveries caused by the Registry which is not subject to Paragraph 7.1 and is not within the reasonable control of, or the result of the negligence of, such Party, which such Party was unable to avoid by the exercise of due diligence, and affects in generally the same manner other users of the Registry seeking to make a similar use of the Registry (a "Registry Suspension Event"), such Party shall provide the other Party with written notice and full details within two (2) Business Days of the Registry Suspension Event. In the event of a Registry Suspension Event, the Parties will use their best efforts to cause Delivery and Receipt of the applicable AB32 Product and give effect to the original intention of the Parties. No Party will be relieved due to a Registry Suspension Event from any obligation to provide any notice or make any payments due. A Registry Suspension Event excuses Delivery and Receipt while it is pending, and alone is not an event of Force Majeure.

6.3 Scope of Force Majeure. This Paragraph 6.3 is in addition to and not in replacement of the provisions respecting Force Majeure in the EEI Master Agreement. Force Majeure may not be based upon change in Applicable Law or Government Action, any change in the price or value of AB32 Product in the market generally; any disability or penalty arising with respect to a Party as a result of the failure to comply with AB32; change in the Auction Reserve Price or the Allowance Price Containment Reserve Price, as those terms are used in the Cap and Trade Regulations; change in the manner of distribution or allocation of Allowances to regulated entities by CARB; or changes to the number of Allowances that may be purchased or retired by non-regulated or opt-in entities. In the case of a Party's obligation to make payments hereunder, Force Majeure will be only an event or act of Force Majeure that on any day disables generally in the city in which a Party's invoice payment employees work access to the nation's banking system.

PARAGRAPH SEVEN: CHANGE IN APPLICABLE LAW

7.1 Government Action.

7.1.1 Unless otherwise provided in an AB32 Transaction, upon the occurrence of Government Action, either Party shall, notwithstanding Section 5.2(i) of the EEI Master Agreement, be entitled to terminate and cancel (any such termination and cancellation, a "Cancellation") any and all affected AB32 Transactions. In the event of any such Cancellation, neither Party shall have any further payment or performance obligations under the Cancelled AB32 Transactions; provided, however, that the Parties shall remain liable for any payments due for, and all other obligations that may lawfully be performed respecting, AB32 Product Received prior to such Cancellation and Seller shall refund to Buyer, to the extent it is lawful to do so, any amount previously paid by Buyer for any AB32 Product not Received prior to such Cancellation. Neither Party shall have any rights to, or obligations or liability for, payment of a Termination Payment for or as a result of any Cancellation of any AB32 Transaction. Cancellation of AB32 Transactions shall not terminate or affect the EEI Master Agreement or any other Transactions thereunder.

7.1.2 During a Program Interim Suspension, the Delivery Date automatically extends such that neither Party has an obligation to Deliver or Receive the AB32 Product to the extent prevented by the Government Action. If a Program Interim Suspension is terminated, lifted or ceases to apply within a Commercially Reasonable Period following the effective date of the Government Action, then the Parties shall immediately resume performance under the terms of the AB32 Transaction in good faith. If the Program Interim Suspension is not terminated within a Commercially Reasonable Period following the effective date of the Government Action, then the Program Interim Suspension will constitute Government Action on the basis of which the affected AB32 Transactions will be subject to Cancellation by either Party in accordance with Paragraph 7.1.1 of this Annex.

7.1.3 Notwithstanding the foregoing, (a) no AB32 Transaction will be subject to Cancellation or otherwise affected by Government Action that is specific to a Party and that is taken by a Governmental Authority on the basis of any actual or alleged violation of any Applicable Law by such Party and (b) Government Action and Program Interim Suspension do not suspend or abrogate any other right of a Party to terminate an AB32 Transaction or exercise a remedy hereunder not relating to such Government Action, such as such a right arising pursuant to an Event of Default.

7.2 Governing Law. Notwithstanding Section 10.6 of the EEI Master Agreement, the creation, issuance, transfer, tracking and retirement of AB32 Product shall be governed by the laws, rules and regulations of California.

Schedule 1: Outstanding AB32 Transactions

The AB32 Transactions set forth below constitute Outstanding AB32 Transactions:

Schedule 2: Applicability of Collateral Annex

The Collateral Annex applies to all AB32 Transactions except those set forth below:

EXHIBIT A: EXAMPLE AB32 TRANSACTION CONFIRMATION

To: _____
Confirmation Administration

From: _____
Confirmation Administration

This confirms an AB32 Transaction between Buyer and Seller for the sale, purchase and delivery of AB32 Product pursuant to the terms of the EEI Master Power Purchase and Sale Agreement between them dated [_____] and the EEI California AB32 Product Annex dated [_____] ("Annex") thereto (collectively, the "Agreement").

Trade Date _____

Seller: _____ Seller Account No.: _____

Buyer: _____ Buyer Account No.: _____

Type of AB32 Product: (__) Allowance
(__) Offset Credit Protocol: _____
(__) Sector-Based Offset Credit

Quantity: _____

Vintage: _____

Price: _____

Delivery Date: _____

Delivery Term: _____

Regulatorily Continuing: (__) yes/(__) no; if neither checked, yes applies.

Penalties are part of Replacement Price: (__) yes/(__) no; if neither checked, yes applies.

Associated Energy/Capacity transaction, if applicable:

import node; other information.

The Parties agree to the AB32 Transaction set forth herein.

[Seller] [Buyer]

Signed:_____ Signed:_____
Name:_____ Name:_____

EXHIBIT A-1: EXAMPLE AB32 TRANSACTION
PRE-FIRST AUCTION CONFIRMATION

[for use only before first auction]

To: _____
Confirmation Administration

From: _____
Confirmation Administration

This confirms an AB32 Transaction between Buyer and Seller for the sale, purchase and delivery of AB32 Product pursuant to the terms of the EEI Master Power Purchase and Sale Agreement between them dated [____] and the EEI California AB32 Product Annex dated [____] ("Annex") thereto (collectively, the "Agreement").

[optional:] This Transaction is contingent upon the Registry becoming operational and the first Auction occurring on or before _____, 2012. If both events do not occur before such date, this Transaction shall at the option of either Party be terminated and upon such termination neither Party shall have any further payment or performance obligations and Seller shall refund to Buyer any amount previously paid by Buyer for prior to such termination.

Trade Date _____

Seller: _____ Seller Account No.: _____

Buyer: _____ Buyer Account No.: _____

Type of AB32 Product: (__) Allowance
(__) Offset Credit Protocol: _____
(__) Sector-Based Offset Credit

Quantity: _____

Vintage: _____

Price: _____

Delivery Date: _____

Delivery Term: _____

Regulatorily Continuing: (__) yes/(__) no; if neither checked, yes applies.

Penalties are part of Replacement Price: (__) yes/(__) no; if neither checked, yes applies.

Associated Energy/Capacity transaction, if applicable:

import node; other information.

The Parties agree to the AB32 Transaction set forth herein.

[Seller] [Buyer]

Signed:_____ Signed:_____

Name:_____ Name:_____

EXHIBIT A-2: EXAMPLE CLIMATE RESERVE TONNE TRANSACTION CONFIRMATION

To: _____
Confirmation Administration

From: _____
Confirmation Administration

This confirms an AB32 Transaction between Buyer and Seller for the sale, purchase and delivery of AB32 Product pursuant to the terms of the EEI Master Power Purchase and Sale Agreement between them dated [ ] and the EEI California AB32 Product Annex dated [ ] ("Annex") thereto (collectively, the "Agreement").

Trade Date _____

Seller: _____ Seller Account No.: _____

Buyer: _____ Buyer Account No.: _____

Type of AB32 Product: CRTs
Quantity: _____
Protocol: _____
Vintage: _____
Price: _____
Delivery Date: _____
Delivery Term: _____
Regulatorily Continuing: (x) no
Penalties are part of Replacement Price: (x) no

For this Transaction, the Annex is changed as follows:

Delivery Point is Buyer's CAR account.

A Party's Holding Account means the Party's CAR account.

Replacement Offset Credits means Offset Credits generated by a Project meeting CAR requirements and having the same Vintage and pursuant to the same Compliance Offset Protocol as the CRTs in this Transaction.

Paragraph 7 of the Annex does not apply.

Until the ____ anniversary hereof, if any state, regional, federal or international registry or program for offset projects, or GHG registry or program, or system for the transfer of Offset Credits, that involves sources or sinks in the nature of the Project, is implemented, Seller shall

provide all Project documents to Buyer if Buyer, at its expense, elects to additionally register or have Seller register the Offset Credits, with any such registries.

The Parties agree to the AB32 Transaction set forth herein.

[Seller]	[Buyer]
Signed:_____	Signed:_____
Name:_____	Name:_____

MARKET PARTICIPANTS CONSIDERING USE OF THIS OR ANY SIMILAR PROVISION ARE ENCOURAGED TO CONSULT THEIR OWN LEGAL COUNSEL TO ENSURE THAT THEIR COMMERCIAL OBJECTIVES WILL BE ACHIEVED AND THEIR LEGAL RIGHTS AND INTERESTS ADEQUATELY PROTECTED.

The language set forth below may be appropriate for inclusion under the "Other Changes" section of the Cover Sheet if the Master Agreement or Transaction Confirmations are contemplated to be signed by an Agent on behalf of a party. For drafting convenience, the Master Agreement is amended by this language to identify the party utilizing the Agent as Party B.

Other Changes

Section 10.2 shall be amended by designating the original text thereof as paragraph (a), and by adding a new paragraph (b), reading in its entirety as follows:

(b) On the Effective Date and the date of entering into each Transaction, Party B represents and warrants to Party A that:

(i) the execution, delivery, and performance of this Master Agreement and all Confirmations by [insert name of agent] (the "Agent") is within the scope of the power and authority of the Agent to act for and bind Party B pursuant to that certain [insert name of the agency agreement] dated [insert date of agency agreement] the ("Agency Agreement");

(ii) the Agency Agreement has been duly authorized, executed and delivered by the Agent and Party B, is in full force and effect, and constitutes the legal, valid and binding obligations of each of Party B and the Agent;

(iii) the Agent is duly organized, validly existing, and in good standing under the applicable laws of the jurisdiction of its formation; and

(iv) Party B will be fully bound to perform the obligations incurred under this Master Agreement on its behalf by the Agent.

MARKET PARTICIPANTS CONSIDERING USE OF THIS OR ANY SIMILAR PROVISION ARE ENCOURAGED TO CONSULT THEIR OWN LEGAL COUNSEL TO ENSURE THAT THEIR COMMERCIAL OBJECTIVES WILL BE ACHIEVED AND THEIR LEGAL RIGHTS AND INTERESTS ADEQUATELY PROTECTED.

The Cover Sheet should be completed in the name of Party B, with the signature block modified as follows:

Party B Name

By: [Name of Agent], as agent for [Party B]

By: _____

Name: _____

Title: _____

In addition, the following acknowledgement should be added below the Party B signature block on the Cover Sheet:

[Party B] hereby acknowledges and confirms (a) that Agent (as herein defined) is its duly authorized agent for all purposes of this Master Agreement and (b) its representations and warranties contained in Section 10.2(b).

Party B Name

By: _____

Name: _____

Title: _____

MARKET PARTICIPANTS CONSIDERING USE OF THIS OR ANY SIMILAR PROVISION ARE ENCOURAGED TO CONSULT THEIR OWN LEGAL COUNSEL TO ENSURE THAT THEIR COMMERCIAL OBJECTIVES WILL BE ACHIEVED AND THEIR LEGAL RIGHTS AND INTERESTS ADEQUATELY PROTECTED.

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10.13 Bankruptcy Acknowledgments

10.14 Version 1.0

10.15 March 28, 2007

Section 10.10 is replaced in its entirety with the following:

"10.10 Bankruptcy Issues. The Parties intend that (i) all Transactions constitute a "forward contract" within the meaning of the United States Bankruptcy Code (the "Bankruptcy Code") or a "swap agreement" within the meaning of the Bankruptcy Code; (ii) all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute "settlement payments" within the meaning of the Bankruptcy Code; (iii) all transfers of Performance Assurance by one Party to the other Party under this Agreement constitute "margin payments" within the meaning of the Bankruptcy Code; and (iv) this Agreement constitutes a "master netting agreement" within the meaning of the Bankruptcy Code.

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10.16 Bankruptcy – Utility Clause Version 1.0

To be added to Section 10.10:

Each Party further agrees that, for purposes of this Agreement, the other Party is not a "utility" as such term is used in 11 U.S.C. Section 366, and each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. Section 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort."

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"CAISO Energy" means with respect to any Transaction, a Product under which the Seller shall sell and the Buyer shall purchase a quantity of energy equal to the hourly quantity without Ancillary Services (as defined in the Tariff) that is or will be scheduled as a schedule coordinator to schedule coordinator transaction pursuant to the applicable tariff and protocol provisions of the California Independent System Operator ("CAISO") (as amended from time to time, the "Tariff") for which the only excuse for failure to deliver or receive is an "Uncontrollable Force" (as defined in the Tariff).

EDISON ELECTRIC INSTITUTE

Coal Annex to the EEI Master Power Purchase and Sales Agreement

Version 1.0 April 2, 2007

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PARAGRAPH 4

to the
COAL ANNEX
to the
EEI MASTER POWER PURCHASE & SALE AGREEMENT

(i) COAL ANNEX ELECTIONS COVER SHEET

Paragraph 4. Elections and Variables

Name: _____, a _____ organized under the laws of the State of _____("_____" or "Party A")

Name: _____, a _____ organized under the laws of the State of _____ ("Counterparty" or "Party B")

Effective Date of EEI Master Agreement between Party A and Party B: _____

All Notices:

As set forth on the EEI Master Agreement Cover Sheet unless otherwise set forth below:

Street:
_____
City:
_____
Attn:
_____
Phone:
_____
Facsimile:
_____
Duns:
_____
Federal Tax ID Number:
_____

All Notices:

As set forth on the EEI Master Agreement Cover Sheet unless otherwise set forth below:

Street:
_____
City
_____
Attn:
_____
Phone:
_____
Facsimile:
_____
Duns:
_____
Federal Tax ID Number:
_____

Invoices:

As set forth on the EEI Master Agreement Cover Sheet unless otherwise set forth below:

Attn:
_____
Phone:
_____
Facsimile:

Invoices:

As set forth on the EEI Master Agreement Cover Sheet unless otherwise set forth below:

Attn:
_____
Phone:
_____
Facsimile:

Nominations:

As set forth on the EEI Master Agreement Cover Sheet unless otherwise set forth below:

Attn:

Phone:

Facsimile:

As set forth on the EEI Master Agreement Cover Sheet unless otherwise set forth below:

Attn:

Phone:

Facsimile:

Confirmations:

As set forth on the EEI Master Agreement Cover Sheet unless otherwise set forth below:

Attn:

Phone:

Facsimile:

Confirmations:

As set forth on the EEI Master Agreement Cover Sheet unless otherwise set forth below:

Attn:

Phone:

Facsimile:

Option Exercise:

As set forth on the EEI Master Agreement Cover Sheet unless otherwise set forth below:

Attn:

Phone:

Facsimile:

Option Exercise:

As set forth on the EEI Master Agreement Cover Sheet unless otherwise set forth below:

Attn:

Phone:

Facsimile:

(i) Elections for Paragraph Three

3.19(a) **Force Majeure – Make-Up of Tonnage**	☐ Option A (Affected Quantity Made Up Upon Mutually Agreeable Schedule) ☐ Option B (Affected Quantity Made Up at the Discretion of the Non-Claiming Party, On a Mutually Agreeable Schedule) ☐ Option C (Affected Quantity Not Made Up Unless the Parties Mutually Agree Otherwise). If none is checked, Option C shall be applicable.
3.19(b) **Force Majeure – Effect of Termination**	☐ Option A (Neither Party Has Any Obligation To The Other (other than payment obligations for prior performance)) ☐ Option B (Termination Pursuant to Article Five (Termination Payment)) If neither is checked, Option A shall be applicable.
3.20 **Payment Netting**	☐ Option A (Payment Netting Between Other Product and Coal Product Transactions - If neither Option A nor Option B is checked, Option A shall be applicable. ☐ Option B (No Payment Netting Between Other Product and Coal Product Transactions) If neither is checked, Option B shall be applicable.

Other Changes [1]Specify, if any:

COAL ANNEX
TO THE
EEI MASTER POWER
PURCHASE & SALE AGREEMENT

WHEREAS, Party A and Party B are parties to an EEI Master Power Purchase & Sale Agreement (including without limitation any amendments, annexes or Cover Sheet thereto which are provided for and incorporated into the EEI Master Power Purchase & Sale Agreement, the "EEI Master Agreement"), which EEI Master Agreement governs the terms and conditions pursuant to which the Parties may enter into transactions relating to the purchase and sale of electric capacity, energy or other products related thereto, or gas or other products involving gas; and

WHEREAS, the Parties desire to enter into this Coal Annex to the EEI Master Agreement to provide for the terms and conditions under which the Parties may enter into Transactions relating to the purchase and sale of coal;

NOW, THEREFORE, the Parties agree as follows:

ARTICLE ELEVEN: PARAGRAPH ONE: GENERAL TERMS

1.1 **Scope of Agreement**. This Coal Annex to the EEI Master Agreement (this "EEI Coal Annex") provides for the terms and conditions pursuant to which the Parties may enter into Transactions for Coal Products (as defined below).

The terms set forth in the EEI Master Agreement and this EEI Coal Annex apply to those Transactions that relate to Coal Products (each such Transaction, a "Coal Products Transaction"). Unless otherwise expressly provided in this EEI Coal Annex, all of the terms and conditions set forth in the EEI Master Agreement shall be applicable to Coal Products Transactions entered into between the Parties. The term "Transaction" as used in the EEI Master Agreement shall include Coal Products Transactions and, except as otherwise provided in this EEI Coal Annex, the EEI Master Agreement shall apply equally to all Transactions without differentiation. By way of example only, the occurrence of an Event of Default under Section 5.1 would enable the Non-Defaulting Party to exercise any or all of the rights provided in Article Five with respect to all

Transactions notwithstanding whether such Transactions are for Coal Products and/or other Products; and that the collateral provisions agreed to by the Parties in the Collateral Annex to the EEI Master Agreement, if any, shall apply to all Transactions notwithstanding whether such Transactions are for Coal Products and/or other Products. In the event of any inconsistency among or between the EEI Master Agreement and this EEI Coal Annex, this EEI Coal Annex will govern with respect to Coal Products Transactions only.

PARAGRAPH TWO: AMENDMENTS AND SUPPLEMENTS TO THE EEI MASTER AGREEMENT FOR COAL PRODUCTS TRANSACTIONS

2.1 **Definitions**. For purposes of Coal Products Transactions only:

(a) Section 1.23 is supplemented by adding the following sentence at the end of such Section:

(a) **This definition of Force Majeure in Section 1.23 shall not apply to Coal Products Transactions. In respect of Coal Products Transactions, "Force Majeure" shall have the following meaning: *"Force Majeure"* means events that are beyond the reasonable control and without the fault or negligence of the Party affected thereby ("Claiming Party") that prevents the Claiming Party from performing its obligations under one or more Coal Product Transactions, that, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. A change in market conditions shall not be considered a Force Majeure event. For the avoidance of doubt, Force Majeure shall not be based on (i) the loss of Buyer's markets; (ii) Buyer's inability economically to use or resell Coal; (iii) Buyer's or Buyer's Customer's ability to purchase Coal upon terms more favorable than the terms of the applicable Coal Product Transaction (including, but not limited to, purchasing Coal at a price less than the Contract Price); (iv) the loss or failure of Seller's supply, whether or not foreseeable (including, without limitation, adverse mining conditions or Seller's inability to economically produce or obtain the Coal); or (v) Seller's ability to sell Coal upon terms more favorable than the terms of the applicable Coal Product Transaction (including, but not limited to, selling Coal at a price greater than the Contract Price). A transportation delay shall not be considered a Force Majeure event unless such delay affects Coal deliveries to all Persons at all locations comprising the Delivery Point.**

(b) Section 1.47 is supplemented by adding the following language at the end thereof:

1.47 "Product" or "Products" means or includes, as the case may require, Coal Products.

(c) Sections 1.22, 1.31, 1.43, and 1.44 shall not be applicable to Coal Products Transactions.

(d) Section 1.51 is supplemented by adding the following language as the second sentence thereof:

1.51 Notwithstanding the foregoing, for Coal Products, "Replacement Price" means, for each Ton of Coal Product not delivered by Seller, the commercially reasonable market price at which Buyer is able, or absent an actual purchase at the time of Seller's breach, would be able (FOB Delivery Point) to purchase or otherwise receive comparable supplies of Coal of comparable quality on an equivalent ¢/MMBtu, SO_2 adjusted basis, plus (i) costs reasonably incurred by Buyer in purchasing such substitute Coal and (ii) additional transportation charges, if any, reasonably incurred by Buyer as a result of taking delivery of substitute Coal at a location other than FOB the Delivery Point.

(e) Section 1.53 is supplemented by adding the following language as the second sentence thereof:

1.53 Notwithstanding the foregoing, for Coal Products, "Sales Price" means, for each Ton of Coal Product not accepted by Buyer, the commercially reasonable market price at which Seller is able, or absent an actual sale, would be able (FOB Delivery Point), to sell or otherwise dispose of the Coal Product at the time of Buyer's breach, deducting from such proceeds any (i) costs reasonably incurred by Seller in reselling such Coal Product and (ii) additional transportation charges, if any, reasonably incurred by Seller in delivering such Coal Product to the third party purchasers.

(f) Section 1.54 is supplemented by adding the following language at the end thereof:

With respect to Coal Products, Coal shall be deemed to have been Scheduled or to be Scheduled Coal when the provisions in Section 3.4 of this EEI Coal Annex have been satisfied.

(g) Section 1.61 is amended to add "or Transporter" after "Transmission Provider".

(h) The definitions of "Master Agreement" and "Agreement" on the Cover Page to the EEI Master Power Purchase & Sale Agreement shall include this EEI Coal Annex.

2.2 **Confirmation**. The first sentence of Section 2.3 of the EEI Master Agreement shall be modified by the addition of the following at the end thereof: "or, with respect to Coal Product Transactions, substantially in the form of Exhibit A to this Coal Annex."

2.3 **Obligations and Deliveries**. Section 3.2 of the EEI Master Agreement shall be applicable only to Power Products. The applicable Transportation and Scheduling provisions with respect to Coal Products are set forth in Paragraph Three below.

2.4 **References to Tariffs**. References to the Tariffs of Party A and Party B in the EEI Master Agreement shall only apply to Power Products.

2.5 **Default**. Section 5.1(c) of the EEI Master Agreement shall not be applicable to Coal Products. The following provision shall be applicable to Coal Products in lieu thereof:

> The failure of the Defaulting Party to comply with its material obligations under a Coal Product Transaction, this EEI Coal Annex or the EEI Master Agreement (except to the extent constituting a separate Event of Default hereunder and except for such Party's obligations to deliver or receive Coal Product, the exclusive remedies for which are provided for in Article 4 of the EEI Master Agreement, and such failure continues uncured for ten (10) Business Days after written notice thereof, provided that if it shall be impracticable or impossible to remedy such failure within such ten (10) Business Day period, the cure period shall be extended for an additional period (not to exceed sixty (60) days) reasonably necessary to remedy such failure subject to the condition that during the additional period, the Defaulting Party shall be diligently pursuing a remedy for the failure.

2.6 **Limitation of Liability**. Section 7.1 of the EEI Master Agreement shall not be applicable to Coal Products. The following provision shall be applicable to Coal Products in lieu thereof:

> **OTHER THAN THOSE EXPRESSLY PROVIDED IN THIS EEI COAL ANNEX OR IN A CONFIRMATION, SELLER MAKES NO OTHER REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, EXPRESS OR IMPLIED, IN CONNECTION WITH THE SALE AND PURCHASE OF COAL HEREUNDER. ALL WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE OR ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE ARE SPECIFICALLY EXCLUDED. SELLER MAKES NO WARRANTY CONCERNING THE SUITABILITY OF COAL DELIVERED HEREUNDER FOR USE IN ANY FACILITIES. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS 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 COAL 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. 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. UNLESS EXPRESSLY PROVIDED HEREIN, 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 OR OTHERWISE. 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 IS SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.

2.7 **Taxes and Other Liabilities**. Section 9.2 of the EEI Master Agreement shall not be applicable to Coal Products. The following provision shall be applicable to Coal Products in lieu thereof:

> Seller shall be solely responsible as to any Coal Product Transaction for all assessments, fees, costs, expenses and Taxes (including without limitation, New Taxes, but not income taxes) imposed by governmental authorities or other third parties ("Third Party Impositions") relating to the mining, beneficiation, production, sale, use, loading and delivery of Coal to Buyer or in any way accrued or levied prior to the transfer of title to the Coal to Buyer, and including, without limitation, all severance taxes, royalties, black lung fees, reclamation fees and other costs, charges and liabilities. The risk of any change in such Third Party Impositions shall be borne solely by Seller. Buyer shall be solely responsible as to any Coal Product Transaction for Third Party Impositions relating to the Coal accrued or levied at or after the transfer of title to the Coal to Buyer, including, but not limited to, sales or use tax if applicable.

2.8 **Title and Risk of Loss**. The first sentence of Section 10.3 of the EEI Master Agreement shall not be applicable to Coal Products.

2.9 **General**. In Section 10.8 of the EEI Master Agreement, the covenant that "Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect outstanding Transactions under this

Agreement without the prior written consent of the other Party" shall not apply in respect of Coal Products Transactions.

PARAGRAPH THREE: SUPPLEMENTS TO THE EEI MASTER AGREEMENT FOR COAL PRODUCTS TRANSACTIONS

The following provisions are applicable with respect to Coal Products Transactions only.

3.1 **Definitions.**

(a) "Analysis Person" has the meaning set forth in Section 3.13(b).

(b) "Analysis Report" has the meaning set forth in Section 3.13(d) of this Coal Annex.

(c) "ASTM" means the American Society for Testing and Materials.

(d) "ASTM Standards" means then-current, published, applicable ASTM guidelines relating to the characteristic referenced.

(e) "ASTM Reproducibility Limits" mean the limits for permissible differences for reproducibility listed within the relevant ASTM Standard.

(f) "Barge" means a barge with capacity sufficient to hold the number of Tons of Coal for delivery from the Source(s) or Delivery Point(s) (if the Delivery Point is different from the Source) as specified in the relevant Confirmation.

(g) "Buyer's Customer" means, if any, the party to which Buyer has contracted to sell the Coal purchased from Seller under a Coal Products Transaction.

(h) "Claiming Party" has the meaning set forth in Section 2.1(a) of this Coal Annex.

(i) "Coal" means a fossil fuel composed primarily of carbon along with assorted other elements and taking the form of a readily combustible black or brownish-black rock extracted from the ground by mining.

(j) "Coal Product" or "Coal Products" mean products involving Coal as specified in a Transaction by reference to a Product listed in Exhibit B hereto or as otherwise specified by the Parties in the Transaction.

(k) "Commercially Reasonable Efforts" means the taking by a Person of such action as would be in accordance with reasonable commercial practices as applied to the particular matter in question to achieve the result as expeditiously as practicable; provided, however, that such action shall not require that such Person incur unreasonable expense.

(l) "Delivery Schedule" has the meaning set forth in Section 3.4(a) or (b), as applicable, of this Coal Annex.

(m) "Eastern Mine" means a Coal mine that is located east of the Mississippi River.

(n) "Financial Difference" means the difference, obtained by subtracting the Settlement Price from the Contract Price.

(o) "FOB" has the meaning given to such term in the Uniform Commercial Code enacted by the State of New York.

(p) "Monthly Shipment Notification Date" has the meaning set forth in Section 3.4(a) or (b), as applicable, of this Coal Annex.

(q) "New Taxes" means (a) any Taxes, fees or assessments enacted and effective after the Trade Date of the relevant Coal Product Transaction, including, without limitation, that portion of any Taxes or New Taxes that constitutes an increase.

(r) "Nomination Period" shall mean the period during which deliveries of Coal Products may be Scheduled during the term of a particular Coal Product Transaction.

(s) "Non-Conforming Shipment" has the meaning set forth in Section 3.17 of this Coal Annex.

(t) "Objecting Person" has the meaning set forth in Section 3.13(d) of this Coal Annex.

(u) "Option Premium" means the amount, if any, paid by an Option Buyer to the Option Seller as consideration for an Option.

(v) "Person" means any individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, association, joint stock company, trust, unincorporated organization, or other organization, whether or not a legal entity, and any governmental authority.

(w) "PRB" means the Powder River basin located in the States of Montana and Wyoming.

(x) "Quantity" means the quantity of Coal Product that Seller agrees to sell to (or if applicable, exchange with), or cause to be delivered to, Buyer, and that Buyer agrees to purchase and receive, or cause to be received, from Seller, pursuant to a Coal Product Transaction, as specified in a Confirmation.

(y) "QVA" means Quantity Variation Adjustment as set forth in Section 3.9 hereto.

(z) "Ratable Amount(s)" means the Quantity divided by the number of months in the Term, or if a Confirmation sets forth differing Quantities for delivery during

discrete quarterly, annual or other time periods within the Term, then each such Quantity divided by the number of months in the applicable time period for delivery.

(aa) "Rejection Limits" means the quality characteristics for the Coal Product that is the subject of a Coal Product Transaction, as specified in the relevant Confirmation, that, if exceeded, give rise to a rejection right of Buyer pursuant to Section 3.17 of this Coal Annex.

(bb) "Sampling Person" has the meaning set forth in Section 3.13(a).

(cc) "Shipping Notice" has the meaning set forth in Section 3.5(c) of this Coal Annex.

(dd) "Shipment" means, as applicable, one Unit Train load, one Barge or vessel load, or the aggregate of the truckloads or other common carrier loads that are loaded for a single delivery loaded in accordance with the Delivery Schedule and in accordance with the applicable Transportation Specifications.

(ee) "Source" means the mining region, mine(s), mining complex(es), loadout(s) or river dock(s) or other point(s) of origin that Seller and Buyer agree are acceptable origins for the Coal Products in a Coal Product Transaction as specified in the Confirmation by reference to a Source standard listed in Exhibit C hereto or as otherwise specified by the parties in a Confirmation.

(ff) "Specifications" means the quality characteristics for the Coal Product specified in connection with a Coal Product Transaction, determined on an "as received" basis, using ASTM Standards.

(gg) "Taxes" means any or all ad valorem, property, occupation, severance, generation, first use, conservation, Btu or energy, utility, gross receipts, privilege, sales, use, consumption, excise, lease, transaction, and other taxes, governmental charges, licenses, fees, permits and assessments, or increases therein, other than taxes based on net income or net worth.

(hh) "Ton" means 2,000 pounds avoirdupois.

(ii) "Transportation Equipment" means Barges, vessels, railcars, or trucks, as specified in the relevant Confirmation.

(jj) "Transportation Specifications" means that part of the agreement(s) made by or on behalf of Seller or Buyer with its respective Transporter(s) or any applicable tariff, as amended from time to time, with respect to transportation-related requirements for each Shipment.

(kk) "Transporter" means the entity or entities transporting Coal Product on behalf of Seller to and at the Delivery Point, or, on behalf of Buyer or Buyer's designee, from the Delivery Point.

(ll) "Unit Train" means a train with capacity sufficient to hold the number of Tons of Coal Product for a Shipment, as defined in the relevant Confirmation.

(mm) "Western Mine" means a Coal mine that is located West of the Mississippi River.

3.2 **Obligations and Deliveries**. The following Sections are added to Article Three of the EEI Master Agreement with respect to Coal Products only:

3.4 Scheduling. The Parties will work together in good faith to agree on a reasonable and mutually acceptable Delivery Schedule within the Nomination Period and within each month during the Nomination Period for each Coal Product Transaction; provided, however that the Parties agree to make Commercially Reasonable Efforts to arrange and receive Shipments in accordance with a Delivery Schedule. Seller agrees to deliver and Buyer agrees to receive the Quantity to be delivered in approximate Ratable Amounts each calendar month over the Term of a Coal Product Transaction.

(a) Rail or Truck Scheduling. Except as may be otherwise provided in the relevant Confirmation, Buyer shall advise Seller on or before the 15th day of each calendar month preceding scheduled Shipments of (i) the quantity of Coal Product and the number of Unit Trains or trucks Buyer desires to have delivered in the succeeding month to fulfill, in whole or in part, the Quantity; (ii) Buyer's desired loading dates; and (iii) the delivery schedule therefor ("Delivery Schedule"). Seller shall advise Buyer on or before the 20th day of the month preceding Shipment of Seller's Source and/or Delivery Point for the Scheduled monthly Shipment(s) and Buyer shall advise Seller of the specific transportation arrangements to comply with its Delivery Schedule no later than the 25th of the month preceding shipment (the "Monthly Shipment Notification Date"). The Parties will work together in good faith to agree on a reasonable and mutually acceptable Delivery Schedule within the Nomination Period and within each month during the Nomination Period provided however that the parties agree to make Commercially Reasonable Efforts to arrange and receive Shipments in accordance with a Delivery Schedule to be completed on or before the 20th of the month preceding the month of shipment. If either Party is unable to meet the scheduling requirements within the time periods set forth herein, such Party shall not have failed to deliver or receive Coal if such scheduling requirements are met within five (5) days of the time for performance of such obligations as set forth above.

(b) Barge Scheduling. On or before the third to last Business Day of the month preceding the delivery month:

(i) Buyer shall advise Seller of the quantity of Coal and number of Barges it desires to load during the succeeding month to fulfill the Coal Product Transaction volume and Buyer's desired loading dates and delivery schedule ("Delivery Schedule");

(ii) Seller shall advise Buyer of its Source and/or Delivery Point for the scheduled monthly Shipment(s); and

(iii) Buyer shall advise Seller of the specific transportation arrangements to comply with its Delivery Schedule (the "Monthly Shipment Notification Date").

3.5 Delivery and Risk of Loss.

(a) Rail or Truck Deliveries. For rail or truck deliveries, the Coal shall be delivered to Buyer FOB Unit Train(s) or FOB truck(s) at the Delivery Point. For rail deliveries, title to and risk of loss of the Coal will pass to Buyer upon completion of loading all railcars in each Unit Train and release of the Unit Train to Buyer's Transporter. For truck deliveries, title to and risk of loss of the Coal will pass to Buyer upon completion of loading of the trucks. Buyer shall furnish suitable Unit Trains or trucks for loading and delivery of the Coal. Such Unit Trains or trucks shall be compatible with the coal loading facilities utilized by Seller and shall be properly prepared to receive Coal. Coal haulage or transportation equipment provided by either Seller or Buyer, as the case may be, shall be clean, dry and suitable for the transportation of Coal. Seller shall arrange for and pay all costs of transporting the Coal to the Delivery Point and handling and loading the Coal into Unit Trains or trucks and proper distribution in such Unit Trains or trucks. If the Delivery Point is at a Source such that the Coal will have been transported by Unit Train or truck prior to delivery, then title to and risk of loss of the Coal will pass to Buyer upon the earlier to occur of (i) the safe and proper placement of the Unit Trains or trucks at the Delivery Point or (ii) other transfer of the custody and control of the Unit Trains or trucks to Buyer or Buyer's Transporter.

(b) Barge or Vessel Deliveries. For Barge or vessel deliveries, the Coal shall be delivered to Buyer FOB Barge or vessel at the Delivery Point. Title to and risk of loss of the Coal will pass to Buyer upon each Barge or vessel being fully loaded and trimmed. Buyer or its Transporter shall furnish suitable Barges or vessels for delivery of the Coal. Such Barges or vessels shall be compatible with the Source's or Delivery Point's (if the Source is other than the Delivery Point) coal loading facilities to be utilized by Seller and shall be properly prepared to receive Coal. Coal haulage or transportation equipment provided by either Seller or Buyer, as the case may be, shall be clean, dry and suitable for the transportation of Coal. Seller shall arrange for and pay all costs of transporting the Coal to the Delivery Point and handling and loading the Coal into Barges or vessels to the proper draft and proper distribution in such Barges or vessels. Buyer shall arrange for and pay all costs for transporting the Coal by Barge or vessel from and after the Delivery Point to its destination. If the Delivery Point at a Source is such that the Coal will have been transported by Barge or vessel prior to delivery, then title to and risk of loss of the Coal will pass to Buyer upon the earlier to occur of (i) the safe and proper mooring of the Barge(s) or vessel(s) at the Delivery Point loading dock or discharge point or (ii) other transfer of the custody and control of the Barge(s) or vessel(s) to Buyer or Buyer's Transporter.

(c) Documentation/Shipping Notice. For each Shipment, Seller shall supply Buyer with a shipping notice that includes, as appropriate, the vessel name, Unit Train or Barge or truck number, Source or other point from which supplied or shipped, tonnage shipped, shipping date, destination (if known to Seller), time loading commenced and finished, along with the Analysis Report required under Section 3.13(d) of this Coal Annex and any other information reasonably required by Buyer and agreed to by Seller ("Shipping Notice"). Seller shall within twenty-four (24) hours (or forty-eight (48) hours for PRB sources) of loading or prior to arrival of the vessel, Barge, truck or Unit Train (as applicable) at the destination following loading of such Shipment (whichever comes first), send the Shipping Notice to Buyer by telecopy or other mutually agreed upon method. Notwithstanding the obligations to send Shipping Notices as provided in the previous sentence, Seller agrees to make Commercially Reasonable Efforts to send any such notices as soon as practicable. Seller shall, as soon as is reasonably possible, notify Buyer of any loading deficiencies or delays in loading via telephone or other electronic means, with confirmation in writing.

(d) Additional Transportation Charges. If, in connection with a Coal Product Transaction, a Party is charged for any increased transportation charges, penalties or other costs, including demurrage or detention, attributable to the other Party's failure to timely load or unload Coal Product in accordance with the terms of such Coal Product Transaction or the timing and tonnage requirements of the Transportation Specifications, and if such failure is not due to Force Majeure or the other Party's Transportation Equipment or Transporter, the Party failing to timely load or unload Coal Product shall promptly reimburse the other Party for any such charges actually incurred, if such charges are usual and customary, after written notice thereof. Upon request by either Buyer or Seller, such Transportation Specifications shall be made available for review by the requesting Party, provided that the disclosing Party shall not be required to disclose pricing information. The requesting Party shall sign an appropriate confidentiality agreement if requested by the disclosing Party.

(e) Additives/Freeze Conditioning. Seller shall use Commercially Reasonable Efforts to treat the Coal with freeze control agents or other additives as directed by Buyer. Buyer shall reimburse Seller for the actual cost of materials, including reasonable application costs as charged by the Source or Delivery Point, as applicable, for application of the freeze control agents, or other additives. Seller shall invoice Buyer and Buyer shall pay Seller for such freeze conditioning in accordance with the provisions of Article 6 of the EEI Master Agreement.

(f) Failure to Load as Scheduled. If a Scheduled Shipment fails to load as scheduled, despite the Parties' Commercially Reasonable Efforts to arrange and receive such Shipment in accordance with Sections 3.4(a) or (b), as applicable, the Parties shall make Commercially Reasonable Efforts to reschedule the Shipment to a future load date which is on or before the later of (i) ten (10) days after the originally scheduled Shipment date or (ii) the last day of the originally scheduled delivery month, consistent with industry practices. In the event the Shipment cannot be

rescheduled to a load date within such time period and the Parties cannot agree upon a future load date during the Term, or otherwise, such Shipment will be subject to the provisions of Article 4 of the EEI Master Agreement. If a rescheduled Shipment fails to load as Scheduled, such Shipment will be subject to the provisions of Article 4 of the EEI Master Agreement, unless it is mutually agreed that another future delivery date can be established. The remedies set forth in Article 4 of the EEI Master Agreement shall be a Party's exclusive remedies for the other Party's failure to load a Shipment of Coal as set forth in this EEI Coal Annex.

(g) Buyer's Administrative Obligation. The Parties agree that some of Buyer's obligations hereunder may be performed by Buyer's Customer; nevertheless; Buyer shall remain liable for all of Buyer's obligations hereunder and Buyer shall indemnify and hold Seller harmless from and against any and all claims made by Buyer's Customer against Seller. Buyer agrees to the following:

(i) Buyer shall inform Seller at least twenty-four (24) hours in advance of arrival of each Unit Train, truck, Barge or vessel at the Source or Delivery point (if the Delivery Point is other than the Source) of the identification number of the Unit Train, truck, Barge or vessel, identification of Buyer's Customer, and destination of such Unit Train, truck, Barge or vessel.

(ii) The loading of such Unit Train, truck, Barge or vessel shall be in accordance with the loading provisions provided to Seller herein unless Buyer notified Seller in advance of different loading provisions and such different loading provisions are in general accordance with operating parameters in the Source's region, and do not, in Seller's reasonable opinion, impose an undue operating or economic burden on Seller.

(iii) All information to be supplied by Seller to Buyer under this EEI Coal Annex including but not limited to analysis, weights, manifest and invoicing information shall be supplied to Buyer and Buyer shall be responsible for transmitting such information to Buyer's Customer.

3.6 Title and Indemnity. With respect to each Coal Product Transaction, Seller warrants that it shall have good and marketable title to Coal and shall deliver such Coal to Buyer, free and clear of all claims, liens, security interests, encumbrances, or an interest therein or thereto by any person arising prior to the transfer of title to Buyer. Seller shall indemnify, defend and hold harmless Buyer from any and all Claims arising prior to the transfer of title to Coal from Seller to Buyer. Buyer shall indemnify, defend and hold harmless Seller from any and all Claims arising after the transfer of title to Coal from Seller to Buyer.

3.7 Substitute Coal. Unless otherwise restricted by the subject Confirmation, Seller shall, by giving timely notice as provided in Section 3.4 above, have the option, subject to Buyer's approval, not to be unreasonably withheld, to provide the Coal Product from any alternate Source Seller may select. Any such substituted Coal Product must comply with all Specifications for the Coal Product to be replaced

and be otherwise acceptable to Buyer. Seller shall cooperate with Buyer in Buyer's arranging for alternative transportation to allow the Coal Product shipped from the alternate Source to be delivered to Buyer at the Delivery Point at the same time and at the same Contract Price on an equivalent $/mmBtu and SO_2 adjusted basis (if SO_2 adjustment is provided in the relevant Confirmations) as if delivery had been made to Buyer from the original Source. The Seller shall be solely responsible for any increased transportation, handling, storage and other costs, if any, incurred by Buyer directly resulting from Seller's provision of substitute Coal Product.

3.8 Failure to Deliver or Receive Coal. The remedies set forth in Article 4 of the EEI Master Agreement shall be a Party's exclusive remedies for the other Party's failure to deliver or receive all or part of the Quantity for the relevant delivery month in accordance with the applicable Coal Product Transaction.

(a) Rescheduling. As an alternative to the damages provision in Article 4 of the EEI Master Agreement, if the Parties mutually agree in writing, the Party other than the Party failing to deliver or receive a Shipment of Coal may schedule deliveries or receipts, as the case may be, pursuant to such terms as the Parties agree in order to discharge some or all of the obligation to pay damages. In the absence of such agreement, the liquidated damages provision in Article 4 of the EEI Master Agreement shall apply.

(b) Duty to Mitigate. Both parties shall be subject to a commercially reasonable good faith obligation to mitigate any damages hereunder.

(c) Payment. Payment of amounts, if any, determined under this Section 3.8 shall be made in accordance with Article 4 of the EEI Master Agreement. All such determinations shall be made in a commercially reasonable manner and the Party other than the Party failing to deliver or receive a Shipment of Coal Product shall not be required to enter into any actual replacement transaction in order to determine the Replacement Price or Sales Price as appropriate.

(d) Damages Stipulation. Each Party stipulates that the payment obligations set forth in this Section 3.8 for the damages incurred are a reasonable approximation of the anticipated harm or loss and acknowledges the difficulty of estimation or calculation of actual damages, and each Party hereby waives the right to contest such payments as unenforceable, an unreasonable penalty or otherwise.

3.9 Quantity Variation Adjustment. If a Confirmation for a Coal Product Transaction in which the Quantity is designated in Unit Train loads or Barge loads states that QVA is applicable, then Coal Product delivered in respect of that Coal Product Transaction that is either in excess of or below the designated capacity of such Unit Train or Barge shall be priced as set forth in Exhibit D.

3.10 Specifications. Seller agrees that the quality of any and all Coal Product to be delivered by Seller and purchased by Buyer pursuant to any Coal Product

Transaction shall conform to the relevant Specifications and contain no synthetic fuels, be substantially free from any extraneous materials (including, but not limited to, mining debris, bone, slate, iron, steel, petroleum coke, earth, rock, pyrite, wood or blasting wire), be substantially consistent in quality throughout a Shipment, meet the size required, and have had no intermediate sizes (including fines) added or removed.

3.11 Unit Train or Truck Weighing. Shipments delivered into Unit Trains or trucks shall be weighed at Seller's expense by means of a certified batch weighing system or certified track or truck scale or in the absence of a batch weighing system or track scales for rail weights, official railroad weights. The weights determined thereby (absent manifest error) will be the basis on which invoices will be rendered and payments made hereunder.

(a) Testing. Seller shall make Commercially Reasonable Efforts to cause the Source or Delivery Point (if the Delivery point is other than the Source) to test, calibrate, and certify its scales approximately every six (6) months to maintain them at a scale accuracy in accordance with the guidelines outlined in the National Bureau of Standards Handbook #44. Seller shall make Commercially Reasonable Efforts to notify Buyer as soon as it knows the date and time for such testing and calibration, and Buyer shall have the right, but not the duty, to witness such testing, calibration, and certification of such scales.

(b) Inoperative Scales. If the scales are determined to be inoperative, if the Source is a Western Mine, then the weight of such Coal delivered shall be determined by averaging the lading weight per railcar of the last five (5) Unit Trains of like equipment under this Agreement weighed at the Source or Delivery Point (if the Delivery Point is other than the Source) prior to such breakdown. If less than five (5) Unit Trains of like equipment under this EEI Coal Annex were weighed at the Source or Delivery Point (if the Delivery Point is other than the Source) prior to the breakdown, the weight per railcar shall be determined by averaging the lading weight per railcar of the Unit Train(s) of like equipment under this EEI Coal Annex weighed at the Source or Delivery Point (if the Delivery Point is other than the Source) prior to the breakdown as well as the lading weight per railcar of Unit Train(s) of like equipment under this EEI Coal Annex first weighed at the Source or Delivery Point (if the Delivery Point is other than the Source) after the scales are operable, so as to comprise a five (5) Unit Train weighted average. If the Source is an Eastern Mine, the weight of such Coal delivered shall be determined by railroad weights. If railroad weights are not available, the procedure for Western Mines shall be utilized.

(c) Observation. Buyer shall have the right to have a representative present at its own risk and expense at any and all times to observe weighing of the Coal. If either Party should at any time question the accuracy of the scales at the Source or Delivery Point (if the Delivery Point is other than the Source), such Party may request a prompt test and adjustment of such track scales or batch weighing system at its expense by an entity mutually agreed upon by Buyer and Seller.

3.12 Barge and Vessel Weighing. Shipments delivered by Barge(s) or vessel(s) shall be weighed at Seller's expense as determined by a certified belt scale (such certification to be not older than six (6) months from the date of loading) or if not available, by draft survey taken at the Delivery Point prior to the departure of the Barge(s) or vessel(s) from the Delivery Point at Seller's expense. The weights thereby determined (absent manifest error) will be the basis on which invoices will be rendered and payments made hereunder. All such draft surveys at the Delivery Point shall be conducted by an independent surveyor (certified commercial marine surveyor for vessels) experienced in the conduct of draft surveys and selected by mutual agreement of the parties or, failing agreement, by Seller.

3.13 Sampling and Analysis.

(a) Sampling. The Sampling Person shall be Seller or Seller's designee and shall perform sampling and analysis of the Coal pursuant to a Coal Product Transaction at Seller's expense. The Sampling Person shall cause a representative Coal sample to be taken by mechanical sampler that is in working condition and that has been dynamically bias tested within twelve (12) months prior to delivery by an independent certified third party. In the event the Sampling Person is not able to obtain a sample with bias tested equipment in proper working condition, the Parties shall confer for purposes of reaching agreement as to an alternative means of sampling. Samples shall be taken on an "as-loaded" basis, and analyzed on an "as-received" basis, and all sampling, sample preparation and analysis shall be performed in accordance with then current published applicable ASTM Standards.

(b) Analysis Procedures. The Analysis Person shall be an independent certified laboratory. The Analysis Person shall be chosen by good faith agreement of the Parties, or failing agreement, by Seller. The Analysis Person shall, at Seller's expense, perform a short proximate analysis on an "as-received" basis, which shall include total moisture, ash, Btu, sulfur and other data as required by the applicable Confirmation.

(c) Analysis Splits. The Sampling Person's samples of Coal representing each Shipment and the analysis thereof shall be used to determine quality adjustments pursuant to Section 3.16 and any rejection or suspension rights pursuant to Sections 3.17 and 3.18. Each sample shall be divided into three (3) parts in accordance with then current ASTM Standards and placed in separate airtight containers. One (1) part of each sample will be analyzed by the Analysis Person as determined pursuant to sub-section (b) above; one (1) part shall be retained by the Sampling Person for a period of forty-five (45) days or shipped as Buyer directs; and one (1) part shall be retained by the Sampling Person for a period of forty-five (45) days to be used for a referee analysis, if necessary.

(d) Analysis Objections. At the request of either Buyer or Seller, and at the expense of the requesting Party, additional analyses may be performed. The Sampling Person shall or shall cause the results of the short proximate analysis to be reported to Buyer and Seller along with Shipment I.D. number, weight and shipping data ("Analysis Report") by fax, telephone (to be confirmed promptly by fax) or other electronic means as soon as available, but in any event within twenty-four (24) hours (forty-eight (48) hours for PRB Sources) of the completion of the loading of each Shipment. By notice to the Sampling Person within twenty-four (24) hours after delivery of the Analysis Report and in any event prior to unloading of the Coal at the destination, Buyer or Seller may object to the analysis (the "Objecting Person"), and if so, the Sampling Person shall submit the retained sample to an independent testing laboratory selected by and unaffiliated with the Objecting Person for an independent analysis ("Referee Analysis"). If the results of the Referee Analysis are within ASTM

(interlaboratory) Reproducibility Limits, the Analysis Report shall control, and the costs of the Referee Analysis shall be paid by the Objecting Person. If such results for any Specification are not within such Reproducibility Limits, the results of the Referee Analysis shall control, and the costs of the Referee Analysis shall be borne by the non-Objecting Person. All analyses shall be performed in accordance with then current published applicable ASTM Standards.

3.14 Rounding and Significant Digits. All calculations will use floating decimals with the final operation being rounded to the significant digits to the right of the decimal place as follows:

Btu/lb. will be zero (0)	nn,nnn.
Grindability will be zero (0)	nn.
Emission Allowances will be zero (0)	n,nnn.
Tons will be two (2)	nn,nnn.nn
Dollars for payment will be two (2)	nnn,nnn.nn
Moisture % will be two (2)	nn.nn%
Ash % will be two (2)	nn.nn%
Sulfur % will be two (2)	nn.nn%
Sodium % will be two (2)	nn.nn%
SO2 lbs./MMBTU will be two (2)	.nn lbs/MMBTU
Dollars per ton will be three (3)	nn.nnn / Ton
Quality Dollars per ton will be three (3)	n.nnn / Ton

Items not specified above will use the industry standards for significant digits to the right of the decimal place.

3.15 Representative Presence. Each Party has the right to have a representative present, at such Party's expense, at the Delivery Point during the loading, weighing and sampling of the Coal Product.

3.16 Quality Adjustments. If Coal Product delivered in connection with a Coal Product Transaction varies from the Specifications required in respect thereof, and Buyer does not exercise its rejection rights under Section 3.17, quality adjustments shall be calculated pursuant to the formula(s) set forth in the relevant Confirmation. Within ten (10) days after the end of each month during the Term for each Coal Product Transaction, the quality adjustments for each Coal Product Transaction, if any, shall be netted against each other and the net quality adjustment, as appropriate, for all Shipments during such month shall be determined by Seller, and Buyer shall pay Seller the net positive adjustment, if any, or Seller shall credit Buyer the net negative adjustment, if any, on the next invoice (or pay such amount to Buyer in the event no further invoices are due) in

accordance with the billing and payment terms of Article 6 of the EEI Master Agreement.

3.17 Buyer's Rejection Rights. If any quality characteristic of any Shipment of Coal Product, determined in accordance with the sampling and analysis procedures set forth herein, is above or below, as applicable, any of the Rejection Limits specified in connection with a Coal Product Transaction (a "Non-Conforming Shipment"), Buyer shall have the option, exercisable by notice to Seller within one (1) Business Day after Buyer's receipt of the Analysis Report and additional analysis, if any, of the Coal provided pursuant to Section 3.13, to either (i) reject such Non-Conforming Shipment at the Delivery Point or in route, but prior to unloading from Transporter's Transportation Equipment; or (ii) reach a mutually agreeable price adjustment or other resolution using Commercially Reasonable Efforts. If Buyer fails timely to exercise its rejection rights under this Section 3.17 as to a Shipment, Buyer shall be deemed to have waived such rights to reject with respect to that Shipment only. In addition, any waiver pursuant to the foregoing sentence shall not constitute a waiver of Buyer's rights under Section 3.18. If Buyer timely exercises its rejection rights under this Section 3.17 with respect to a Non-Conforming Shipment, title, if already passed, shall immediately revert to Seller, and Seller shall be responsible for promptly transporting the rejected Coal to an alternative destination determined by Seller and, if applicable, promptly unloading such Coal and shall reimburse Buyer for all reasonable costs and expenses associated with the transportation, storage, handling and removal of the Non-Conforming Shipment. Seller shall, at Buyer's election, replace the rejected Coal within a reasonable period of time, provided that Buyer gives written notice to Seller of its desire for replacement Coal within forty-eight (48) hours after rejection of the Non-Conforming Shipment.

3.18 Suspension Rights. If there are three (3) Non-Conforming Shipments, whether rejected or not, in any three (3) month period or if two (2) out of any four (4) consecutive Shipments under a Coal Product Transaction are Non-Conforming Shipments (or with respect to Shipments by Barge, one (1) or more Non-Conforming Shipments in each of two (2) days of sequential Shipments under a given Coal Product Transaction, whether or not there are any intervening days without Shipments), as the case may be, then Buyer may upon written notice to Seller suspend the receipt of future Shipments under such Coal Product Transaction (except Shipments already loaded or in transit to Buyer; provided that Buyer shall retain all rights under Sections 3.16 and 3.17 with regard to such Shipments). A waiver by Buyer of its suspension right in respect of any one series of Shipments shall not constitute a waiver for any subsequent series of Shipments. If Seller, within ten (10) days of its receipt of such notice of suspension from Buyer under this Section 3.18, provides reasonable assurances in writing to Buyer that future Shipments will conform to the Specifications and Buyer has accepted such assurances (such acceptance not to be unreasonably withheld), Shipments shall resume and any tonnage deficiencies shall be made up within the Term at Buyer's option. If (i) Seller fails to provide such acceptable

assurances within such ten (10) day period; or (ii) after such assurances are provided and within three (3) months thereafter, any Shipments of Coal Product fail to conform to the Specifications and give rise to any of Buyer's rejection rights under Section 3.17 for the Rejection Limit parameter for which there was a prior suspension under such Coal Product Transaction, as the case may be, then such failure shall constitute an Event of Default under the EEEI Master Agreement solely with respect to the affected Coal Product Transaction, with Seller deemed to be the Defaulting Party under Article 5 of the EEI Master Agreement.

3.19 Force Majeure.

(a) Excuse from Performance. In addition to the provisions of Section 3.3 of the EEI Master Agreement, in the event of Force Majeure affecting a Party's obligation to deliver or receive Coal Products:

Option A: delivery of the affected quantity of Coal Product shall be made up on a schedule mutually agreeable to the Parties.

Option B: delivery of the affected quantity of Coal Product shall be made up at the non-Claiming Party's discretion on a schedule mutually agreeable to the Parties.

Option C: delivery of the affected quantity of Coal Product shall not be made up unless the Parties mutually agree otherwise.

(b) Extended Force Majeure/Non-Claiming Party's Right to Terminate. If the Claiming Party is excused, in whole or in part, from the performance of its obligations with respect to a Coal Product Transaction by Force Majeure for a continuous period of sixty (60) days or more, then the Non-Claiming Party shall have the right, upon three (3) Business Days' prior written notice, to terminate such Coal Product Transaction and the associated obligations of the Parties thereunder (other than payment obligations for prior performance thereunder).

Option A: N**either Party shall have any liability hereunder as a result of termination of** the affected Coal Product Transaction (other than payment obligations for prior performance thereunder)**, including, but not limited to, any Termination Payment pursuant to Section 5.3 of the EEI Master Agreement.**

Option B: In the event of **termination of** the affected Coal Product Transaction, the non-Claiming Party must declare an Early Termination Date pursuant to Article 5 **of the EEI Master Agreement** and a Termination Payment will be

calculated and payable with respect to the Coal Product Transaction as if such Coal Product Transaction were being terminated in accordance therewith, in which case references to the Defaulting Party and the Non-Defaulting Party will be deemed references to the Claiming Party and the non-Claiming Party, respectively. For the avoidance of doubt, while the Claiming Party shall be deemed to be the Defaulting Party for purposes of calculating the Termination Payment, the Claiming Party shall not be a Defaulting Party for purposes of Article 5 **of the EEI Master Agreement** solely as a result of the non-Claiming Party's termination of the Coal Product Transaction pursuant to this Section 3.19. In determining a Termination Payment pursuant to this Section, the non-Claiming Party shall (a) if obtaining market quotations from one or more third parties, ask each third party (i) not to take account of the current creditworthiness of the non-Claiming Party or any existing Performance Assurance and (ii) to provide mid-market quotations; and (b) in any other case, use mid-market values without regard to the creditworthiness of the non-Claiming Party.

(c) Pro Rata Allocation. If Seller claims Force Majeure and is unable to meet all of its sales obligations under an affected Coal Product Transaction and any other of its coal sales agreements involving coal of a similar type and quality as the Coal Product, or if Buyer claims Force Majeure and is unable to meet all of its purchase obligations under an affected Coal Product Transaction and any other of its coal purchase agreements involving coal of a similar type and quality as the Coal Product, then any reductions in Seller's deliveries or Buyer's purchases (as applicable) shall be allocated on a pro rata basis among the affected Coal Product Transaction(s) and such other coal supply or purchase agreements involving coal of the same type and quality as the Coal Product to the extent contractually permitted by such Coal Product Transaction and agreements.

(d) Capital Expenditures and Labor Matters. It is understood and agreed that significant capital expenditures and settlement of strikes and lockouts shall be entirely within the discretion of the Party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require significant capital expenditure or settlement of strikes and lockouts by acceding to the demands of the opposing party when such course is inadvisable in the discretion of the Party having difficulty.

(e) Delivery at Delivery Point. This Section 3.19 shall not require Seller to deliver, or Buyer to receive, the quantity of Coal affected by Force Majeure at points other than the Delivery Point (including allowable substitutions under the terms of the Coal Product Transaction).

3.20 Payment Netting. If neither Option A nor Option B is specified on the Paragraph 4 Cover Sheet as applicable, Option B of this Section 3.20 shall apply.

Option A: Payment Netting Between Other Product and Coal Product Transactions.

Section 6.4 of the EEI Master Agreement shall be applicable to all Products; monthly payment obligations in respect of all other Products shall be netted with monthly payment obligations in respect of Coal Products, all in accordance with Article 6 of the EEI Master Agreement. For clarity, it is expressly agreed that, in addition to the netting of monthly payment obligations in respect of other Products and Coal Products, if an Early Termination Date is declared by the Non-Defaulting Party pursuant to Article 5 of the EEI Master Agreement, then all Settlement Amounts and any other payments for all Transactions whether for other Products and/or Coal Products shall be netted in calculating the Early Termination Payment pursuant to the provisions of Section 5.3 of the EEI Master Agreement.

Option B: No Payment Netting Between Other Product and Coal Product Transactions.

Section 6.4 of the EEI Master Agreement shall be separately applicable to Coal Products; for this limited purpose only, monthly payment obligations in respect of other Products shall not be netted with monthly payment obligations in respect of Coal Products and monthly payment obligations in respect of Coal Products shall be netted only with monthly payment obligations in respect of other Coal Products. For clarity, it is expressly agreed that if an Early Termination Date is declared by the Non-Defaulting Party, then all Settlement Amounts and any other payments for all Transactions whether for other Products and/or Coal Products shall be netted in calculating the Early Termination Payment pursuant to the provisions of Section 5.3 of the EEI Master Agreement.

3.3 **Miscellaneous**. The following Section is added to Article 10 of the EEI Master Agreement with respect to Coal Products only:

10.12 UCC Waiver. Section 8 of the EEI Master Agreement and, if applicable, the Collateral Annex, set forth the entirety of the agreement of the Parties regarding credit, collateral and adequate assurances. Except as expressly set forth in the options elected by the Parties in respect of Sections 8.1 and 8.2, in Section 8.3, and in the relevant portions of the Collateral Annex, neither Party:

(a) has or will have any obligation to post margin, provide letters of credit, pay deposits, make any other prepayments or provide any other financial assurances, in any form whatsoever, or

(b) will have reasonable grounds for insecurity with respect to the creditworthiness of a Party that is complying with the relevant provisions of Section 8 of this Agreement;

and all implied rights relating to financial assurances arising from Section 2-609 of the Uniform Commercial Code or case law applying similar doctrines, are hereby waived.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this EEI Coal Annex to be duly executed in one or more counterparts (each of which shall be deemed an original, and all of which, taken together with the EEI Master Agreement, shall constitute one and the same agreement) effective as of the Effective Date of the EEI Master Agreement. The Parties expressly acknowledge the validity of facsimile counterparts of the executed EEI Coal Annex, if any, which may be transmitted in advance of, or in lieu of, executed original documents.

_____

By:_____
Printed Name: _____
Title:_____

_____

By:_____
Printed Name: _____
Title:_____

EXHIBIT "A-1"
TO THE
EEI COAL ANNEX

CONFIRMATION - EXCLUDING OPTIONS

Date:_____

Counterparties

Coal Seller:	**Coal Buyer:**
---Counterparty1--- ("---CP-1---")	**---Counterparty2---("---CP-2---")**
_____	_____
_____	_____
Attn: _____	Attn: _____
Tel. _____	Tel. _____
Fax. _____	Fax. _____
---CP-1--- Ref #:_____	**---CP-2---** Ref #:_____

This Confirmation sets forth the binding agreement entered into between **---Counterparty1---** ("**---CP-1---**") and **---Counterparty2---** ("**---CP-2---**") on the TRADE DATE set out below as to a Transaction (this "Transaction") regarding the sale/purchase of Coal under the following terms:

Commodity: Coal: As defined in the Coal Annex.

Trade
Date:_____

**********Purchase / Sale Information**********

Product: _____

Term: _____

Quantity/Tons: _____

Scheduling (Check one): ____ Per Master Agreement

____ Other: _____

Nomination Period (Check one): ___ Monthly ___ Quarterly ___ Other:_____

Source(s): _____

Delivery Point (Check one): ___ FOB railcar at the Source
___ FOB barge at the Source

___ Other: _____

Contract Price: _____

Payment (check one): _____ Per Coal Annex

_____ Other _____

SPECIFICATIONS:	**CHARACTERISTIC**	**STANDARD**	**REJECTION LIMIT**
	Base Calorific Value	min__ Btu/lb.	Max ___Btu/lb.
	Total Moisture	max__%	Max ___%
	Ash	max__%	Max ___%
	Sulfur	max__%	Max ___%
	lbs. SO_2/mmBtu	max__lbs.	Max ___lbs.
	Ash Fusion Temperature (H= 1/2W °F Reducing Atmosphere)	__°F	Min ___°
	Volatile Matter	__%	Min ___%
	Grindability (HGI)	__	Min ___
	Sodium (%)	__%	
	Size	[__]" x 0" topsize, nominal, with a maximum of 55% passing 1/4" square wire cloth sieve to be determined on the basis of the primary cutter of the mechanical	

sampling system.

FORMULA(S) FOR QUALITY ADJUSTMENTS:

Btu Adjustment:

If the actual Btu on an as-received basis of any Shipment accepted by Buyer is other than the Base Calorific Value, an adjustment shall be calculated based on each Shipment as follows:

$$\text{Base Calorific Value Adjustment} = \frac{[(\text{Actual Calorific Value}) \textit{ minus } (\text{Base Calorific Value})]}{\text{Base Calorific Value}} \text{ X (Contract Price)}$$

WHERE:

Actual Calorific Value = Shipment average Btu/lb

Base Calorific Value = Btu/lb as shown above

☐ **SO2 Adjustment** (Applicable only if box is checked) :

If the actual SO_2 lbs/MMBtu on an as-received basis of any Shipment accepted by Buyer is other than the Standard SO_2 lbs/MMBtu, an adjustment shall be calculated based on each Shipment as follows:

$$\frac{((\text{Standard } SO_2 \text{ lbs/MMBtu} - \text{Actual lbs. SO2/mmbtu}) * \text{Actual Btu/lb.} * E)}{1{,}000{,}000}$$

WHERE:

E is the price of one SO_2 Allowance (as defined below) expressed in dollars. The price of an SO_2 Allowance is determined by the monthly SO_2 price indices published in Argus Air Daily published by Argus Media Ltd. or any successor publication ("Air Daily") for the calendar month of delivery.[3]

In lieu of a financial SO_2 adjustment, Buyer and Seller may, upon mutual agreement at the time, exchange SO_2 Allowances as determined by the following formula:

---

[3] As noted in the definition of "SO_2 Allowance" below, currently one SO_2 Allowance is required to emit one Ton of SO_2 during a calendar year. Upon implementation of the *Clean Air Interstate Rule* under 40 CFR 96.202 (*see* Final Rule, 60 Fed. Reg. 91 (May 12, 2005) at p. 25363), this formula will need to be adjusted based upon an increase in the ratio of allowances required for SO_2 emissions as follows:

a. Use of Title IV allowances with vintage years 2010-2014 will require 2 allowances per Ton of SO_2.

b. Use of Title IV allowances with vintage years 2015 or later will require 2.86 allowances per Ton of SO_2.

Number of SO_2 Allowances = (Standard SO_2 lbs/MMBtu – Actual SO_2 lbs/MMBtu X Actual Btu/lb X Tons of Coal ÷1,000,000[4]

If the product of the above is positive, Buyer shall transfer SO_2 Allowances to Seller, and if the product of the above is negative, Seller shall transfer SO_2 Allowances to Buyer. SO_2 Allowances due to Buyer or Seller hereunder shall be transferred to such party consistent with the payment required for cash SO_2 adjustments. Fractional SO_2 Allowances resulting from the calculations shall be paid in cash.

"SO_2 Allowance" means an authorization by the administrator of the United States Environmental Protection Agency (or its successor) ("EPA") under Title IV of the Clean Air Act Amendments of 1990 (effective November 15, 1990), any amendments thereto and any regulations promulgated thereunder, to emit one Ton of SO_2 during the current calendar year.

If the party owed the SO_2 Allowances (the "SO_2 Transferee") requests the transfer of the SO_2 Allowances, the party owing SO_2 Allowances (the "SO_2 Transferor") shall deliver a fully executed Allowance Transfer Form (OMB No. 2060-0258) ("ATF") relating to such SO_2 Allowances to the SO_2 Transferee. The SO_2 Transferee shall promptly cause all appropriate and fully completed SO_2 Allowance transfer documentation, including the ATF, to be placed on file with the EPA in accordance with the applicable regulations relating to the Allowance Tracking System.

The SO_2 Transferor warrants that it will deliver to the SO_2 Transferee the SO_2 Allowances, free and clear of all liens, claims, security interests, encumbrances and other defects of title. EACH PARTY EXPRESSLY NEGATES ANY OTHER REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY WITH RESPECT TO CONFORMITY TO MODELS OR SAMPLES, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE.

Each party shall be responsible for any taxes or other fees associated with its respective delivery and receipt of such SO_2 Allowances.

Quality price adjustments shall be rounded to the nearest $0.001 and calculated on a monthly weighted average.

OTHER: OPTIONAL TERMS

The following provisions are for administrative convenience and do not alter, or release Seller or Buyer from contractual liability to perform, any obligation of Seller or Buyer under this Transaction.

BUYER NOT END-USER

☐ Buyer Not End-User (Applicable only if box is checked.)

Buyer is not able or expecting to use or consume, or take physical delivery of

[4] *Id.*

the Coal that is the subject of this Transaction and designates Buyer's Customer as its agent for purposes of, and delegates to Buyer's Customer all of, Buyer's rights, duties and obligations relating to, scheduling, transportation from the Delivery Point, unloading, additional charges (demurrage, etc.), shipping documentation, freeze conditioning, weighing, sampling and analysis, quality adjustments and related payments, and rejection and suspension rights ("*Physical Receipt Functions*") relating to the Coal that Buyer may resell to Buyer's Customer(s) (the "*Delegated Downstream Physical Receipt Functions*"). Seller acknowledges and agrees to Buyer's delegation of all rights, duties and obligations relating to the Delegated Downstream Physical Receipt Functions and further agrees to recognize and accept exercise and performance thereof by Buyer's Customer as exercise and performance by Buyer.

Buyer shall notify Seller as soon as practicable, but in any event no later than the Monthly Shipment Notification Date, of the identity of Buyer's Customer(s) and provide Seller with the name, telephone number, fax number and electronic mail address of the individual responsible for Buyer's Customer's scheduling activities.

For purposes of this Transaction, the term "*Buyer's Customer*" means any person to which Buyer may resell any or all of the Coal that is the subject of this Transaction.

☐ Daisy-chain Provision (Applicable only if box is checked.)

Buyer's designation of Buyer's Customer as its agent and delegation to Buyer's Customer of the Delegated Downstream Physical Receipt Functions is with full right on the part of Buyer's Customer to designate any person to which Buyer's Customer may resell any or all of the Coal that is the subject of this Transaction (a "Downstream Customer") as Buyer's Customer's (and, thus, Buyer's) agent for purposes of, and delegate to such person all of, Buyer's Customer's rights, duties and obligations relating to the Delegated Downstream Physical Receipt Functions, including the right on the part of such person pursuant to this paragraph to further delegate all of the rights, duties and obligations relating to the Delegated Downstream Physical Receipt Functions. Seller acknowledges and agrees to the right on the part of Buyer's Customer to further designate an agent for performance of, and to further delegate the rights, duties and obligations relating to, the Delegated Downstream Physical Receipt Functions and further agrees to recognize and accept exercise and performance thereof by a Downstream Customer as exercise and performance by Buyer.

☐ Buyer is End-user (Applicable only if box is checked.)

Buyer is able or expecting to use or consume, or take physical delivery of the Coal that is the subject of this Transaction. Seller designates Buyer as its

agent for purposes of, and delegates to Buyer all of, Seller's rights, duties and obligations relating to the Physical Receipt Functions relating to Coal that Seller may purchase from Seller's Vendor ("*Delegated Upstream Physical Receipt Functions*"). Buyer acknowledges and agrees to Seller's delegation of all rights, duties and obligations relating to the Delegated Upstream Physical Receipt Functions and agrees to exercise and perform such rights, duties and obligations on behalf of Seller of the benefit and on behalf of Seller and, if applicable, Seller's predecessor(s) in the chain of title to the Coal that is the subject of this Transaction.

SELLER NOT PRODUCER

☐ Seller Not Producer (Applicable only if box is checked.)

Seller is not able or expecting to produce, or make physical delivery of the Coal that is the subject of this Transaction and designates Seller's Vendor as its agent for purposes of, and delegates to Seller's Vendor all of, Seller's rights, duties and obligations relating to, scheduling, loading, transportation to the Delivery Point, additional charges (demurrage, etc.), shipping documentation, freeze conditioning, weighing, sampling and analysis, quality adjustments and related payments and rejection and suspension rights ("*Physical Delivery Functions*") relating to the Coal that Seller may purchase from Seller's Vendor (the "*Delegated Upstream Physical Delivery Functions*"). Buyer acknowledges and agrees to Seller's delegation of all rights, duties and obligations relating to the Delegated Upstream Physical Delivery Functions and further agrees to recognize and accept exercise and performance thereof by Seller's Vendor as exercise and performance thereof by Seller.

Seller shall notify Buyer as soon as practicable, but in any event no later than the Monthly Shipment Notification Date, of the identify of Seller's Vendor and provide Buyer with the name, telephone number, fax number and electronic mail address of the individual responsible for Seller's Vendor's scheduling activities.

For purposes of this transaction, the term "*Seller's Vendor*" means any person from whom Seller may purchase any or all of the Coal that is the subject of this Transaction.

☐ Daisy-chain Provision (Applicable only if box is checked.)

Seller's designation of Seller's Vendor as its agent and delegation to Seller's Vendor of the Delegated Upstream Physical Delivery Functions is with full right on the part of Seller's Vendor to designate any person from which Seller's Vendor may purchase any or all of the Coal that is the subject of this Transaction (an "Upstream Vendor") as Seller's Vendor's (and, thus, Seller's) agent for purposes of, and delegate to such person all of Seller's

Vendor's rights, duties and obligations relating to the Delegated Upstream Physical Delivery Functions, including the right on the part of such person pursuant to this paragraph to further delegate all of the rights, duties and obligations relating to the Delegated Upstream Physical Delivery Functions. Buyer acknowledges and agrees to the right on the part of Seller's Vendor to further designate an agent for performance of, and to further delegate the rights, duties and obligations relating to, the Delegated Upstream Physical Delivery Functions and further agrees to recognize and accept exercise and performance thereof by an Upstream Vendor as exercise and performance by Seller.

☐ Seller is Producer (Applicable only if box is checked.)

Seller is able or expecting to produce, or make physical delivery of, the Coal that is the subject of this Transaction. Buyer designates Seller as its agent for purposes of, and delegates to Seller all of, Buyer's rights, duties and obligations relating to the Physical Delivery Functions relating to Coal that Buyer may resell to Buyer's Customer (the "*Delegated Downstream Physical Delivery Functions*"). Seller acknowledges and agrees to Buyer's delegation of all rights, duties and obligations relating to the Delegated Downstream Physical Delivery Functions and agrees to exercise and perform such rights, duties and obligations on behalf of Buyer for the benefit and on behalf of Buyer and, if applicable, Buyer's successor(s) in the chain of title to the Coal that is the subject of this Transaction.

This letter constitutes a "Confirmation" as referred to in the Master Agreement described below. This Confirmation supplements, forms part of, and is subject to, the Master Power Purchase & Sale Agreement dated _____, ____, as it may be amended, and supplemented from time to time (the "Master Agreement") between Coal Buyer and Coal Seller. All provisions contained in the Master Agreement govern this Confirmation to the extent not in conflict with the terms hereof. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

Please confirm that the foregoing correctly sets forth the terms of the agreement between you and us as to this Transaction by timely returning an executed copy of this letter by facsimile at the fax number specified in the Master Agreement. If you do not return this Confirmation or object to any of the terms stated herein within two (2) Business Days of your receipt of it, then in accordance with the EEI Master Agreement this Confirmation shall be deemed correct, and binding and conclusive evidence of this Transaction. This Confirmation supersedes any broker confirmation concerning this Transaction.

COAL SELLER	**COAL BUYER**
By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____

EXHIBIT "A-2"
TO THE
EEI COAL ANNEX

CONFIRMATION - OPTIONS

Date:_____

Counterparties

Option Seller:	**Option Buyer:**
---Counterparty1--- ("---CP-1---")	**---Counterparty2---("---CP-2---")**
_____	_____
_____	_____
Attn: _____	Attn: _____
Tel. _____	Tel. _____
Fax. _____	Fax. _____
---CP-1--- Ref #:_____	**---CP-2---** Ref #:_____

This Confirmation sets forth the binding agreement entered into between **---Counterparty1---** ("**---CP-1---**") and **---Counterparty2---** ("**---CP-2---**") on the TRADE DATE set out below as to a Transaction (this "Transaction") regarding the sale/purchase of Coal under the following terms:

Commodity: Coal: As defined in the Master Agreement.

Trade
Date:_____

*****************Purchase / Sale Information*****************

Option Type: _____

Option Term: _____

Strike Price: _____

Option Quantity / Tons: _____

Exercise Period: _____

Exercise Date (s) (Check one): ____ Per Master Agreement

____ Other: _____

_____

**********Purchase / Sale Information**********

Product: _____

Term: _____

Quantity/Tons: _____

Scheduling (Check one): ____ Per Master Agreement

____ Other: _____

Nomination Period (Check one): ___ Monthly ___ Quarterly ___ Other:_____

Source(s): _____

Delivery Point (Check one): ___ FOB railcar at the Source
___ FOB barge at the Source

___ Other: _____

Contract Price: _____

Payment (check one): _____ Per Master Agreement

_____ Other _____

SPECIFICATIONS:	**CHARACTERISTIC**	**STANDARD**	**REJECTION LIMIT**
	Base Calorific Value	min__ Btu/lb.	Max ___Btu/lb.
	Total Moisture	max__%	Max ___%
	Ash	max__%	Max ___%
	Sulfur	max__%	Max ___%

lbs. SO_2/mmBtu	max__lbs.	Max ___lbs.
Ash Fusion	__°F	Min ___°
Temperature(H= 1/2W °F Reducing Atmosphere)		
Volatile Matter		
Grindability (HGI)	__%	Min ___%
Sodium (%)	__ __%	Min ___
Size	[___]" x 0" topsize, nominal, with a maximum of 55% passing 1/4" square wire cloth sieve to be determined on the basis of the primary cutter of the mechanical sampling system.	

FORMULA(S) FOR QUALITY ADJUSTMENTS:

Btu Adjustment:

If the actual Btu on an as-received basis of any Shipment accepted by Buyer is other than the Base Calorific Value, an adjustment shall be calculated based on each Shipment as follows:

$$\text{Base Calorific Value Adjustment} = \frac{[(\text{Actual Calorific Value}) \textit{ minus } (\text{Base Calorific Value})]}{\text{Base Calorific Value}} \text{ X (Contract Price)}$$

WHERE:

Actual Calorific Value = Shipment average Btu/lb

Base Calorific Value = Btu/lb as shown above

☐ **SO2 Adjustment** (Applicable only if box is checked) :

If the actual SO_2 lbs/MMBtu on an as-received basis of any Shipment accepted by Buyer is other than the Standard SO_2 lbs/MMBtu, an adjustment shall be calculated based on each Shipment as follows:

$$\frac{((\text{Standard } SO_2 \text{ lbs/MMBtu} - \text{Actual lbs. SO2/mmbtu}) * \text{Actual Btu/lb.} * E)}{1{,}000{,}000}$$

WHERE:

E is the price of one SO_2 Allowance (as defined below) expressed in dollars. The price of an SO_2 Allowance is determined by the monthly SO_2 price indices published in Argus Air Daily published by Argus Media Ltd. or any successor publication ("Air Daily") for the calendar month of delivery.[5]

In lieu of a financial SO_2 adjustment, Buyer and Seller may, upon mutual agreement at the time, exchange SO_2 Allowances as determined by the following formula:

Number of SO_2 Allowances = (Standard SO_2 lbs/MMBtu – Actual SO_2 lbs/MMBtu X Actual Btu/lb X Tons of Coal ÷1,000,000[6]

If the product of the above is positive, Buyer shall transfer SO_2 Allowances to Seller, and if the product of the above is negative, Seller shall transfer SO_2 Allowances to Buyer. SO_2 Allowances due to Buyer or Seller hereunder shall be transferred to such party consistent with the payment required for cash SO_2 adjustments. Fractional SO_2 Allowances resulting from the calculations shall be paid in cash.

"SO_2 Allowance" means an authorization by the administrator of the United States Environmental Protection Agency (or its successor) ("EPA") under Title IV of the Clean Air Act Amendments of 1990 (effective November 15, 1990), any amendments thereto and any regulations promulgated thereunder, to emit one Ton of SO_2 during the current calendar year.

If the party owed the SO_2 Allowances (the "SO_2 Transferee") requests the transfer of the SO_2 Allowances, the party owing SO_2 Allowances (the "SO_2 Transferor") shall deliver a fully executed Allowance Transfer Form (OMB No. 2060-0258) ("ATF") relating to such SO_2 Allowances to the SO_2 Transferee. The SO_2 Transferee shall promptly cause all appropriate and fully completed SO_2 Allowance transfer documentation, including the ATF, to be placed on file with the EPA in accordance with the applicable regulations relating to the Allowance Tracking System.

The SO_2 Transferor warrants that it will deliver to the SO_2 Transferee the SO_2 Allowances, free and clear of all liens, claims, security interests, encumbrances and other defects of title. EACH PARTY EXPRESSLY NEGATES ANY OTHER REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING

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[5] As noted in the definition of "SO_2 Allowance" below, currently one SO_2 Allowance is required to emit one Ton of SO_2 during a calendar year. Upon implementation of the *Clean Air Interstate Rule* under 40 CFR 96.202 (*see* Final Rule, 60 Fed. Reg. 91 (May 12, 2005) at p. 25363), this formula will need to be adjusted based upon an increase in the ratio of allowances required for SO_2 emissions as follows:

a. Use of Title IV allowances with vintage years 2010-2014 will require 2 allowances per Ton of SO_2.

b. Use of Title IV allowances with vintage years 2015 or later will require 2.86 allowances per Ton of SO_2.

[6] *Id.*

WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY WITH RESPECT TO CONFORMITY TO MODELS OR SAMPLES, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE.

Each party shall be responsible for any taxes or other fees associated with its respective delivery and receipt of such SO_2 Allowances.

Quality price adjustments shall be rounded to the nearest $0.001 and calculated on a monthly weighted average.

OTHER:

OPTIONAL TERMS

The following provisions are for administrative convenience and do not alter, or release Seller or Buyer from contractual liability to perform, any obligation of Seller or Buyer under this Transaction.

BUYER NOT END-USER

☐ Buyer Not End-User (Applicable only if box is checked.)

Buyer is not able or expecting to use or consume, or take physical delivery of the Coal that is the subject of this Transaction and designates Buyer's Customer as its agent for purposes of, and delegates to Buyer's Customer all of, Buyer's rights, duties and obligations relating to, scheduling, transportation from the Delivery Point, unloading, additional charges (demurrage, etc.), shipping documentation, freeze conditioning, weighing, sampling and analysis, quality adjustments and related payments, and rejection and suspension rights ("*Physical Receipt Functions*") relating to the Coal that Buyer may resell to Buyer's Customer(s) (the "*Delegated Downstream Physical Receipt Functions*"). Seller acknowledges and agrees to Buyer's delegation of all rights, duties and obligations relating to the Delegated Downstream Physical Receipt Functions and further agrees to recognize and accept exercise and performance thereof by Buyer's Customer as exercise and performance by Buyer.

Buyer shall notify Seller as soon as practicable, but in any event no later than the Monthly Shipment Notification Date, of the identity of Buyer's Customer(s) and provide Seller with the name, telephone number, fax number and electronic mail address of the individual responsible for Buyer's Customer's scheduling activities.

For purposes of this Transaction, the term "*Buyer's Customer*" means any person to which Buyer may resell any or all of the Coal that is the subject of this Transaction.

☐ Daisy-chain Provision (Applicable only if box is checked.)

Buyer's designation of Buyer's Customer as its agent and delegation to Buyer's Customer of the Delegated Downstream Physical Receipt Functions is with full right on the part of Buyer's Customer to designate any person to which Buyer's Customer may resell any or all of the Coal that is the subject of this Transaction (a "Downstream Customer") as Buyer's Customer's (and, thus, Buyer's) agent for purposes of, and delegate to such person all of, Buyer's Customer's rights, duties and obligations relating to the Delegated Downstream Physical Receipt Functions, including the right on the part of such person pursuant to this paragraph to further delegate all of the rights, duties and obligations relating to the Delegated Downstream Physical Receipt Functions. Seller acknowledges and agrees to the right on the part of Buyer's Customer to further designate an agent for performance of, and to further delegate the rights, duties and obligations relating to, the Delegated Downstream Physical Receipt Functions and further agrees to recognize and accept exercise and performance thereof by a Downstream Customer as exercise and performance by Buyer.

☐ Buyer is End-user (Applicable only if box is checked.)

Buyer is able or expecting to use or consume, or take physical delivery of the Coal that is the subject of this Transaction. Seller designates Buyer as its agent for purposes of, and delegates to Buyer all of, Seller's rights, duties and obligations relating to the Physical Receipt Functions relating to Coal that Seller may purchase from Seller's Vendor ("*Delegated Upstream Physical Receipt Functions*"). Buyer acknowledges and agrees to Seller's delegation of all rights, duties and obligations relating to the Delegated Upstream Physical Receipt Functions and agrees to exercise and perform such rights, duties and obligations on behalf of Seller of the benefit and on behalf of Seller and, if applicable, Seller's predecessor(s) in the chain of title to the Coal that is the subject of this Transaction.

SELLER NOT PRODUCER

☐ Seller Not Producer (Applicable only if box is checked.)

Seller is not able or expecting to produce, or make physical delivery of the Coal that is the subject of this Transaction and designates Seller's Vendor as its agent for purposes of, and delegates to Seller's Vendor all of, Seller's rights, duties and obligations relating to, scheduling, loading, transportation to the Delivery Point, additional charges (demurrage, etc.), shipping documentation, freeze conditioning, weighing, sampling and analysis, quality adjustments and related payments and rejection and suspension rights ("*Physical Delivery Functions*") relating to the Coal that Seller may purchase from Seller's Vendor (the "*Delegated Upstream Physical Delivery Functions*"). Buyer acknowledges and agrees to Seller's delegation of all rights, duties and obligations relating to the Delegated Upstream Physical Delivery Functions and further agrees to recognize and accept exercise and

performance thereof by Seller's Vendor as exercise and performance thereof by Seller.

Seller shall notify Buyer as soon as practicable, but in any event no later than the Monthly Shipment Notification Date, of the identify of Seller's Vendor and provide Buyer with the name, telephone number, fax number and electronic mail address of the individual responsible for Seller's Vendor's scheduling activities.

For purposes of this transaction, the term "*Seller's Vendor*" means any person from whom Seller may purchase any or all of the Coal that is the subject of this Transaction.

☐ Daisy-chain Provision (Applicable only if box is checked.)

Seller's designation of Seller's Vendor as its agent and delegation to Seller's Vendor of the Delegated Upstream Physical Delivery Functions is with full right on the part of Seller's Vendor to designate any person from which Seller's Vendor may purchase any or all of the Coal that is the subject of this Transaction (an "Upstream Vendor") as Seller's Vendor's (and, thus, Seller's) agent for purposes of, and delegate to such person all of Seller's Vendor's rights, duties and obligations relating to the Delegated Upstream Physical Delivery Functions, including the right on the part of such person pursuant to this paragraph to further delegate all of the rights, duties and obligations relating to the Delegated Upstream Physical Delivery Functions. Buyer acknowledges and agrees to the right on the part of Seller's Vendor to further designate an agent for performance of, and to further delegate the rights, duties and obligations relating to, the Delegated Upstream Physical Delivery Functions and further agrees to recognize and accept exercise and performance thereof by an Upstream Vendor as exercise and performance by Seller.

☐ Seller is Producer (Applicable only if box is checked.)

Seller is able or expecting to produce, or make physical delivery of, the Coal that is the subject of this Transaction. Buyer designates Seller as its agent for purposes of, and delegates to Seller all of, Buyer's rights, duties and obligations relating to the Physical Delivery Functions relating to Coal that Buyer may resell to Buyer's Customer (the "*Delegated Downstream Physical Delivery Functions*"). Seller acknowledges and agrees to Buyer's delegation of all rights, duties and obligations relating to the Delegated Downstream Physical Delivery Functions and agrees to exercise and perform such rights, duties and obligations on behalf of Buyer for the benefit and on behalf of Buyer and, if applicable, Buyer's successor(s) in the chain of title to the Coal that is the subject of this Transaction.

This letter constitutes a "Confirmation" as referred to in the Master Agreement described below. This Confirmation supplements, forms part of, and is subject to, the Master Power Purchase & Sale Agreement dated _____, ____, as it may be amended, and supplemented from time to time (the "Master Agreement") between Coal Buyer and Coal Seller. All provisions contained in the Master Agreement govern this Confirmation to the extent not in conflict with the terms hereof. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

Please confirm that the foregoing correctly sets forth the terms of the agreement between you and us as to this Transaction by timely returning an executed copy of this letter by facsimile at the fax number specified in the Master Agreement. If you do not return this Confirmation or object to any of the terms stated herein within two (2) Business Days of your receipt of it, then in accordance with the EEI Master Agreement this Confirmation shall be deemed correct, and binding and conclusive evidence of this Transaction. This Confirmation supersedes any broker confirmation concerning this Transaction.

Option Buyer		**Option Seller**	
By:	_____	By:	_____
Title:	_____	Title:	_____
Date:	_____	Date:	_____

EXHIBIT B
TO THE
EEI COAL ANNEX

PRODUCTS

As used in this Exhibit:

* This specification will be determined per ASTM standards.
">" means "greater than".
"<" means "less than".
"**N/A**" means such specification is not applicable to the Product.

Product Specifications.

"**CAPP Rail 12500 CS**" or "**CAR125CS**" means Coal which conforms to at least the following rejection limits/specifications on an "as received" basis:

Specification	Standard	Shipment Rejection Limits (Lot: Unit Train)
BTU/LB.	12,500	< 12,200
MOISTURE	7.0 %	> N/A %
ASH	12.0 %	> 13.5 %
SULFUR		
- CS	N/A	> N/A %
SULFUR DIOXIDE (S02)		
- CS	1.20 lb./MMBTU	> 1.20 lb./MMBTU
VOLATILE	N/A %	< 30.0 %
Size (2" x 0"):		
-- Top size (inches)*	< 2"	> N/A "
-- Fines (% by weight)*		
Passing ¼" screen	< N/A %	> 55.0 %
GRINDABILITY (HGI)	43	< 40

"**CAPP Rail 12500 LS**" or "**CAR125LS**" means Coal which conforms to at least the following rejection limits/specifications on an "as received" basis:

Specification	Standard	Shipment Rejection Limits (Lot: Unit Train)
BTU/LB.	12,500	< 12,200
MOISTURE	7.0 %	> N/A %
ASH	12.0 %	> 13.5 %
SULFUR		
- LS	N/A	> 1.00 %
SULFUR DIOXIDE (S02)		
- CS	N/A	N/A
VOLATILE	N/A %	< 30.0 %
Size (2" x 0"):		
-- Top size (inches)*	< 2"	> N/A "

-- Fines (% by weight)*		
Passing ¼" screen	< N/A %	> 55.0 %
GRINDABILITY (HGI)	43	< 40

"**NYMEX Look-alike**" or "**NXLA**" means Coal which conforms to at least the following rejection limits/specifications on an "as received" basis:

Specification	Standard	Shipment Rejection Limits (Lot: Barge)
BTU/LB.	12,000	< 11,750
MOISTURE	10.0 %	> 10.0 %
ASH	13.5 %	> 13.5 %
SULFUR	1.00 %	> 1.05 %
SULFUR DIOXIDE (S02)	N/A	> N/A lb./MMBTU
VOLATILE	30.0 %	< 30.0 %
Size (3" x 0"):		
-- Top size (inches)*	< 3"	> N/A "
-- Fines (% by weight)*		
Passing ¼" screen	< N/A %	> 55.0 %
GRINDABILITY (HGI)	41	< 38

"**PRB 8400**" or "**PR84**" means Coal which conforms to at least the following rejection limits/specifications on an "as received" basis:

Specification	Standard	Shipment Rejection Limits (Lot: Unit Train)
BTU/LB.	8,400	< 8,200
MOISTURE	30.0 %	> N/A %
ASH	5.5 %	> N/A %
SULFUR	N/A %	> N/A %
SULFUR DIOXIDE (S02)	0.80 lb./MMBTU	> 1.20 lb./MMBTU
VOLATILE	N/A %	< N/A %
Size (3" x 0"):		
-- Top size (inches)*	< 3"	> N/A "
-- Fines (% by weight)*		
Passing ¼" screen	< N/A %	> N/A %
GRINDABILITY (HGI)	N/A	< N/A

"**PRB 8800**" **or** "**PR88**" means Coal which conforms to at least the following rejection limits/specifications on an "as received" basis:

Specification	Standard	Shipment Rejection Limits (Lot: Unit Train)
BTU/LB.	8,800	< 8,600
MOISTURE	27.0 %	> N/A %
ASH	5.5 %	> N/A %
SULFUR	N/A %	> N/A %

SULFUR DIOXIDE (S02)	0.80 lb./MMBTU	> 1.20 lb./MMBTU
VOLATILE	N/A %	< N/A %
Size (3" x 0"):		
-- Top size (inches)*	< 3"	> N/A "
-- Fines (% by weight)*		
Passing ¼" screen	< N/A %	> N/A %
GRINDABILITY (HGI)	N/A	< N/A

"**PRB 8800 Low Sulfur**" or "**PR88LS**" means Coal which conforms to at least the following rejection limits/specifications on an "as received" basis:

Specification	Standard	Shipment Rejection Limits (Lot: Unit Train)
BTU/LB.	8,800	< 8,600
MOISTURE	27.0 %	> N/A %
ASH	5.5 %	> N/A %
SULFUR	N/A %	> N/A %
SULFUR DIOXIDE (S02)	0.55 lb./MMBTU	> 0.80 lb./MMBTU
VOLATILE	N/A %	< N/A %
Size (3" x 0"):		
-- Top size (inches)*	< 3"	> N/A "
-- Fines (% by weight)*		
Passing ¼" screen	< N/A %	> N/A %
GRINDABILITY (HGI)	N/A	< N/A

EXHIBIT C
TO THE
EEI COAL ANNEX

SOURCE STANDARDS

"**CAPP–CSX Standard**" means any rail loadout located on the CSX railroad within the Kanawha Rate District or the Big Sandy Rate District capable of loading 100 car/10,000 Ton Unit Trains in four hours or less.

"**CAPP–NS Standard**" means any rail loadout located on the Norfolk Southern railroad within the Kenova Rate District or the Thacker Rate Districts capable of loading 100 car/10,000 Ton Unit Trains in four hours or less.

"**NYMEX Standard**" means any dock located on the Ohio River between MP 306 and MP 317 or on the Big Sandy River.

"**PRB Standard**" means any rail loadout located on the joint line (Burlington Northern Santa Fe/Union Pacific) in the Southern Powder River Basin within Converse or Campbell Counties, Wyoming capable of loading 12,000 to 15,000 Ton Unit Trains.

EXHIBIT D
TO THE
EEI COAL ANNEX

QUANTITY VARIATION ADJUSTMENTS

The formula for determining the Quantity Variation Adjustment when applicable are as follows:

If the absolute value of the difference obtained by subtracting the actual Tons of Coal delivered during a calendar month from Contract Quantity for such month is greater than the Allowance, then Seller shall calculate and invoice a Quantity Variation Adjustment determined as follows:

> **Quantity Variation Adjustment** = [(Basis x number of monthly contracted Barges or Unit Trains) – actual monthly Tons delivered] x [(Prompt Monthly Price + Product Basis Differential) – Contract Price]

Where

"**Allowance**" has the meaning for the applicable Product as set forth below.

"**Basis**" has the meaning for the applicable Product as set forth below.

"**Monthly Quantity**" means the Basis multiplied by the number of Barges or Unit Trains to be delivered for the applicable calendar month as set forth in a Transaction.

"**Product Basis Differential**" has the meaning for the applicable Product as set forth below.

"**Prompt Monthly Price**" means the average daily OTC Prompt Month Broker Index for the applicable Product published in Platts Coal Trader, published for the month immediately preceding the month of scheduled delivery.

If Quantity Variation Adjustment is a negative number, Seller shall pay the absolute value of the Quantity Variation Adjustment to Buyer. If Quantity Variation Adjustment is a positive number, Buyer shall pay the absolute value of the Quantity Variation Adjustment to Seller.

For Products PRB 8800, PRB 8800 Low Sulfur, PRB 8400:

> "**Allowance**" means one percent (1%) of the Monthly Quantity.
>
> "**Basis**" means 14,500 Tons per Unit Train.
>
> "**Product Basis Differential**" is zero (0).

For Products CAPP Rail 12500 LS, CAPP Rail 12500 CS:

> "**Allowance**" means two percent (2%) of the Monthly Quantity.
>
> "**Basis**" means 10,000 Tons per Unit Train.

"**Product Basis Differential**" has the meaning as set forth on the Confirmation, or if not set forth therein, zero (0).

For Product NYMEX Look-Alike:

"**Allowance**" means two percent (2%) of the Monthly Quantity.

"**Basis**" shall mean 7,550 Tons per monthly contract.

"**Product Basis Differential**" is zero (0).

EDISON ELECTRIC INSTITUTE

Collateral Annex

Version 1.0
2/21/02

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COLLATERAL ANNEX

This Collateral Annex, together with the Paragraph 10 Elections, (the "Collateral Annex") supplements, forms a part of, and is subject to, the EEI Master Power Purchase and Sale Agreement, dated _____, including the Cover Sheet and any other annexes thereto between _____ ("Party A") and _____ ("Party B"). Capitalized terms used in this Collateral Annex but not defined herein shall have the meanings given such terms in the Agreement.

The obligations of each Party under the Agreement shall be secured in accordance with the provisions of this Collateral Annex, which, except as provided below, sets forth the exclusive conditions under which a Party will be required to Transfer Performance Assurance in the form of Cash, a Letter of Credit or other property as agreed to by the Parties, as well as the exclusive conditions under which a Party will release such Performance Assurance. This Collateral Annex supercedes and replaces in its entirety Sections 8.1(c), 8.2(c) and 8.3 of the Agreement and the defined terms used therein to the extent that such terms are otherwise defined and used in this Collateral Annex. In addition, to the extent that the Parties have specified on the Cover Sheet that Sections 8.1(b), 8.1(d), 8.2(b) or 8.2(d) of the Agreement are applicable, then the definition of Performance Assurance as used in this Collateral Annex shall apply and Paragraphs 2, 6, 7 and 9 of this Collateral Annex shall apply to any such Performance Assurance posted under such provisions, it being understood that nothing contained in this Collateral Annex shall change any election that the Parties have specified on the Cover Sheet with respect to Sections 8.1(b), 8.1(d), 8.2(b) or 8.2(d) of the Agreement, which provisions require a Party to Transfer Performance Assurance under certain circumstances not contemplated by this Collateral Annex.

Paragraph 1. Definitions.

For purposes of this Collateral Annex, the following terms have the respective definitions set forth below:

"Calculation Date" means any Local Business Day on which a Party chooses or is requested by the other Party to make the determinations referred to in Paragraphs 3, 4, 5 or 8 of this Collateral Annex.

"Cash" means U.S. dollars held by or on behalf of a Party as Performance Assurance hereunder.

"Collateral Account" shall have the meaning attributed to it in Paragraph 6(a)(ii)(B).

"Paragraph 10 Cover Sheet" means the Cover Sheet attached to this Collateral Annex setting forth certain elections governing this Collateral Annex.

"Collateral Requirement" shall have the meaning attributed to it in Paragraph 3(b).

"Collateral Threshold" means, with respect to a Party, the collateral threshold, if any, set forth in the Paragraph 10 Cover Sheet for a Party.

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"Collateral Value" means (a) with respect to Cash, the face amount thereof; (b) with respect to Letters of Credit, the Valuation Percentage multiplied by the stated amount then available under the Letter of Credit to be unconditionally drawn by the beneficiary thereof; and (c) with respect to other forms of Performance Assurance, the Valuation Percentage multiplied by the fair market value on any Calculation Date of each item of Performance Assurance on deposit with, or held by or for the benefit of, a Party pursuant to this Collateral Annex as determined by such Party in a commercially reasonable manner.

"Credit Rating" means with respect to any entity, on any date of determination, the respective ratings then assigned to such entity's unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancement) by S&P, Moody's or other specified rating agency or agencies or if such entity does not have a rating for its unsecured, senior long-term debt or deposit obligations, then the rating assigned to such entity as its "corporate credit rating" by S&P.

"Credit Rating Event" shall have the meaning attributed to it in Paragraph 6(a)(iii).

"Current Mark-to-Market Value" of an outstanding Transaction, on any Calculation Date, means the amount, as calculated in good faith and in a commercially reasonable manner, which a Party to the Agreement would pay to (a negative Current Mark-to-Market Value) or receive from (a positive Current Mark-to-Market Value) the other Party as the Settlement Amount (calculated at the mid-point between the bid price and the offer price) for such Transaction.

"Custodian" shall have the meaning attributed to it in Paragraph 6(a)(i).

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"Downgraded Party" shall have the meaning attributed to it in Paragraph 6(a)(i).

"Eligible Collateral" means, with respect to a Party, the Performance Assurance specified for such Party on the Paragraph 10 Cover Sheet.

"Exposure" of one Party ("Party X") to the other Party ("Party Y") for each Transaction means (without duplication) as of any Calculation Date the sum of the following:

(a) the aggregate of all amounts in respect of such Transaction that are owed or otherwise accrued and payable (regardless of whether such amounts have been or could be invoiced) to Party X and that remain unpaid as of such Calculation Date minus the aggregate of all amounts in respect of such Transaction that are owed or otherwise accrued and payable (regardless of whether such amounts have been or could be invoiced) to Party Y and that remain unpaid as of such Calculation Date; plus

(b) the Current Mark-to-Market Value of such Transaction to Party X.

"Exposure Amount" shall have the meaning set forth in Paragraph 3(a).

"Independent Amount" means, with respect to a Party, the amount, if any, set forth in the Paragraph 10 Cover Sheet for such Party (which amount, if designated, shall either be a Fixed Independent Amount, a Full Floating Independent Amount or a Partial Floating Independent Amount, in each case, as designated on the Paragraph 10 Cover Sheet), or if no amount is specified, zero, or with respect to either Party, an additional or reduced amount agreed to as such for that Party in respect of a Transaction.

"Interest Amount" means with respect to a Party and an Interest Period, the sum of the daily interest amounts for all days in such Interest Period; each daily interest amount to be determined by such Party as follows: (a) the amount of Cash held by such Party on that day; multiplied by (b) the Interest Rate for that day, divided by (c) 360.

"Interest Period" means the period from (and including) the last Local Business Day on which an Interest Amount was Transferred by a Party (or if no Interest Amount has yet been Transferred by such Party, the Local Business Day on which Cash was Transferred to such

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Party) to (but excluding) the Local Business Day on which the current Interest Amount is to be Transferred.

"Interest Rate" means, in respect of a Party holding Cash, the rate specified for such Party in the Paragraph 10 Cover Sheet.

"Letter of Credit" means an irrevocable, transferable, standby letter of credit, issued by a major U.S. commercial bank or the U.S. branch office of a foreign bank with, in either case, a Credit Rating of at least (a) "A-" by S&P and "A3" by Moody's, if such entity is rated by both S&P and Moody's or (b) "A-" by S&P or "A3" by Moody's, if such entity is rated by either S&P or Moody's but not both, substantially in the form set forth in Schedule 1 attached hereto, with such changes to the terms in that form as the issuing bank may require and as may be acceptable to the beneficiary thereof.

"Letter of Credit Default" means with respect to a Letter of Credit, the occurrence of any of the following events: (a) the issuer of such Letter of Credit shall fail to maintain a Credit Rating of at least (i) "A-" by S&P or "A3" by Moody's, if such issuer is rated by both S&P and Moody's, (ii) "A-" by S&P, if such issuer is rated only by S&P, or (iii) "A3" by Moody's, if such issuer is rated only by Moody's; (b) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit; (c) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (d) such Letter of Credit shall expire or terminate, or shall fail or cease to be in full force and effect at any time during the term of the Agreement, in any such case without replacement; or (e) the issuer of such Letter of Credit shall become Bankrupt; provided, however, that no Letter of Credit Default shall occur or be continuing in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to a Party in accordance with the terms of this Collateral Annex.

"Local Business Day" means, a day on which commercial banks are open for business (a) in relation to any payment, in the place where the relevant account is located and (b) in relation to any notice or other communication, in the city specified in the address for notice provided by the recipient.

"Minimum Transfer Amount" means, with respect to a Party, the amount, if any, set forth in the Paragraph 10 Cover Sheet for such Party.

"Net Exposure" shall have the meaning attributed to it in Paragraph 3(a).

"Notification Time" means 11:00, New York time, on any Calculation Date or any different time specified in the Paragraph 10 Cover Sheet.

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"Obligations" shall have the meaning attributed to it in Paragraph 2.

"Performance Assurance" means all Eligible Collateral, all other property acceptable to the Party to which it is Transferred, and all proceeds thereof, that has been Transferred to or received by a Party hereunder and not subsequently Transferred to the other Party pursuant to Paragraph 5 or otherwise received by the other Party. Any Interest Amount or portion thereof not Transferred pursuant to Paragraph 6(a)(iv) and any Cash received and held by a Party after drawing on any Letter of Credit will constitute Performance Assurance in the form of Cash, until all or any portion of such Cash is applied against Obligations owing to such Party pursuant to the provisions of this Collateral Annex. Any guaranty agreement executed by a Guarantor of a Party shall not constitute Performance Assurance hereunder.

"Pledging Party" shall have the meaning attributed to it in Paragraph 3(b).

"Qualified Institution" means a commercial bank or trust company organized under the laws of the United States or a political subdivision thereof, with (i) a Credit Rating of at least (a) "A-" by S&P and "A3" by Moody's, if such entity is rated by both S&P and Moody's or (b) "A-" by S&P or "A3" by Moody's, if such entity is rated by either S&P or Moody's but not both, and (ii) having a capital and surplus of at least $1,000,000,000.

"Reference Market-maker" means a leading dealer in the relevant market selected by a Party determining its Exposure in good faith from among dealers of the highest credit standing which satisfy all the criteria that such Party applies generally at the time in deciding whether to offer or to make an extension of credit.

"Rounding Amount" means, with respect to a Party, the amount, if any, set forth in the Paragraph 10 Cover Sheet for such Party.

"Secured Party" shall have the meaning attributed to it in Paragraph 3(b).

"Transfer" means, with respect to any Performance Assurance or Interest Amount, and in accordance with the instructions of the Party entitled thereto:

(a) in the case of Cash, payment or transfer by wire transfer into one or more bank accounts specified by the recipient;

(b) in the case of Letters of Credit, delivery of the Letter of Credit or an amendment thereto to the recipient; and

(c) in the case of any other type of Performance Assurance, delivery thereof as specified by the recipient.

"Valuation Percentage" means, with respect to any Performance Assurance designated as Eligible Collateral on the Paragraph 10 Cover Sheet, the Valuation Percentage specified for such Performance Assurance on the Paragraph 10 Cover Sheet.

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Paragraph 2. Encumbrance; Grant of Security Interest.

As security for the prompt and complete payment of all amounts due or that may now or hereafter become due from a Party to the other Party and the performance by a Party of all covenants and obligations to be performed by it pursuant to this Collateral Annex, the Agreement, all outstanding Transactions and any other documents, instruments or agreements executed in connection therewith (collectively, the "Obligations"), each Party hereby pledges, assigns, conveys and transfers to the other Party, and hereby grants to the other Party a present and continuing security interest in and to, and a general first lien upon and right of set off against, all Performance Assurance which has been or may in the future be Transferred to, or received by, the other Party and/or its Custodian, and all dividends, interest, and other proceeds from time to time received, receivable or otherwise distributed in respect of, or in exchange for, any or all of the foregoing and each Party agrees to take such action as the other Party reasonably requests in order to perfect the other Party's continuing security interest in, and lien on (and right of setoff against), such Performance Assurance.

Paragraph 3. Calculations of Collateral Requirement.

(a) On any Calculation Date, the "Exposure Amount" for each Party shall be calculated for all Transactions for which there are any Obligations remaining unpaid or unperformed, by calculating each Party's Exposure to the other Party in respect of each such Transaction and determining the net aggregate sum of all Exposures for all Transactions for each Party. The Party having the greater Exposure Amount at any time (the "Secured Party") shall be deemed to have a "Net Exposure" to the other Party equal to the Secured Party's Exposure Amount.

(b) The "Collateral Requirement" for a Party (the "Pledging Party") means the Secured Party's Net Exposure minus the sum of:

(1) the Pledging Party's Collateral Threshold; plus

(2) the amount of Cash previously Transferred to the Secured Party, the amount of Cash held by the Secured Party as Performance Assurance as a result of drawing under any Letter of Credit, and any Interest Amount that has not yet been Transferred to the Pledging Party; plus

(3) the Collateral Value of each Letter of Credit and any other form of Performance Assurance (other than Cash) maintained by the Pledging Party for the benefit of the Secured Party; provided, however, that, the Collateral Requirement of a Party will be deemed to be zero (0) whenever the calculation of such Party's Collateral Requirement yields a number less than zero (0).

Paragraph 4. Delivery of Performance Assurance.

On any Calculation Date on which (a) no Event of Default or Potential Event of Default has occurred and is continuing with respect to the Secured Party, (b) no Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Secured Party for which there exist any unsatisfied payment Obligations, and (c) the Pledging Party's

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Collateral Requirement equals or exceeds its Minimum Transfer Amount, then the Secured Party may demand that the Pledging Party Transfer to the Secured Party, and the Pledging Party shall, after receiving such notice from the Secured Party, Transfer, or cause to be Transferred to the Secured Party, Performance Assurance for the benefit of the Secured Party, having a Collateral Value at least equal to the Pledging Party's Collateral Requirement. The amount of Performance Assurance required to be Transferred hereunder shall be rounded up to the nearest integral multiple of the Rounding Amount. Unless otherwise agreed in writing by the Parties, (i) Performance Assurance demanded of a Pledging Party on or before the Notification Time on a Local Business Day shall be provided by the close of business on the next Local Business Day and (ii) Performance Assurance demanded of a Pledging Party after the Notification Time on a Local Business Day shall be provided by the close of business on the second Local Business Day thereafter. Any Letter of Credit or other type of Performance Assurance (other than Cash) shall be Transferred to such address as the Secured Party shall specify and any such demand made by the Secured Party pursuant to this Paragraph 4 shall specify account information for the account to which Performance Assurance in the form of Cash shall be Transferred.

Paragraph 5. Reduction and Substitution of Performance Assurance.

(a) On any Local Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to Cash), a Pledging Party may request a reduction in the amount of Performance Assurance previously provided by the Pledging Party for the benefit of the Secured Party, provided that, after giving effect to the requested reduction in Performance Assurance, (i) the Pledging Party shall in fact have a Collateral Requirement of zero; (ii) no Event of Default or Potential Event of Default with respect to the Pledging Party shall have occurred and be continuing; and (iii) no Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Pledging Party for which there exist any unsatisfied payment Obligations. A permitted reduction in Performance Assurance may be effected by the Transfer of Cash to the Pledging Party or the reduction of the amount of an outstanding Letter of Credit previously issued for the benefit of the Secured Party. The amount of Performance Assurance required to be reduced hereunder shall be rounded down to the nearest integral multiple of the Rounding Amount. The Pledging Party shall have the right to specify the means of effecting the reduction in Performance Assurance. In all cases, the cost and expense of reducing Performance Assurance (including, but not limited to, the reasonable costs, expenses, and attorneys' fees of the Secured Party) shall be borne by the Pledging Party. Unless otherwise agreed in writing by the Parties, (i) if the Pledging Party's reduction demand is made on or before the Notification Time on a Business Day, then the Secured Party shall have one (1) Local Business Day to effect a permitted reduction in Performance Assurance and (ii) if the Pledging Party's reduction demand is made after the Notification Time on a Local Business Day, then the Secured Party shall have two (2) Local Business Days to effect a permitted reduction in Performance Assurance, in each case, if such reduction is to be effected by the return of Cash to the Pledging Party. If a permitted reduction in Performance Assurance is to be effected by a reduction in the amount of an outstanding Letter of Credit previously issued for the benefit of the Secured Party, the Secured Party shall promptly take such action as is reasonably necessary to effectuate such reduction.

(b) Except when (i) an Event of Default or Potential Event of Default with respect to the Pledging Party shall have occurred and be continuing or (ii) an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the

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Pledging Party for which there exist any unsatisfied payment Obligations, the Pledging Party may substitute Performance Assurance for other existing Performance Assurance of equal Collateral Value upon one (1) Local Business Day's written notice (provided such notice is made on or before the Notification Time, otherwise the notification period shall be two (2) Local Business Days) to the Secured Party; provided, however, that if such substitute Performance Assurance is of a type not otherwise approved by this Collateral Annex, then the Secured Party must consent to such substitution. Upon the Transfer to the Secured Party and/or its Custodian of the substitute Performance Assurance, the Secured Party and/or its Custodian shall Transfer the relevant replaced Performance Assurance to the Pledging Party within two (2) Local Business Days. Notwithstanding anything herein to the contrary, no such substitution shall be permitted unless (i) the substitute Performance Assurance is Transferred simultaneously or has been Transferred to the Secured Party and/or its Custodian prior to the release of the Performance Assurance to be returned to the Pledging Party and the security interest in, and general first lien upon, such substituted Performance Assurance granted pursuant hereto in favor of the Secured Party shall have been perfected as required by applicable law and shall constitute a first priority perfected security interest therein and general first lien thereon, and (ii) after giving effect to such substitution, the Collateral Value of such substitute Performance Assurance shall equal the greater of the Pledging Party's Collateral Requirement or the Pledging Party's Minimum Transfer Amount. Each substitution of Performance Assurance shall constitute a representation and warranty by the Pledging Party that the substituted Performance Assurance shall be subject to and governed by the terms and conditions of this Collateral Annex, including without limitation the security interest in, general first lien on and right of offset against, such substituted Performance Assurance granted pursuant hereto in favor of the Secured Party pursuant to Paragraph 2.

(c) The Transfer of any Performance Assurance by the Secured Party and/or its Custodian in accordance with this Paragraph 5 shall be deemed a release by the Secured Party of its security interest, general first lien and right of offset granted pursuant to Paragraph 2 hereof only with respect to such returned Performance Assurance. In connection with each Transfer of any Performance Assurance pursuant to this Paragraph 5, the Pledging Party will, upon request of the Secured Party, execute a receipt showing the Performance Assurance Transferred to it.

Paragraph 6. Administration of Performance Assurance.

(a) Cash. Performance Assurance provided in the form of Cash to a Party that is the Secured Party shall be subject to the following provisions.

(i) If such Party is entitled to hold Cash, then it will be entitled to hold Cash or to appoint an agent which is a Qualified Institution (a "Custodian") to hold Cash for it provided that the conditions for holding Cash that are set forth on the Paragraph 10 Cover Sheet for such Party are satisfied. If such Party is not entitled to hold Cash, then the provisions of Paragraph 6(a)(ii) shall not apply with respect to such Party and Cash shall be held in a Qualified Institution in accordance with the provisions of Paragraph 6(a)(ii)(B). Upon notice by the Secured Party to the Pledging Party of the appointment of a Custodian, the Pledging Party's obligations to make any Transfer will be discharged by making the Transfer to that Custodian. The holding of Cash by a Custodian will be deemed to be the holding of Cash by the Secured Party for which the Custodian is acting. If the Secured Party or its Custodian fails to satisfy any conditions for holding Cash as set forth above or in the Paragraph 10 Cover Sheet or if the Secured Party is not entitled to hold Cash at any time, then the Secured Party will Transfer, or cause its Custodian to Transfer, the Cash to a Qualified Institution and the Cash shall be maintained in accordance with Paragraph 6(a)(ii)(B), with the Party not eligible to hold Cash being considered the "Downgraded Party" (as defined below). Except as set forth in Paragraph 6(c), the Secured Party will be liable for the acts or omissions of its Custodian to the same extent that the Secured Party would be liable hereunder for its own acts or omissions.

(ii) Use of Cash. Notwithstanding the provisions of applicable law, if no Event of Default has occurred and is continuing with respect to the Secured Party and no Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Secured Party for which there exist any unsatisfied payment Obligations, then the Secured Party shall have the right to sell, pledge, rehypothecate, assign, invest, use, commingle or

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otherwise use in its business any Cash that it holds as Performance Assurance hereunder, free from any claim or right of any nature whatsoever of the Pledging Party, including any equity or right of redemption by the Pledging Party; provided, however, that if a Party or its Custodian is not eligible to hold Cash pursuant to Paragraph 6(a) (such Party shall be the "Downgraded Party" and the event that caused it or its Custodian to be ineligible to hold Cash shall be a "Credit Rating Event") then:

(A) the provisions of this Paragraph 6(a)(ii) will not apply with respect to the Downgraded Party; and

(B) the Downgraded Party shall be required to Transfer (or cause to be Transferred) not later than the close of business on the next Local Business Day following such Credit Rating Event all Cash in its possession or held on its behalf to a Qualified Institution approved by the non-Downgraded Party (which approval shall not be unreasonably withheld), to a segregated, safekeeping or custody account (the "Collateral Account") within such Qualified Institution with the title of the account indicating that the property contained therein is being held as Cash for the Downgraded Party. The Qualified Institution shall serve as Custodian with respect to the Cash in the Collateral Account, and shall hold such Cash in accordance with the terms of this Collateral Annex and for the security interest of the Downgraded Party and execute such account control agreements as are necessary or applicable to perfect the security interest of the Non-Downgraded Party therein pursuant to Section 9-314 of the Uniform Commercial Code or otherwise, and subject to such security interest, for the ownership and benefit of the non-Downgraded Party. The Qualified Institution holding the Cash will invest and reinvest or procure the investment and reinvestment of the Cash in accordance with the written instructions of the Pledging Party, subject to the approval of such instructions by the Downgraded Party (which approval shall not be unreasonably withheld), provided that the Qualified Institution shall not be required to so invest or reinvest or procure such investment or reinvestment if an Event of Default or Potential Event of Default with respect to the Pledging Party shall have occurred and be continuing. The Downgraded Party shall have no responsibility for any losses resulting from any investment or reinvestment effected in accordance with the Pledging Party's instructions.

(iii) Interest Payments on Cash. So long as no Event of Default or Potential Event of Default with respect to the Pledging Party has occurred and is continuing, and no Early Termination Date for which any unsatisfied payment Obligations of the Pledging Party exist has occurred or been designated as the result of an Event of Default with respect to the Pledging Party, and to the extent that an obligation to Transfer Performance Assurance would not be created or increased by the Transfer, in the event that the Secured Party or its Custodian is holding Cash, the Secured Party will Transfer (or caused to be Transferred) to the Pledging Party, in lieu of any interest or other amounts paid or deemed to have been paid with respect to such Cash (all of which may be retained by the Secured Party or its Custodian), the Interest Amount. The Pledging Party shall invoice the Secured Party monthly setting forth the calculation of the Interest Amount due, and the Secured Party shall make payment thereof by the later of (A) the third Local Business Day of the first month after the last month to which such invoice relates or (B) the third Local Business Day after the day on which such invoice is received. On or after the occurrence of a Potential Event of Default or an Event of Default with respect to the Pledging Party or an Early Termination Date as a result of an Event of Default with

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respect to the Pledging Party, the Secured Party or its Custodian shall retain any such Interest Amount as additional Performance Assurance hereunder until the obligations of the Pledging Party under the Agreement have been satisfied in the case of an Early Termination Date or for so long as such Event of Default is continuing in the case of an Event of Default.

(b) Letters of Credit. Performance Assurance provided in the form of a Letter of Credit shall be subject to the following provisions.

(i) Unless otherwise agreed to in writing by the parties, each Letter of Credit shall be provided in accordance with Paragraph 4, and each Letter of Credit shall be maintained for the benefit of the Secured Party. The Pledging Party shall (A) renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit, (B) if the bank that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide either a substitute Letter of Credit or other Eligible Collateral, in each case at least twenty (20) Local Business Days prior to the expiration of the outstanding Letter of Credit, and (C) if a bank issuing a Letter of Credit shall fail to honor the Secured Party's properly documented request to draw on an outstanding Letter of Credit, provide for the benefit of the Secured Party either a substitute Letter of Credit that is issued by a bank acceptable to the Secured Party or other Eligible Collateral, in each case within one (1) Local Business Day after such refusal, provided that, as a result of the Pledging Party's failure to perform in accordance with (A), (B), or (C) above, the Pledging Party's Collateral Requirement would be greater than zero.

(ii) As one method of providing Performance Assurance, the Pledging Party may increase the amount of an outstanding Letter of Credit or establish one or more additional Letters of Credit.

(iii) Upon the occurrence of a Letter of Credit Default, the Pledging Party agrees to Transfer to the Secured Party either a substitute Letter of Credit or other Eligible Collateral, in each case on or before the first Local Business Day after the occurrence thereof (or the fifth (5th) Local Business Day after the occurrence thereof if only clause (a) under the definition of Letter of Credit Default applies).

(iv) (A) Upon or at any time after the occurrence and continuation of an Event of Default with respect to the Pledging Party, or (B) if an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Pledging Party for which there exist any unsatisfied payment Obligations, then the Secured Party may draw on the entire, undrawn portion of any outstanding Letter of Credit upon submission to the bank issuing such Letter of Credit of one or more certificates specifying that such Event of Default or Early Termination Date has occurred and is continuing. Cash proceeds received from drawing upon the Letter of Credit shall be deemed Performance Assurance as security for the Pledging Party's obligations to the Secured Party and the Secured Party shall have the rights and remedies set forth in Paragraph 7 with respect to such cash proceeds. Notwithstanding the Secured Party's receipt of Cash proceeds of a drawing under the Letter of Credit, the Pledging Party shall remain liable (y) for any failure to Transfer sufficient Performance Assurance or (z) for any amounts

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owing to the Secured Party and remaining unpaid after the application of the amounts so drawn by the Secured Party.

(v) In all cases, the costs and expenses (including but not limited to the reasonable costs, expenses, and attorneys' fees of the Secured Party) of establishing, renewing, substituting, canceling, and increasing the amount of a Letter of Credit shall be borne by the Pledging Party.

(c) Care of Performance Assurance. Except as otherwise provided in Paragraph 6(a)(iii) and beyond the exercise of reasonable care in the custody thereof, the Secured Party shall have no duty as to any Performance Assurance in its possession or control or in the possession or control of any Custodian or any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto. The Secured Party shall be deemed to have exercised reasonable care in the custody and preservation of the Performance Assurance in its possession, and/or in the possession of its agent for safekeeping, if the Performance Assurance is accorded treatment substantially equal to that which it accords its own property, and shall not be liable or responsible for any loss or damage to any of the Performance Assurance, or for any diminution in the value thereof, by reason of the act or omission of any Custodian selected by the Secured Party in good faith except to the extent such loss or damage is the result of such agent's willful misconduct or negligence. Unless held by a Custodian, the Secured Party shall at all times retain possession or control of any Performance Assurance Transferred to it. The holding of Performance Assurance by a Custodian for the benefit of the Secured Party shall be deemed to be the holding and possession of such Performance Assurance by the Secured Party for the purpose of perfecting the security interest in the Performance Assurance. Except as otherwise provided in Paragraph 6(a)(ii), nothing in this Collateral Annex shall be construed as requiring the Secured Party to select a Custodian for the keeping of Performance Assurance for its benefit.

Paragraph 7. Exercise of Rights Against Performance Assurance.

(a) In the event that (i) an Event of Default with respect to the Pledging Party has occurred and is continuing or (ii) an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Pledging Party, the Secured Party may exercise any one or more of the rights and remedies provided under the Agreement, in this Collateral Annex or as otherwise available under applicable law. Without limiting the foregoing, if at any time (i) an Event of Default with respect to the Pledging Party has occurred and is continuing, or (ii) an Early Termination Date occurs or is deemed to occur as a result of an Event of Default with respect to the Pledging Party, then the Secured Party may, in its sole discretion, exercise any one or more of the following rights and remedies:

(i) all rights and remedies available to a secured party under the Uniform Commercial Code and any other applicable jurisdiction and other applicable laws with respect to the Performance Assurance held by or for the benefit of the Secured Party;

(ii) the right to set off any Performance Assurance held by or for the benefit of the Secured Party against and in satisfaction of any amount payable by the Pledging Party in respect of any of its Obligations;

(iii) the right to draw on any outstanding Letter of Credit issued for its benefit; and/or

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(iv) the right to liquidate any Performance Assurance held by or for the benefit of the Secured Party through one or more public or private sales or other dispositions with such notice, if any, as may be required by applicable law, free from any claim or right of any nature whatsoever of the Pledging Party, including any right of equity or redemption by the Pledging Party (with the Secured Party having the right to purchase any or all of the Performance Assurance to be sold) and to apply the proceeds from the liquidation of such Performance Assurance to and in satisfaction of any amount payable by the Pledging Party in respect of any of its Obligations in such order as the Secured Party may elect.

(b) The Pledging Party hereby irrevocably constitutes and appoints the Secured Party and any officer or agent thereof, with full power of substitution, as the Pledging Party's true and lawful attorney-in-fact with full irrevocable power and authority to act in the name, place and stead of the Pledging Party or in the Secured Party's own name, from time to time in the Secured Party's discretion, for the purpose of taking any and all action and executing and delivering any and all documents or instruments which may be necessary or desirable to accomplish the purposes of Paragraph 7(a).

(c) Secured Party shall be under no obligation to prioritize the order with respect to which it exercises any one or more rights and remedies available hereunder. The Pledging Party shall in all events remain liable to the Secured Party for any amount payable by the Pledging Party in respect of any of its Obligations remaining unpaid after any such liquidation, application and set off.

(d) In addition to the provisions of Paragraph 7(a), if at any time (i) an Event of Default with respect to the Secured Party has occurred and is continuing or (ii) an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Secured Party, then:

(1) the Secured Party will be obligated immediately to Transfer all Performance Assurance (including any Letter of Credit) and the Interest Amount, if any, to the Pledging Party;

(2) the Pledging Party may do any one or more of the following: (x) exercise any of the rights and remedies of a pledgor with respect to the Performance Assurance, including any such rights and remedies under law then in effect; (y) to the extent that the Performance Assurance or the Interest Amount is not Transferred to the Pledging Party as required in (1) above, setoff amounts payable to the Secured Party against the Performance Assurance (other than Letters of Credit) held by the Secured Party or to the extent its rights to setoff are not exercised, withhold payment of any remaining amounts payable by the Pledging Party, up to the value of any remaining Performance Assurance held by the Secured Party, until the Performance Assurance is Transferred to the Pledging Party; and (z) exercise rights and remedies available to the Pledging Party under the terms of any Letter of Credit; and

(3) the Secured Party shall be prohibited from drawing on any Letter of Credit that has been posted by the Pledging Party for its benefit.

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Paragraph 8. Disputed Calculations

(a) If the Pledging Party disputes the amount of Performance Assurance requested by the Secured Party and such dispute relates to the amount of the Net Exposure claimed by the Secured Party, then the Pledging Party shall (i) notify the Secured Party of the existence and nature of the dispute not later than the Notification Time on the first Local Business Day following the date that the demand for Performance Assurance is made by the Secured Party pursuant to Paragraph 4, and (ii) provide Performance Assurance to or for the benefit of the Secured Party in an amount equal to the Pledging Party's own estimate, made in good faith and in a commercially reasonable manner, of the Pledging Party's Collateral Requirement in accordance with Paragraph 4. In all such cases, the Parties thereafter shall promptly consult with each other in order to reconcile the two conflicting amounts. If the Parties have not been able to resolve their dispute on or before the second Business Day following the date that the demand is made by the Secured Party, then the Secured Party's Net Exposure shall be recalculated by each Party requesting quotations from one (1) Reference Market-Maker within two (2) Business Days (taking the arithmetic average of those obtained to obtain the average Current Mark-to-Market Value; provided, that, if only one (1) quotation can be obtained, then that quotation shall be used) for the purpose of recalculating the Current Mark-to-Market Value of each Transaction in respect of which the Parties disagree as to the Current Mark-to-Market Value thereof, and the Secured Party shall inform the Pledging Party of the results of such recalculation (in reasonable detail). Performance Assurance shall thereupon be provided, returned, or reduced, if necessary, on the next Local Business Day in accordance with the results of such recalculation.

(b) If the Secured Party disputes the amount of Performance Assurance to be reduced by the Secured Party and such dispute relates to the amount of the Net Exposure claimed by the Secured Party, then the Secured Party shall (i) notify the Pledging Party of the existence and nature of the dispute not later than the Notification Time on the first Local Business Day following the date that the demand to reduce Performance Assurance is made by the Pledging Party pursuant to Paragraph 5(a), and (ii) effect the reduction of Performance Assurance to or for the benefit of the Pledging Party in an amount equal to the Secured Party's own estimate, made in good faith and in a commercially reasonable manner, of the Pledging Party's Collateral Requirement in accordance with Paragraph 5(a). In all such cases, the Parties thereafter shall promptly consult with each other in order to reconcile the two conflicting amounts. If the Parties have not been able to resolve their dispute on or before the second Local Business Day following the date that the demand is made by the Pledging Party, then the Secured Party's Net Exposure shall be recalculated by each Party requesting quotations from one (1) Reference Market-Maker within two (2) Business Days (taking the arithmetic average of those obtained to obtain the average Current Mark-to-Market Value; provided, that, if only one (1) quotation can be obtained, then that quotation shall be used) for the purpose of recalculating the Current Mark-to-Market Value of each Transaction in respect of which the Parties disagree as to the Current Mark-to-Market Value thereof, and the Secured Party shall inform the Pledging Party of the results of such recalculation (in reasonable detail). Performance Assurance shall thereupon be provided,

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returned, or reduced, if necessary, on the next Local Business Day in accordance with the results of such recalculation.

Paragraph 9. Covenants; Representations and Warranties; Miscellaneous.

(a) The Pledging Party will execute and deliver to the Secured Party (and to the extent permitted by applicable law, the Pledging Party hereby authorizes the Secured Party to execute and deliver, in the name of the Pledging Party or otherwise) such financing statements, assignments and other documents and do such other things relating to the Performance Assurance and the security interest granted under this Collateral Annex, including any action the Secured Party may deem necessary or appropriate to perfect or maintain perfection of its security interest in the Performance Assurance, and the Pledging Party shall pay all costs relating to its Transfer of Performance Assurance and the maintenance and perfection of the security interest therein.

(b) On each day on which Performance Assurance is held by the Secured Party and/or its Custodian under the Agreement and this Collateral Annex, the Pledging Party hereby represents and warrants that:

(i) the Pledging Party has good title to and is the sole owner of such Performance Assurance, and the execution, delivery and performance of the covenants and agreements of this Collateral Annex, do not result in the creation or imposition of any lien or security interest upon any of its assets or properties, including, without limitation, the Performance Assurance, other than the security interests and liens created under the Agreement and this Collateral Annex;

(ii) upon the Transfer of Performance Assurance by the Pledging Party to the Secured Party and/or its Custodian, the Secured Party shall have a valid and perfected first priority continuing security interest therein, free of any liens, claims or encumbrances, except those liens, security interests, claims or encumbrances arising by operation of law that are given priority over a perfected security interest; and

(iii) it is not and will not become a party to or otherwise be bound by any agreement, other than the Agreement and this Collateral Annex, which restricts in any manner the rights of any present or future holder of any of the Performance Assurance with respect hereto.

(c) This Collateral Annex has been and is made solely for the benefit of the Parties and their permitted successors and assigns, and no other person, partnership, association, corporation or other entity shall acquire or have any right under or by virtue of this Collateral Annex.

(d) The Pledging Party shall pay on request and indemnify the Secured Party against any taxes (including without limitation, any applicable transfer taxes and stamp, registration or other documentary taxes), assessments, or charges that may become payable by reason of the

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security interests, general first lien and right of offset granted under this Collateral Annex or the execution, delivery, performance or enforcement of the Agreement and this Collateral Annex, as well as any penalties with respect thereto (including, without limitation costs and reasonable fees and disbursements of counsel). The Parties each agree to pay the other Party for all reasonable expenses (including without limitation, court costs and reasonable fees and disbursements of counsel) incurred by the other in connection with the enforcement of, or suing for or collecting any amounts payable by it under, the Agreement and this Collateral Annex.

(e) No failure or delay by either Party hereto in exercising any right, power, privilege, or remedy hereunder shall operate as a waiver thereof.

(f) The headings in this Collateral Annex are for convenience of reference only, and shall not affect the meaning or construction of any provision thereof.

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SCHEDULE 1 to Collateral Annex

IRREVOCABLE STANDBY LETTER OF CREDIT FORMAT
DATE OF ISSUANCE: _____

[Address]

Re: Credit No. _____

We hereby establish our Irrevocable Transferable Standby Letter of Credit in your favor for the account of _____ (the "Account Party"), for the aggregate amount not exceeding _____ United States Dollars ($_____), available to you at sight upon demand at our counters at (Location) on or before the expiration hereof against presentation to us of one or more of the following statements, dated and signed by a representative of the beneficiary:

1. "An Event of Default (as defined in the Master Purchase and Sale Agreement dated as of _____ between beneficiary and Account Party, as the same may be amended (the "Master Agreement")) has occurred and is continuing with respect to Account Party under the Master Agreement and no Event of Default has occurred and is continuing with respect to the beneficiary of this Letter of Credit. Wherefore, the undersigned does hereby demand payment of the entire undrawn amount of the Letter of Credit"; or

2. "An Early Termination Date (as defined in the Master Purchase and Sale Agreement dated as of _____ between beneficiary and Account Party, as the same may be amended (the "Master Agreement")) has occurred and is continuing with respect to Account Party under the Master Agreement and no Event of Default has occurred and is continuing with respect to the beneficiary of this Letter of Credit. Wherefore, the undersigned does hereby demand payment of the entire undrawn amount of the Letter of Credit".

This Letter of Credit shall expire on _____.

The amount which may be drawn by you under this Letter of Credit shall be automatically reduced by the amount of any drawings paid through the Issuing Bank referencing this Letter of Credit No. ____. Partial drawings are permitted hereunder.

We hereby agree with you that documents drawn under and in compliance with the terms of this Letter of Credit shall be duly honored upon presentation as specified.

This Letter of Credit shall be governed by the Uniform Customs and Practice for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 13(b) and 17 of the UCP, in which case the terms of this Letter of Credit shall govern.

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With respect to Article 13(b) of the UCP, the Issuing Bank shall have a reasonable amount of time, not to exceed three (3) banking days following the date of its receipt of documents from the beneficiary, to examine the documents and determine whether to take up or refuse the documents and to inform the beneficiary accordingly.

In the event of an Act of God, riot, civil commotion, insurrection, war or any other cause beyond our control that interrupts our business (collectively, an "Interruption Event") and causes the place for presentation of this Letter of Credit to be closed for business on the last day for presentation, the expiry date of this Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

This Letter of Credit is transferable, and we hereby consent to such transfer, but otherwise may not be amended, changed or modified without the express written consent of the beneficiary, the Issuing Bank and the Account Party.

[BANK SIGNATURE]

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11.2 Commodity Exchange Act Representations

11.3 Version 1.1

11.4 July 5, 2005

I. Section 10.2, Representations and Warranties, is amended by replacing clauses (x), (xi) and (xii) in their entirety with the following:

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"(x) it is an "eligible commercial entity" within the meaning of Section 1a (11) of the Commodity Exchange Act, as amended by the Commodity Futures Modernization Act of 2000 (the "Commodity Exchange Act");

(xi) it is an "eligible contract participant" within the meaning of Section 1a (12) of the Commodity Exchange Act; and

(xii) each Transaction that is not executed or traded on a "trading facility", as defined in Section 1(a)(33) of the Commodity Exchange Act, is subject to individual negotiation by the Parties."

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11.5 Confidentiality

The following is added an additional sentence at the end of Section 10.11: 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.

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EEI's Market Disruption Provisions:

Discussion of Revised Optional Language for Transactions with Index-based Pricing

Version 2.0[7]

June 9, 2008

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EEI's MARKET DISRUPTION PROVISIONS: DISCUSSION OF REVISED OPTIONAL LANGUAGE FOR TRANSACTIONS WITH INDEX-BASED PRICING

A. Background

The Edison Electric Institute ("EEI") first published "Optional Language for Transactions with Index-based pricing" in 2002 (the "Original Market Disruption Provisions"). This provision was published for use by parties that envision pricing certain Transactions based on an index or other third party price source and, as a result, wish to provide for an alternative basis for determining the Contract Price should the relevant index or price source be disrupted, substantially altered or no longer published.

In February 2007 the EEI Contract Drafting Committee formed a Market Disruption Subcommittee (the "Subcommittee") to consider whether the Original Market Disruption Provisions should be revised and updated to address several issues that had been raised by market participants. For example, a number of parties had found that the existing provisions did not properly address market disruption events when they actually occurred and, consequently, these terms were often disregarded in practice. In addition, some firms were concerned about the fact that other market disruption provisions commonly used in the commodity markets, such as those published by the International Swaps and Derivatives Association, Inc. (ISDA) for commodity derivative transactions, were inconsistent with EEI's optional provisions in several respects. Because of this inconsistency, these firms maintained that related transactions under separate master agreements could potentially be priced differently following the occurrence of a market disruption event, creating unintended "basis risk" for the transactions.

The Subcommittee sought to leverage the lessons learned during the last few years to create a set of provisions that would produce an outcome more closely aligned to the parties' wishes and expectations upon the occurrence of a market disruption event. As part of this effort, the Subcommittee also attempted to better harmonize these new market disruption provisions with those included in the 2005 ISDA Commodity Definitions. The result is a set of new provisions entitled "Revised Optional Language for Transactions with Index-based Pricing" (the "Revised Market Disruption Provisions"). Capitalized terms used in this discussion and not otherwise defined have the meanings given to them in the Revised Market Disruption Provisions.

B. Explanation of Changes

Expanded Definition of Market Disruption Event. As noted above, the Revised Market Disruption Provisions reflect several changes to the previously published provisions in order to achieve greater consistency with ISDA's market disruption provisions. For example, the definition of "Market Disruption Event" was expanded to include material changes to the composition of the Product. In addition language was added to address the fact that certain Transactions may reference a price that is announced or made available by a regional transmission operator (RTO) or independent system operator (ISO).

Revised Waterfall of Disruption Fallbacks. The Revised Market Disruption Provisions revise the original waterfall of fallbacks that apply following the occurrence of a Market Disruption Event in an attempt to make them not only more consistent with ISDA's waterfall but also more likely to produce a result desired by the parties. For example, upon the occurrence of a Market Disruption Event, the Revised

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Market Disruption Provisions first require the parties to use a fallback Floating Price to the extent such a fallback price was specified in the Confirmation, consistent with ISDA's waterfall.

If the parties have not specified a fallback Floating Price, the Revised Market Disruption Provisions require the parties to endeavor, in good faith and using commercially reasonable efforts, to agree on a substitute price taking into consideration industry initiatives (e.g., guidance, protocols, recommendations by trade organizations and industry groups) in response to such market disruption event. This fallback is similar to ISDA's concept of "Negotiated Fallback" and one of the fallbacks included in the Original Market Disruption Provisions. However, the Revised Market Disruption Provisions specifically require the parties to look toward market conventions adopted to address the event concerned in attempting to determine a mutually agreeable substitute price. The Revised Market Disruption Provisions provide that the parties have up to 5 Business Days (rather than 12) to agree to a substitute price in an attempt to achieve greater consistency with the 2005 ISDA Commodity Definitions.

The Revised Market Disruption Provisions also provide that, to the extent the Price Source specified in the Transaction publishes the relevant Floating Price for a Disrupted Day before the parties have managed to agree to a substitute price, the parties must utilize that retrospectively published Floating Price for the relevant Disrupted Day. This fallback is similar to ISDA's "Delayed Publication or Announcement" and was not included in EEI's Original Market Disruption Provisions. In contrast, ISDA's "Postponement" fallback was not included in the waterfall for the Revised Market Disruption Provisions because the Subcommittee determined that it was not appropriate to shift the pricing date for a Transaction upon the occurrence of a Market Disruption Event.

If the parties cannot determine a Floating Price pursuant to the foregoing fallbacks within 5 Business Days of the occurrence of the Market Disruption Event, the parties must then determine the Floating Price based on a form of dealer poll. This final fallback is similar to ISDA's concept of "Fallback Reference Dealers" and the fallback included in the Original Market Disruption Provisions, with certain modifications and clarifications.

Changes to "Corrections to Published Prices". The Revised Market Disruption Provisions provide that a party may require that payments be adjusted to reflect any correction to a published price that is issued within 30 days of the original publication. This 30-day lookback period is consistent with the 2005 ISDA Commodity Definitions and represents a substantial reduction from the two-year lookback period that was included in the Original Market Disruption Provisions. However, this provision is subject to an important exception for RTO Transactions, consistent with RTO rules, as the Subcommittee recognized that a longer period may be necessary for these types of Transactions.

Rounding. On rounding the Subcommittee determined that it has become common practice to round Floating Prices to four decimal places rather than three (as the Original Market Disruption Provisions provided), so the Revised Market Disruption Provisions reflect this convention. However, the Subcommittee also observed that it is necessary for parties to consider what their systems and confirmation platforms can accommodate when agreeing to a rounding convention and therefore left the numbers in this provision in brackets.

AMENDMENT TO THE
Master Power Purchase and Sale Agreement

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[/or/ **ISDA Master Agreement including the ISDA North American Power Annex**]
Relating to Scheduling Firm (LD) and Firm (No Force Majeure) Transactions in
ERCOT Upon Implementation of the Texas Nodal Market

This Amendment ("**Amendment**") is made this ___ day of ____ 201_, by and between a _____ ("Party A"), and _____, a _____ ("Party B") (each a "**Party**" and collectively "**Parties**"). Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Master Agreement defined below and/or the ERCOT Nodal Protocols, as applicable.

RECITALS

WHEREAS, the Parties are parties to that certain Edison Electric Institute Master Power Purchase and Sale Agreement dated _____ __, 20__ ("**Master Agreement**");

[/or/ **WHEREAS,** the Parties are parties to that certain ISDA Master Agreement, including the ISDA North American Power Annex thereto, dated as of _____ ___, 200_ ("**Master Agreement**");]

WHEREAS, upon implementation of the "Texas Nodal Market" in the Electric Reliability Council of Texas region ("**ERCOT**"), pursuant to the ERCOT Nodal Protocols, the Parties will be able to schedule Firm (LD) and Firm (No Force Majeure) Products either prior to the time in which ERCOT runs the Reliability Unit Commitment ("**RUC**") market or the day after delivery;

WHEREAS, as of the Texas Nodal Market Implementation Date, if both Buyer and Seller do not schedule a Firm (LD) and Firm (No Force Majeure) Product in ERCOT on or before the applicable RUC market scheduling deadline for hourly and day-ahead transactions, ERCOT can assess RUC charges;

WHEREAS, the Parties desire to Schedule Firm (LD) and Firm (No Force Majeure) Products in ERCOT prior to the hourly or day-ahead RUC scheduling deadline, as applicable, and in a manner that gives each Party sufficient time to correct any scheduling errors and the ability to avoid the imposition of RUC charges;

WHEREAS, the Parties understand that submitting complete schedules at least thirty (30) minutes prior to the day-ahead RUC scheduling deadline would give the Parties sufficient time to correct any scheduling errors;

WHEREAS, with effect from and after the Texas Nodal Market Implementation Date, the Parties desire to amend the terms of the Master Agreement, on the terms and subject to the conditions set forth in this Amendment in order to require each Party to schedule Firm (LD) and Firm (No Force Majeure) Products in ERCOT on or before the applicable RUC deadline.

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NOW, THEREFORE, for the above reasons, in consideration of the mutual covenants herein, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties desire to amend the Master Agreement as follows:

1. Adoption

The Parties agree that upon the Texas Nodal Market Implementation Date, the definitions and provisions contained in this Amendment shall be deemed incorporated into and applied to the Master Agreement.

2. Amendments

The Parties agree that:
1. Section 3.2 Transmission and Scheduling [ISDA Power Annex Part[6](b)(ii)] of the Master Agreement shall be amended by adding the following at the end thereof:

"With respect to Firm (LD) Transactions and Firm (No Force Majeure) Transactions in the Electric Reliability Council of Texas ("ERCOT") region, the following shall apply, notwithstanding any other Scheduling deadlines in the ERCOT Nodal Protocols:

(A) Definitions: "DRUC Schedule Deadline" means the time at which ERCOT is required to start the DRUC process relating to such day of delivery.

"HRUC Schedule Deadline" means the time at which ERCOT is required to start an HRUC process relating to such hour of delivery.

"First HRUC Schedule Deadline" means the HRUC Schedule Deadline which immediately follows the time at which the Parties entered into the Transaction and which occurs after the start of the next clock hour.

(B) **HRUC Scheduling Requirement: Buyer and Seller shall Schedule each hour's deliveries of the Product with ERCOT** prior to the First HRUC Schedule Deadline unless the time at which the Transaction was entered into is less than thirty (30) minutes prior to the start of the next clock hour, in which case the HRUC Schedule Deadline immediately following the **First HRUC Schedule Deadline shall be the applicable scheduling deadline.**

(C) DRUC Scheduling Requirement: If a Transaction is entered into prior to that day's DRUC Schedule Deadline, **Buyer and Seller shall Schedule such day's deliveries of the Product** with ERCOT prior to **that day's DRUC Schedule Deadline.**"

2. Section 4.1 [ISDA Power Annex Part[6](c)(i)] of the Master Agreement shall be relabelled 4.1(a) [Part[6](c)(i)(A)] and a new Section 4.1(b) [Part[6](c)(i)(B)] shall be added to deal with Seller Failure with respect to Firm (LD) Transactions and Firm (No Force Majeure) Transactions in ERCOT:

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"4.1(b) [ISDA Power Annex Part[6](c)(i)(B)] Seller Failure in ERCOT for Firm (LD) Transactions and Firm (No Force Majeure) Transactions. 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 or, if "Accelerated Payment of Damages" is specified on the Cover Sheet [in the Elective Provisions of the ISDA Power Annex], within five (5) Business Days of invoice receipt, (i) an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price and (ii) an amount equal to the ERCOT charges incurred by Buyer, if any, as a result of Seller's failure to Schedule a Firm (LD) or Firm (No Force Majeure) Transaction in the ERCOT region prior to any applicable DRUC Schedule Deadline or HRUC Schedule Deadline under Section 3.2 [ISDA Power Annex Part[6](b)(ii)]. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount."

3. Section 4.2 [ISDA Power Annex Part[6](c)(ii)] of the Master Agreement shall be relabelled 4.2(a) [Part[6](c)(ii)(A)] and a new Section 4.2(b) [Part[6](c)(ii)(B)] shall be added to deal with Buyer Failure with respect to Firm (LD) Transactions and Firm (No Force Majeure) Transactions in ERCOT:

"4.2(b) [ISDA Power Annex Part[6](c)(ii)(B)] Buyer Failure in ERCOT for Firm (LD) Transactions and Firm (No Force Majeure) Transactions. 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 or, if "Accelerated Payment of Damages" is specified on the Cover Sheet [in the Elective Provisions of the ISDA Power Annex], within five (5) Business Days of invoice receipt, (i) an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price; and (ii) an amount equal to the ERCOT charges incurred by Seller, if any, as a result of Buyer's failure to Schedule a Firm (LD) or Firm (No Force Majeure) Transaction prior to any applicable DRUC Schedule Deadline or HRUC Schedule Deadline under Section 3.2 [ISDA Power Annex Part[6](b)(ii)]. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount."

3. Miscellaneous

(a) **Entire Agreement.** This Amendment constitutes the entire agreement and understanding of the Parties with respect to its subject matter. Except as set forth herein, nothing amends or cancels the Master Agreement or any prior Confirmations thereunder.

(b) **Non-reliance.** Each Party acknowledges that in agreeing to this Amendment it has not relied on any oral or written representation, warranty or other assurance and waives all rights and remedies which might otherwise be available to it in respect thereof, except that nothing in this Amendment will limit or exclude any liability of a Party for fraud.

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(c) **Headings.** The headings used in this Amendment are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Amendment.

(d) **Governing Law.** This Amendment will be governed by and construed in accordance with the law specified to govern the Master Agreement and otherwise in accordance with applicable choice of law doctrine.

(e) **Counterparts.** This Amendment (and each amendment, modification and waiver in respect of it) may be executed and delivered in any number of counterparts (including by facsimile transmission or PDF files) and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Amendment to be duly executed by their authorized officers or agents on the date first written above, but effective upon implementation of the Texas Nodal Market in the ERCOT.

[Party A]	**[Party B]**
By:	By:
Name:	Name:
Title:	Title:

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Errata

Version 1.1 – July 18, 2007

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Errata

The language set forth below may be appropriate for inclusion in the Cover Sheet to the Master Power Purchase and Sale Agreement as "Other Changes".

Other Changes

The Master Agreement is hereby amended as follows:

Cover Sheet—Schedule M.

Delete the reference to "Section 8.6" and replace it with "Section 8.4".

Section 1.12—"Credit Rating".

Delete the word "issues" and replace it with "issuer".

Section 1.50—"Recording".

Delete the reference to "Section 2.4" and replace it with "Section 2.5".

Section 5.2—Declaration of an Early Termination Date and Calculation of Settlement Amounts.

Reverse the placement of "(i)" and "to".

The language set forth below may be appropriate for inclusion in Paragraph 10 to the Collateral Annex to the EEI Master Power Purchase and Sale Agreement as "Other Changes".

Other Changes

The Collateral Annex is hereby amended as follows:

Introductory Paragraph.

Delete "Paragraph 10 Elections" in the first introductory paragraph and replace it with "Paragraph 10 Cover Sheet".

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Paragraph 1.—Definitions.

Delete "Paragraph 6(a)(iii)" in the definition of "Credit Rating Event" and replace it with "Paragraph 6(a)(ii)".

Add "a.m." after "11:00" in the definition of "Notification Time".

Delete "Paragraph 6(a)(iv)" in the definition of "Performance Assurance" and replace it with "Paragraph 6(a)(iii)".

Delete "capital and surplus" in the definition of "Qualified Institution" and replace it with "capital surplus".

Delete "Paragraph 3(b)" in the definition of "Secured Party" and replace it with "Paragraph 3(a)".

Paragraph 5.—Reduction and Substitution of Performance Assurance.

Delete "before the Notification Time on a Business Day" in Paragraph 5(a) and replace it with "before the Notification Time on a Local Business Day".

Paragraph 6.—Administration of Performance Assurance.

Delete "to perfect the security interest of the Non-Downgraded Party" in Paragraph 6(a)(ii)(B) and replace it with "to perfect the security interest of the Downgraded Party".

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The language set forth below may be appropriate for inclusion under the "Other Changes" section of the Cover Sheet if the parties desire that the Master Agreement govern power transactions entered into by the parties prior to execution of the Master Agreement.

Other Changes

Prior Transactions. The following additional sentence is added at the beginning of Section 2.2:

Party A and Party B confirm that this Master Agreement shall apply to, and shall supersede and replace all similar provisions contained in, the transactions listed on Schedule T hereto, and agree that such transactions are, effective as of the Effective Date, governed by this Master Agreement, and are part of the single integrated agreement between the Parties, consistent with this Section 2.2.

[Use of this provision requires that Schedule T be completed and attached to the Master Agreement.]

MARKET PARTICIPANTS CONSIDERING USE OF THIS OR ANY SIMILAR PROVISION ARE ENCOURAGED TO CONSULT THEIR OWN LEGAL COUNSEL TO ENSURE THAT THEIR COMMERCIAL OBJECTIVES WILL BE ACHIEVED AND THEIR LEGAL RIGHTS AND INTERESTS ADEQUATELY PROTECTED.

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EEI's Market Disruption Provisions:

Revised Optional Language for Transactions with Index-based Pricing

Version 2.0[8]

June 8, 2008

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Revised Optional Language for Transactions with Index-based Pricing

The language set forth below may be appropriate for inclusion under the "Other Changes" section of the Cover Sheet if Transactions with index-based pricing are envisioned, and the Parties desire to provide for an alternative basis for determining the Contract Price should the relevant index be substantially altered, disrupted or no longer published.

Index Transactions. If the Contract Price for a Transaction is determined by reference to a Price Source, then:

(a) **Market Disruption**. If a Market Disruption Event occurs on any one or more days during a Determination Period (each day, a "Disrupted Day"), then:

- The fallback Floating Price, if any, specified by the Parties in the relevant Confirmation shall be the Floating Price for each Disrupted Day.
- If the Parties have not specified a fallback Floating Price, then the Parties will endeavor, in good faith and using commercially reasonable efforts, to agree on a substitute Floating Price, taking into consideration, without limitation, guidance, protocols or other recommendations or conventions issued or employed by trade organizations or industry groups in response to the Market Disruption Event and other prices published by the Price Source or alternative price sources with respect to the Delivery Point or comparable Delivery Points that may permit the Parties to derive the Floating Price based on historical differentials.
- If the Price Source retrospectively issues a Floating Price in respect of a Disrupted Day (a "Delayed Floating Price") before the parties agree on a substitute Floating Price for such day, then the Delayed Floating Price shall be the Floating Price for such Disrupted Day. If a Delayed Price is issued by the Price Source in respect of a Disrupted Day after the Parties agree on a substitute Floating Price for such day, the substitute Floating Price agreed upon by the Parties will remain the Floating Price without adjustment unless the Parties expressly agree otherwise.
- If the Parties cannot agree on a substitute Floating Price and the Price Source does not retrospectively publish or announce a Floating Price, in each case, on or before the fifth Business Day following the first Trading Day on which the Market Disruption Event first occurred or existed, then the Floating Price for each Disrupted Day shall be determined by taking the arithmetic mean of quotations requested from four leading dealers in the relevant market that are unaffiliated with either Party and mutually agreed upon by the Parties ("Specified Dealers"), without regard to the quotations with the highest and lowest values, subject to the following qualifications:
    - If exactly three quotations are obtained, the Floating Price for each such Disrupted Day will be the quotation that remains after disregarding the quotations having the highest and lowest values.
    - If fewer than three quotations are obtained, the Floating Price for each such Disrupted Day will be the average of the quotations obtained.
    - If the Parties cannot agree upon four Specified Dealers, then each of the Parties will, acting in good faith and in a commercially reasonable

manner, select up to two Specified Dealers separately, and those selected dealers shall be the Specified Dealers.

- Unless otherwise agreed, if at any time the Parties agree on a substitute Floating Price for any Disrupted Day, then such substitute Floating Price shall be the Floating Price for such Disrupted Day, notwithstanding the subsequent publication or announcement of a Delayed Floating Price by the relevant Price Source or any quotations obtained from Specified Dealers.

"Determination Period" means each calendar month a part or all of which is within the Delivery Period of a Transaction.

"Exchange" means, in respect of a Transaction, the exchange or principal trading market specified as applicable to the relevant Transaction.

"Floating Price" means a Contract Price specified in a Transaction that is based upon a Price Source.

"Market Disruption Event" means, with respect to any Price Source, any of the following events:

(a) the failure of the Price Source to announce, publish or make available the specified Floating Price or information necessary for determining the Floating Price for a particular day;
(b) the failure of trading to commence on a particular day or the permanent discontinuation or material suspension of trading in the relevant options contract or commodity on the Exchange, RTO or in the market specified for determining a Floating Price;
(c) the temporary or permanent discontinuance or unavailability of the Price Source;
(d) the temporary or permanent closing of any Exchange or RTO specified for determining a Floating Price; or
(e) a material change in the formula for or the method of determining the Floating Price by the Price Source or a material change in the composition of the Product.

"Price Source" means, in respect of a Transaction, a publication or such other origin of reference, including an Exchange or RTO, containing or reporting or making generally available to market participants (including by electronic means) a price, or prices or information from which a price is determined, as specified in the relevant Transaction.

"RTO" means any regional transmission operator or independent system operator.

"RTO Transaction" means a Transaction in which the Price Source is an RTO.

"Trading Day" means a day in respect of which the relevant Price Source ordinarily would announce, publish or make available the Floating Price.

(b) **Corrections to Published Prices.** If the Floating Price published, announced or made available on a given day and used or to be used to determine a relevant price is subsequently corrected by the relevant Price Source (i) within 30 days of the original

publication, announcement or availability, or (ii) in the case of RTO Transactions only, within such longer time period as is consistent with the RTO's procedures and guidelines, then either Party may notify the other Party of that correction and the amount (if any) that is payable as a result of that correction. If, not later than thirty (30) days after publication or announcement of that correction, a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount will, not later than three (3) Business Days after such notice is effective, pay, subject to any applicable conditions precedent, to the other Party that amount, together with interest at the Interest Rate for the period from and including the day on which payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that correction. Notwithstanding the foregoing, corrections shall not be made to any Floating Prices agreed upon by the Parties or determined based on quotations from Specified Dealers pursuant to paragraph (a) above unless the Parties expressly agree otherwise.

(c) **Rounding.** [When calculating a Floating Price, all numbers shall be rounded to [four (4)] decimal places. If the [fifth (5th)] decimal number is five (5) or greater, then the [fourth (4th)] decimal number shall be increased by one (1), and if the [fifth (5th)] decimal number is less than five (5), then the [fourth (4th)] decimal number shall remain unchanged.][9]

[9] Parties should bilaterally determine the rounding convention they will apply to Transactions that reference Floating Prices, taking into account their systems requirements and conventions applicable to confirmation platforms that they may use, as appropriate.

PRACTICE NOTES:

MARKET PARTICIPANTS CONSIDERING USE OF THIS OR ANY SIMILAR PROVISION ARE ENCOURAGED TO CONSULT THEIR OWN LEGAL COUNSEL TO ENSURE THAT THEIR COMMERCIAL OBJECTIVES WILL BE ACHIEVED AND THEIR LEGAL RIGHTS AND INTERESTS ADEQUATELY PROTECTED.

IN PARTICULAR, MARKET PARTICIPANTS SHOULD CONSIDER WHETHER THEY MAY HAVE AN INTEREST IN HARMONIZING THE MARKET DISRUPTION PROVISIONS THAT THEY HAVE NEGOTIATED IN OTHER AGREEMENTS THAT ARE RELATED TO THE TRANSACTIONS ENTERED INTO UNDER THE EEI MASTER POWER PURCHASE AND SALE AGREEMENT (E.G., TRANSACTIONS ENTERED INTO UNDER AN ISDA MASTER AGREEMENT).

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Mobile Sierra

Parties may wish to consider using this optional provision to document their intent to waive or limit the ability of regulators to modify the rates or terms and conditions of wholesale power transactions. The issues are complex and evolving, and each person is advised to consult with his or her counsel on the appropriate use of this provision.

This version is modified from what EEI published on its website in 2004 in two ways. First, the Supreme Court in *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. __ (2008) ruled that there is a single statutory standard of FERC review- the "just and reasonable" standard, which permits contract abrogation by FERC only in "those extraordinary circumstances where the public will be severely harmed" (Slip. Op. at 23), and not two standards from which parties may select by agreement. Second, a referenced FERC policy statement on the subject of its standard of review has since been terminated – see Docket No. RM-35-000, Notice of Proposed Rulemaking, footnote 1.

The following is added to the Agreement as Section 10.__: FERC Standard of Review; Mobile-Sierra Waiver.

(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 this 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 solely be the "public interest" application of the "just and reasonable" 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 Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish 554 U.S. __ (2008) (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 this 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 this 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).

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Renewable Energy Certificates Annex to the EEI Master Power Purchase & Sale Agreement

Version 1.0

11/4/10

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INTRODUCTION AND EXPLANATORY NOTES

Introduction

This is the Renewable Energy Certificates Annex to the Edison Electric Institute (EEI) Master Power Purchase and Sale Agreement (EEI RECs Annex). It was developed by a subcommittee of the Contracts Drafting Committee of the Edison Electric Institute (EEI) and was derived from the Master Renewable Energy Certificate Purchase and Sale Agreement that was prepared by a working group comprised of members of the Renewable Energy Resources Committee and the Special Committee on Energy and Environmental Finance of the American Bar Association's Section of Environment, Energy and Resources, the Environmental Markets Association, and the American Council on Renewable Energy (the "ABA/EMA/ACORE Master Agreement").

The following notes explain certain concepts that are novel to trading in these instruments, and that the user would likely want to understand. They are written to educate, and are not part of the document itself, and do not create legal obligations between the parties.

The EEI RECs Annex uses a disclosure driven-model. The RECs Product bookends are a "Standard REC", which includes all Environmental Attributes (as that term is defined with its own exclusions), and a "Basic REC", which includes only the proof of generation of the electricity. In between is a "Specified REC," which includes proof of generation and less than all Environmental Attributes. "Standard REC" is called "standard" because it most closely represents the predominant products traded in these markets. Currently a "Standard REC" will likely be required in order for a RECs Product to be certifiable under the Center for Resource Solutions' Green-e program, and one may conclude from a review of the definition of a "Green Attribute" in the California Renewable Portfolio Standard that a "Standard REC" currently is necessary for a California-compliant product.

Change in Law Risks

The EEI RECs Annex uses the term "Regulatorily Continuing" to allocate change in law risk. If an Applicable Program is specified, the Seller is agreeing today to meet the standards of the Applicable Program as it is in effect today. But the Applicable Program can be changed by regulators or legislators. If the Applicable Program does get changed, the Seller bears the risk of any cost of compliance with that change if a transaction is "Regulatorily Continuing." If a transaction is not Regulatorily Continuing, the buyer bears the risk of whether the product it agrees to buy today meets the requirements of the program tomorrow, to the extent tomorrow's requirements differ from today's requirements.

To analogize, a certain quality of 2x4 boards can be defined in a contract, and the seller can represent that it meets the contractually defined quality and leave it to the buyer to figure out if it meets a particular building code. The seller can also represent that the boards meet a particular building code, as that code is in effect today. The seller could also promise that when the boards are delivered, it will meet a particular building code as that code is in effect, however it may be changed.

When a REC is indicated as sold in an Applicable Program (e.g., a compliance market), the seller represents that as of the date of the trade, the REC complies with the requirements of the Applicable Program indicated, but the buyer takes the risk of the potential for change in the legal requirements after the trade date. The parties can have the seller bear the risks of change-in-law in the Applicable Program between the trade date and the delivery date by electing to sell the product as "Regulatorily Continuing." Presence or absence of the "Regulatorily Continuing" designation does not give rise to a right by either Buyer or Seller to cancel delivery or purchase if there is a failure of the Product to comply for a later delivery date if the program is changed; rather it is an allocation of risks of what parties may be required to do so the delivery can, when made, be used for compliance. Additionally, if the Applicable Program is later cancelled, delivery is still to be made and paid for at the original price, unless the parties have specifically provided otherwise in the original RECs Confirmation.

Additionally, the EEI RECs Annex does not provide for a "price majeure" if, for example, a voluntary Applicable Program's RECs suddenly become more valuable due to a promulgation of a new RPS that makes compliance mandatory. Parties can vary this. Additionally, parties can evaluate outs akin to the "Change in Scheme" concept sometimes seen in documentation for the European Emissions Trading Scheme.

Disaggregation of Environmental Attributes

A particular quantity of renewable energy generation includes a variety of avoided emissions and other environmental impacts. Some of these are unknown in magnitude until measured. There will likely be significant developments concerning which Environmental Attributes are required to be part of a REC for a particular purpose, especially as the intersection of renewable energy and carbon emission constraining programs develops. For example, one could measure and verify avoided CO_2 emissions from a unit of renewable generation, to be stripped and sold in the CO_2 markets, leaving a "no CO_2" REC available for sale. As sticks are pulled out of the REC bundle, different buyers will attribute different values to the various removed sticks and the remainder of the bundle.

The ABA/EMA/ACORE Master Agreement sets forth a robust mechanism for so stripping out or otherwise independently selling environmental attributes. The EEI RECs Annex does not include this full mechanism in this document; those who require such functionality are referred to the aforesaid form agreement.

Future Allowances

Distinguish between generating unit electric generation and generating unit capacity. There may be future programs providing allowances to renewable energy facilities based on facility capacity, but not generation. This is distinct from credits (or allowances) provided on account of actual renewable resource generation. A "Standard REC," which is "all" Environmental Attributes, includes within it any future allowances (or credits) that are awarded based on the measured quantity of generation with which the Standard REC was associated. If the parties do not wish to transfer future potential allowances or credits based on generation, they should elect to trade a "Specified REC" and carve those out in the confirmation.

If under a new greenhouse gas emissions law, an allowance-based compliance regime is created and initial allowances are allocated to all existing generation, fossil and non-fossil fueled generation, and a wind facility is given in a table 100 Carbon Allowances, which it does not need for compliance, has the wind facility which sold a Standard REC sold any of its carbon allowances? If the allowances were for identifiable prior generation, and a buyer paid for them, they were transferred. If the allocation of allowances is made on an on-going future basis, as electricity is generated, and the amount of allowances is keyed to actual energy production, the allowances are part of a Standard REC. But an allocation of allowances *based on* historic output of the unit (i.e., demonstrated capacity) does not mean the allowances transfer to those to whom the past performance was sold. A system which allocates allowances based on some formula other than on-going actual generation of energy is very different from a system that gives credit for displacing emissions based on actual generation of energy from a renewable resource. The drafters have sought to be as clear as possible under the circumstances, but the parties are advised to remain informed about the potential for future allowance and credit-based programs which might apply to their units and draft their RECs Transactions accordingly. Parties may consider adding the following language to the definition of Environmental Attributes:

Environmental Attributes do not include, unless the parties have expressly agreed otherwise, tradable emission allowances or other entitlements to produce emissions issued by a Governmental Authority and allocated to a Renewable Energy Facility on a basis other than actual generation of avoided emissions associated with the generation of electricity by the Renewable Energy Facility. For example, any CO_2 emission allowances that may be allocated to a Renewable Energy Facility by a Governmental Authority on a basis other than a calculation of such Facility's actual avoided emissions would not be included as an Environmental Attribute.

Unit Contingent Definitions

Two defined terms in Schedule P-RECs refer to the generating unit's performance. Some types of renewable resource generators, such as wind turbines or solar cells, are intermittent, and only generate electricity when the wind blows or the sun shines. Therefore, these units may not be able to generate to a fully contracted quantity. In a "Unit Contingent" sale, Seller is excused from underdelivery if the unit does not generate the full amount contracted for with Buyer in the period indicated, and puts Buyer at the top of the stack from which the Seller may be making sales from the unit over the period indicated. In a "Unit Contingent-Allocated" sale, Seller is excused if the unit does not generate the full amount contracted with Buyer and all the other parties to whom Seller has contracted for sale from the unit, and puts Buyer within the stack from which Seller may be making sales from the unit over the period indicated. Buyers of a Unit Contingent-Allocated Product may consider asking the seller about those other sale commitments. A seller with a 20MW unit entering into two 10MW Unit Contingent transactions runs the risk of breaching both contracts by making both sales Unit Contingent, since both buyers could claim a first entitlement to generation from the unit. A seller in such case may wish to indicate the Product is Unit Contingent-Allocated, and that each buyer receives half of the RECs as generated.

RENEWABLE ENERGY CERTIFICATES ANNEX
to the
EEI MASTER POWER PURCHASE & SALE AGREEMENT

Name: _____, a _____ organized under the laws of the State of _____("Party A")

Name: _____, a _____ organized under the laws of the State of _____ ("Party B")

Effective Date of EEI Master Agreement between Party A and Party B: _____

Paragraph 8 Renewable Energy Certificate Elections Cover Sheet:

All Notices:
As set forth on the EEI Master Agreement Cover Sheet unless otherwise set forth below:

Street: _____
City: _____
Attn: _____
Phone: _____
Facsimile: _____

All Notices:
As set forth on the EEI Master Agreement Cover Sheet unless otherwise set forth below:

Street: _____
City _____
Attn: _____
Phone: _____
Facsimile: _____

Invoices:
As set forth on the EEI Master Agreement Cover Sheet unless otherwise set forth below:

Attn: _____
Phone: _____
Facsimile: _____

Invoices:
As set forth on the EEI Master Agreement Cover Sheet unless otherwise set forth below:

Attn: _____
Phone: _____
Facsimile: _____

Confirmations:
As set forth on the EEI Master Agreement Cover Sheet unless otherwise set forth below:

Attn: _____
Phone: _____
Facsimile: _____

Confirmations:
As set forth on the EEI Master Agreement Cover Sheet unless otherwise set forth below:

Attn: _____
Phone: _____
Facsimile: _____

Payments:
As set forth on the EEI Master Agreement Cover Sheet unless otherwise set forth below:

Attn:
Phone:
Facsimile:

Payments:
As set forth on the EEI Master Agreement Cover Sheet unless otherwise set forth below:

Attn:
Phone:
Facsimile:

Wire Transfer:
As set forth on the EEI Master Agreement Cover Sheet unless otherwise set forth below:

BNK:
ABA:
ACCT:

Wire Transfer:
As set forth on the EEI Master Agreement Cover Sheet unless otherwise set forth below:

BNK:
ABA:
ACCT:

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Additional elections for EEI Master Agreement Section 2.1 Transactions

Outstanding RECs Transactions. This EEI RECs Annex applies to the following pre-existing RECs Transactions:

- ☐ Option A: All RECs Transactions outstanding between the parties as of the Effective Date of this EEI RECs Annex. – If no options are selected, Option A applies.
- ☐ Option B: The RECs Transactions listed in Schedule 1 to this EEI RECs Annex only.
- ☐ Option C: None of the RECs Transactions between the Parties that were executed prior to the Effective Date of this EEI RECs Annex.

Applicability of Articles 8.1, 8.2, and, if applicable, the Collateral Annex

- ☐ Option A: Articles 8.1, 8.2 and, if applicable, the Collateral Annex, apply to all RECs Transactions. – If no options are selected, Option A applies.
- ☐ Option B: Articles 8.1, 8.2 and, if applicable, the Collateral Annex, do not apply to any RECs Transactions.
- ☐ Option C: Articles 8.1, 8.2 and, if applicable, the Collateral Annex, apply to all RECs Transactions except those RECs Transactions set forth in Schedule 2 as amended from time to time.

Elections for Paragraph Three:

3.5 **Payment Netting**

- ☐ Option A (Payment Netting) – If neither Option A nor Option B is checked, Option A shall apply.
- ☐ Option B (No Payment Netting)

Other Changes Specify, if any:

[Parties should refer to any provisions of their EEI Cover Sheet and optional provisions that should not govern RECs Transactions, for example Mobile-Sierra waivers.]

IN WITNESS WHEREOF, the Parties have caused this EEI RENEWABLE ENERGY CERTIFICATES ANNEX to be duly executed in one or more counterparts (each of which shall be deemed an original, and all of which, taken together, shall constitute one and the same agreement) effective as of the Effective Date of this EEI RECs Annex. The Parties expressly acknowledge the validity of facsimile counterparts of this EEI RECs Annex, if any, which may be transmitted in advance of, or in lieu of, executed original documents.

Party A: _____

By:_____
Printed Name: _____
Title:_____

Party B: _____

By:_____
Printed Name: _____
Title:_____

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RENEWABLE ENERGY CERTIFICATES ANNEX TO THE EEI MASTER POWER PURCHASE & SALE AGREEMENT

WHEREAS, Party A and Party B have entered into an EEI Master Power Purchase & Sale Agreement (including any amendments, annexes or Cover Sheet thereto which are provided for and incorporated into the EEI Master Power Purchase & Sale Agreement, the "EEI Master Agreement"), which EEI Master Agreement governs the terms and conditions pursuant to which the Parties may enter into transactions relating to the purchase and sale of electric capacity, energy and other products related thereto; and

WHEREAS, the Parties desire to enter into this Renewable Energy Certificates Annex to the EEI Master Agreement to provide terms and conditions under which the Parties may enter into Transactions relating to the purchase and sale of Renewable Energy Certificates (as hereinafter defined; each such Transaction, a "RECs Transaction");

NOW, THEREFORE, the Parties agree as follows:

PARAGRAPH ONE: GENERAL TERMS

1.2 Scope of Agreement. The Parties enter into this Renewable Energy Certificates Annex to the EEI Master Agreement (this "EEI RECs Annex") in order to provide for the terms and conditions pursuant to which they may enter into Transactions for RECs Products (as defined below). This EEI RECs Annex, together with the Paragraph 8 Renewable Energy Certificate Elections Cover Sheet ("Paragraph 8 Cover Sheet"), supplements, forms a part of, and is incorporated into, the EEI Master Agreement. Capitalized terms used in this EEI RECs Annex but not defined herein shall have the meanings given such terms in the EEI Master Agreement.

1.2 The terms set forth in the EEI Master Agreement and this EEI RECs Annex apply to those Transactions that relate to RECs Products (each such Transaction, a "RECs Transaction"). Unless otherwise expressly amended by this EEI RECs Annex, all of the terms and conditions set forth in the EEI Master Agreement apply to RECs Transactions. "Transaction" as used in the EEI Master Agreement includes both Transactions relating to Power Products and RECs Products and except as otherwise provided in this EEI RECs Annex, the EEI Master Agreement shall apply equally to all such Transactions without differentiation. By way of example only, the Parties intend that the occurrence of an Event of Default under Section 5.1 of the EEI Master Agreement would enable the Non-Defaulting Party to exercise any or all of the rights of Article Five with respect to all Transactions notwithstanding whether such Transactions are for RECs Products or Power Products. In the event of any inconsistency among or between the EEI Master Agreement and this EEI RECs Annex, this EEI RECs Annex will govern with respect to RECs Transactions only.

PARAGRAPH TWO: DEFINITIONS

2.1 Definitions. With respect to RECs Transactions, these terms have the following meanings, and if the same term is defined in the EEI Master Agreement, the definition herein supersedes and replaces that in the EEI Master Agreement:

2.1.47 "Administrator" means an administrator, Certifier, Governmental Authority or other body with jurisdiction over Certification or transfer of Environmental Attributes in the Applicable Program.

11.21 2.1.2 "Alternative Compliance Payment" means a monetary amount under Applicable Law for an Applicable Program the payment of which is in lieu of compliance or other maximum amount agreed upon by the Parties.

11.22 2.1.3 "Applicable Law" means all legally binding constitutions, treaties, statutes, laws, ordinances, rules, regulations, orders, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority or arbitrator that apply to the Applicable Program or any one or both of the Parties or the terms hereof.

11.23 2.1.4 "Applicable Program" means a mandatory or voluntary domestic, international or foreign RPS, renewable energy, or other program, scheme or organization, with respect to a market, registry or reporting for Environmental Attributes specified in a RECs Transaction.

11.24 2.1.5 "Attestation" means a Transfer Certificate or Certification in form and substance as agreed to by the Parties separate and apart from the RECs Confirmation, an example of which for voluntary and potentially other Applicable Programs is attached as Exhibit C.

11.25 2.1.6 "Certification" means, if applicable, the certification by the Certifier of the Applicable Program of (i) the creation and characteristics of a REC, (ii) the qualification of a Renewable Energy Facility under the Applicable Program, (iii) Delivery of a REC or (iv) other compliance with the requirements of the Applicable Program.

11.26 2.1.7 "Certifier" means an entity that certifies the generation, characteristics or Delivery of a REC, or the qualification of a Renewable Energy Facility under the Applicable Program, and may include the Administrator, a GIS, a Governmental Authority, one or both of the Parties, an independent auditor or other third party, and should include (i) absent an Applicable Program, the Seller, or the generator of the RECs if the Seller is not the generator, (ii) if the RECs are to be Delivered pursuant to the Applicable Program, the Administrator of the Applicable Program, or such other person or entity specified by the Applicable Program to perform Certification or (iii) such other person or entity specified by the Parties.

11.27 2.1.8 "Certified Renewable Energy Facility" means a Renewable Energy Facility that is certified under or pursuant to the Applicable Program.

11.28 2.1.9 "Delivered" or "Delivery" means the transfer from Seller to Buyer of the Contract Quantity of the RECs Product in accordance with the Applicable Program and recognition by any applicable Administrator, Certifier, or GIS that such transfer has completed.

11.29 2.1.10 "Delivery Date" means the dates specified in the RECs Transaction for Delivery of the RECs Product to the Buyer.

11.30 2.1.11 "Environmental Attribute" means an aspect, claim, characteristic or benefit, howsoever entitled, associated with the generation of a quantity of Energy by a Renewable Energy Facility, other than the electric energy produced, and that is capable of being measured, verified or calculated, including any fuel, emissions, air quality or other environmental characteristics, credits, benefits, reductions, offsets and allowances resulting from the purchase, generation or use of energy from a Renewable Energy Facility or the avoidance of any emission of any gas, chemical or other substance to the air, soil or water attributable to such energy generation or arising out of any present or future Applicable Law. An Environmental Attribute may include one or more of the following identified with a particular megawatt hour of generation by a Renewable Energy Facility designated prior to Delivery: the Renewable Energy Facility's use of a particular renewable energy source, avoided NO_x, SO_x, CO_2 or greenhouse gas emissions, avoided water use (but not water rights or other rights or credits obtained pursuant to requirements of Applicable Law in order to site and develop the Renewable Energy Facility itself), or as otherwise defined under the Applicable Program or as agreed by the Parties. Environmental Attributes do not include any Energy, capacity, reliability or other power attributes from the Renewable Energy Facility, production tax credits or other direct third-party subsidies, filed rates, or feed-in tariffs for generation of electricity by the Renewable Energy Facility.

11.31 2.1.12 "GIS" means a generation information system or generation attribute tracking system operated by an Independent System Operator or a Regional Transmission Organization, or any other system that records generation from Renewable Energy Facilities.

11.32 2.1.13 "Government Action" means action (and not merely the speculation thereof) by a Governmental Authority, Administrator, Certifier, or by the governing body of the Applicable Program, including a Regulatory Event, which results in a change to the eligibility of a RECs Product for the Applicable Program or a substantial change to the requirements for compliance by persons or entities obligated to comply with the Applicable Program which in either case has a material effect on the supply or value of a RECs Product that is the subject of a particular RECs Transaction, and includes a change in Applicable Law that disqualifies any previously qualifying or Certified Renewable Energy Facilities (by Energy sources, Initial Operating Date or otherwise) or previously complying RECs Product, that is the subject of a RECs Transaction entered into prior to the change under an existing Applicable Program, including a change that that (i) eliminates or discontinues certification of the RECs Product, or (ii) creates any adverse material change in the application of the Applicable Program regarding a Party's authority to sell or purchase the RECs Product.

11.33 2.1.14 "Governmental Authority" means any international, national, federal, provincial, state, municipal, county, regional or local government, administrative, judicial or

regulatory entity operating under any Applicable Laws and includes any department, commission, bureau, board, administrative agency or regulatory body of any government.

11.34 2.1.15 "Initial Operating Date" means the date when a particular Renewable Energy Facility first became commercially operational.

11.35 2.1.16 "Penalties" means, with respect to the Non-Defaulting Party, the present value of any Alternative Compliance Payments, penalties, fines or fees imposed or assessed against the Non-Defaulting Party by an Administrator or Governmental Authority on account of Delivery not occurring on the Delivery Date, as determined by the Non-Defaulting Party in a commercially reasonable manner.

11.36 2.1.17 "RECs Product" means the RECs and Environmental Attributes to be delivered in a particular RECs Transaction.

11.37 2.1.18 "RECs Confirmation" is the form used by the Parties in the form of Exhibit A or Exhibit B or as otherwise agreed by the Parties, specifying the terms of a RECs Transaction.

11.38 2.1.19 "RECs Product Reporting Rights" means the exclusive right to report sole ownership of the RECs Product to any Certifier, GIS, Administrator, Governmental Authority or other party, including under Section 1605(b) of the Energy Policy Act of 1992, or under any present or future Applicable Program.

11.39 2.1.20 "RECs Transaction" is a Transaction under the Agreement governed by this EEI RECs Annex.

11.40 2.1.21 "Regulatorily Continuing" means, with respect to a RECs Transaction represented by a Party as complying with an Applicable Program, such compliance will be as of both the Delivery Date and the Trade Date notwithstanding any Government Action.

11.41 2.1.22 "Renewable Energy Certificate" or "REC" means a certificate, credit, allowance, green tag or other transferable indicia, howsoever entitled, created by or pursuant to the Applicable Program or Certifier indicating generation of a particular quantity of energy, or RECs Product associated with the generation of a specified quantity of Energy from a renewable energy source by a Renewable Energy Facility, separate from the Energy produced.

11.42 2.1.23 "Renewable Energy Facility" means an electric generation unit or other facility or installation that produces Energy qualifying under the Applicable Program, and includes a Certified Renewable Energy Facility.

11.43 2.1.24 "Renewable Portfolio Standard" or "RPS" means a domestic, international, or foreign state, provincial or federal law, rule or regulation that requires a stated amount or minimum proportion or quantity of electricity that is sold or used by specified entities to be generated from renewable energy.

11.44 2.1.25 "Replacement Price" means the price at which Buyer, acting in a commercially reasonable manner, purchases replacement RECs Product for any RECs Product

specified in the RECs Transaction but not delivered by Seller, which replacement RECs Product complies with the Applicable Program as of the Delivery Date for a Regulatorily Continuing RECs Transaction and as of the Trade Date for a RECs Transaction that is not Regulatorily Continuing, and have the same Vintage as the RECs Product not Delivered, plus Costs reasonably incurred by Buyer in purchasing such substitute RECs Product, or absent a purchase, the market price for such RECs Product not delivered, as determined by Buyer in a commercially reasonable manner; provided, however, in no event shall such market price exceed any applicable Alternative Compliance Payment set forth in the Applicable Program (if any), nor shall Buyer be required to acquire replacement RECs or utilize or change its utilization of its market positions to minimize Seller's liability.

11.45 2.1.26 "Reporting Year" means a twelve-month compliance period specified under the Applicable Program.

11.46 2.1.27 "Sales Price" means the price at which Seller, acting in a commercially reasonable manner, resells any RECs Product specified in the RECs Transaction not received by Buyer deducting from such proceeds any Costs reasonably incurred by Seller in reselling such RECs Product and Delivering to a third party purchaser thereof, or absent a sale, the market price for such RECs Product that complies with the Applicable Program as of the Delivery Date for a Regulatorily Continuing RECs Transaction and as of the Trade Date for a RECs Transaction that is not Regulatorily Continuing, and have the same Vintage as the RECs Product not received, as determined by Seller in a commercially reasonable manner; provided, however, in no event shall such market price include any Penalties or similar charges or stranded costs unless specified in the applicable RECs Transaction, nor shall Seller be required to utilize or change its utilization of its market positions to minimize Buyer's liability; and provided further that if Seller is unable after using commercially reasonable efforts to obtain a market price or resell all or a portion of the RECs Product not received by Buyer, then the Sales Price with respect to such unsold RECs Product shall be deemed equal to zero dollars ($0).

11.47 2.1.28 "Trade Date" means the date a RECs Transaction is entered into by the Parties.

11.48 2.1.29 "Transfer Certificate" means an Attestation, GIS record of ownership transfer or other document evidencing Delivery of a REC and otherwise satisfying the requirements of the Parties and any Applicable Program.

11.49 2.1.30 "Vintage" means the calendar year, Reporting Year or other period specified by the Parties or the Certifier, as applicable, in which the RECs Product is created or first valid for use under the Applicable Program.

11.50 2.2 Rules of Interpretation. Unless otherwise required by the context in which any term appears, (i) the singular includes the plural and vice versa; (ii) all references to a particular entity or market price index include a reference to such entity's or index's successors and (if applicable) permitted assigns; and (iii) a reference to a statute or to a regulation issued by a Governmental Authority includes the statute or regulation in force as of the Trade Date, or Delivery Date with respect to a RECs Product that is Regulatorily Continuing; and (iv) the word "or" is not necessarily exclusive.

PARAGRAPH THREE: AMENDMENTS TO THE EEI MASTER AGREEMENT

3.1 Definitions. Section 1.47 of the EEI Master Agreement is amended by adding to the end thereof "in the EEI RECs Annex or RECs Product Transactions thereunder."

3.2 Confirmation. The first sentence of Section 2.3 of the EEI Master Agreement shall be modified by the addition of the following at the end thereof: "and substantially in the form of a RECs Confirmation with respect to RECs Transactions."

3.3 Additional Confirmation Terms. Section 2.4 of the EEI Master Agreement shall apply only to Power Products.

3.4 Obligations and Deliveries. Sections 3.1 and 3.2 of the EEI Master Agreement shall apply only to Power Products. The applicable provisions with respect to RECs Products are set forth in Paragraph 4.1 below.

3.5 Payment and Netting.

Option A: Payment Netting with Payment for Power and RECs Transactions on the same payment date. Section 6.2 of the EEI Master Agreement shall apply to Power Products and RECs Products, it being the intent of the Parties that monthly payments for Power Products shall be netted with monthly payments for RECs Products, all in accordance with Article 6 of the EEI Master Agreement, including Section 6.4 thereof. In addition to the netting of monthly payments in respect of RECs Products and Power Products, if an Early Termination Date is declared by the Non-Defaulting Party pursuant to Article 5 of the EEI Master Agreement, then all Settlement Amounts and any other payments for all Transactions whether for Power Products or RECs Products shall be netted in calculating the Early Termination Payment pursuant to the provisions of Section 5.3 of the EEI Master Agreement.

Option B: No Payment Netting with Payment for RECs Transactions on the 5th Business Day following Delivery of RECs. The first sentence of Section 6.2 of the EEI Master Agreement shall apply only to Power Products. With respect to RECs Products only, the first sentence of Section 6.2 shall be replaced with the following sentence: "Unless otherwise agreed by the Parties in a RECs Transaction, all invoices under this EEI Master Agreement for RECs Products shall be due and payable in accordance with each Party's invoice instructions on or before the later of the 5th Business Day following Delivery, or the 5th Business Day after receipt of the invoice by Buyer." Section 6.4 of the EEI Master Agreement shall apply to both Power Products and RECs Products; provided, however, for this limited purpose only, monthly payments for Power Products shall be netted only with monthly payments for other Power Products and monthly payments for RECs Products shall be netted only with monthly payments for other RECs Products. If an Early Termination Date is declared by the Non-Defaulting Party, then all Settlement Amounts and any other payments for all Transactions whether for Power Products or RECs Products shall be netted in calculating the Early Termination Payment pursuant to the provisions of Section 5.3 of the EEI Master Agreement.

3.6 Title and Indemnity. Sections 10.3 and 10.4 of the EEI Master Agreement shall apply only to Power Products. The provisions that apply to RECs Products are set forth in Paragraph 4.3 below.

PARAGRAPH FOUR: SUPPLEMENTS TO THE EEI MASTER AGREEMENT FOR TRANSACTIONS RELATING TO RECs PRODUCTS

The following provisions apply to RECs Products only.

4.1 Delivery. Seller shall Deliver the RECs Product, and Buyer shall receive and pay for the RECs Product, in the manner required to comply with the terms of this RECs Annex and any RECs Transactions into which the Parties may from time to time enter.

4.2 Taxes and Fees. In any RECs Transaction, the term "Delivery Point" as used in the EEI Master Agreement is defined in the RECs Confirmation, if applicable. Each Party will be responsible for the payment of any fees, including broker's fees, incurred by it in connection with any RECs Transactions hereunder.

4.3 Transfer of Title. Unless otherwise specified in a RECs Transaction, none of Seller's applicable property and other right, title and interests in the RECs Product will pass to Buyer until the Delivery and payment are complete and upon such completion, all rights, title and interest in and to the RECs Product, to the full extent the same is property, will transfer to Buyer.

4.4 Effect of Transfer of Environmental Attributes. By transferring RECs Product in a RECs Transaction, Seller transfers any and all, and the exclusive, right to use that RECs Product in any Applicable Program, whether or not the RECs Transaction specifies that the RECs Product is eligible for an Applicable Program, and whether or not the particular RECs Product or any Environmental Attribute therein constitutes property, as well as any and all RECs Product Reporting Rights. Transfer of an Environmental Attribute does not transfer eligibility for production tax credits or other direct third-party subsidies for generation of electricity by any specified Renewable Energy Facility. Delivery of a RECs Product grants the Buyer the right, exclusive to the full extent applicable, to verify, certify and otherwise take advantage of the rights, claims and ownership in the RECs Product.

4.5 Certifying. The type and amount of any Environmental Attribute transferred and Delivered will be measured, calculated, verified and certified as agreed by the Parties or as required pursuant to the Applicable Program, if any. Unless otherwise specified in a RECs Transaction or the Applicable Program, Seller will (a) ensure that the selection of the Certifier complies with this EEI RECs Annex and the Applicable Program and (b) be responsible for the costs of the Certifier required for Delivery.

4.6 Secondary Markets; Exclusion of Warranties. Unless otherwise specified in a RECs Transaction, neither Seller nor Buyer will have any liability to the other for any act, omission, misrepresentation or breach by a Certifier (other than those due to failure to pay required fees, charges or expenses). Except as required under the Applicable Program, to the

extent a RECs Product is evidenced or Delivered with a Transfer Certificate or other documents executed by or setting forth the findings of third parties, the sole representations of Seller with respect thereto will be that (i) Seller has no actual knowledge that any statement therein is false or intentionally misleading, and (ii) the documents provided by it are true and correct copies of the documentation it has. All representations and warranties made by a Seller to a Buyer with respect to the Environmental Attributes, Renewable Energy Facility, Energy delivery location or Vintage of a RECs Product are transferable by the Buyer. However, as different Applicable Programs have differing compliance requirements, any representation that a RECs Product is Regulatorily Continuing applies solely to the Delivery by the Seller of RECs Product under the Applicable Program to the Buyer and only up to the Delivery Date, and the benefit of such representation is not assignable by Buyer, except as consented to by Seller in writing. Any other representation of compliance with the Applicable Program applies only up to the Trade Date. A RECs Transaction may provide by its terms that the Renewable Energy Facility will be designated by the Seller after the Trade Date and on or before the Delivery Date, so long as once having been designated, the Delivery complies with the requirements of the Applicable Program, in the manner represented by Seller.

4.7 Tariffs; Energy. Party A Tariff and Party B Tariff do not apply to RECs Transactions unless specifically so stated in the RECs Confirmation. A RECs Transaction may be entered into in connection with a Transaction for Energy. Delivery of RECs Product can be with or independent of delivery of the Energy with which the RECs Product is associated if so permitted under the Applicable Program.

PARAGRAPH FIVE: FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS

5.1 Mutual Representations and Warranties. On the Effective Date and on each Trade Date, each Party represents and warrants to the other what it has represented and warranted in Section 10.2 of the EEI Master Agreement and that: (i) it is an "eligible commercial entity" and an "eligible contract participant" within the meaning of United States Commodity Exchange Act §§1a(17) and 1a(18), respectively and (ii) except as otherwise provided in Paragraph 4.6, all applicable information, documents or statements that have been furnished in writing by or on behalf of it to the other Party in connection with this Agreement are true, accurate and complete in every material respect and do not omit a material fact that would otherwise make the information, document or statement misleading.

5.2 Warranties and Certain Covenants of Seller. With respect to each RECs Transaction, Seller represents and warrants to Buyer on the Trade Date and on the Delivery Date for all RECs Product that: (i) Seller has good and marketable title to such RECs Product; (ii) Seller has not, under any Applicable Program or otherwise, sold to any other person or entity, retired for its own benefit, or represented as part of any Energy sale the RECs Product or any Environmental Attribute of the RECs Product to be transferred to Buyer; (iii) all right, title and interest in and to such RECs Product are free and clear of any liens, taxes, claims, security interests or other encumbrances except for any right or interest by any entity claiming through Buyer; (iv) each Environmental Attribute and REC meets the specifications set forth in the RECs Transaction; (v) the RECs Product is separate from the Energy generated by the Renewable Energy Facility, unless otherwise specified by the Parties; (vi) such RECs Product complies with

the Applicable Program for which the RECs Product requires compliance until (a) Delivery for RECs Transactions that are Regulatorily Continuing, or (b) the Trade Date for RECs Transactions that are not Regulatorily Continuing; (vii) unless expressly set forth in a RECs Transaction, with respect to Seller, the RECs Product is not transferred, and has not been transferred pursuant to a contract filed or required to be filed with or approved by any Governmental Authority having jurisdiction over the sale of Energy; (viii) the representations and warranties set forth in the form of Attestation, if any, as of the Delivery Date are true and correct, provided that if the RECs Transaction is not Regulatorily Continuing, this representation is only as to the form of Attestation in effect as of the Trade Date; and (ix) subject to Paragraph 4.6 and unless otherwise specified to the contrary on the RECs Transaction, Seller has disclosed to Buyer any and all Transfer Certificates, Attestations, and all other relevant documentation received by it in connection with its acquisition of the RECs Product sold to Buyer hereunder, and any use by any Environmental Attribute of the RECs Product by Seller or any other person or entity to comply with any Applicable Program. With respect to any RECs Transaction, absent a representation by Seller that the RECs Product complies with the requirements of a specified Applicable Program, Buyer bears the risk that the RECs Product is or will be in compliance with such Applicable Program. With respect to any RECs Transaction, if Seller represents that a RECs Product complies with the Applicable Program, such representation is made and effective as of the Trade Date, and Seller will not be in breach of such representation on account of any Government Action occurring after the Trade Date, unless the RECs Transaction is Regulatorily Continuing, in which case Seller must Deliver RECs Product that complies with the Applicable Program as of the Delivery Date. If the RECs Transaction is Regulatorily Continuing, Seller will cause the RECs Product that is Delivered to comply with the requirements of the Applicable Program on the Delivery Date, including Delivering substitute RECs Product acceptable to Buyer if appropriate.

5.3 LIMITATION OF WARRANTIES. THE EXPRESS WARRANTIES SET FORTH HEREIN ARE EXCLUSIVE AND SELLER MAKES NO OTHER WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE RECS PRODUCT DELIVERED AND TRANSFERRED WHETHER AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER MATTER, INCLUDING WITH RESPECT TO ANY GOVERNMENT ACTION OR ANY OTHER FUTURE ACTION OR FAILURE TO ACT OR APPROVAL OR FAILURE TO APPROVE BY ANY GOVERNMENTAL AUTHORITY OR ADMINISTRATOR.

5.4 Cooperation on Delivery; Review of Records. Upon either Party's receipt of notice from the Administrator that the transfer of RECs pursuant to a RECs Transaction will not be recognized or a RECs Product Delivery was not made as required pursuant to the terms of a RECs Transaction, that Party will immediately so notify the other Party, providing a copy of such notice, and both Parties will cooperate in taking such actions as are necessary and commercially reasonable to cause such transfer to be recognized and RECs Product Delivered. Each Party agrees to provide copies of its records to the extent reasonably necessary for the Certifier to perform the functions designated on the RECs Transaction, and to verify the accuracy of any fact, statement, charge or computation made pursuant hereto if requested by the other Party. If, as a result of Seller's failure to provide Buyer with documentation and records it has agreed in the RECs Transaction to provide any or all of the Contract Quantity of RECs

Product is disallowed ("Disallowed RECs") Seller will pay damages for such Disallowed RECs as if there had been a failure to Deliver them and Buyer shall after receipt of such damages return the Disallowed RECs to Seller. If Seller is not the owner or operator of the Renewable Energy Facility that generated the RECs Product, Seller will cooperate with Buyer in any efforts to review the records of the original Seller of such RECs Product. If Seller is the owner or operator of the Renewable Energy Facility that generated the RECs Product in a RECs Transaction, it consents to the Buyer's assignment of rights under this Paragraph to any subsequent purchaser of such RECs Product. The obligations set forth in this Paragraph terminate with respect to any particular RECs Transaction on the later of thirty days following the last banking date under the Applicable Program for the Vintage of the RECs Product Delivered, or the third anniversary of the Delivery Date. Notwithstanding any provisions in the EEI Master Agreement regarding confidentiality, Buyer, and any affiliates or customers of Buyer to which Buyer resells the Product delivered by Seller hereunder, will have the right to disclose (i) to any entity or governmental authority having jurisdiction, any information necessary to demonstrate compliance with any RPS, and (ii) to any customer of Buyer or Buyer's affiliates that is participating in any voluntary renewable energy retail electric service customer choice program, the RECs Product content and characteristics.

PARAGRAPH SIX: ADDITIONAL TERMS RESPECTING REMEDIES AND FORCE MAJEURE

6.1 Not a Penalty. The Parties intend that no remedy or amount due hereunder represents a penalty to the Defaulting Party.

6.2 Registry Failure. If a Party is unable to Deliver or receive RECs due to the occurrence of a disruption in Deliveries caused by the applicable Administrator or GIS, as applicable which is not subject to Paragraph 7.11 and is not within the reasonable control of, or the result of the negligence of, such Party, by the exercise of due diligence, such Party was unable to avoid (a "Registry Failure"), it shall provide the other Party with written notice and full details within two (2) Business Days. The Parties will use their best efforts to cause Delivery and give effect to the original intention of the Parties. No Party will be relieved due to a Registry Failure from any obligation to provide any notice or make any payments due.

6.3 Scope of Force Majeure. This Paragraph 6.3 is in addition to and not in replacement of the provisions respecting Force Majeure in the EEI Master Agreement. With respect to Unit Specific RECs, Force Majeure includes events of Force Majeure that disrupt the operation of the specified Renewable Energy Facility. Force Majeure may not be based upon change in Applicable Law or Government Action in a Regulatorily Continuing RECs Transactions. In the case of a Party's obligation to make payments hereunder, Force Majeure will be only an event or act of a Governmental Authority that on any day disables the banking system through which a Party makes such payments.

PARAGRAPH SEVEN: APPLICABLE LAW

7.11 Government Action. The Parties acknowledge that the Applicable Programs, which among other things establish the conditions for a market for certain RECs Products, may

be the subject of Government Action. Unless otherwise provided in a RECs Transaction, Government Action that changes in any respect the value of a RECs Product, without rendering the RECs Product out of compliance with the Applicable Program if Regulatorily Continuing, including the Applicable Program being discontinued, suspended, cancelled, repealed, or otherwise no longer scheduled to proceed, will have no effect on the obligation of the Parties to purchase and sell such RECs Product at the price and on the terms set forth in the RECs Transaction. To the extent that Government Action (i) renders Delivery illegal under Applicable Law, or (ii) makes impossible the trading or transferring of the RECs Product, then promptly after the occurrence of such Government Action, the Parties will use their best efforts to reform the affected RECs Transaction(s) in order to give effect to the original intention of the Parties or transfer the RECs Product under another Applicable Program or method if possible. For purposes of the affected RECs Transaction(s) only, if the Parties are unable, despite such efforts, to reform such RECs Transaction(s) or transfer the RECs Product within ten (10) Business Days following the Government Action, either Party may, at its sole option terminate the affected RECs Transaction(s) without terminating the EEI Master Agreement and with no further payment or performance obligation; provided that the Parties shall make any payments due in accordance with obligations already performed and that portion of whatever has been paid for the quantity of RECs Product not yet Delivered will be refunded by Seller, to the extent it is lawful to do so. If Government Action results in the Applicable Program being superseded by another state, regional or federal renewable energy program, then, Seller shall Deliver either under the existing Applicable Program or under the superseding program, to the extent possible and commercially reasonable. Notwithstanding the foregoing, no RECs Transaction will be affected, cancelled or otherwise impaired by Government Action that is specific to a Party under Applicable Law taken by a Governmental Authority alleging that Party's violation thereof.

7.2 Governing Law. Notwithstanding Section 10.6 of the EEI Master Agreement, the creation, issuance, transfer, tracking and retirement of RECs shall be governed by the laws, rules and regulations of the Applicable Program, if any.

SCHEDULE P-RECS: RECS PRODUCT DEFINED TERMS

"Basic REC" means a REC that consists solely of a Certification of the generation of electricity by a Renewable Energy Resource, without any additional Environmental Attributes.

"Firm" means, with respect to a RECs Transaction, that if either Party fails to perform its obligation to sell and deliver or purchase and receive the RECs Product, the Party to which performance is owed shall be entitled to receive from the Party that failed to perform an amount determined pursuant to Article 4 of the EEI Master Agreement. Force Majeure shall not excuse performance of a Firm RECs Transaction.

"Resource Type Specific" when referring to RECs Product means that the Renewable Energy Facility that has generated or is eligible to generate the RECs Product utilizes a specified type of renewable energy.

"Specified REC" means a REC that includes or excludes specified Environmental Attributes.

"Standard REC" means a REC that includes all Environmental Attributes arising as a result of the generation of electricity associated with the REC, whether such Environmental Attributes have been certified and whether creditable under any existing Applicable Program.

"Unit Contingent" means that Seller is excused from any failure to Deliver RECs Product quantity on account of failure of a specified Renewable Energy Facility to generate the amount of RECs necessary in the Vintage or other time period indicated. In such event, Seller shall not be liable to Buyer for any damages, including any amounts determined pursuant to Article 4.

"Unit Contingent-Allocated" means that Seller is excused from any failure to Deliver RECs Product quantity on account of failure of a specified Renewable Energy Facility to generate the amount of RECs necessary in the Vintage or other time period indicated to satisfy all obligations of RECs delivery to all purchasers as assigned by Seller to the Renewable Energy Facility. In such event, Seller shall not be liable to Buyer for any damages, including any amounts determined pursuant to Article 4.

"Unit Non-specific" means that the Renewable Energy Facility generating the RECs Product need not be specified.

"Unit Specific" means that the Renewable Energy Facility generating the RECs Product is and must be specified.

Schedule 1: Outstanding RECs Transactions

The RECs Transactions set forth below constitute Outstanding RECs Transactions:

Schedule 2: Applicability of Collateral Annex

The Collateral Annex applies to all RECs Transactions except those set forth below:

EXHIBIT A: EXAMPLE RECS CONFIRMATION

RECS TRANSACTION CONFIRMATION BETWEEN

_____

AND

_____

This confirmation ("Confirmation") confirms the transaction ("Transaction") between [ ] ("Seller") and [ ] ("Buyer"), each individually a "Party" and together the "Parties", effective as of [ ], 20[ ] (the "Trade Date"). This Transaction is governed by the pursuant to the terms of the EEI Master Power Purchase and Sale Agreement between them dated _____, 20[ ] and the EEI Renewable Energy Certificates Annex dated _____, 20[ ] ("EEI RECs Annex") thereto (collectively, the "Agreement"). Initially capitalized terms used and not otherwise defined herein are defined in the Agreement and Schedule P-RECs or in the Applicable Program.

<table>
<tr><td>Seller: _____</td><td>Buyer: _____</td></tr>
<tr><td>Contact Information:</td><td>Seller
Tel: _____
Fax: _____

Buyer
Tel: _____
Fax: _____</td></tr>
<tr><td>Product:</td><td>
<table>
<tr><th>Type of REC</th></tr>
<tr><td>□ Standard REC</td></tr>
<tr><td>□ Basic REC</td></tr>
<tr><td>□ Other RECs Product [describe]: _____.</td></tr>
</table>

<table>
<tr><th></th><th>Applicable Program</th></tr>
<tr><td></td><td>□ United States Renewable Energy Standard</td></tr>
<tr><td></td><td>□ California RPS</td></tr>
<tr><td></td><td>□ _____ RPS</td></tr>
<tr><td></td><td></td></tr>
<tr><td></td><td>□ Certified by Green-e Energy Center For Resource Solutions or Green-e approved entity</td></tr>
<tr><td></td><td>□ Certifiable by Green-e Energy Center For Resource Solutions</td></tr>
<tr><td></td><td>□ Other _____</td></tr>
<tr><td></td><td>□ None</td></tr>
</table>

<table>
<tr><th>Product: (Check One):</th></tr>
<tr><td>□ Firm</td></tr>
<tr><td>□ Unit Contingent</td></tr>
<tr><td>□ Unit Contingent-Allocated</td></tr>
<tr><td>□ Unit Specific:</td></tr>
</table>

<table>
<tr><th>Certifier</th></tr>
<tr><td>□ WREGIS</td></tr>
<tr><td>□ Center for Resource Solutions Green-e Energy</td></tr>
<tr><td>□ Other: _____.</td></tr>
</table>
</td></tr>
<tr><td>Contract Quantity:</td><td>[[ ] MWh/[ ] RECs]</td></tr>
<tr><td>Vintage:

Reporting Year:</td><td>_____
_____</td></tr>
</table>

Renewable Energy Resource (if applicable):	**Name of Facility(ies):**	
	Location:	
	EIA Number:	
	California Energy Commission ID (or other Applicable Program Renewable Energy Facility Certifier ID:	
	GIS ID:	
	Certification Date:	
	On-line Date:	
Resource-Type (if applicable)		
Contract Price:	Vintage _____ [$[ ]/MWh/$[ ] REC] Vintage _____[$[ ]/MWh/$[ ] REC] Vintage _____[$[ ]/MWh/$[ ] REC] Vintage _____[$[ ]/MWh/$[ ] REC]	
Delivery Term:	The Delivery Term of this Transaction shall commence on [ ], 20[ ] and shall continue until [delivery by Seller to Buyer of the Product has been completed/[ ], 20[ ]].	
Alternate Payment Terms:	□ Prepay □ Payment under Article Six of EEI Master Agreement based on time of upon Delivery of electricity with which RECs Product is associated, if applicable □ Payment upon Delivery of GIS Certificates	
Allocation of Change in Law Risk: (check one)	Seller's representations of compliance with the Applicable Program in Paragraph 5.2 are: □ made as of the Trade Date; □ made as of each Delivery Date during the Delivery Term and hence Regulatorily Continuing; □ excluded and shall not apply to this Transaction.	
Delivery Point:	□ Buyer's GIS account (specify account information) □ Other _____	
Alternate Title Transfer	□ Title transfers from Seller to Buyer upon the completion of both Delivery and payment for the RECs □ Title transfers from Seller to Buyer upon the completion of Delivery of the RECs, regardless of payment	
Additional Terms:	The following additional terms shall apply: _____	

The Parties agree to the RECs Transaction set forth herein.

[Seller]
Signed:_____

[Buyer]
Signed:_____

Name:_____ Name:_____

EXHIBIT B: EXAMPLE RECS CONFIRMATION
RECS TRANSACTION
CONFIRMATION

To: _____

From:
Confirmation Administration

This confirms a RECs Transaction between Buyer and Seller for the sale, purchase and delivery of Renewable Energy Certificates ("RECs") pursuant to the terms of the EEI Master Power Purchase and Sale Agreement between them dated [_____] and the EEI Renewable Energy Certificates Annex dated [_____] ("EEI RECs Annex") thereto (collectively, the "Agreement"). Initially capitalized terms used and not otherwise defined herein are defined in the Agreement and Schedule P-RECs.

Trade Date _____

Seller: _____

Buyer: _____

Type of RECs Product: (__) Standard RECs
(__) Unit Contingent-Allocated

1. Amount: Number of RECs: _____MWh
2. Vintage: ____
3. Price: $_____/MWh for RECs
4. Delivery Date: _____
5. Method of Transfer: ___ Attestation ___ GIS specified as _____
6. Renewable Energy Facility: _____ Renewable Energy Source: _____
7. Seller represents that these RECs are compliant with the following Applicable Programs:
   _____ [list] as of the Trade Date or,
   (___) [check only if applicable] Regulatorily Continuing and as of the Delivery Date.

The Parties agree to the RECs Transaction set forth herein.

[Seller]	[Buyer]
Signed:_____	Signed:_____
Name:_____	Name:_____

Renewable Energy Certificate Record Keeping: Seller will deliver, to the extent applicable, the Attestation in a form similar to that attached hereto, or in such other form as may be required from time to time by such Certifier or as may from time to time be mutually agreed to by the Parties pursuant to the terms of the Applicable Program.

EXHIBIT C
EXAMPLE ATTESTATION

I, _____, as the authorized representative of [Company Name] ("Generator") declare that Generator hereby sells, transfers and delivers to Buyer the RECs Product (including, unless otherwise specified, all Environmental Attributes and RECs Product Reporting Rights) associated with the generation and delivery of energy to Buyer from the Renewable Energy Facility as described below, in the amount of one REC for each megawatt hour generated as Delivery of [RECs Product], and that the RECs sold hereunder:

1. were generated by the following Renewable Energy Facilities and sold, subject to receipt of payment, to Buyer;
2. qualify as [RECs Product] as of the Trade Date;
3. are solely and exclusively owned by Generator;
4. have not been used by Generator or any third party to meet the RPS or other Applicable Program requirements in another state or jurisdiction;
5. were delivered into the [Delivery Area (e.g. PJM Control Area (as defined by PJM))] and complied with [PJM] energy delivery rules;
6. were not sold to any end-use customer or other wholesale provider other than Buyer during the calendar/Reporting Year; and
7. were not used on-site for generation.

Generator Name or Designation	Technology Type	Fuel Type	Generator Location	EIA #	[RECs Product]	Start and End Dates

As an authorized representative of Generator, I state that the above statements are true and correct to the best of my knowledge. This Attestation may serve as a Bill of Sale to confirm, in accordance with the Agreement, the transfer from Generator to Buyer all of Seller's right, title and interest in and to the RECs Product as set forth above.

_____ Date _____
Name:_____ [notarize if required]

Either Party may disclose this Attestation to others, including the Administrator, Certifier and the public utility commissions having jurisdiction over Buyer, to substantiate and verify the accuracy of the Parties' compliance, advertising and public claims.

Note: If the Applicable Program contemplates certification by green-e or other Applicable Program making use of materials provided by the Center for Resource Solutions, or other voluntary program or protocol, users should consult the most current form of attestation required by such program.

EDISON ELECTRIC INSTITUTE

(i)

11.51 Uniform Commercial Code Waiver

11.52 Version 1.0 February 6, 2007

Background Statement:

EEI contract users have asked the EEI Drafting Committee to develop language to clarify their intent that the credit assurances provisions set forth in the contract reflect the entirety of the parties contractual, legal, and/or equitable rights to call for financial assurances, including collateral or other credit support, and that neither party may rely on or use law external to the contract, including any implied right arising from Section 2-609 of the Uniform Commercial Code or similar legal doctrines, as a way to require further financial assurances from a party already complying with the express provisions of the contract. Parties should only use this provision if they are comfortable that the four corners of the contract set forth all the circumstances under which they would want credit support from their counterparty. The waiver is limited and is not meant to waive the entirety of Section 2-609 of the Uniform Commercial Code or other legal doctrines to the extent that they relate to matters other than financial assurances.

Some EEI contract users believe that under existing law, this new provision is unnecessary, and that by checking the "Not Applicable" box for "Credit Assurances" on the Cover Sheet, a party has already waived any right implied by the Uniform Commercial Code to request or demand adequate assurances. Some of these users might therefore view this optional provision as unnecessary.

Provision:

Section 8 of the Agreement and, if applicable, the Collateral Annex, set forth the entirety of the agreement of the Parties regarding credit, collateral and adequate assurances. Except as expressly set forth in the

options elected by the Parties in respect of Sections 8.1 and 8.2, in Section 8.3, and in the relevant portions of the Collateral Annex, neither Party:

a) has or will have any obligation to post margin, provide letters of credit, pay deposits, make any other prepayments or provide any other financial assurances, in any form whatsoever, or

b) will have reasonable grounds for insecurity with respect to the creditworthiness of a Party that is complying with the relevant provisions of Section 8 of this Agreement;

and all implied rights relating to financial assurances arising from Section 2-609 of the Uniform Commercial Code or case law applying similar doctrines, are hereby waived.

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Optional Language to make the Master Agreement "Unilateral", i.e., only covering sales from Party A to Party B

The language set forth below may be appropriate for inclusion under the "Other Changes" section of the Cover Sheet if the parties desire to limit the Agreement's applicability only to sales of Products by Party A to Party B.

Other Changes

Unilateral Agreement. The definition of "Transaction" in Section 1.60 is amended to read, in its entirety, as follows:

1.60 "Transaction" means a particular transaction agreed to by the Parties relating to the sale by Party A and the purchase by Party B of a Product pursuant to this Master Agreement.

MARKET PARTICIPANTS CONSIDERING USE OF THIS OR ANY SIMILAR PROVISION ARE ENCOURAGED TO CONSULT THEIR OWN LEGAL COUNSEL TO ENSURE THAT THEIR COMMERCIAL OBJECTIVES WILL BE ACHIEVED AND THEIR LEGAL RIGHTS AND INTERESTS ADEQUATELY PROTECTED.

Gas Annex to the EEI Master Power Purchase & Sale Agreement

Version 2.0
10/16/13

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GAS ANNEX COVER SHEET

This Gas Annex to the EEI Master Power Purchase & Sale Agreement ("Gas Annex") is entered into as of the following date: _____ ("Effective Date"), and is pursuant to the EEI Master Power Purchase & Sale Agreement (including without limitation any amendments, annexes or Cover Sheet thereto which are provided for and incorporated into the EEI Master Power Purchase & Sale Agreement, the "EEI Master Agreement") previously entered into between the Parties. The Gas Annex, together with the EEI Master Agreement (including any Gas Transactions accepted in accordance with Paragraph 1.3 hereto) shall be referred to as the "Agreement." Party A (as defined below) and Party B (as defined below) are referred to individually as the "Party" and collectively as the "Parties." The Parties to this Gas Annex are the following:

Name: _____, a _____ organized under the laws of the State of _____ ("Party A")		**Name:** _____, a _____ organized under the laws of the State of _____ ("Party B")	
Date of the EEI Master Agreement between Party A and Party B:	_____		
Effective Date of Gas Annex:	_____ (the "Gas Annex Effective Date")		
	If the Parties do not specify a Gas Annex Effective Date, the Gas Annex Effective Date shall be the Date of the EEI Master Agreement.		
All Notices:		**All Notices:**	
As set forth on the Cover Sheet to the EEI Master Agreement unless otherwise set forth below:		As set forth on the Cover Sheet to the EEI Master Agreement unless otherwise set forth below:	
Street:		Street:	
City, State, Zip:		City, State, Zip:	
Attn:		Attn:	
Phone:		Phone:	
Facsimile:		Facsimile:	
Email:	[NOTE: Parties should consider	Email:	[NOTE: Parties should consider

	potential implications of email notice and confer with legal counsel before completing this field.]		potential implications of email notice and confer with legal counsel before completing this field.]
Duns:		Duns:	
Federal Tax ID Number:		Federal Tax ID Number:	
Invoices:		**Invoices:**	
As set forth on the Cover Sheet to the EEI Master Agreement unless otherwise set forth below:		As set forth on the Cover Sheet to the EEI Master Agreement unless otherwise set forth below:	
Attn:		Attn:	
Phone:		Phone:	
Facsimile:		Facsimile:	
Email:		Email:	
Nominations:		**Nominations:**	
As set forth on the Cover Sheet to the EEI Master Agreement with respect to "Scheduling" unless otherwise set forth below:		As set forth on the Cover Sheet to the EEI Master Agreement with respect to "Scheduling" unless otherwise set forth below:	
Attn:		Attn:	
Phone:		Phone:	
Facsimile:		Facsimile:	
Email:		Email:	
Confirmations:		**Confirmations:**	
As set forth on the Cover Sheet to the EEI Master Agreement with respect to "All Notices" unless otherwise set forth below:		As set forth on the Cover Sheet to the EEI Master Agreement with respect to "All Notices" unless otherwise set forth below:	
Attn:		Attn:	
Phone:		Phone:	
Facsimile:		Facsimile:	
Email:		Email:	
Option Exercise:		**Option Exercise:**	
As set forth on the Cover Sheet to the EEI Master Agreement with respect to "All Notices" unless otherwise set forth below:		As set forth on the Cover Sheet to the EEI Master Agreement with respect to "All Notices" unless otherwise set forth below:	
Attn:		Attn:	

Phone:		Phone:	
Facsimile:		Facsimile:	
☐ **Wire Transfer - or - ☐ ACH (check one box):**		☐ **Wire Transfer - or - ☐ ACH (check one box):**	
As set forth in the Cover Sheet to the EEI Master Agreement unless otherwise set forth below:		As set forth in the Cover Sheet to the EEI Master Agreement unless otherwise set forth below:	
Bank:		Bank:	
ABA:		ABA:	
Account:		Account:	
Other Details:		Other Details:	

(i) Paragraph One Elections:

1.2 **Alternative Spot Price Index:**	The Parties have agreed to the following Alternative Spot Price Index: [None.]
	If no index is specified, then no Alternative Spot Price Index will apply unless otherwise specified in a Confirmation with respect to a Gas Transaction.
1.3 **Applicability to Outstanding Gas transactions:**	☐ Option A: All Gas transactions outstanding between the Parties in respect of Gas Products as of the Gas Annex Effective Date.
	☐ Option B: All Gas transactions outstanding between the Parties in respect of Gas Products that are specified in Schedule 1 to this Gas Annex.
	☐ Option C: None of the Gas transactions outstanding between the Parties in respect of Gas Products as of the Gas Annex Effective Date.
	If none of the options specified above are selected, Option A shall apply.
1.4 **Outstanding Gas Credit Support:**	☐ Applicable.
	☐ Not Applicable.
	If neither of the options specified above are selected, Paragraph 1.4 shall <u>not</u> apply.

(ii)

(iii)

(iv)

(v) Paragraph Two Elections:

2.2 **Timing of Payments:**	☐ Option A: Payment Netting, with Payment for Gas Transactions and Transactions other than Gas Transactions on the 25th.
	☐ Option B: Payment Netting, with Payment for Gas Transactions and Transactions other than Gas Transactions on the 20th.
	☐ Option C: No Payment Netting, with Payment for Gas Transactions on the 25th.
	☐ Option D: No Payment Netting, with Payment for Gas Transactions on the following date of each month: _____
	If none of the options specified above are selected, Option C shall apply.

(vi) Paragraph Three Elections

3.2 **Remedies For Failure to Deliver/Receive Gas Products:**	☐ Option A: Cover Standard
	☐ Option B: Spot Price Standard
	If neither of the options specified above are selected, Option A shall apply.
3.6 **Governmental Charges (Taxes):**	☐ Option A: Buyer Pays At the Delivery Point
	☐ Option B: Seller Pays Before the Delivery Point
	If neither of the options specified above are selected, Option A shall apply.
3.9 **U.S. Customs:**	☐ Option A: Importer of Record

	☐ Option B: Importer of Record and Provision of North American Free Trade Agreement Certificate of Origin
	If neither of the options specified above are selected, Option A shall apply.

Other changes:

Specify, if any:

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have caused this Gas Annex to be duly executed in one or more counterparts (each of which shall be deemed an original, and all of which, taken together, shall constitute one and the same agreement) effective as of the date specified as the Gas Annex Effective Date. The Parties expressly acknowledge the validity of facsimile counterparts of the executed Gas Annex, if any, which may be transmitted in advance of, or in lieu of, executed original documents.

PARTY A	**PARTY B**
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

GENERAL TERMS OF THE GAS ANNEX TO THE EEI MASTER POWER PURCHASE & SALE AGREEMENT

WHEREAS, Party A and Party B have entered into that certain EEI Master Power Purchase & Sale Agreement, dated as of the date specified on the Gas Annex Cover Sheet (and including without limitation any amendments, annexes or Cover Sheet thereto which are provided for and incorporated into the EEI Master Power Purchase & Sale Agreement, the "EEI Master Agreement"), which EEI Master Agreement governs the terms and conditions pursuant to which the Parties may enter into Transactions relating to the purchase and sale of electric capacity, energy and other products related thereto;

WHEREAS, the Parties desire to enter into this Gas Annex to the EEI Master Agreement to provide for the terms and conditions under which the Parties may enter into Transactions relating to the purchase and sale of natural gas and products related thereto;

WHEREAS, the Gas Annex, together with the EEI Master Agreement, shall be referred to as the "Agreement"; and

NOW, THEREFORE, the Parties agree as follows:

ARTICLE TWELVE: PARAGRAPH ONE: GENERAL TERMS

1.1 Scope of Agreement.

(a) The Parties agree that they are entering into this Gas Annex in order to provide for the terms and conditions pursuant to which the Parties may enter into Transactions (or which, pursuant to Section 1.3 of this Annex, may govern certain Outstanding Gas transactions) for the purchase and sale of natural gas, including any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane, or such similar product otherwise specified by the Parties in a Confirmation and identified as being governed by this Gas Annex. This Gas Annex supplements, forms a part of, and is subject to the Agreement, and each reference to the Agreement shall include this Gas Annex. Unless otherwise expressly amended pursuant to this Gas Annex, all of the terms and conditions set forth in the EEI Master Agreement shall be applicable to Gas Transactions entered into between the Parties. In the event of any inconsistency between a Confirmation with respect to a Gas Transaction and this Gas Annex, the terms of such Confirmation will govern with respect to such Gas Transaction. In the event of any inconsistency among or between the EEI Master Agreement and this Gas Annex, this Gas Annex will govern with respect to Gas Transactions only.

(b) 1.2 Defined Terms.

(a) Capitalized terms used in this Gas Annex but not defined herein shall have the meanings given such terms in the EEI Master Agreement.

(b) Upon execution of this Gas Annex the following definitions and terms in the EEI Master Agreement will be amended as follows:

(i) "Product" means electric capacity, energy, Gas Product(s) or other product(s) related thereto as specified in a Transaction by reference to a Product listed in Schedule P hereto or as otherwise specified by the Parties in the Transaction.

(ii) "Transaction" means a particular transaction or Gas Transaction agreed to by the Parties relating to the sale and purchase of a Product pursuant to this Master Agreement.

(iii) The term "written supplements" in the EEI Master Agreement shall apply to annexes to the EEI Master Agreement, and shall include this Gas Annex.

(c) For purposes of this Gas Annex the following definitions shall apply:

"Alternative Damages" means such damages, expressed U.S. Dollars or in U.S. Dollars per MMBtu, as the Parties shall agree upon with respect to a Gas Transaction, in the event either Seller fails to perform a Firm obligation to deliver Gas or Buyer fails to perform a Firm obligation to receive Gas.

"Alternative Spot Price Index" if any, has the meaning specified in the Gas Annex Cover Sheet or, with respect to a particular Gas Transaction, means the Alternative Spot Price Index specified in the Confirmation in respect of such Gas Transaction.

"British thermal unit" or "Btu" means the International BTU, which is also called the Btu (IT).

"Contract Price" means the amount expressed in U.S. Dollars per MMBtu to be paid by Buyer to Seller for the purchase of Gas as agreed to by the Parties in a Gas Transaction.

"Contract Quantity" means the quantity of Gas to be delivered and taken as agreed to by the Parties in a Gas Transaction.

"Cover Standard" means that if there is an unexcused failure to take or deliver any quantity of Gas pursuant to this Gas Annex, then the performing Party shall use commercially reasonable efforts to (a) if Buyer is the performing Party, obtain Gas, (or an alternate fuel if elected by Buyer and replacement Gas is not available), or (b) if Seller is the performing Party, sell Gas, in either case, at a price reasonable for the delivery or production area, as applicable, consistent with: the amount of notice provided by the nonperforming Party; the immediacy of the Buyer's Gas consumption needs or Seller's Gas sales requirements, as applicable; the quantities involved; and the anticipated length of failure by the nonperforming Party.

"Day" means a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter with respect to a particular Gas Transaction.

"EFP" means the purchase, sale or exchange of natural gas as the "physical" side of an exchange for physical transaction involving gas futures contracts. EFP shall incorporate the meaning and remedies of "Firm", provided that a Party's excuse for nonperformance of its obligations to deliver or receive Gas will be governed by the rules of the relevant futures exchange regulated under the Commodity Exchange Act (7 U.S.C. §1 et. seq., as amended).

"Firm" means that either Party may interrupt its performance without liability only to the extent that such performance is prevented for reasons of Force Majeure; provided, however, that during Force Majeure interruptions, the Party invoking Force Majeure may be responsible for any Imbalance Charges as set forth in Paragraph 3.4(c) related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by the Transporter.

"Floating Price" means a Contract Price or factor of a Contract Price specified in a Transaction based upon a Price Source.

"Force Majeure" shall have the meaning specified in Paragraph 3.3 of this Gas Annex.

"Gas" means any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.

"Gas Product" or "Gas Products" means products involving the purchase and sale of Gas or such similar product as otherwise specified by the Parties in the Transaction.

"Gas Transaction" means a particular Transaction with respect to which the Product is a Gas Product.

"Imbalance Charges" means any fees, penalties, costs or charges (in cash or in kind) assessed by a Transporter for failure to satisfy the Transporter's balance and/or nomination requirements.

"Interruptible" means that either Party may interrupt its performance at any time for any reason, whether or not caused by an event of Force Majeure, with no liability except such interrupting Party may be responsible for any Imbalance Charges as set forth in Paragraph 3.4(c) related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by Transporter.

"MMBtu" means one million British thermal units, which is equivalent to one dekatherm.

"Price Source" means, in respect of a Transaction, the publication (or such other origin of reference, including an Exchange) containing (or reporting) the specified price (or prices from which the specified price is calculated) specified in the relevant Transaction.

"Receiving Transporter" means the Transporter receiving Gas at a Delivery Point, or absent such receiving Transporter, the Transporter delivering Gas at a Delivery Point.

"Scheduled Gas Quantity" means the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.

"Specified Spot Price Index" means, unless an Alternative Spot Price Index is specified in the Gas Annex Cover Sheet or in a Confirmation with respect to a Gas Transaction, the column captioned "Midpoint" in the "Daily price survey" table set forth in the *Gas Daily* publication published by Platts, or any successor publication thereto, under the listing applicable to the geographic location closest in proximity to the Delivery Point(s). If an Alternate Spot Price Index is specified in the Gas Annex Cover Sheet, or in a Confirmation with respect to a Gas Transaction, the Specified Spot Price Index means the Alternative Spot Price Index so specified.

"Spot Price" means the price listed in the Specified Spot Price Index for the relevant Day; provided, if there is no single price published in the Specified Spot Price Index for such location for such Day, but there is published a range of prices, then the Spot Price shall be the average of such high and low prices. If no price or range of prices is published for such Day, then the Spot Price shall be the average of the following: (a) the price (determined as stated above) for the first Day for which a price or range of prices is published that next precedes the relevant Day; and (a) the price (determined as stated above) for the first Day for which a price or range of prices is published that next follows the relevant Day.

"Termination Event" means the contractual right of a Party to terminate a Gas Transaction in the event that the other Party fails to perform a Firm obligation to deliver Gas in the case of Seller, or to receive Gas in the case of Buyer, for a designated number of Days during a period as specified in the applicable Confirmation.

"Transporter(s)" shall mean all Gas gathering or pipeline companies, or local distribution companies, acting in the capacity of a transporter, transporting Gas for Seller or Buyer upstream or downstream, respectively, of the Delivery Point pursuant to a particular Gas Transaction.

1.3 Applicability to Outstanding Gas transactions. Those Gas transactions that were entered into between the Parties prior to the Gas Annex Effective Date and designated on the Gas Annex Cover Sheet ("Outstanding Gas transactions") shall, unless the Parties otherwise agree in writing with respect to one or more specific Outstanding Gas transactions, be Gas Transactions for purposes of the Agreement and shall, from and after the Gas Annex Effective Date, be subject to the terms and conditions of the Agreement. Each confirmation evidencing such Outstanding Gas transactions shall be deemed to be a "Confirmation" under and as defined in the Agreement. In the event that a confirmation is issued or entered into with respect to any Outstanding Gas transaction pursuant to the terms of any other master agreement or contains terms and conditions that are not directly related to the commercial terms of such Outstanding Gas transaction and are inconsistent with or duplicative of the terms and conditions contained in the Agreement (such other master agreement or the portion of such confirmation containing such terms and conditions, the "Outstanding Master Agreement") then, notwithstanding any provision of the Outstanding Master Agreement to the contrary, the terms of the Agreement shall

automatically supersede such Outstanding Master Agreement as of the Gas Annex Effective Date.

1.4 Outstanding Gas Credit Support. If this Paragraph 1.4 is specified as applicable in the Gas Annex Cover Sheet:

(a) To the extent that any collateral, margin, security, cash or other similar credit support (collectively, but excluding any guaranty, the "Outstanding Gas Credit Support") is held by a Party in connection with the obligations of the other Party under any Outstanding Gas transactions, such Outstanding Gas Credit Support shall be deemed to have been delivered in connection with this Agreement.

(b) The Parties further agree that, with respect to any Outstanding Gas Credit Support, if the Parties have entered into a Collateral Annex or other agreement similar in connection with the Agreement or have specified that the relevant provisions of Sections 8.1 and/or 8.2 of the EEI Master Agreement are applicable (such Collateral Annex, other agreement or the relevant provisions of the EEI Master Agreement, the "Existing EEI Credit Support"), such Existing EEI Credit Support shall constitute credit support or Performance Assurance, as applicable, provided under this Outstanding Gas Credit Support Paragraph in respect of Outstanding Gas transactions, effective as of the date agreed by the Parties.

(c) In the event that a Party delivered a guaranty in support of its obligations under any Outstanding Gas transactions or an Outstanding Master Agreement, such Party represents and warrants that any amendments necessary to ensure that such guaranty continues to extend to the Gas Transactions under the Gas Annex have been made prior to the Gas Annex Effective Date.

(d) The Parties agree that they will enter into any necessary amendments to any other Outstanding Gas Credit Support as may be necessary to give full effect to the terms of this Paragraph 1.4.

PARAGRAPH TWO: AMENDMENTS TO THE EEI MASTER AGREEMENT

2.1 Payment and Netting. In accordance with Section 6.1 of the EEI Master Agreement, Seller shall invoice Buyer for Gas delivered and received in the preceding calendar month and for any other applicable charges, providing supporting documentation acceptable in industry practice to support the amount charged. If the actual quantity delivered is not known by the billing date, the invoice will be prepared based on the Scheduled Gas Quantity. The invoiced quantity will then be adjusted to the actual quantity on the following calendar month's invoice or as soon thereafter as actual delivery information is available. Any dispute or adjustment of invoices shall be addressed in accordance with Section 6.3 of the EEI Master Agreement.

(c) 2.2 Timeliness of Payment. With respect to all Transactions:

(a) The first sentence of Section 6.2 of the EEI Master Agreement is hereby amended and restated as follows in accordance with the option selected on the Gas Annex Cover Sheet:

Option A: Payment Netting, with Payment for Gas Transactions and all other Transactions on the 25th.

"Unless otherwise agreed by the Parties in a Transaction, all payments with respect to both Gas Transactions and all other Transactions under this EEI Master Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twenty-fifth (25th) day of each month or the tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day."

Option B: Payment Netting, with Payment for Gas Transactions and all other Transactions on the 20th.

"Unless otherwise agreed by the Parties in a Transaction, all payments with respect to both Gas Transactions and all other Transactions under this EEI Master Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month or the tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day."

Option C: No Payment Netting, with Payment for Transactions other than Gas Transactions on the 20th and for Gas Transactions on the 25th.

"Unless otherwise agreed by the Parties in a Transaction, (i) all payments with respect to Transactions other than Gas Transactions under this EEI Master Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month or the tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day and (ii) all payments with respect to Gas Transactions under this EEI Master Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twenty-fifth (25th) day of each month or the tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day."

Option D: No Payment Netting, with Payment for Transactions other than Gas Transactions on the 20th and for Gas Transactions on a Specified Date.

"Unless otherwise agreed by the Parties in a Transaction, (i) all payments with respect to Transactions other than Gas Transactions under this EEI Master Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month or the tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day and (ii) all payments with respect to Gas Transactions under this EEI Master Agreement shall be due and payable in

accordance with each Party's invoice instructions on or before the later of date specified in Gas Annex Cover Sheet or the tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day."

(b) Section 6.2 of the EEI Master Agreement is hereby further amended by, as applicable, either (x) adding at the end thereof the following sentence or (y) to the extent that the Parties have previously agreed to an analogous amendment to Section 6.2 of the EEI Master Agreement, amending and restating the last sentence of Section 6.2 as follows:

"Notwithstanding the foregoing, all payments with respect to Transactions that relate to Products other than Gas Products and Power Products shall be due and payable on such dates as are specified in the annexes applicable to such Products."

PARAGRAPH THREE: SUPPLEMENTS TO THE EEI MASTER AGREEMENT FOR GAS TRANSACTIONS

Notwithstanding any analogous provision of the EEI Master Agreement (including, but not limited to, Section 9.2, Sections 3.2 and 3.3, and Article Four thereof), unless otherwise specified in the Gas Annex Cover Sheet, the following provisions shall apply with respect to all Gas Transactions.

3.1 Specific EEI Master Agreement Changes Relating Only to Gas Transactions: With respect to Gas Transactions only:

(a) *Confirmations*. Section 2.3 of the EEI Master Agreement is hereby amended to add the phrase "with respect to Power Transactions and substantially in the form of Exhibit A to the Gas Annex with respect to Gas Transactions" after the reference "Exhibit A" in each instance set forth therein.

(b) *Remedies for Failure to Deliver/Receive*. Sections 3.6 (if applicable), 5.1(c), 6.4, and 6.5 of the EEI Master Agreement are hereby amended by adding the phrase "with respect to Power Products and Paragraph 3.2 of the Gas Annex with respect to Gas Products" after the first reference to "Article Four" in each instance set forth therein.

(c) *Mobile-Sierra Standard applicable to Gas Transactions*. The following new Section is hereby added to Article Ten of the EEI Master Agreement at the end thereof:

To the extent that a Gas Transaction does not qualify as a "first sale" as defined by the Natural Gas Act and §§ 2 and 601 of the Natural Gas Policy Act, each Party irrevocably waives its rights, including its rights under §§ 4-5 of the Natural Gas Act, unilaterally to seek or support a change in the rate(s), charges, classifications, terms or conditions of this Gas Annex, any Gas Transaction hereunder or any other agreements entered into in connection with this Agreement (collectively, the "Covered Agreements"). By this provision, each Party

expressly waives its right to seek or support: (i) an order from the U.S. Federal Energy Regulatory Commission ("FERC") finding that the market-based rate(s), charges, classifications, terms or conditions agreed to by the Parties under the Covered Agreements are unjust and unreasonable; or (ii) any refund with respect thereto. Each Party agrees not to make or support such a filing or request, and that these covenants and waivers shall be binding notwithstanding any regulatory or market changes that may occur hereafter. Absent the agreement of all Parties to the proposed change, the standard of review for changes to any section of the Covered Agreements proposed by a Party (to the extent that any waiver as set forth in this Section 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 Morgan Stanley Capital Group Inc. v. Pub. Util. Dist. No. 1 of Snohomish County, 128 S. Ct. 2733 (2008) and NRG Power Marketing LLC v. Maine Pub. Util. Comm'n, 558 U.S. 165 (2010) (the "Mobile-Sierra" doctrine).

[NOTE: Parties who have an existing EEI Master Agreement for electric capacity, energy or other related Products should consider separately adopting the Mobile-Sierra provision for such Products, as the Mobile-Sierra provision above is applicable *only* to Gas Transactions entered into pursuant to the EEI Gas Annex. A Mobile-Sierra provision appropriate for application to such electric Products can be found on the EEI website, on the "Miscellaneous" page, under the heading "Miscellaneous Provisions for Use with the EEI Master Contract" at:

http://www.eei.org/resourcesandmedia/mastercontract/Pages/Miscellaneous.aspx
].

3.2 Remedy for Failure to Deliver/Receive Gas Products. Article Four of the EEI Master Agreement shall not apply to any Gas Transaction. In the event of a breach of a Firm obligation to deliver or receive Gas, unless Alternative Damages are specified as applying in a Confirmation signed by both Parties, the Parties agree that:

Option A: Cover Standard. The sole and exclusive remedy of the Parties in the event of a breach of a Firm obligation to deliver or receive Gas shall be recovery of the following: (a) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the positive difference, if any, between the purchase price paid by Buyer utilizing the Cover Standard and the Contract Price, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually delivered by Seller for such Day(s) excluding any quantity for which no replacement is available; or (b) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in the amount equal to the positive difference, if any, between the Contract Price and the price received by Seller utilizing the Cover Standard for the resale of such Gas, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually taken by Buyer for such Day(s) excluding any quantity for which no sale is

available; and (c) in the event that Buyer has used commercially reasonable efforts to replace the Gas or Seller has used commercially reasonable efforts to sell the Gas to a third Party, and no such replacement or sale is available for all or any portion of the Contract quantity of Gas, then in addition to (i) or (ii) above, as applicable, the sole and exclusive remedy of the performing Party with respect to the Gas not replaced or sold shall be an amount equal to any unfavorable difference between the Contract Price and the Spot Price, adjusted for such transportation to the applicable Delivery Point, multiplied by the quantity of Gas not replaced or sold. Imbalance Charges shall not be recovered under this Paragraph 3.2, but Seller and/or Buyer shall be responsible for Imbalance Charges, if any, as provided in Paragraph 3.4(c) of this Gas Annex. The amount of such unfavorable difference shall be payable five Business Days after presentation of the performing Party's invoice, which shall set forth the basis upon which such amount was calculated.

Option B: Spot Price Standard. The sole and exclusive remedy of the Parties shall be recovery of the following: (a) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Seller and received by Buyer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the Contract Price from the Spot Price; or (b) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Seller and received by Buyer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the applicable Spot Price from the Contract Price. Imbalance Charges shall not be recovered under this Paragraph 3.2, but Seller and/or Buyer shall be responsible for Imbalance Charges, if any, as provided in Paragraph 3.4(c) of this Gas Annex. The amount of such unfavorable difference shall be payable five Business Days after presentation of the performing Party's invoice, which shall set forth the basis upon which such amount was calculated

If the Parties do not specify either Option A or Option B as applicable in the Gas Annex Cover Sheet, Option B shall apply.

In addition to Option A and Option B above, the Parties may provide for a Termination Event in a Confirmation executed in writing by both Parties. The Confirmation containing the Termination Event will designate the length of nonperformance triggering the Termination Event and the procedures for exercise thereof, how damages for nonperformance will be compensated, and how liquidation costs will be calculated.

3.3 Force Majeure. Section 3.3 of the EEI Master Agreement shall not apply to any Gas Transaction, and the Force Majeure provisions below shall govern with respect to Gas Transactions.

(a) Except with regard to a Party's obligation to make payment(s) due under Articles Six and Eight of the EEI Master Agreement, Section 5.3 of the EEI Master Agreement and payment of Imbalance Charges under Paragraph 3.4(c) of this Gas Annex, neither Party shall be liable to the other for failure to perform a Firm obligation in respect of a Gas Transaction to the extent such failure was caused by

Force Majeure. The term "Force Majeure" for purposes of this Gas Annex means any cause not reasonably within the control of the Party claiming suspension, as further defined in Paragraph 3.3(b) of this Gas Annex.

(b) Force Majeure shall include, but not be limited to, the following: (i) physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes, which result in evacuation of the affected area, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery or equipment or lines of pipe; (ii) weather related events affecting an entire geographic region, such as low temperatures which cause freezing or failure of wells or lines of pipe; (iii) interruption and/or curtailment of Firm transportation and/or storage by Transporters; (iv) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections or wars, or acts of terror; and (v) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, regulation, or policy having the effect of law promulgated by a governmental authority having jurisdiction. Seller and Buyer shall make reasonable efforts to avoid the adverse impacts of a Force Majeure and to resolve the event or occurrence once it has occurred in order to resume performance.

(c) Neither Party shall be entitled to the benefit of the provisions of Force Majeure to the extent performance is affected by any or all of the following circumstances: (i) the curtailment of interruptible or secondary Firm transportation unless primary, in-path, Firm transportation is also curtailed; (ii) the Party claiming excuse failed to remedy the condition and to resume the performance of such covenants or obligations with reasonable dispatch; or (iii) economic hardship, to include, without limitation, Seller's ability to sell Gas at a higher or more advantageous price than the Contract Price, Buyer's ability to purchase Gas at a lower or more advantageous price than the Contract Price, or a regulatory agency disallowing, in whole or in part, the pass through of costs resulting from this Agreement; (iv) the loss of Buyer's market(s) or Buyer's inability to use or resell Gas purchased hereunder, except, in either case, as provided in Paragraph 3.3(b) of this Gas Annex; or (v) the loss or failure of Seller's gas supply or depletion of reserves, except, in either case, as provided in Paragraph 3.3(b) of this Gas Annex. The Party claiming Force Majeure shall not be excused from its responsibility for Imbalance Charges.

(d) Notwithstanding anything to the contrary herein, the Parties agree that the settlement of strikes, lockouts or other industrial disturbances shall be within the sole discretion of the Party experiencing such disturbance.

(e) The Party whose performance is prevented by Force Majeure must provide notice to the other Party. Initial notice may be given orally; however, written notice with reasonably full particulars of the event or occurrence is required as soon as reasonably possible. Upon providing written notice of Force Majeure to the other Party, the affected Party will be relieved of its obligation, from the onset of the Force Majeure event, to make or accept delivery of Gas, as applicable, to the

extent and for the duration of Force Majeure, and neither Party shall be deemed to have failed in such obligations to the other during such occurrence or event.

(f) Notwithstanding Paragraphs 3.3(b) and 3.3(c) of this Gas Annex, the Parties may agree to alternative Force Majeure provisions with respect to a Gas Transaction in a Confirmation executed in writing by both Parties.

3.4 Transportation, Nominations and Imbalances. Section 3.2 of the EEI Master Agreement shall not apply to any Gas Transaction, and the provisions below shall govern with respect to Gas Products:

(a) Seller shall have the sole responsibility for transporting the Gas to the Delivery Point(s). Buyer shall have the sole responsibility for transporting the Gas from the Delivery Point(s).

(b) The Parties shall coordinate their nomination activities, giving sufficient time to meet the deadlines of the affected Transporter(s). Each Party shall give the other Party timely prior notice, sufficient to meet the requirements of all Transporter(s) involved in the Gas Transaction, of the quantities of Gas to be delivered and purchased each Day. Should either Party become aware that actual deliveries at the Delivery Point(s) are greater or lesser than the Scheduled Gas, such Party shall promptly notify the other Party.

(c) The Parties shall use commercially reasonable efforts to avoid imposition of any Imbalance Charges. If Buyer or Seller receives an invoice from a Transporter that includes Imbalance Charges, the Parties shall determine the validity as well as the cause of such Imbalance Charges. If the Imbalance Charges were incurred as a result of Buyer's receipt of quantities of Gas greater than or less than the Scheduled Gas, then Buyer shall pay for such Imbalance Charges or reimburse Seller for such Imbalance Charges paid by Seller. If the Imbalance Charges were incurred as a result of Seller's delivery of quantities of Gas greater than or less than the Scheduled Gas, then Seller shall pay for such Imbalance Charges or reimburse Buyer for such Imbalance Charges paid by Buyer.

3.5 Quality and Measurement. All Gas delivered by Seller shall meet the pressure, quality and heat content requirements of the Receiving Transporter. The unit of quantity measurement for purposes of Gas Transactions shall be one MMBtu dry. Measurement of Gas quantities hereunder shall be in accordance with the established procedures of the Receiving Transporter.

3.6 Governmental Charges (Taxes). Notwithstanding the first two sentences of Section 9.2 of the EEI Master Agreement, the following elections are applicable to the Gas Annex:

Option A: Buyer Pays At and After the Delivery Point. Seller shall pay or cause to be paid all taxes, fees, levies, penalties, licenses or charges imposed by any government authority ("Taxes") on or with respect to the Gas prior to the Delivery Point(s). Buyer shall pay or cause to be paid all Taxes on or with respect to the Gas at the Delivery

Point(s) and all Taxes after the Delivery Point(s). If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, the Party responsible for such Taxes shall promptly reimburse the other Party for such Taxes. Any Party entitled to an exemption from any such Taxes or charges shall furnish the other Party any necessary documentation thereof

Option B: Seller Pays Before and At the Delivery Point. Seller shall pay or cause to be paid all taxes, fees, levies, penalties, licenses or charges imposed by any government authority ("Taxes") on or with respect to the Gas prior to the Delivery Point(s) and all Taxes at the Delivery Point(s). Buyer shall pay or cause to be paid all Taxes on or with respect to the Gas after the Delivery Point(s). If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, the Party responsible for such Taxes shall promptly reimburse the other Party for such Taxes. Any Party entitled to an exemption from any such Taxes or charges shall furnish the other Party any necessary documentation thereof.

If the Parties do not specify either Option A or Option B as applicable in the Gas Annex Cover Sheet, Option A shall apply.

3.7 Market Disruption Events.

If a Market Disruption Event has occurred then the Parties shall negotiate in good faith to agree on a replacement price for the Floating Price (or on a method for determining a replacement price for the Floating Price) for the affected Day, and if the Parties have not so agreed on or before the second Business Day following the affected Day then the replacement price for the Floating Price shall be determined within the next two following Business Days with each Party obtaining, in good faith and from non-affiliated market participants in the relevant market, two quotes for prices of Gas for the affected Day of a similar quality and quantity in the geographical location closest in proximity to the Delivery Point and averaging the four quotes. If either Party fails to provide two quotes then the average of the other Party's two quotes shall determine the replacement price for the Floating Price. If both Parties fail to provide two quotes, then the Parties shall use the average of all of quotes actually obtained to determine the replacement price for the Floating Price. "Market Disruption Event" means, with respect to an index specified for a Gas Transaction, any of the following events: (a) the failure of the index to announce or publish information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading on the exchange or market acting as the index; (c) the temporary or permanent discontinuance or unavailability of the index; (d) the temporary or permanent closing of any exchange acting as the index; or (e) both Parties agree that a material change in the formula for or the method of determining the Relevant Price has occurred. For the purposes of the calculation of a replacement price for the Relevant Price, all numbers shall be rounded to three decimal places. If the fourth decimal number is five or greater, then the third decimal number shall be increased by one, and if the fourth decimal number is less than five, then the third decimal number shall remain unchanged.

3.8 Title, Warranty and Indemnity relating to Gas Transactions.

(a) Unless otherwise specifically agreed, title to the Gas shall pass from Seller to Buyer at the Delivery Point(s). Seller shall have responsibility for and assume any liability with respect to the Gas prior to its delivery to Buyer at the specified Delivery Point(s). Buyer shall have responsibility for and assume any liability with respect to said Gas after its delivery to Buyer at the Delivery Point(s).

(b) Seller warrants that it will have the right to convey and will transfer good and merchantable title to all Gas sold hereunder and delivered by it to Buyer, free and clear of all liens, encumbrances, and claims. EXCEPT AS PROVIDED IN THIS PARAGRAPH 3.8, ALL OTHER WARRANTIES WITH RESPECT TO GAS, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE, ARE DISCLAIMED.

(c) Seller agrees to indemnify Buyer and save it harmless from all losses, liabilities or claims including reasonable attorneys' fees and costs of court ("Claims"), from any and all persons, arising from or out of claims of title, personal injury (including death) or property damage from said Gas or other charges thereon which attach before title passes to Buyer. Buyer agrees to indemnify Seller and save it harmless from all Claims, from any and all persons, arising from or out of claims regarding payment, personal injury or property damage from said Gas or other charges thereon which attach after title passes to Buyer.

(d) Notwithstanding the other provisions of this Paragraph 3.8 of this Gas Annex, as between Seller and Buyer, Seller will be liable for all Claims to the extent that such arise from the failure of Gas delivered by Seller to meet the quality requirements of Paragraph 3.5 of this Gas Annex.

3.9 U.S. Customs.

The Parties may elect to apply one of the following options:

Option A: Importer of Record. In the event Seller took title to Gas under a Gas Transaction outside the Customs Territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States 19 U.S.C. §1202, General Notes, page 3) for delivery to the Buyer within the Unites States, Seller represents and warrants that it is the importer of record for all Gas entered and delivered into the United States, and shall be responsible for entry and entry summary filings as well as the payment of duties, taxes and fees, if any, and all applicable record keeping requirements.

Option B: Importer of Record and Provision of North American Free Trade Agreement Certificate of Origin. If checked, both (i) and (ii) shall apply.

(i) In the event Seller took title to Gas under a Gas Transaction outside the Customs Territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States 19 U.S.C. §1202, General Notes, page 3) for delivery to the Buyer within the United States, Seller represents and warrants that it is the importer of record for all Gas entered and delivered into the United States, and shall be responsible for entry and entry summary filings as well as the payment of duties, taxes and fees, if any, and all applicable record keeping requirements; and

(ii) In the event that Seller sells Gas under a Gas Transaction outside the Customs Territory of the United States for delivery to the Buyer within the United States, Seller agrees to provide to Buyer within two Business Days of the sale a fully executed North American Free Trade Agreement Certificate of Origin.

If neither option is checked, then Option A shall apply.

3.10 UCC. Each Party agrees that notwithstanding any provisions of law relating to adequate assurance of future performance, including without limitation Article 2-609 of the UCC, the Parties shall only be entitled to request adequate assurance as specifically provided in the Agreement, including the Collateral Annex thereto. For purposes of the foregoing, UCC means the Uniform Commercial Code as adopted by the jurisdiction governing the Parties and the Gas Transactions. Any section references are to the Model Uniform Commercial Code and are intended to correspond to the same substantive provisions contained in the specific codes adopted in the controlling jurisdictions, to the extent that section references differ.

OFFICE OF THE MAYOR
SAN FRANCISCO

EDWIN M. LEE
MAYOR

181123

TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: Mayor Edwin M. Lee
RE: Purchase and Sale of Electricity and Related Products and Services for CleanPowerSF – Public Utilities Commission
DATE: November 3, 2015

Attached for introduction to the Board of Supervisors is an ordinance conditionally authorizing the Public Utilities Commission (PUC) to enter into one or more agreements requiring expenditures of $10,000,000 or more for electric power and related products and services to launch the City's community choice aggregation program, CleanPowerSF, and authorizing the General Manager of the PUC to deviate from certain otherwise applicable requirements of City law in such agreements.

Please note that this legislation is co-sponsored by President Breed.

I respectfully request that this item be calendared in Budget & Finance Committee on November 18, 2015.

Should you have any questions, please contact Nicole Elliott (415) 554-7940.

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