Department of Water and Power the City of Los Angeles

ANTONIO R. VILLARAIGOSA
Mayor

Commission
NICK PATSAOURAS, *President*
EDITH RAMIREZ, *Vice President*
LEE KANON ALPERT
WALLY KNOX
FORESCEE HOGAN-ROWLES
BARBARA E. MOSCHOS, *Secretary*

H. DAVID NAHAI,
Chief Executive Officer and General Manager

RECEIVED
AUG 13 2008
KAREN E. KALFAYAN

August 8, 2008

The Honorable City Council
City of Los Angeles
Room 395, City Hall
Los Angeles, California 90012

Dear Members:

Subject: Renewable Willow Creek Wind Project Power Purchase Agreement (LADWP No. BP 08-013) with Willow Creek Energy, LLC

Pursuant to Charter Section 647(a)(2), enclosed for approval by your Honorable Body is Resolution No. 009-023, adopted by the Board of Water and Power Commissioners (Board) on August 5, 2008, approved as to form and legality by the City Attorney, which authorizes execution of a Renewable Willow Creek Wind Project Power Purchase Agreement (LADWP No. BP 08-013) with Willow Creek Energy, LLC, to allow LADWP to purchase 72 megawatts of renewable wind energy from Willow Creek Energy. This resolution also authorizes the LADWP Board to act on all future amendments to this agreement without further City Council approval. As directed by the Board, transmitted to you are supporting documents.

If there are any questions regarding this item, please contact Ms. Winifred Yancy, DWP Council Liaison at (213) 367-0025, or Mr. Randy S. Howard at (213) 367-0381.

Sincerely,

Barbara E. Moschos

Barbara E. Moschos
Board Secretary

BEM:oja
Enclosures: DWP Resolution
Board Letter
Power Purchase Agreement (LADWP No. BP 08-013)

(Ordinance transmitted under separate cover)

c/enc: Mayor Antonio Villaraigosa
Ms. Jan C. Perry, Chair, Energy and the Environment Committee
Mr. Gerry F. Miller, Chief Legislative Analyst
Ms. Karen L. Sisson, City Administrative Officer
Mr. Rafael Prieto, Legislative Analyst, CLA
Mr. William R. Koenig, Chief Administrative Analyst
Ms. Winifred Yancy
Mr. Randy S. Howard

ADOPTED AS AMENDED AT AUGUST 5, 2008 BOARD MEETING SEE ATTACHED VERBAL MOTION.

RESOLUTION NO. 009 023

WHEREAS, the Los Angeles Department of Water and Power (LADWP) Renewable Portfolio Standard established the goal for LADWP to supply 20% of its retail energy from renewable energy sources by 2010; and

WHEREAS, LADWP issued a Request for Proposal (RFP), a competitive bid process, for the purchase and or acquisition of renewable energy resources; and

WHEREAS, LADWP received more than 50 responses to its RFP, one of which was submitted by Invenergy Wind North American, LLC (Invenergy), that proposed the sale of 72 megawatts (MW) of renewable energy from wind power generating facilities to be developed and constructed in Morrow and Gilliam Counties, Oregon (Project); and

WHEREAS, the Project owned by Willow Creek Energy, LLC, a subsidiary of Invenergy was selected to provide renewable energy from wind power generating facilities; and

WHEREAS, the Willow Creek Wind Project Power Purchase Agreement No. BP 08-013 sets forth mutual covenants and agreements between LADWP and Willow Creek Energy, LLC for LADWP's acquisition of 72 MW of the metered output and associated environmental attributes as produced by the Project; and

NOW, THEREFORE, BE IT RESOLVED that the Willow Creek Wind Project Power Purchase Agreement No. BP 08-013 by and between LADWP and Willow Creek Energy, LLC, now on file with the Secretary of the Board and approved as to form and legality by the City Attorney, be and the same is hereby approved.

BE IT FURTHER RESOLVED that the energy acquired from the Willow Creek Wind Project Power Purchase Agreement shall be credited towards LADWP's Renewable Portfolio Standard Goal of 20% by 2010.

BE IT FURTHER RESOLVED that the Chief Accounting Employee of LADWP upon proper certification is authorized and directed to draw demands on the Power Revenue Fund, over the term of the Willow Creek Wind Project Power Purchase Agreement, BP 08-013, in payment of the obligations incurred for energy delivered under such agreement, provided that such payments shall not include the capital costs of acquiring the Project.

BE IT FURTHER RESOLVED that the President or the Vice President of this Board, or General Manager, or such person as he shall designate in writing as his designee, and the Secretary, Assistant Secretary, or the Acting Secretary of this Board are hereby authorized, empowered, and directed to execute the Willow Creek Wind Project Power Purchase Agreement BP 08-013, for and on behalf of LADWP, subject to City Council approval by ordinance of such agreement.

BE IT FURTHER RESOLVED that the Board requests that the City Council approve, by ordinance, pursuant to §§ 101 and 674 (a)(2) of the City Charter, Agreement No. BP 08-013 and authorize the Board to act on all future amendments to this Agreement, without further approval by the City Council.

I HEREBY CERTIFY that the foregoing is a full, true, and correct copy of the resolution adopted by the Board of Water and Power Commissioners of the City of Los Angeles at its meeting held AUG 05 2008

Rosie A. Garcia
Assistant Secretary

APPROVED AS TO FORM AND LEGALITY
ROCKARD J. DELGADILLO, CITY ATTORNEY

JUL 29 2008

BY Fay A. Chu
FAY A. CHU
Assistant City Attorney

REQUIRES CITY COUNCIL
APPROVAL

Item No. 3

VERBAL MOTION

I MOVE that Item No. 3 on the August 5, 2008, Regular Commission Agenda relative to a resolution authorizing execution of a Renewable Willow Creek Wind Project Power Purchase Agreement (LADWP No. BP 08-013) with Willow Creek Energy, LLC, to allow LADWP to purchase 72 megawatts of renewable wind energy from Willow Creek Energy for a period of 15 years, **BE AMENDED,** as follows:

> "To use revised wording for the "Gapp" definition on page seven as follows:
>
> > "GAAP" means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board, which are in effect as of the relevant date of determination."

Moved by: Lee Kanon Alpert

Seconded by: Forescee Hogan-Rowles

Approved by the Board of Water and Power Commissioners at its Regular Meeting on August 5, 2008: Ayes: 5, Noes: 0

By: Barbara E. Moschos

Barbara E. Moschos, Board Secretary

LADWP BOARD APPROVAL LETTER

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ORIGINAL SIGNED BY
ARAM BENYAMIN

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H. DAVID NAHAI

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Renewable Power Purchase Agreement With Willow Creek Energy, LLC, for 72 megawatts (MW) of Wind Capacity From the Willow Creek Wind Project in Morrow and Gilliam Counties, Oregon for a 15-year Term .
(LADWP No. BP 08-013)

FOR COMMISSION OFFICE USE:

ADOPTED AS AMENDED AT AUGUST 5, 2008 BOARD MEETING. SEE ATTACHED VERBAL MOTION.</td></tr>
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Yes ☒ No ☐</td><td>IF YES, BY WHICH CITY CHARTER SECTION:
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PURPOSE

- Obtain authority to enter into a Willow Creek Wind Project Power Purchase Agreement No. BP 08-013 (PPA) between the Willow Creek Energy, LLC (Willow Creek) and the City of Los Angeles acting by and through the Los Angeles Department of Water and Power (LADWP) which authorizes the LADWP to purchase 72 MW of renewable wind energy from Willow Creek and sets forth mutual covenants and agreements in order to pay Willow Creek for the energy and capacity of the Willow Creek Wind Project (Project). The PPA provides for the purchase of renewable wind energy from the Project located in Morrow and Gilliam Counties, Oregon, starting December 31, 2008, for a period of fifteen (15) years.

- Obtain authorization to apply the energy received under this agreement towards LADWP's renewable portfolio standard goals.

- To request an ordinance from City Council authorizing the Board of Water and Power Commissioners to make amendments to the PPA without further City Council approval.

BACKGROUND

As part of its Renewable Portfolio Standard (RPS), the LADWP has a goal to supply 20% of its retail energy from renewable energy sources by 2010. In achieving that goal, LADWP issued a Request for Proposal (RFP), a competitive selection process, for the purchase and/or acquisition of renewal energy resources. More than 50 proposals were received from several firms having the capability to provide renewable energy from sources such as solar, wind, biomass, landfill gas, geothermal, and other sources.

The Project, proposed by Invenergy Wind North American, LLC, parent of Willow Creek, was short listed by the LADWP Project Team. Under the terms of the Agreement, Willow Creek would sell 72 MW of renewable energy from wind power generating facilities, located in Morrow and Gilliam Counties, Oregon. The Project has an expected availability every hour of the year and an expected capacity factor of 30%.

The purchase of 72 MW of renewable energy output per year will enable the LADWP to meet approximately 0.8 percent of the LADWP's resource requirements. The renewable energy will be delivered to the point on Bonneville Power Authority's (BPA) Boardman/Alkali Line shown in Seller's interconnection request Willow Creek GI#255. The energy will then be transmitted through the Pacific DC Intertie to Sylmar.

To obtain point-to-point transmission from the BPA to bring the energy to the Pacific DC Intertie, LADWP shall pay for transmission charges, including costs for Western Electricity Coordinating Council (WECC), BPA expenses and transmission charges, BPA wind integration charges, and losses, estimated to be approximately $17.27/MWh.

Willow Creek Agreement

Under the terms of the Willow Creek Agreement, the LADWP contractually agrees to the following terms:

- Production Tax Credits:
  The Project will obtain federal production tax credits (PTC) for all wind turbines completed by December 31, 2008. The PTC currently expire on December 31, 2008. In the event the facility does not obtain PTC for turbines above a minimum threshold percentage, the LADWP has an option to purchase the entire facility. This option will not be executed until further approval is obtained from this Board. If the PTCs are not renewed and LADWP elects not to purchase the Project, the energy price paid to Willow Creek will be adjusted.

- Quantity:
  LADWP will receive rights to 72 MW (Expected Generation Capacity) including all associated capacity, energy, and environmental attributes. The LADWP expects to receive approximately 200,000 MWh of renewable energy per year at the expected annual generation capacity factor of 30%.

- Cost:

  Scenario 1: Developer completes installation of 100% of Expected Generation Capacity by December 31, 2008 (COD):

- To pay for the renewable energy, \$76.96/MWh weighted average first year price, with an annual escalation rate of 2.25%.

- The average annual cost for this energy is expected to be approximately \$18,000,000.

- The estimated cost of the renewable energy purchases, over the 15-year term of the Agreement, is \$271,000,000.

<u>Scenario 2: Developer fails to complete installation of at least 80% of Expected Generation Capacity by the COD and LADWP opts to Purchase the Project</u>:

Under this scenario, LADWP would purchase the renewable energy for the first year at the price which includes LADWP's portion of the lost PTC value, or \$92.96/MWh weighted average first year price. During this year, LADWP would be performing the due diligence necessary to purchase the Project. Assuming the worst case, where none of the Expected Generation Capacity is operational by the COD:

- To pay for the renewable energy, \$92.96/MWh weighted average first year price, which totals \$18,600,000 over the first year.

- At the one-year anniversary of the COD, LADWP would pay \$2,430/kW or \$175,000,000 to take ownership of the Project.

<u>Scenario 3: Developer fails to complete installation of 100% of Expected Generation Capacity by the COD and LADWP opts not to Purchase the Project:</u>

Under this scenario, all of the costs described in Scenario 1 would apply for those turbines operational by the COD. LADWP and the developer would split the value of the lost PTCs for those turbines not operational by the COD. The value of LADWP's portion of the lost PTC value would be approximately \$16/MWh with an annual escalation rate of 2.25%. Assuming the worst case, where none of the Expected Generation Capacity is operational by the COD:

- To pay for the renewable energy, \$92.96/MWh weighted average first year price, with an annual escalation rate of 2.25%.

- The average annual cost for this energy is expected to be approximately \$21,800,000.

- The estimated cost of the renewable energy purchases, over the 15-year term of the Agreement, is \$327,000,000.

There have been no previous power purchase agreements directly with Invenergy Wind North American, LLC, or Willow Creek.

COST AND DURATION:

- The cost of the Agreement is broken down by the above scenarios.
- The average annual cost for transmission charges is expected to be approximately $3,400,000. To receive green energy from this generation resource, LADWP would need transmission from the Project's delivery point to the nearest point on LADWP's transmission system (namely, to the Nevada-Oregon Border, a.k.a. NOB, on the Pacific DC Intertie). To accomplish this, staff will secure adequate rights on BPA's transmission system in advance of commercial operation and/or will contract with electricity marketers to move the green energy to LADWP under one or more separate energy exchange contracts. The final arrangement may well be a hybrid of the two approaches, using an energy exchange to cover a part of the energy flow and/or a portion of the distance to LADWP's system.

FUNDING SOURCE:

Funding is budgeted in Power Revenue Fund's Fuel and Purchased Power Budget.

FISCAL IMPACT STATEMENT:

The average annual expenditures, including transmission, may total $25,200,000 per year for fifteen (15) years (under Scenario 3). Alternatively there may be one year where LADWP purchases $18,600,000 of renewable energy from this Project, then purchases the Project for $175,000,000 and expends approximately $3,400,000 per year for transmission to bring the renewable energy to Los Angeles.

The funds will be used to purchase renewable energy, provide for energy transmission, or potentially purchase renewable generation as part of LADWP's Renewable Portfolio Standard. This will benefit the ratepayers of Los Angeles by supplying them with renewable energy and reducing the consumption of fossil fuels and reducing emissions.

TYPE OF INSURANCE COVERAGE(S):

Not applicable.

PRE-AWARD CHECKLIST:

Not applicable.

CONTRACT ADMINISTRATION:

The PPA will be administered by the Power Supply Contracts Group in the Power System.

FORMAL OBJECTIONS TO AWARD OF CONTRACT:

Not applicable.

JOB OPPORTUNITIES AND TRAINING POLICY:

☐Applicable ☒Not Applicable

INTERNAL AUDIT:

☐Yes ☒No

EXTERNAL AUDIT:

☐Yes ☒No

CHARTER SECTION 1022 FINDINGS AND BASIS THEREOF:

Not applicable. This PPA is for the purchase of renewable energy.

MEMORANDUM OF UNDERSTANDING PROPOSED CONTRACT REVIEW PROCESS:

Memorandum of Understanding not yet processed.

METHOD OF SELECTION:

☒ Competitive ☐ Cooperative Purchase ☐ Sole Source

OUTREACH EFFORTS TAKEN:

The LADWP RFP was distributed to all of the renewable energy providers, developers, and contractors, as well as posting.

MINORITY/WOMEN BUSINESS ENTERPRISE (MBE/WBE) SUBCONTRACTING PARTICIPATION:

Under Power Purchase Agreements for out-of-state facilities not owned by the LADWP, MBE/WBE policy does not apply.

VENDOR HISTORY:

There have been no previous power purchase agreements directly with Invenergy or Willow Creek.

VENDOR PERFORMANCE:

Not applicable. The purchase of energy does not involve any construction, construction schedules, or completion times.

ENVIRONMENTAL DETERMINATION:

The Project is statutorily exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15277, because it is located outside of California and is subject to environmental impact review pursuant to the National Environmental Policy Act of 1969 (NEPA). Review under NEPA has been completed, and the NEPA Record of Decision was signed on June 25, 2008, by BPA.

RECOMMENDATION:

It is recommended that your Honorable Board approve the accompanying resolution, approved as to form and legality by the City Attorney, and that the Agreement be executed as authorized in the resolution.

City Council approval of the PPA by ordinance is required pursuant to §§ 101 and 674 (a) (2) of the City Charter for the purchase of electric energy.

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Attachments
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Raman Raj
Maria Sison-Roces
Richard M. Brown
Aram Benyamin
James B. McDaniel
Robert K. Rozanski
Ronald O. Vazquez
James H. Caldwell Jr.
Matthew M. Lampe
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TYPE OF INSURANCE COVERAGE(S):

Not applicable.

PRE-AWARD CHECKLIST:

Not applicable.

CONTRACT ADMINISTRATION:

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FORMAL OBJECTIONS TO AWARD OF CONTRACT:

Not applicable.

JOB OPPORTUNITIES AND TRAINING POLICY:

☐ Applicable ☒ Not Applicable

INTERNAL AUDIT:

☐ Yes ☒ No

EXTERNAL AUDIT:

☐ Yes ☒ No

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EXECUTION VERSION

POWER PURCHASE AGREEMENT

BETWEEN

CITY OF LOS ANGELES ACTING BY AND THROUGH THE

DEPARTMENT OF WATER AND POWER

AND

WILLOW CREEK ENERGY LLC

DATED AS OF JULY 28, 2008

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POWER PURCHASE AGREEMENT

PARTIES

THIS POWER PURCHASE AGREEMENT ("***Agreement***") is entered into as of this 28th day of July, 2008 by and between the City of Los Angeles acting by and through the Department of Water and Power ("***Buyer***" or "***LADWP***"), a municipal corporation of the State of California, and Willow Creek Energy LLC ("***Seller***"), a limited liability company organized and existing under the laws of the State of Delaware. Each of Buyer and Seller is referred to individually in this Agreement as a ***"Party"*** and together they are referred to as the ***"Parties"***.

RECITALS

WHEREAS, LADWP has adopted a "Renewables Portfolio Standard" designed to increase the amount of energy it provides to its retail customers from renewable power sources to 20% of its retail electricity sales by December 31, 2010; and

WHEREAS, on January 30, 2007, LADWP issued a request for proposals to acquire renewable resources; and

WHEREAS, Seller's parent, Invenergy Wind North America LLC, responded to the January 30, 2007 request for proposals and following negotiation has agreed to sell to LADWP and LADWP has agreed to purchase certain renewable energy; and

WHEREAS, the Parties desire to set forth the terms and conditions pursuant to which such sales and purchases shall be made;

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth, the Parties hereto agree as follows:

ARTICLE I
DEFINITIONS AND INTERPRETATION

Section 1.1 Definitions. The following capitalized terms in this Agreement and the appendices hereto shall have the following meanings:

"**Affiliate**" means, as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by or is under common control with such Person or is a director or officer of such Person or of an Affiliate of such Person. As used in this Agreement, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise.

"**Agreement**" means this Power Purchase Agreement, as it may be amended, supplemented or otherwise modified from time to time hereafter in accordance with its terms.

"**Agreement Term**" has the meaning set forth in Section 2.2.

"**Assumed Daily Deliveries**" has the meaning set forth in Section 13.3(c).

"**Authorized Auditors**" means representatives of Buyer or Buyer's Agents who are authorized to conduct audits on behalf of Buyer.

"**Authorized Representative**" means, with respect to each Party, the Person designated as such Party's authorized representative pursuant to Section 14.1.

"**Bankruptcy**" means any case, action or proceeding under any bankruptcy, reorganization, debt arrangement, insolvency or receivership law or any dissolution or liquidation proceeding commenced by or against a Person and, if such case, action or proceeding is not commenced by such Person, such case or proceeding shall be consented to or acquiesced in by such Person or shall result in an order for relief or shall remain undismissed for sixty (60) days.

"**Bona Fide Offer**" has the meaning set forth in Section 14.26.

"**Brown Act**" has the meaning set forth in Section 14.21.

"**Business Day**" means any calendar day that is not a Saturday, a Sunday, or a day on which commercial banks are authorized or required to be closed in Los Angeles, California or New York, New York.

"**Buyer's Agent**" means any Person authorized or designated by Buyer to make any determination or perform, carry out or provide any function on behalf of Buyer under this Agreement.

"**Buyer's Board of Commissioners**" means Board of Water and Power Commissioners of the City of Los Angeles created pursuant to Sections 600 and 670 of the Charter of the City of Los Angeles, as amended.

"**Cal-OSHA**" means California Occupational Safety & Health Administration and any successor thereto.

"**CAMD**" means the Clean Air Markets Division of the United States Environmental Protection Agency, any successor agency and any other state, regional or federal or intergovernmental entity or Person that is given authorization or jurisdiction or both over a program involving the registration, validation, certification or transferability or any of the foregoing of Environmental Attributes.

"**Capacity**" means, with respect to any wind turbine, the manufacturer's nameplate rating of such turbine.

"**Capacity Deficiency**" means, at any time after the Partial Commercial Operation Date, the amount by which the Target Capacity exceeds the Capacity of the Complete Turbines at the Facility at such time.

"**Capacity Rights**" means the rights, whether in existence as of the Effective Date or arising hereafter during the Agreement Term, to capacity, resource adequacy, associated attributes and/or reserves, if any, or any of the foregoing associated with the electric generating capability of the Facility, including the right to resell such rights.

"**CEC**" means the California Energy Commission and any successor agency thereto.

"**CEC Performance Standard**" means, at any time, the applicable greenhouse gas emission performance standard in effect at such time for baseload electric generation facilities owned or operated (or both) by local publicly owned electric utilities, as established by the CEC or other Governmental Authority having jurisdiction over Buyer.

"**Change of Law**" means that, after the date on which Seller executes this Agreement, a Requirement of Law is enacted, amended, modified, nullified, suspended, repealed, found unconstitutional or unlawful, or changed or affected in any respect (including any change in any interpretation thereof).

"**Commercial Operation**" means that all of the following have occurred:

(a) Construction of the Facility has been completed in accordance with the terms and conditions of this Agreement and the Facility possesses all the characteristics, and satisfies all of the requirements, set forth for the Facility in this Agreement;

(b) The Facility has successfully completed all testing required by Prudent Utility Practices or any material Requirement of Law to be completed prior to full commercial operations or the results of which are required to be delivered to Buyer pursuant to Section 5.1(c);

(c) Seller has obtained all material Permits required for the construction, operation and maintenance of the Facility in accordance with this Agreement (including those identified in Appendix B), except for any such Permits not yet required to be obtained but which can reasonably be expected to be obtained when needed, and all such Permits are final and non-appealable;

(d) The Facility is both authorized and able to operate and deliver Energy at full Capacity in accordance with Prudent Utility Practices, the requirements of this Agreement and all Requirements of Law in all material respects; and

(e) Seller has obtained Insurance coverage for the Facility as required by Appendix F.

"**Commercial Operation Date**" means the date on which Seller gives a notice pursuant to Section 3.3 that Commercial Operation has occurred and such notice is accurate in all material respects.

"**Commercial Operation Deadline**" means June 30, 2010. The Commercial Operation Deadline shall not be extended for any delay in achieving Commercial Operation due to Force Majeure or otherwise, except that the Commercial Operation Deadline shall be extended on a day-for-day basis, or such longer period as may be appropriate under the circumstances, for any delay in achieving Commercial Operation attributable to action or inaction on the part of Buyer or Transmission Provider.

"**Commercial Operation Target Date**" means December 31, 2008; *provided, however*, that the Commercial Operation Target Date shall be extended on a day-for-day basis, or such longer period as may be appropriate under the circumstances, for any delay in achieving Commercial Operation attributable to Fore Majeure or action or inaction on the part of Buyer or Transmission Provider.

"**Complete Turbine**" means any turbine whose construction has reached substantial completion, has passed the contractor's (or, if applicable, turbine vendor's) performance test, and has commenced the regular delivery of Energy to the Facility Point of Delivery.

"**Confidential Information**" has the meaning set forth in Section 14.21(a).

"**Contract Year**" means (i) initially the twelve-month period beginning on the Commercial Operation Date and ending on the last day of the calendar month in which the first anniversary of the Commercial Operation Date occurs, and (ii) each succeeding period of twelve consecutive months during the Delivery Term following the period described in the preceding clause (i).

"**Costs**" has the meaning set forth in Section 13.3(f).

"**CPRA**" has the meaning set forth in Section 14.21.

"**Credit Rating**" means, with respect to any Person, the rating assigned to such Person's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) by Standard & Poor's or Moody's, or if such entity does not have a rating for its senior unsecured long-term debt, the rating assigned to such entity as an issuer rating by Standard & Poor's or Moody's.

"**Curtailment Energy**" means Energy that the Facility is prevented from generating or delivering to the Facility Point of Delivery due to an order of the Transmission Provider or any Governmental Authority, or due to any event or circumstance occurring on Transmission Provider's side of the facility Point of Delivery, unless caused by a default by Buyer under this Agreement or under any agreement between Buyer and the Transmission Provider, by Buyer's failure or inability to secure transmission services on Buyer's side of the Point of Delivery, or any Requirement of Law. Buyer is not required to pay for Curtailment Energy.

"**Default**" has the meaning set forth in Section 13.1.

"**Defaulting Party**" has the meaning set forth in Section 13.1.

"**Delivered Energy**" means the MWh of Energy delivered by Seller and received by Buyer at the Point of Delivery, including Replacement Energy.

"**Delivery Term**" has the meaning set forth in Section 2.2.

"**Deposit**" has the meaning set forth in Section 14.26.

"**Dispute**" and "**Dispute Notice**" have the meaning set forth in Section 14.3.

"**Downgrade Event**" means that a Person who has issued Performance Security on behalf of Seller pursuant to Section 5.4 ceases to have a current long-term credit rating (corporate or long-term senior unsecured debt) of (1) "A2" or higher by Moody's; or (2) "A" or higher by S&P.

"**Early Termination Date**" has the meaning set forth in Section 13.3(a).

"**Effective Date**" means the date LADWP executes this Agreement, so long as the conditions precedent set forth in Section 2.1 have been met by such date.

"**Electric Metering Device(s)**" means all meters, metering equipment, and data processing equipment used to measure, record, or transmit data relating to the Energy output from the Facility. Electric Metering Devices include the metering current transformers and the metering voltage transformers.

"**Energy**" means electrical energy.

"**Environmental Attribute**" means any and all current or future fuel, emissions, air quality, or other environmental characteristic, credit, benefit, reduction, offset, and allowance, howsoever entitled, named, registered, created, measured, allocated, validated, hereafter recognized or deemed of value (or both) by Buyer, applicable law, or any voluntary program of any Governmental Authority or other Person attributable to generation from the Facility and its displacement of conventional fossil generation, including but not limited to the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water attributable to the Facility during the Agreement Term or the generation, purchase, sale, or use of energy from or by the Facility during the Agreement Term, that are now or hereafter deemed of value by Buyer, and include without limitation any of the same arising out of legislation or regulation concerned with oxides of nitrogen, sulfur, carbon, or any other greenhouse gas or chemical compound, with particulate matter, soot, or mercury, or implementing the United Nations Framework Convention on Climate Change (the "UNFCCC"), the Kyoto Protocol to the UNFCCC, California's greenhouse gas legislation (including but not limited to California Assembly Bill 32 (Global Warming Solutions Act of 2006)) or any similar international, federal, state or local program or crediting "early action" with a view thereto, or laws or regulations involving or administered by the CAMD, and all Environmental Attribute Reporting Rights, including all evidences (if any) thereof such as RECs, but specifically excluding only any PTCs or other tax benefits related to Seller's ownership of the Facility or the production and sale of the output thereof. Environmental Attributes for purposes of this definition are separate from the Energy produced from the Facility.

"**Environmental Attribute Reporting Rights**" means all rights to report ownership of the Environmental Attributes to any Person, under Section 1605(b) of the Energy Policy Act of 1992, as amended from time to time or any successor statute, or any other current or future international, federal, state or local law, regulation or bill, or otherwise.

"**EPS Compliant**," when used with respect to the Facility or any other facility at any time, means that the facility satisfies both the PUC Performance Standard and the CEC Performance Standard in effect at the time; *provided, however,* if it is impossible for the facility to satisfy both the PUC Performance Standard and the CEC Performance Standard in effect at any time, the facility shall be deemed EPS Compliant if it satisfies the CEC Performance Standard in effect at the time and those portions of the PUC Performance Standard in effect at the time that it is possible for the facility to satisfy while at the same time satisfying the CEC Performance Standard in effect at the time.

"**EPS Law**" means Sections 8340 and 8341 of the California Public Utilities Code as implemented and amended from time to time, or any successor laws or regulations in the State of California.

"**Excess Energy**" means, subject to Section 9.2, the portion of the Delivered Energy for any Contract Year which is (i) Facility Energy and (ii) in excess of the Guaranteed Generation.

"**Excess Energy Rate**" means the $/MWh payment made to Seller by Buyer for Excess Energy according to the provisions in Appendix A.

"**Facility**" means the wind powered electric generating facility, including but not limited to all property interests and related transmission and other facilities described in Appendix B.

"**Facility Energy**" means Energy generated by the Facility, less station load and transmission losses to the Facility Point of Delivery.

"**Facility Lender**" means any Person providing senior or subordinated construction, interim or long-term debt or equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, including any equity and tax investor providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller and/or its Affiliates, and any trustee or agent acting on their behalf, and any Person providing interest rate protection agreements to hedge any of the foregoing debt obligations.

"**Facility Point of Delivery**" means the point on Bonneville Power Authority's Boardman/Alkali Line shown in Seller's interconnection request Willow Creek GI#255; *provided, however*, Energy will not be considered delivered at the Facility Point of Delivery unless the Facility Energy is accepted by the Transmission Provider at the Willow Creek GI#255 and capable of being transmitted either to the Boardman substation or to at least one other point in the Transmission Provider's "network", as defined in the Transmission Provider's open access transmission tariff.

"**FERC**" means the Federal Energy Regulatory Commission or any successor agency thereto.

"**Force Majeure**" has the meaning set forth in Section 14.6.

"**Force Majeure Notice**" has the meaning set forth in Section 14.6.

"**Forced Outage**" means the removal of service availability of the Facility, or any portion of the Facility, for emergency reasons or conditions in which the Facility, of any portion thereof, is unavailable due to unanticipated failure, including as a result of Force Majeure.

"**GAAP**" means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board, which are in effect as of the relevant date of determination.

"**Gains**" has the meaning set forth in Section 13.3(f).

"**Governmental Authority**" means any federal, state, regional, city or local government, any intergovernmental association or political subdivision thereof, or other governmental, regulatory or administrative agency, court, commission, administration, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority, or any Person acting as a delegate or agent of any Governmental Authority.

"**Guaranteed Generation**" means One Hundred Fifty Thousand (150,000) MWh; *provided, however*, that on and after the Partial Commercial Operation Date but prior to the Commercial Operation Deadline, Guaranteed Generation means One Hundred Fifty Thousand (150,000) MWh multiplied by a fraction, the numerator of which is the weighted average of the Capacity of Complete Turbines on each day during the applicable Contract Year and the denominator of which is the Target Capacity; and *provided, further*, that if on the Commercial Operation Deadline the Capacity of the Facility is less than the Target Capacity, Guaranteed Generation after that date means One Hundred Fifty Thousand (150,000) MWh multiplied by fraction, the numerator of which is the Capacity of the Facility on the Commercial Operations Deadline and the denominator of which is the Target Capacity; and *provided, further*, that the Guaranteed Generation for any year shall be reduced to reflect any turbine outages due to Force Majeure during such year.

"**Imputed Energy**" means Energy that the Facility is prevented from generating or delivering to the Facility Point of Delivery due to an order of the Transmission Provider or any Governmental Authority, or due to any event or circumstance occurring on Transmission Provider's side of the facility Point of Delivery, other than Curtailment Energy.

"**Increased RPS/EPS Compliance Cost**" means all reasonable and necessary costs and expenses of maintaining the Facility's status as RPS Compliant and EPS Compliant attributable to a Change of Law.

"**Ineligible Turbine**" has the meaning set forth in Section 14.26(f).

"**Insurance**" means the policies of insurance as set forth in Appendix F.

"**Interest Rate**" shall mean the lesser of (i) two hundred (200) basis points above the per annum Prime Rate reported daily in the Wall Street Journal, or (ii) the maximum rate permitted by applicable Requirements of Law.

"**IPT**" means (i) when used with respect to a Retail Seller for any year for which an incremental procurement target has been set for the Retail Seller by the PUC under the RPS Law, the incremental procurement target so set, and (ii) when used with respect to a Retail Seller for any year for which an incremental procurement target has not been set for the Retail Seller by the PUC under the RPS Law, the incremental procurement target last set for the Retail Seller by the PUC under the RPS Law, and (iii) when used with respect to Buyer for any year, means Buyer's renewable energy portfolio standard or procurement target for the year in which this Agreement is entered into as established by the Buyer's Board of Commissioners and in effect on the date this Agreement is entered into.

"**Lien**" means any mortgage, deed of trust, lien, security interest, retention of title or lease for security purposes, pledge, charge, encumbrance, equity, attachment, claim, easement, right of way, covenant, condition or restriction, leasehold interest, purchase right or other right of any kind, including an option, of any other Person in or with respect to any real or personal property.

"**Los Angeles City Attorney**" means Buyer's Counsel as provided under Section 270 or any successor provision of the Charter of the City of Los Angeles.

"**Losses**" has the meaning set forth in Section 13.3(f).

"**Major Maintenance Blockout**" has the meaning set forth in Section 4.5(e).

"**Makeup Deadline**" has the meaning set forth in Section 9.3.

"**Minimum Generation**" means Ninety Nine Thousand Nine Hundred and Fifty (99,950) MWh; *provided, however*, that on and after the Partial Commercial Operation Date but prior to the Commercial Operation Deadline, Minimum Generation means Ninety Nine Thousand Nine Hundred and Fifty (99,950) MWh multiplied by a fraction, the numerator of which is the weighted average of the Capacity of Complete Turbines on each day during the applicable Contract Year and the denominator of which is the Target Capacity; and *provided, further*, that if on the Commercial Operation Deadline the Capacity of the Facility is less than the Target Capacity, Minimum Generation after that date means Ninety Nine Thousand Nine Hundred and Fifty (99,950) MWh multiplied by fraction, the numerator of which is the Capacity of the Facility on the Commercial Operations Deadline and the denominator of which is the Target Capacity; and *provided, further*, that the Minimum Generation for any year shall be reduced to reflect any turbine outages due to Force Majeure (other than Wind Turbine Serial Defects) during such year.

"**Moody's**" shall mean Moody's Investor Services, Inc. and any successor thereto.

"**MW**" means megawatt.

"**MWh**" means megawatt-hours.

"**NERC**" means the North American Electric Reliability Corporation and any successor thereto.

"**Non-Defaulting Party**" has the meaning set forth in Section 13.3(a).

"**Notice Date**" has the meaning set forth in Section 14.26.

"**Notifying Party**" has the meaning set forth in Section 14.3.

"**OSHA**" means Occupational Safety & Health Administration and any successor thereto.

"**Pacific Prevailing Time**" means the local time in Los Angeles, California.

"**Partial Commercial Operation**" means that all of the following have occurred:

(a) Construction of the Complete Turbines with a Capacity of at least eighty percent (80%) of the Target Capacity has been completed in accordance with the terms and conditions of this Agreement and the Complete Turbines possess all of the characteristics, and satisfy all of the requirements, set forth for the Facility in this Agreement, prorated, to the extent appropriate, based on the ratio of the Capacity of the Complete Turbines to the Target Capacity;

(b) The Complete Turbines have successfully completed all testing required by Prudent Utility Practices or any material Requirement of Law to be completed prior to full commercial operation or the results of which are required to be delivered to Buyer pursuant to Section 5.1(c);

(c) Seller has obtained all material Permits required for the construction, operation and maintenance of the Complete Turbines in accordance with this Agreement (including those identified in Appendix B), except for any such Permits not yet required to be obtained but which can reasonably be expected to be obtained when needed, and all such Permits are final and non-appealable;

(d) The Complete Turbines are both authorized and able to operate and deliver Energy at full capacity in accordance with Prudent Utility Practices, the requirements of this Agreement and all applicable Requirements of Law in all material respects; and

(e) Seller has obtained Insurance coverage for the Facility as required by Appendix F.

"**Partial Commercial Operation Date**" means the date on or after January 1, 2009 on which Seller gives a notice pursuant to Section 3.2 that Partial Commercial Operation has occurred and such notice is accurate in all material respects.

"**Performance Security**" means the performance security described in Section 5.3 that is required to be provided by Seller to Buyer to secure Seller's performance under this Agreement.

"**Permit**" means all applications, permits, licenses, franchises, certificates, concessions, consents, authorizations, approvals, registrations, orders, filings, entitlements and similar requirements of whatever kind and however described which are required to be obtained or maintained by any Person with respect to the development, siting, design, acquisition, construction, equipping, financing, ownership, possession, shakedown, start-up, testing, operation or maintenance of the Facility, the production and delivery of Facility Energy, Capacity Rights and Environmental Attributes, or any other transactions or matter contemplated by this Agreement (including those pertaining to electrical, building, zoning, environmental and occupational safety and health requirements), including those described in Appendix B.

"**Permitted Encumbrances**" means (i) any Lien in favor of a Facility Lender (ii) Liens for Taxes not yet due or for Taxes being contested in good faith by appropriate proceedings, so long as such proceedings do not involve an imminent likelihood of the sale, forfeiture, loss or restriction on the use of the Facility or any part thereof, (iii) suppliers', vendors', mechanics', workman's, repairman's, employees' or other like Liens arising in the ordinary course of business for work or service performed or materials furnished in connection with the Facility for amounts the payment of which is either not yet delinquent or is being contested in good faith by appropriate proceedings so long as such proceedings do not involve an imminent likelihood of the sale, forfeiture, loss or restriction on use of the Facility or any part thereof, and (iv) any other Lien approved by Buyer in a writing separate from this Agreement, which approval shall not be unreasonably withheld or delayed, *provided,* that in the case of Liens being contested under subsections (ii) or (iii), the Seller shall have furnished such security as may be required in such proceeding to prevent the sale, forfeiture, loss or restriction on use of the Facility or any part thereof.

"**Person**" means any individual, corporation, partnership, joint venture, limited liability company, association, joint stock company, trust, unincorporated organization, entity, government or other political subdivision.

"**Point of Delivery**" means, when used with respect to any Energy sold and purchased under this Agreement, the point where that Energy is required to be delivered by Seller to Buyer under this Agreement. In the case of Replacement Energy, the Point of Delivery shall be the Facility Point of Delivery, any point which is included in the definition of Mid-Columbia or Bonneville Pacific Authority's Northwest Market Hub or any other point designated by Seller and reasonably acceptable to Buyer.

"**Power Revenue Fund**" means the fund in the City of Los Angeles' treasury known as the "Power Revenue Fund" to which all revenue from every source collected by LADWP in connection with its possession, management and control of the power assets is required to be deposited and credited.

"**Present Value Rate**" means, at any date, the sum of 0.50% plus the yield reported on page "USD" of the Bloomberg Financial Markets Services Screen (or, if not available, any other nationally recognized trading screen reporting on-line intraday trading in United States government securities) at 11:00 a.m. (New York City, New York time) for the United States government securities having a maturity that most nearly matches the Remaining Term at that date.

"**Prime Rate**" shall mean the lesser of (i) the per annum Prime Rate reported daily in the Wall Street Journal, or (ii) the maximum rate permitted by applicable Requirements of Law.

"**PTC**" means the Production Tax Credit under Section 45 of the Internal Revenue Code, as the same may be amended, supplemented, extended or replaced from time to time, and including all successor enactments or legislation relating thereto.

"**PTC Gross-Up Amount**" means the amount equal to (i) the PTCs which Seller would have been entitled to with respect to any Imputed Energy, *divided by* (ii) Sixty-five Hundredths (0.65).

"**Prudent Utility Practices**" means those practices, methods, and acts, that are commonly used by a significant portion of the wind powered electric generation industry in prudent engineering and operations to design and operate wind powered facilities similar in size and operating characteristics to the Facility lawfully and with safety, dependability, efficiency, and economy, having due regard for applicable practices, methods, acts, guidelines, standards and criteria of FERC, NERC, WECC, the American Society of Mechanical Engineers, the American Society for Testing and Materials, the Institute of Electrical and Electronics Engineers, the Instrument Society of America, the National Electrical Code, National Electric Safety Code, OSHA, Cal-OSHA, as applicable, Uniform Building Code, Uniform Plumbing Code, and the applicable local County Fire Department Standards of the applicable county, and any successors thereto, other codes and standards and operations and maintenance requirements applicable to the services, equipment, and work as generally shown in this Agreement, and all applicable Requirements of Law in all material respects.

"**Public Utilities Code**" means the Public Utilities Code of the State of California.

"**PUC**" means the California Public Utilities Commission and any successor thereto.

"**PUC Performance Standard**" means, at any time, the greenhouse gas emission performance standard in effect at such time for baseload electric generation facilities owned or operated (or both) by load-serving entities and not local publicly-owned electric utilities, as established by the PUC or other Governmental Authority under the EPS Law.

"**Qualified Issuer**" means a Person who has issued a Performance Security on behalf of Seller pursuant to Section 5.4 and who has a current long-term credit rating (corporate or long-term senior unsecured debt) of (1) "A2" or higher by Moody's; or (2) "A" or higher by S&P.

"**Quality Assurance Program**" has the meaning set forth in Section 5.3.

"**RECs**" means tradable environmental commodities that represent proof that one (1) megawatt-hour (MWh) of Energy was generated from an eligible resource. These certificates can be sold and traded and the owner of the REC can claim to have purchased renewable energy. RECs are also commonly known as renewable energy credits and green tags.

"**Recipient Party**" has the meaning set forth in Section 14.3.

"**Remaining Term**" means, at any date, the remaining portion of the Agreement Term at that date without regard to any early termination of this Agreement.

"**Renewable Energy**" means energy which satisfies Buyer's renewable energy portfolio standard or procurement target for 2008 as established by the Buyer's Board of Commissioners and in effect on the date that Seller executes this Agreement.

"**Replacement Energy**" has the meaning set forth in Section 9.3.

"**Replacement Price**" has the meaning set forth in Section 6.3.

"**Requirement of Law**" means federal, state and local laws, statutes, regulations, rules, codes or ordinances enacted, adopted, issued or promulgated by any federal, state, local or other Governmental Authority (including those pertaining to electrical, building, zoning, environmental and occupational safety and health requirements).

"**Retail Seller**" means an "electrical corporation" (as defined in Section 218 of the Public Utilities Code) that is a "retail seller" as defined in Section 399.12(b) of the California Public Utilities Code as amended from time to time and any successor law.

"**RPS Compliant**," when used with respect to the Facility or any other facility at any time, means (i) that all Energy generated by that facility at that time would, if purchased by a Retail Seller together with the associated Environmental Attributes, be eligible to be credited against the IPT of the Retail Seller for the year during which the Energy is purchased, and (ii) that all Energy generated by that facility at that time would, if purchased by the Buyer together with the associated Environmental Attributes, be eligible to be credited against the IPT of the Buyer.

"**RPS Law**" means Sections 399.11 to 399.20 of the Public Utilities Code, as implemented and amended from time to time, and any successor law.

"**S&P**" shall mean Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.) and any successor thereto.

"**Sales Price**" has the meaning set forth in Section 6.4.

"**Schedule or Scheduling**" means the actions of Seller and Buyer or their Authorized Representatives, including each Party's Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity of Energy to be delivered hourly at the Point of Delivery on any given date during the Delivery Term.

"**Scheduled Outage**" means any outage with respect to the Facility, other than a Forced Outage, that would result in an interruption of the operation of more than six turbines at a time.

"**Scheduled Outage Projection**" has the meaning set forth in Section 4.5(e).

"**Scheduler**" means the Persons doing Scheduling for each Party. The contact information for Buyer's Scheduler and Seller's Scheduler at the Effective Date is set forth in item 4, Appendix C which will be revised by the Parties as needed.

"**Shortfall Energy**" has the meaning set forth in Section 9.1.

"**Site**" means the real property (including all fixtures and appurtenances thereto) and related physical and intangible property generally identified in Appendix B as owned or leased by Seller where the Facility is located or will be located, and including any easements, rights-of-way or contractual rights held or to be held by Seller for transmission lines and/or roadways servicing such Site or the Facility located (or to be located) thereon.

"**Special Purpose Entity**" means a limited liability company which at all times on and after the Effective Date:

(a) prepares and maintains its own separate, full and complete books, records and financial statements in compliance with GAAP, provided that nothing herein shall be construed as prohibiting Seller's owners from preparing consolidated financial statements;

(b) observes all material formalities regarding its separate existence; acts, and conducts its business, only in its own name and through authorized agents pursuant to its organizational documents; and holds itself out as a legal entity distinct from its Affiliates;

(c) maintains separate bank accounts in its own name and causes all investments made by it or on its behalf to be made solely in its name;

(d) manages directly its own expenses and liabilities, including paying its own operating expenses;

(e) does not permit any of its Affiliates to guarantee any of its debts, and does not guarantee any debts of any of its Affiliates, except than as otherwise permitted under this Agreement;

(f) does not commingle any of its money or other assets with the money or assets of any of its Affiliates; provided that nothing herein shall prohibit Seller from making payments to Affiliates by way of dividends, repayments of loans or advances, or reimbursement of expenses;

(g) has not acquired and will not acquire obligations or securities of its members or any Affiliate;

(h) is organized solely for the purpose of acquiring, developing, owning, holding, selling, leasing, transferring, exchanging, managing and operating the Facility, entering into this Agreement with Buyer and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing;

(i) does not have any assets other than those related to the Facility or the activities described in Paragraph (h); and

(j) does not (i) engage in any dissolution or liquidation, or (ii) modify, amend or waive any provisions of its organizational documents in a manner that would cause it not to maintain its status as a Special Purpose Entity.

"**System Emergency**" means an emergency condition or abnormal interconnection situation which affects the ability of Buyer or the Transmission Provider to receive Energy at the Point of Delivery.

"**Target Capacity**" means seventy-two (72) MW.

"**Tax**" or "**Taxes**" means each federal, state, county, local and other (a) net income, gross income, gross receipts, sales, use, ad valorem, business or occupation, transfer, franchise, profits, withholding, payroll, employment, excise, property or leasehold tax and (b) customs, duty or other fee, assessment or charge of any kind whatsoever, together with any interest and any penalties, additions to tax or additional amount with respect thereto.

"**Termination Notice**" has the meaning set forth in Section 13.3(a).

"**Termination Payment**" has the meaning set forth in Section 13.3(d).

"**Transmission Provider**" means the Person(s) operating the Transmission System(s) providing Transmission Services to or from the Point of Delivery.

"**Transmission Services**" means the transmission and other services required to transmit Energy to or from the Point of Delivery.

"**Transmission System**" means the facilities utilized to provide Transmission Services.

"**Unexcused Cause**" has the meaning set forth in Section 14.6(b).

"**WECC**" means the Western Electricity Coordinating Council and any successor entity thereto.

"**Wind Turbine Serial Defect Outage**" means an outage of one or more of Seller's wind turbines that caused by a Wind Turbine Serial Defect that Seller is able to demonstrate it was unable to prevent by performing preventative maintenance in accordance with Prudent Utility Practices.

"**Wind Turbine Serial Defect**" means a defect in the generator, gearbox or blades any of the Facility's wind turbines which:

a) is common to at least fifteen percent (15%) of the wind turbine manufacturer's wind turbines of that model actually installed at the Facility; and

b) either (i) causes a wind turbine or any material component thereof to fail prior to it's expected replacement or refurbishment date in accordance with Prudent Utility Practices despite having been maintained as required by this Agreement; (ii) causes a wind turbine or any material component thereof to operate at a capacity below its expected capacity based on the performance test contemplated by this Agreement and the age and repair record of the turbine or material component; or (iii) causes the manufacturer to recommend a service level change in writing which results in a decrease in the generating capacity of a wind turbine; and

c) is either: (i) Referenced by the wind turbine manufacturer in a technical bulletin issued to its customers as a preventative maintenance issue; (ii) acknowledged by the wind turbine manufacturer in a notice to its customers as a manufacturing defect; or (iii) identified in a report from a third party expert employed by Seller and acceptable to Buyer.

"**WREGIS**" means Western Renewable Energy Generation Information System, and any successor; provided that said successor is capable of performing substantially similar functions and is acceptable to Buyer.

"**WREGIS Certificates**" has the meaning set forth in Section 8.4.

"**WREGIS Operating Rules**" means the rules describing the operations of the Western Renewable Energy Generation Information System, as published by WREGIS and as may be amended from time to time.

Other terms defined herein have the meanings so given them in this Agreement.

Section 1.2 Interpretation. In this Agreement, unless a clear contrary intention appears:

(a) the singular number includes the plural number and vice versa;

(b) reference to any Person includes such Person's successors and assigns but, in case of a Party hereto, only if such successors and assigns are permitted by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;

(c) reference to any gender includes the other;

(d) reference to any agreement (including this Agreement), document, instrument or tariff means such agreement, document, instrument or tariff as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof;

(e) reference to any Article, Section, or Appendix means such Article of this Agreement, Section of this Agreement, or such Appendix to this Agreement, as the case may be, and references in any Article or Section or definition to any clause means such clause of such Article or Section or definition;

(f) "hereunder", "hereof", "hereto" and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article or Section or other provision hereof or thereof;

(g) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term;

(h) relative to the determination of any period of time, "from" means "from and including", "to" means "to but excluding" and "through" means "through and including"; and

(i) reference to time shall always refer to Pacific Prevailing Time; and reference to any "day" shall mean a calendar day unless otherwise indicated.

ARTICLE II
EFFECTIVE DATE, TERM, AND EARLY TERMINATION

Section 2.1 Effective Date. This Agreement is effective as of the Effective Date. On or prior to the Effective Date, each of the following shall have occurred:

(a) Buyer received copies of all requisite resolutions and incumbency certificates of Seller and any other documents evidencing all actions taken by Seller to authorize the execution and delivery of this Agreement, such resolutions to be certified as of the Effective Date by an authorized representative of Seller;

(b) Buyer received an executed original of a written legal opinion of Joe Condo, Esq., General Counsel to Invenergy LLC, in the form attached hereto as Exhibit G, dated as of the date on which Seller executed the Agreement and addressed to Buyer;

(c) The Performance Security required under Section 5.4 was executed and delivered to Buyer;

(d) Buyer received all certificates and other documents required to establish that the insurance policies required by Appendix F are in full force and effect upon the Effective Date; and

(e) Buyer received satisfactory evidence that Seller has obtained all Permits described in Appendix B, except for any such Permits not yet required to be obtained but which can reasonably be expected to be obtained when needed, and each such Permit is final and non-appealable.

Section 2.2 Agreement Term and Delivery Term. This Agreement shall have a delivery term (the "***Delivery Term***") of fifteen (15) Contract Years commencing on the Commercial Operation Date and ending on the fifteenth (15th) anniversary of the last day of the month in which the Commercial Operation Date occurs, unless sooner terminated in accordance with the terms of this Agreement. The term of this Agreement (the "***Agreement Term***") shall commence on the Effective Date and shall end upon the expiration or earlier termination of this Agreement in accordance with the terms hereof.

Section 2.3 Survivability. The provisions of this Article II, Article XII, Article XIII, Section 14.19 and Section 14.21 shall survive for a period of one year following the termination of this Agreement. The provisions of Article XI shall survive for a period of four (4) years following final payment made by the Buyer hereunder or the expiration or termination date of this Agreement, whichever is later. The provisions of Article V, Article VI, and Article VIII shall continue in effect after termination to the extent necessary to provide for final billing and adjustments related to the period prior to termination of this Agreement.

Section 2.4 Early Termination.

(a) **Early Termination by Mutual Agreement**. This Agreement may be terminated by mutual written agreement of the Parties.

(b) **Early Termination for Default**. Upon the occurrence of a Default, the Non-Defaulting Party may terminate this Agreement as set forth in Section 13.3.

(c) **Early Termination for Business Policies**. This Agreement shall terminate when and as provided in Section 14.23.

(d) **Early Termination Following Purchase**. This Agreement shall terminate following Buyer's purchase of the Facility pursuant to Section 14.26.

(e) **Early Termination for Failure to Achieve Commercial Operation Date**. Buyer, in its sole discretion, may terminate this Agreement effective upon written notice to Seller delivered no later than thirty (30) days after the Commercial Operation Deadline if the Commercial Operation Date has not occurred on or before the Commercial Operation Deadline.

(f) **Early Termination for Failure to Achieve Effective Date**. If the Effective Date has not occurred on or before October 3, 2008, Seller, in its sole discretion, may terminate this Agreement effective upon written notice to Buyer delivered at any time after October 3, 2008, and before the Effective Date; provided, however, that if this Agreement is approved by the Los Angeles City Council prior to the delivery of such a termination notice, this termination right shall be suspended for the ten (10) days following the date of such approval.

(g) **Early Termination Following Casualty**. This Agreement shall terminate when and as provided in Section 14.19(b).

(h) **Effect of Termination**. Any termination of this Agreement under this Section 2.4 shall be without prejudice to the rights and remedies of either Party for Defaults occurring prior to such termination.

ARTICLE III
DEVELOPMENT OF THE FACILITY

Section 3.1 In General.

(a) **Permitting.** Seller, at its expense, shall timely take all steps necessary to obtain all Permits required to construct, maintain or operate the Facility in accordance with the requirements of this Agreement and all applicable Requirements of Law in all material respects.

(b) **Facility Design.** Seller shall determine the proposed location, design, configuration and capacities of the Facility as it deems appropriate, subject only to the requirements of this Agreement and all applicable material Requirements of Law, including but not limited to the characteristics and other requirements for the Facility set forth in Appendix B.

(c) **Meetings With Governmental Authorities.** Seller shall represent the Facility as necessary in all meetings with and proceedings before all Governmental Authorities.

(d) **Ownership and Operation of the Facility.** Seller shall use commercially reasonable and diligent efforts to site, develop, finance and construct the Facility. The Facility shall be owned by Seller during the Agreement Term. Seller shall develop, operate and maintain the Facility, at its sole risk and expense, and in compliance with the requirements of this Agreement, all applicable Requirements of Law in all material respects, Prudent Utility Practices, and applicable manufacturer's and operator's specifications and recommended procedures *provided*, meeting these requirements shall not relieve Seller of its other obligations under this Agreement. Seller shall not sell or otherwise dispose of or create, incur, assume or permit to exist any Lien (other than Permitted Encumbrances) on any portion of the Facility or any other property or assets of Seller which are related to the operation, maintenance and use of the Facility without the prior written approval of Buyer, which approval shall not be unreasonably withheld, conditioned or delayed.

Section 3.2 Certification of Partial Commercial Operation Date. Seller may provide Buyer with a notice when Seller believes that all conditions precedent to achieving Commercial Operation of the Facility as specified in the definition of "Partial Commercial Operation" in Section 1.1 have been satisfied. If Buyer determines, in the exercise of its reasonable discretion, that the notice is inaccurate in any material respect, Seller shall either (i) withdraw the notice and issue a new notice at such time as the issuance would be accurate in all material respects, or (ii) submit the matter to dispute resolution as provided in Section 14.3. If Seller refers the matter to dispute resolution and it is ultimately determined that Seller's notice was not inaccurate, the Partial Commercial Operation Date shall be deemed to be the date of Seller's original notice. On and after the Partial Commercial Operation Date and until the sooner to occur of the Commercial Operation Date or the Commercial Operation Deadline notwithstanding any other provisions in this Agreement to the contrary:

(a) Buyer will not have a right to terminate this Agreement pursuant to Section 2.4(d);

(b) The Commercial Operation Date for all purposes under this Agreement shall be the Partial Commercial Operation Date except that the Commercial Operations Date shall not be deemed to have occurred for purposes of Section 3.5 and Seller may continue to add Complete Turbines to the Facility to achieve the Target Capacity until the Commercial Operation Deadline;

(c) The price to be paid for Facility Energy produced by the Complete Turbines will be the price set forth in paragraph (1) (for Excess Energy) or paragraph (3) (for other Facility Energy) of Appendix A and the price to be paid for Facility Energy produced by any other turbines will be the price set forth in paragraph (2) of Appendix A; and

(d) Facility Energy from turbines that are not Complete Turbines will be paid for and treated as test energy and will not be credited when determining whether the Guaranteed Generation requirement of this Agreement has been met.

Section 3.3 Certification of Commercial Operation Date. Seller shall provide Buyer with a notice when Seller believes that all conditions precedent to achieving Commercial Operation of the Facility as specified in the definition of "Commercial Operation" in Section 1.1 have been satisfied. If Buyer shall determine, in the exercise of its reasonable discretion, that the notice is inaccurate in any material respect, Seller shall either (i) withdraw the notice and issue a new notice at such time as the issuance would be accurate in all material respects or (ii) submit the dispute to resolution as provided in Section 14.3. If Seller refers the matter to dispute resolution and it is ultimately determined that Seller's notice was not inaccurate, the Commercial Operation Date shall be deemed to be the date of Seller's original notice. If on the Commercial Operation Deadline the Commercial Operation Date has not occurred but the Partial Commercial Operation Date shall have occurred, the following shall apply notwithstanding any other provisions in this Agreement to the contrary:

(a) Buyer will not have a right to terminate this Agreement pursuant to Section 2.4(g);

(b) Seller will not be in default under Section 13.1(g);

(c) The Commercial Operation Date for purposes of Section 2.2 shall be the Partial Commercial Operation Date;

(d) Total Capacity for the Facility (except for computing the Capacity Deficiency for purposes of Section 3.5) will be equal to the Capacity of the Complete Turbines on the Commercial Operations Deadline (the Capacity of Complete Turbines on the Partial Commercial Operation Date plus the Capacity of Complete Turbines added between the Partial Commercial Operation Date and the Commercial Operation Deadline).

Section 3.4 Other Information. Seller shall provide to Buyer such other information regarding the permitting, engineering, construction or operations, of Seller, its subcontractors or the Facility, financial or otherwise, and other data concerning the Seller, its subcontractors or the Facility as Buyer may, from time to time, reasonably request. Until the Commercial Operation Date, Seller shall provide to Buyer quarterly written reports describing permitting and development activities in the previous quarter and anticipated progress and activities for the upcoming quarter. Buyer shall be permitted to inspect the Facility from time to time upon reasonable notice to Seller and during reasonable business hours. While at the Facility, Buyer and its representatives, advisors, engineers and consultants shall observe the safety procedures established by Seller, and shall not interfere in any material way with the development, construction, operation or maintenance of the Facility or any component thereof.

Section 3.5 Performance Damages. If the Commercial Operation Date has not occurred by the Commercial Operation Target Date, Seller shall pay liquidated damages to Buyer in an amount equal to Six Thousand Dollars ($6,000) per month, prorated for any partial month, times the total Capacity (or the Capacity Deficiency at any time after the Partial

Commercial Operation Date) until the earlier to occur of the Commercial Operation Date or the Commercial Operation Deadline. Payments under this paragraph (a) shall be due and payable within fifteen (15) days of the end of the month for which the payments were incurred. The provisions of this Section 3.5 shall survive any early termination of this Agreement under Section 2.4(e).

Section 3.6 Decommissioning and Other Costs. Buyer shall not be responsible for any cost of decommissioning or demolition of the Facility or any environmental or other liability associated with the decommissioning or demolition without regard to the timing or cause of the decommissioning or demolition.

ARTICLE IV
OPERATION AND MAINTENANCE OF THE FACILITY

Section 4.1 Compliance with Electrical Service Requirements. Seller shall, at its sole expense, operate and maintain the Facility (i) in accordance with Prudent Utility Practices, the requirements of this Agreement and all applicable Requirements of Law in all material respects, and (ii) in a manner that is reasonably likely to maximize the output of Energy from the Facility and result in a useful life for the Facility of not less than fifteen years.

Section 4.2 General Operational Requirements. In addition to the requirements set forth in Section 4.1 and elsewhere in this Agreement, Seller shall, at all times:

(a) Employ qualified and trained personnel for managing, operating and maintaining the Facility and for coordinating with Buyer and Buyer's Agent. Seller shall ensure that necessary personnel are available on-site or on-call twenty-four (24) hours per day during the Delivery Term.

(b) Operate and maintain the Facility with due regard for the safety, security and reliability of the interconnected facilities and Transmission System.

(c) Comply with operating and maintenance standards recommended by, and required by, the Facility's equipment suppliers.

Section 4.3 Operation and Maintenance Plan. Seller shall devise and implement a plan of inspection, maintenance, and repair for the Facility and the components thereof in order to maintain such equipment in accordance with Prudent Utility Practices, and shall keep records with respect to inspections, maintenance, and repairs thereto. The aforementioned plan and all records of such activities shall be available for inspection by Buyer during Seller's regular business hours upon reasonable notice.

Section 4.4 Environmental Credits. Seller shall, if applicable, obtain in its own name and at its own expense any and all pollution or environmental credits or offsets and Permits necessary to operate the Facility in compliance with applicable Requirements of Law in all material respects.

Section 4.5 Scheduling of Energy and Scheduled Outages.

(a) Seller or Seller's designee shall be responsible for scheduling the forecast of Facility Energy to the Point of Delivery during the Agreement Term in accordance with the dispatch and scheduling procedures that may be updated from time to time by Buyer or Buyer's Agent. Seller shall submit schedules, and any updates to such schedules, to Buyer or Buyer's Agent designated by Buyer based on the most current forecast of Energy. All generation scheduling and Transmission Services shall be performed in accordance with the applicable NERC and WECC operating policies, criteria, and any other applicable guidelines. Seller shall also fulfill the contractual, metering and interconnection requirements so as to be able to deliver Energy to the Point of Delivery.

(b) No later than forty-five (45) days before the beginning of each calendar year, Seller or Seller's designee shall provide, or cause to be provided, a non-binding forecast of each month's average-day deliveries of Energy, by hour, for the following eighteen (18) months.

(c) Ten (10) Business Days before the beginning of each month, Seller or Seller's designee shall provide, or cause to be provided, a non-binding forecast of each day's average deliveries of Energy, by hour, for the following month.

(d) By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery of Energy, Seller or Seller's designee shall cause the Facility's Scheduling coordinator to provide Buyer or Buyer's Agent with a copy of a non-binding hourly forecast of deliveries of Energy for each hour of the immediately succeeding day. A forecast provided a day prior to any non-Business Day(s) shall include forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Seller shall provide Buyer or Buyer's Agent with a copy of any and all updates to such forecast indicating a change in forecasted Energy from the then current forecast.

(e) Buyer and Seller shall cooperate to minimize Scheduled Outages during the months of June, July and August (the "***Major Maintenance Blockout***"). Seller shall attempt to minimize its Scheduled Outages during the Major Maintenance Blockout consistent with Prudent Utility Practices. No later than sixty (60) days prior to the Commercial Operation Date, and the commencement of each calendar year thereafter, Seller shall provide Buyer or Buyer's Agent with its non-binding written projection of all Scheduled Outages for the succeeding three (3) years (the "***Scheduled Outage Projection***") reflecting a minimized schedule of Scheduled Outages during the Major Maintenance Blockout. In addition, Seller shall cooperate in good faith with Buyer's maintenance scheduling requests consistent with Prudent Utility Practices. The Scheduled Outage Projection shall include information concerning all projected Scheduled Outages during such period, including (i) the anticipated start and end dates of each such Scheduled Outage; (ii) a description of the maintenance and/or repair work to be performed during such Scheduled Outage; and (iii) the anticipated Capacity of the Facility, if any, during such Scheduled Outage. Seller shall notify Buyer or Buyer's Agent of any change in the Scheduled Outage Projection as soon as practicable, but in no event later than thirty (30) days prior to the originally scheduled date of the Scheduled Outage. Seller will use commercially reasonable efforts to accommodate reasonable requests of Buyer with respect to the timing of Scheduled Outages and Seller will, to the extent feasible and consistent with Prudent Utility

Practices, arrange for Scheduled Outages to occur between October 1 of the given year and May 1 of the following year and coincident with planned transmission outages. In the event of a System Emergency, Seller shall make all reasonable efforts to reschedule any Scheduled Outages previously scheduled to occur during the System Emergency.

(f) In the event of a Forced Outage affecting at least 10% of the Capacity of the Facility, to the extent practicable, Seller shall notify Buyer or Buyer's Agent within two (2) hours of the Forced Outage and provide detailed information concerning the Forced Outage, including (i) the start and anticipated end dates of the Forced Outage; (ii) a description of the cause of the Forced Outage; (iii) a description of the maintenance and/or repair work to be performed during the Forced Outage; and (iv) the anticipated Capacity of the Facility, if any, during the Forced Outage. Seller shall take all reasonable measures and exercise commercially reasonable efforts to avoid Forced Outages and to limit the duration and extent of any such outages.

(g) SCADA Data. Seller shall give Buyer access, at Buyer's expense, to data from Seller's Supervisory Control and Data Acquisition System on an as-available basis, or such other basis as Buyer may request.

ARTICLE V
COMPLIANCE DURING CONSTRUCTION AND OPERATION PERIOD

Section 5.1 In General.

(a) **The Facility.** Seller shall perform, or cause to be performed, all engineering, design and construction in a good and workmanlike manner and in accordance applicable standards, Prudent Utility Practice, all applicable Requirements of Law in all material respects, the Milestones and all other requirements of this Agreement. Throughout the Delivery Term, the Facility will comply in all respects with the requirements of this Agreement and all applicable Requirements of Law in all material respects. Throughout the Agreement Term Seller shall monitor the operation and maintenance of the Facility and said operation and maintenance will be, in full compliance with all applicable standards, Prudent Utility Practices, Requirements of Law in all material respects, the Quality Assurance Program, and other provisions of this Agreement. Seller shall at all times exercise commercially reasonable efforts to undertake all recommended or required updates or modifications to the Facility, its equipment and materials, including procedures, programming and software in a timely manner. Seller shall, at its expense, maintain throughout the Agreement Term an inventory of spare parts for the Facility in a quantity that is consistent with manufacturer's recommendations and Prudent Utility Practice.

(b) **Buyer's Right To Monitor In General.** Subject to Section 14.21, Buyer shall have the right and Seller shall permit Buyer and its representatives, advisors, engineers and consultants to observe, inspect and monitor all operations and activities at the Facility site, including the performance of the contractor(s) under the construction contract(s) pertaining to the Facility, the design, engineering, procurement and installation of the equipment, start up and testing, and Commercial Operation. While at the Facility Site, Buyer and its representatives, advisors, engineers and consultants shall observe the safety procedures established by Seller, and shall not interfere in any material way with the development, construction, operation or maintenance of the Facility or any component thereof.

(c) **Startup and Testing**. Prior to the Commercial Operation Date, Buyer shall have the right to:

(1) review and monitor the contractors' performance and achievement of all performance tests and all other tests required under the Facility construction contracts that must be performed in order to achieve completion; and

(2) be present to witness the such performance tests and review the results thereof.

Prior to the commencement of performance tests of the Facility, Seller shall provide Buyer any information regarding the scheduling of performance tests provided to Seller by Seller's construction contractor, and Seller shall use commercially reasonable efforts to cause its construction contractor to conduct tests in accordance with the schedule. Buyer's failure to be present at any test shall not affect the validity of such test, and Seller shall not be required to re-perform, or cause any other Person to re-perform any test that Buyer has failed to observe. While at the Facility, Buyer and its representatives, advisors, engineers and consultants shall observe the safety procedures established by Seller, and shall not interfere in any material way with the development, construction, operation or maintenance of the Facility or any component thereof. Seller shall allow Buyer to review and copy any test results or other data developed during startup and testing. Seller shall send Buyer any summaries of such test results provided by Seller's contractor.

Section 5.2 Compliance With Standards. Seller shall cause the Facility and all parts thereof to be designed, constructed, tested, operated and maintained to meet all of the requirements of this Agreement, including Prudent Utility Practices and all applicable Requirements of Law in all material respects.

Section 5.3 Quality Assurance Program. Seller shall maintain and comply with a written quality assurance policy ("***Quality Assurance Program***"). The Quality Assurance Program will be provided to Buyer no later than sixty (60) days after the Commercial Operation Date. Seller may amend the Quality Assurance Program from time to time in accordance with Prudent Utility Practices, and Seller shall promptly send a copy of such amended Quality Assurance Program to Buyer.

Section 5.4 Performance Security. The Seller shall, on the Effective Date, furnish and maintain a letter of credit (the "***Performance Security***") from a Qualified Issuer in the amount of Five Million Two Hundred Fifty-Six Thousand Dollars ($5,256,000) in the form attached hereto as <u>Appendix E</u>, which will guarantee Seller's obligations under this Agreement. If the Performance Security is used to pay liquidated damages pursuant to <u>Section 3.5</u> or otherwise drawn upon by Buyer and, as a consequence thereof, the amount of the Performance Security is less than Five Million Two Hundred Fifty-Six Thousand Dollars ($5,256,000) at any time during the Agreement Term, within ten (10) Business Days after the date of such draw, Seller shall cause the amount of the Performance Security to be reaffirmed in the amount of Five

Million Two Hundred Fifty-Six Thousand Dollars ($5,256,000). Seller shall notify Buyer of the occurrence of any event which, with notice or the passage of time or both, would constitute a Downgrade Event with respect to an issuer of Performance Security, which notice shall be given by Seller within five (5) Business Days of being notified of the occurrence of such event. If at any time there shall occur a Downgrade Event with respect to an issuer of Performance Security, then Buyer may require that the Seller replace the Performance Security from the issuer that has suffered the Downgrade Event with Performance Security from a Qualified Issuer within thirty (30) days of notice from Buyer to Seller requesting such replacement Performance Security. Seller shall deliver (which delivery may be effected through posting on an internet page identified by notice to Buyer) in no event later than 120 days after the end of each fiscal year of the Qualified Issuer, a copy of such Qualified Issuer's audited consolidated financial statements for such fiscal year. Seller shall be deemed to have satisfied such delivery requirement if audited financial statements of the Qualified Issuer are publicly available on the U.S. Securities and Exchange Commission EDGAR information retrieval system or on an internet page maintained by the Qualified Issuer for those fiscal periods that such entity is required to prepare such statements under applicable law and exchange requirements. Seller shall, from time to time as requested by Buyer, execute, acknowledge, record, register, deliver and file all such notices, statements, instruments and other documents as may be necessary or advisable to render fully valid, perfected and enforceable under all applicable law the credit support contemplated by this Agreement and the rights, Liens and priorities of Buyer with respect to such credit support. Notwithstanding the other provisions of this Agreement, the credit support contemplated by this Agreement: (a) constitutes security for, but is not a limitation of, Seller's obligations under this Agreement, and (b) shall not be Buyer's exclusive remedy against Seller for the Seller's failure to perform in accordance with this Agreement. The Performance Security shall be returned to Seller promptly following the expiration or termination of this Agreement, and the satisfaction by Seller of any outstanding obligations hereunder.

Section 5.5 Effect of Review by Buyer. Any review by Buyer of the design, construction, engineering, operation or maintenance of the Facility is solely for the information of Buyer. Buyer shall have no obligation to share the results of any such review with Seller, nor shall any such review or the results thereof (whether or not the results are shared with Seller) nor any failure to conduct any such review relieve Seller from any of its obligations under this Agreement. By making any such review, Buyer makes no representation as to the economic and technical feasibility, operational capability or reliability of the Facility. Seller shall in no way represent to any third party that any such review by Buyer of the Facility, including, but not limited to, any review of the design, construction, operation or maintenance of the Facility by Buyer, is a representation by Buyer as to the economic and technical feasibility, operational capability or reliability of the Facility. Seller is solely responsible for the economic and technical feasibility, operational capability and reliability thereof.

ARTICLE VI
PURCHASE AND SALE OF POWER

Section 6.1 Purchases by Buyer.

(a) Prior to the Commercial Operation Date, Seller shall sell and deliver, and Buyer shall receive and purchase all Facility Energy for the price set forth in paragraph (2) of Appendix A.

(b) On and after the Commercial Operation Date and continuing for the Delivery Term, Seller shall sell and deliver, and Buyer shall purchase and receive, all Facility Energy for the price set forth in paragraph (1) (for Excess Energy) or paragraph (3) (for other Facility Energy) of Appendix A.

Section 6.2 Facility Point of Delivery. Seller shall deliver all Facility Energy to Buyer, and Buyer, or its designee, shall receive all Facility Energy from Seller, under this Agreement at the Facility Point of Delivery.

Section 6.3 Seller's Failure. If Seller fails to make up the full amount of any Shortfall Energy by the Makeup Deadline and Seller fails to provide Buyer with that quantity of Replacement Energy that is sufficient to make up the shortfall in full with ninety (90) days of the Makeup Deadline in accordance with Section 9.3, Seller shall pay Buyer an amount for each MWh of any remaining shortfall equal to the positive difference, if any, obtained by subtracting the price per MWh which would have been payable by Buyer for the Energy and associated Environmental Attributes not delivered from the Replacement Price. "***Replacement Price***" (i) the time-weighted average price of electricity (on-peak and off-peak) at Mid-Columbia for the delivery of energy for the Contract Year prior to the Contract Year in which payment is due under this Section 6.3, as quoted in the Dow Jones Electricity Price Index (or its successor) published in *The Wall Street Journal* (or, if such index should cease to be published, a successor index as determined by Buyer in the exercise of its reasonable discretion), *plus* (ii) the price at which Buyer, acting in a commercially reasonable manner, could purchase the Environmental Attributes not delivered by Seller, *plus* (iii) Five Dollars ($5.00) per MWh.

Section 6.4 Buyer's Failure. Unless excused by Force Majeure or Seller's failure to perform, if Buyer fails to receive at the Point of Delivery all or any part of any Energy required to be received by Buyer under this Article VI, Article VIII or Article IX, including, without limitation, any Imputed Energy, Buyer shall pay Seller, on the date payment would otherwise be due to Seller, an amount for each MWh of such deficiency equal to the positive difference, if any, obtained by subtracting (i) the Sales Price, from (ii) (A) the price per MWh which would have been payable by Buyer for the Energy not received by Seller, *plus* (B) the PTC Gross-up Amount. Seller shall use commercially reasonable efforts to sell any Energy Buyer so fails to receive at the Facility Point of Delivery. "***Sales Price***" means the price at which Seller, acting in a commercially reasonable manner, resells the Energy or, absent a resale, the market price for the quantity of Energy not received by the Buyer (adjusted for transmission difference, if any). Seller will provide Buyer prompt written notice of the Sales Price together with back-up documentation. In the case of Energy not resold by Seller, the amount of such Energy that Seller would have been capable of producing shall be determined utilizing the methodology in Section 9.1.

Section 6.5 Nature of Remedies. The remedy set forth in Section 6.3 is in addition to, and not in lieu of, any other right or remedy of Buyer, under this Agreement or otherwise, for failure of Seller to sell and deliver Energy and Environmental Attributes as and when required by this Agreement but, notwithstanding anything to the contrary in Section 13.1, shall be the sole and exclusive remedy for failure of Seller to achieve the Guaranteed Generation or to provide Replacement Energy as required by Section 9.3. Notwithstanding anything to the contrary in Section 13.1, the remedy set forth in Section 6.4 is the sole and exclusive remedy of Seller for any failure by Buyer to receive Energy as and when required by this Agreement, and all other remedies and damages for any such failure are hereby waived by Seller.

Section 6.6 Energy to Come Exclusively from Facility. Except as provided in Article IX, in no event shall Seller have the right to procure energy from sources other than the Facility for sale and delivery pursuant to this Agreement.

Section 6.7 Sales to Third Parties. Seller may sell to Persons other than Buyer outside of Buyer's service area any Facility Energy or Replacement Energy that Seller is required to deliver to Buyer, but which Buyer is excused from receiving, or otherwise unable to receive, at the Point of Delivery. Except as provided in the preceding sentence, Seller shall not sell or otherwise transfer any Facility Energy, Replacement Energy, Capacity Rights or Environmental Attributes to any Person other than Buyer during the Agreement Term. Any purported sale or transfer in violation of this provision shall be null and void at inception and of no force or effect.

ARTICLE VII
TRANSMISSION AND SCHEDULING; TITLE AND RISK OF LOSS

Section 7.1 In General. Seller shall arrange and be responsible for any Transmission Services required to deliver Energy to the Point of Delivery, and shall Schedule or arrange for Scheduling services with its Transmission Providers to so deliver the Energy to the Point of Delivery. Buyer shall arrange and be responsible for Transmission Services at and from the Point of Delivery, and shall Schedule or arrange for Scheduling services with its Transmission Providers to receive Energy at the Point of Delivery. Each Party shall designate an authorized Scheduler to effect the Scheduling of all Energy.

Section 7.2 Costs. Seller shall be responsible for any costs or charges imposed on or associated with the delivery of Energy up to the Point of Delivery, including but not limited to control area services, inadvertent energy flows, transmission losses and charges relating to the transmission of Energy. Buyer shall be responsible for any costs or charges imposed on or associated with the delivery of Energy at and from the Point of Delivery, including but not limited to control area services, inadvertent energy flows, transmission losses, ancillary services, balancing charges and charges relating to the transmission of Energy.

Section 7.3 Title; Risk of Loss. As between the Parties, Seller shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of all Energy prior to the Point of Delivery, and Buyer shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of all Energy at and from the Point of Delivery. Seller will deliver all Energy and Environmental Attributes to Buyer free and clear of all Liens created by any Person other than Buyer. Title to and risk of loss as to all Energy and Environmental Attributes shall pass from Seller to Buyer at the Point of Delivery.

ARTICLE VIII
ENVIRONMENTAL ATTRIBUTES; EPS AND RPS COMPLIANCE

Section 8.1 Transfer of Environmental Attributes. For and in consideration of Buyer entering into this Agreement, and in addition to the agreement by Buyer and Seller to purchase and sell Energy on the terms and conditions set forth herein, Seller shall transfer to Buyer, and Buyer shall receive from Seller, all right, title, and interest in and to all Environmental Attributes, whether now existing or acquired by Seller or that hereafter come into existence or are acquired by Seller during the Agreement Term, for all Delivered Energy and Replacement Energy. Seller shall transfer and make such Environmental Attributes available to Buyer immediately to the fullest extent allowed by applicable law upon Seller's production or acquisition of the Environmental Attributes. Seller shall not assign, transfer, convey, encumber, sell or otherwise dispose of all or any portion of such Environmental Attributes to any Person other than Buyer or attempt to do any of the foregoing with respect to any of the Environmental Attributes. Buyer and Seller acknowledge that the consideration for the transfer of Environmental Attributes is contained within the relevant prices for Delivered Energy under Articles VI and IX and Appendix A.

Section 8.2 Reporting of Ownership of Environmental Attributes. During the Agreement Term, Seller shall not report to any Person that the Environmental Attributes granted hereunder to Buyer belong to any Person other than Buyer, and Buyer may report under any program that such Environmental Attributes purchased hereunder belong to it.

Section 8.3 Environmental Attributes. Upon Buyer's request, and, with respect to clause (i), at Buyer's expense, Seller shall (i) take all actions and (ii) execute all documents or instruments necessary under applicable law, bilateral arrangements or other voluntary Environmental Attribute programs of any kind, as applicable, to maximize the attribution, accrual, realization, generation, production, recognition and validation of Environmental Attributes throughout the Agreement Term.

Section 8.4 Use of Accounting System to Transfer Environmental Attributes.

(a) In furtherance and not in limitation of Section 8.3, Seller shall use WREGIS or any successor system to evidence the transfer of any Environmental Attributes considered RECs under applicable law or any voluntary program ("***WREGIS Certificates***"), associated with Facility Energy or Replacement Energy in accordance with WREGIS reporting protocols, and as such shall register the Facility with WREGIS.

(b) After the Facility is registered with WREGIS, at Buyer's option, Seller shall (i) transfer WREGIS Certificates using the Forward Certificate Transfer method, as described in WREGIS Operating Rules, from Seller's WREGIS account to up to three WREGIS accounts, as designated by Buyer, or (ii) retire said WREGIS Certificates into Seller's WREGIS Retirement sub-account on behalf of Seller's requirements (if any); *provided, however*, that Buyer must initially select to use either option (i) or (ii) thirty (30) days prior to delivering any Energy to the Point of Delivery, and, *provided further*, if option (i) is selected, Buyer may change to option (ii) at the beginning of any calendar year during the Agreement Term upon thirty (30) days advance written notice. If option (ii) is selected, then Buyer shall provide Seller the number and vintage of MWh of WREGIS Certificates to be retired by providing written notice to Seller not later than thirty (30) days prior to the desired retirement date. Seller shall be responsible for the WREGIS expenses associated with registering the Facility, maintaining its account, WREGIS Certificate issuance fees, and transferring WREGIS Certificates to Buyer or Buyer's Agent, or any other designees, and Buyer shall be responsible for the WREGIS expenses associated with maintaining its account, or the accounts of its designees, if any, and subsequent transferring or retiring of WREGIS Certificates, or Seller's fees for the retirement of WREGIS Certificates on behalf of Buyer. Forward Certificate Transfers will occur monthly based on the certificate creation time-line established by the WREGIS Operating Rules. As of the Effective Date, the certificate creation time line is established as not later than ninety (90) days following the end of each month. For example, for MWhs generated in January 2009, the certificates will be created in WREGIS not later than April 30, 2009. Seller shall be responsible for, at its expense, validating and disputing data with WREGIS prior to certificate creation each month.

(c) In the event that WREGIS ceases to be in effect, the Parties shall mutually agree upon a successor tracking system and the appropriate allocation of the costs of implementation thereof. In addition, the Parties may, at any time, mutually agree to utilize an alternative tracking system, in which case the Parties shall agree on the allocation of the costs of document the production and transfer of RECs under this Agreement pursuant to such alternative tracking system. In the event that WREGIS is not in operation, or WREGIS does not track Seller's transfer of WREGIS Certificates to Buyer, Buyer's Agent, or its designees for purposes of any RECs attributed, accrued, realized, generated, produced, recognized or validated relative to the Facility Energy or Replacement Energy, or Buyer chooses not to use WREGIS for any reason, Seller shall, at Buyer's expense, document the production and transfer of RECs under this Agreement by delivering to Buyer an attestation for the RECs produced by the Facility, or Replacement Energy, measured in whole MWh, or by such other method as Buyer shall designate.

Section 8.5 Further Assurances. Seller will document the production of Environmental Attributes by delivering with each invoice to Buyer an attestation for Environmental Attributes (i) produced by the Facility or (ii) included with Replacement Energy for the preceding calendar month. The attestation shall be in the form set forth as Appendix D and shall be delivered to Buyer within sixty (60) days of the end of the month in which the Environmental Attributes were produced or, if Buyer has requested Seller to use WREGIS, one hundred five (105) days of the end of the month in which the Environmental Attributes were produced. At Buyer's request, the Parties shall execute all such documents and instruments and take such other action in order to effect the transfer of the Environmental Attributes specified in this Agreement to Buyer's Agents as Buyer may reasonably request. In the event of the promulgation of a scheme involving Environmental Attributes administered by CAMD, upon notification by CAMD that any transfers contemplated by this Agreement will not be recorded, the Parties shall promptly cooperate in taking all reasonable actions necessary so that such transfer can be recorded. Each Party shall promptly give the other Party copies of all documents it submits to CAMD to effectuate any transfers.

Section 8.6 RPS and EPS Compliance.

(a) The Seller warrants that the Facility Energy delivered to the Point of Delivery hereunder will be produced by wind energy. The Seller shall use commercially reasonable efforts to cause the Facility to be both RPS Compliant and EPS Compliant based on Requirements of Law as of the date on which Seller executes this Agreement, except for RPS Compliant and EPS Compliant requirements relating to the transmission of or the ability to transmit Energy to the State of California. Without limiting the generality of the foregoing, Seller shall apply for and diligently prosecute certification of the Facility as a renewable energy resource by CEC.

(b) If there is a Change of Law that would result in Increased RPS/EPS Compliance Costs in excess of Fifty Thousand Dollars ($50,000.00) over the Agreement Term, Seller will notify Buyer thereof together with a detailed estimate of such costs. At the election of Buyer, Seller will implement the changes necessitated by the Change of Law and Buyer will pay the Increased RPS/EPS Compliance Costs. From time to time and at any time requested by the Buyer, the Seller will furnish to the Buyer or Governmental Authorities or other Persons designated by the Buyer, all certificates and other documentation reasonably requested by the Buyer in order to establish compliance with the preceding sentences.

ARTICLE IX
MAKEUP OF SHORTFALL ENERGY

Section 9.1 Makeup of Shortfall. During each Contract Year, all Facility Energy, Imputed Energy and Curtailment Energy will be applied first to the determination of whether Seller has delivered the Guaranteed Generation. If in any Contract Year the sum of Facility Energy, the Imputed Energy and the Curtailment Energy is less than the Guaranteed Generation, then Seller shall make up that shortfall of Facility Energy ("***Shortfall Energy***") in accordance with this Article IX. To determine the amount of Imputed Energy and Curtailment Energy for purposes of determining Guaranteed Generation, Seller and Buyer will establish a calculation methodology that is satisfactory to both Parties in the exercise of their reasonable discretion. The methodology shall:

(a) Use as inputs the wind speed and direction as measured at Seller's meteorological towers on the Facility site;

(b) Be based on the final, as constructed turbine layout;

(c) Use as a basis for calculating unit output the power curves provided by the wind turbine manufacturer;

(d) Provide for losses for items that additionally affect output such as blade soiling, blade degradation, collection system losses to the Point of Delivery, weather induced losses (including ice and light hail), controls, turbulence and high winds, array configuration and terrain; and

(e) Take into account whether any wind turbine at the Facility was out of service or operating at a reduced level for any reason during the measurement period.

Section 9.2 No Excess Energy During Shortfall Periods. During any period in which there is Shortfall Energy due to Buyer, all Facility Energy that would otherwise be designated as Excess Energy shall be applied to make up the Shortfall Energy until all Shortfall Energy is provided to Buyer. All such Facility Energy delivered by Seller to the Facility Point of Delivery shall be paid for at the price specified in Paragraph 3 of Appendix A, and there will be no payment of the Excess Energy Rate for this Energy until the Shortfall Energy has been fully made up.

Section 9.3 Replacement Energy. If Seller fails to make up the full amount of any Shortfall Energy by the end of the one (1) Contract Year following the Contract Year in which the shortfall occurs, or the two (2) Contract Years following the Contract Year in which the shortfall occurs if the shortfall is caused solely by one or more Force Majeure events (the ***"Makeup Deadline"***), Seller shall within ninety (90) days after the Makeup Deadline provide Buyer with that quantity of Replacement Energy that is sufficient to make up the shortfall in full, failing which the provisions of Section 6.3 shall apply with respect to the remaining shortfall, if any. As employed in this Agreement, ***"Replacement Energy"*** means Energy that (i) is produced by a facility other than the Facility, and (ii) is Renewable Energy.

Section 9.4 Application of Shortfall Energy or Replacement Energy. In the event of shortfalls in multiple Contract Years, any Shortfall Energy or Replacement Energy delivered by Seller shall be applied in priority to the earliest outstanding shortfalls hereunder until all shortfalls are satisfied.

ARTICLE X
CAPACITY RIGHTS

Section 10.1 Purchase and Sale of Capacity Rights. For and in consideration of Buyer entering into this Agreement, and in addition to the agreement by Buyer and Seller to purchase and sell Facility Energy on the terms and conditions set forth herein, Seller hereby transfers to Buyer, and Buyer hereby accepts from Seller, all of the Capacity Rights. Buyer and Seller acknowledge that the consideration for the transfer of Capacity Rights is contained within the relevant prices for Facility Energy. In no event shall Buyer have any obligation or liability whatsoever for any debt pertaining to the Facility by virtue of Buyer's ownership of the Capacity Rights or otherwise.

Section 10.2 Ownership of Capacity Rights. Seller shall not assign, transfer, convey, encumber, sell or otherwise dispose of any of the Capacity Rights to any Person other than Buyer or attempt to do any of the foregoing with respect to any of the Capacity Rights. Seller shall not report to any Person that any of the Capacity Rights belong to any Person other than Buyer. Buyer may, at its own risk and expense, report to any Person that the Capacity Rights belong to it.

Section 10.3 Further Assurances. Seller shall execute and deliver such documents and instruments and take such other action as Buyer may request to effect recognition and transfer of the Capacity Rights to Buyer. Seller shall bear the costs associated therewith.

ARTICLE XI
BILLING; PAYMENT; AUDITS; METERING; ATTESTATIONS; POLICIES

Section 11.1 Billing and Payment. Billing and payment for all Delivered Energy (including but not limited to startup and test Energy and Replacement Energy) shall be as set forth in this Article XI.

Section 11.2 Calculation of Energy Delivered; Invoices and Payment.

(a) **Delivered Quantity.** For each calendar month during the Agreement Term, commencing with the first calendar month in which Delivered Energy is delivered and received under this Agreement, Seller shall calculate the amount of Energy so delivered and received during such calendar month as determined (i) in the case of Facility Energy, from recordings produced by Seller's meters maintained pursuant to Section 11.6, at or near midnight on the last day of the calendar month in question, and (ii) in the case of Replacement Energy supplied pursuant to Section 9.3, from such information as is satisfactory to Buyer in the exercise of its reasonable discretion.

(b) **Invoice.** Not later than the tenth day of each calendar month, commencing with the calendar month next following the calendar month in which Energy is first delivered by Seller and received by Buyer under this Agreement, Seller shall deliver to Buyer a proper invoice showing the amount of Delivered Energy during the preceding calendar month (with a separate allocation for any Replacement Energy) and Seller's computation of the amount due Seller in respect thereof. Monthly invoices shall be sent by electronic means to the address set forth in Appendix C or such other address as Buyer may provide to Seller.

(1) Monthly invoices shall contain a statement that the representations and warranties set forth in Sections 12.2(a)-(d), (k) and (l) remain true and correct as of the date of the invoice and that there exists no Default by Seller or any event that, after notice or with the passage of time or both, would constitute a Default. If any such Default or potential Default then exists, Seller shall list, in detail, the nature of the condition or event, the period during which it has existed and the action which Seller has taken, is taking, or proposes to take with respect to each such condition or event,

(2) Seller shall deliver to Buyer attestations of Environmental Attribute transfers substantially in the form set forth in Appendix D to Buyer concurrently with monthly invoices sent pursuant to Section 11.2.

(3) Buyer shall not be required to make invoice payments if the invoice is received more than six (6) months after the billing period. Each invoice shall show the Agreement number, the vendor code number, the City of Los Angeles Business Tax Registration Certificate Number, and the identification of material, equipment and/or services covered by the invoices.

(c) **Payment.** Not later than the fifteenth (15^{th}) day after receipt by Buyer of Seller's monthly invoice (or the next succeeding Business Day, if such fifteenth day is not a Business Day) Buyer shall pay to Seller, by wire transfer of immediately available funds to an account specified by Seller or by any other means agreed to by the Parties from time to time, the amount set forth as due in such monthly invoice, subject to Section 11.3.

Section 11.3 Disputed Invoices. In the event any portion of any invoice is in dispute, the undisputed amount shall be paid when due. The Party disputing a payment shall promptly notify the other Party of the basis for the dispute. Disputes shall be discussed by the Authorized Representatives, who shall use reasonable efforts to amicably and promptly resolve the disputes, and any failure to agree shall be subject to resolution in accordance with Section 14.3. Upon resolution of any dispute, if all or part of the disputed amount is later determined to have been due, then the Party owing such payment or refund shall pay within ten (10) days after receipt of notice of such determination the amount determined to be due plus interest thereon at the Interest Rate from the due date until the date of payment. For purposes of this Section 11.3. Buyer may dispute an invoice at any time, *provided* that Buyer provides Seller with a notification of such dispute, setting forth the details of such dispute in reasonable specificity.

Section 11.4 Buyer's Right of Setoff. In addition to any right now or hereafter granted under applicable law and not by way of limitation of any such rights, Buyer shall have the right at any time or from time to time without notice to Seller or to any other Person, any such notice being hereby expressly waived, to set off against any amount due Seller from Buyer under this Agreement or otherwise any amount due Buyer from Seller under this Agreement or otherwise, including but not limited to any amounts due because of breach of this Agreement or any other obligation and any costs payable by Seller under Section 7.2 if and to the extent paid in the first instance by Buyer.

Section 11.5 Records and Audits.

(a) Seller shall maintain, and shall cause Seller's subcontractors and suppliers operating under contracts entered into after the date on which Seller executes this Agreement, as applicable, to maintain all records pertaining to the management of this Agreement, related subcontracts, and performance of services pursuant to this Agreement (including all billings, costs, metering, and Environmental Attributes), in their original form, including but not limited to, reports, documents, deliverables, employee time sheets, accounting procedures and practices, records of financial transactions, and other evidence, regardless of form (e.g., machine readable media such as disk, tape, etc.) or type (e.g., databases, applications software, database management software, utilities, etc.), sufficient to properly reflect all costs claimed to have been incurred and services performed pursuant to this Agreement.

(b) If the Seller, the Seller's subcontractors and/or suppliers are required to submit cost or pricing data in connection with this Agreement, the Seller must maintain all records and documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used. Buyer and the Authorized Auditors shall have the right to discuss such records with Seller's officers and independent public accountants (and by this provision Seller authorizes said accountants to discuss such billings and costs), all at such times and as often as may be reasonably requested.

(c) All records shall be retained, and shall be subject to examination and audit by the Authorized Auditors, for a period of not less than four (4) years following final payment made by the Buyer hereunder or the expiration or termination date of this Agreement, whichever is later. The Seller shall make said records or to the extent accepted by the Authorized Auditors, photographs, micro-photographs, etc. or other authentic reproductions thereof, available to the Authorized Auditors at the Seller's offices located at all reasonable times and without charge. The Authorized Auditors will have the right to reproduce, photocopy, download, transcribe, and the like any such records at Buyer's cost, except as provided herein. Any information provided by the Seller on machine-readable media shall be provided in a format accessible and readable by the Authorized Auditors. The Seller shall not, however, be required to furnish the Authorized Auditors with commonly available software.

(d) Seller, and the Seller's subcontractors and suppliers operating under contracts entered into after the date on which Seller executes this Agreement, as applicable to the services provided under this Agreement, shall be subject at any time during normal business hours with fourteen (14) calendar days prior written notice to audits or examinations by Authorized Auditors, relating to all billings and to verify compliance with all Agreement requirements relative to practices, methods, procedures, performance, compensation, and documentation. Seller shall use commercially reasonable efforts to make the records of Seller's subcontractors and suppliers operating under contracts entered into prior to the date on which Seller executes this Agreement available on comparable terms.

(e) Examinations and audits will be performed using generally accepted auditing practices and principles and applicable Governmental Authority audit standards. If Seller utilizes or is subject to FAR, Part 30 and 31, et seq. accounting procedures, or a portion thereof, examinations and audits will utilize such information. To the extent that the Authorized Auditor's examination or audit reveals inaccurate, incomplete or non-current records, or records are unavailable, the records shall be considered defective. Consistent with standard auditing procedures, the Seller will be provided fifteen (15) calendar days to review the Authorized Auditor's examination results or audit and respond to the Buyer's prior to the examination's or audit's finalization and public release. If the Authorized Auditor's examination or audit indicates the Seller has been overpaid under a previous payment application, the identified overpayment amount shall be paid by the Seller to the Buyer within fifteen (15) calendar days of notice to the Seller of the identified overpayment.

(f) The Seller shall contractually require all subcontractors performing services under this Agreement pursuant to contracts entered into after the date on which Seller executes this Agreement to comply with the provisions of this section by inserting this Section 11.5 in each subcontractor contract and by contractually requiring each subcontractor to insert this Section 11.5 in any of its subcontract contracts related to services under this Agreement. In addition, Seller and its subcontractors operating under contracts entered into after the date on which Seller executes this Agreement shall also include the following language in each subcontractor contract: "The Department of Water and Power of the City of Los Angeles is a third party beneficiary of the foregoing audit provision. The benefits of the audit provision shall inure solely for the benefit of the Department of Water and Power of the City of Los Angeles. The designation of the Department of Water and Power of the City of Los Angeles as a third party beneficiary of the audit provision shall not confer any rights or privileges on the Seller, subcontractor or any other person/entity."

(g) All expenses and costs incurred by the Authorized Auditors arising out of or related to the examination or audit shall be paid by Buyer unless the audit reveals that the Buyer overpayment to the Seller is more than five percent (5.0%) of the billings reviewed, in which case Seller shall pay all expenses and costs incurred by the Authorized Auditors arising out of or related to the examination or audit. Any such examination or audit expenses and costs shall be paid by the Seller to the Buyer within fifteen (15) calendar days of notice to the Seller of such costs and expenses. The provisions of this Section 11.5 shall survive the expiration or earlier termination of this Agreement.

Section 11.6 Electric Metering Devices.

(a) The Facility Energy made available to Buyer or Buyer's Agent by Seller under this Agreement shall be measured using Electric Metering Devices installed, owned and maintained by the Seller. If the Electric Metering Devices are not installed at the Facility Point of Delivery, meters or meter readings will be adjusted to reflect losses from the Electric Metering Devices to the Facility Point of Delivery. All Electric Metering Devices used to provide data for the computation of payments shall be sealed and the Seller or its designee shall only break the seal when such Electric Metering Devices are to be inspected and tested or adjusted in accordance with this Section 11.6. Seller or its designee shall specify the number, type, and location of such Electric Metering Devices.

(b) Seller or its designee, at no expense to Buyer, shall inspect and test all Electric Metering Devices upon installation and at least annually thereafter. Seller shall provide Buyer with reasonable advance notice of, and permit a representative of Buyer to witness and verify, such inspections and tests. Upon request by Buyer, Seller or its designee shall perform additional inspections or tests of any Electric Metering Device and shall permit a qualified representative of Buyer to inspect or witness the testing of any Electric Metering Device. While at the Facility Site, Buyer and its representatives, advisors, engineers and consultants shall observe the safety procedures established by Seller, and shall not interfere in any material way with the development, construction, operation or maintenance of the Facility or any component thereof The actual expense of any such requested additional inspection or testing shall be borne by Seller. Seller shall provide copies of any inspection or testing reports to Buyer.

(c) **Adjustment for Inaccurate Meters.** If an Electric Metering Device fails to register, or if the measurement made by an Electric Metering Device is found upon testing to be inaccurate by more than one percent (1.0%), an adjustment shall be made correcting all measurements by the inaccurate or defective Electric Metering Device for both the amount of the inaccuracy and the period of the inaccuracy. The adjustment period shall be determined by reference to Seller's check-meters, if any, or as far as can be reasonably ascertained by Seller from the best available data, subject to review and approval by Buyer. If the period of the inaccuracy cannot be ascertained reasonably, any such adjustment shall be for a period equal to one-third of the time elapsed since the preceding test of the Electric Metering Devices. To the extent that the adjustment period covers a period of deliveries for which payment has already been made by Buyer, Buyer shall use the corrected measurements as determined in accordance with this Section 11.6 to recompute the amount due for the period of the inaccuracy and shall subtract the previous payments by Buyer for this period from such recomputed amount. If the difference is a positive number, the difference shall be paid by Buyer to Seller; if the difference is a negative number, that difference shall be paid by Seller to Buyer, or at the discretion of Buyer, may take the form of an offset to payments due to Seller from Buyer. Payment of such difference by the owing Party shall be made not later than thirty (30) days after the owing Party receives notice of the amount due, unless Buyer elects payment via an offset.

Section 11.7 Power Revenue Fund. Any amounts payable by Buyer under this Agreement shall be payable solely from the Buyer's Power Revenue Fund. No other fund or account held by or on behalf of Buyer (or any other department or division thereof) may be used to satisfy any such obligations.

Section 11.8 Taxes. Seller shall be responsible for and shall pay, before the due dates therefor, any and all federal, state and local Taxes incurred by it as a result of entering into this Agreement and all Taxes imposed or assessed with respect to the Facility, the Facility site, or any other assets of Seller, the sale or use of Energy and Environmental Attributes and all Taxes related to Seller's income.

ARTICLE XII
REPRESENTATIONS AND WARRANTIES; COVENANTS OF SELLER

Section 12.1 Representations and Warranties of Buyer. Buyer makes the following representations and warranties to Seller as of the date that it executes this Agreement:

(a) Buyer is a validly existing California charter city and has the legal power and authority to own its properties, to carry on its business as now being conducted and to enter into this Agreement and carry out the transactions contemplated hereby and thereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

(b) The execution, delivery and performance by Buyer of this Agreement have been duly authorized by all necessary action, and do not require any consent or approval of Buyer's regulatory/governing bodies, other than that which has been obtained.

(c) This Agreement constitutes the legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.

Section 12.2 Representations and Warranties of Seller. Seller makes the following representations and warranties to Buyer as of the date that it executes this Agreement:

(a) Seller is a limited liability company duly organized, validly existing and in good standing under the laws of Delaware, is qualified to do business in the State of California and the State of Oregon, and has the legal power and authority to own and lease its properties, to carry on its business as now being conducted and to enter into this Agreement and carry out the transactions contemplated hereby and thereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

(b) The execution, delivery and performance by Seller of this Agreement have been duly authorized by all necessary action, and do not require any consent or approval other than those which have already been obtained.

(c) The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby and thereby and the fulfillment of and compliance with the provisions of this Agreement, does not conflict with or constitute a breach of or a default under, any of the terms, conditions or provisions of any Requirement of Law in any material respect, or any organizational documents, agreement, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which it or any of its property is bound, or result in a breach of or a default under any of the foregoing or result in or require the creation or imposition of any Lien upon any of the properties or assets of Seller (except as contemplated hereby), and Seller has obtained or expects to timely obtain all Permits required for the performance of its obligations hereunder and thereunder and operation of the Facility in accordance with Prudent Utility Practices, the requirements of this Agreement and all applicable Requirements of Law in all material respects.

(d) This Agreement constitutes the legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.

(e) There is no pending or, to the knowledge of the Seller, threatened action or proceeding affecting Seller before any Governmental Authority, which purports to affect the legality, validity or enforceability of this Agreement.

(f) Seller is not in violation of any Requirement of Law, which violations, individually or in the aggregate, would reasonably be expected to result in a material adverse effect on the business, assets, operations, condition (financial or otherwise) or prospects of Seller, or the ability of Seller to perform any of its obligations under this Agreement.

(g) Seller expects to be a Special Purpose Entity on the Effective Date.

(h) Seller has (i) not entered into this Agreement with the actual intent to hinder, delay or defraud any creditor, and (ii) received reasonably equivalent value in exchange for its obligations under this Agreement. No petition in bankruptcy has been filed against Seller and Seller has not made an assignment for the benefit of creditors or taken advantage of any insolvency act for its benefit as a debtor.

(i) All Tax returns and reports of Seller required to be filed by it have been timely filed, and all Taxes shown on such Tax returns to be due and payable and all assessments, fees and other governmental charges upon Seller and upon its properties, assets, income, business and franchises that are due and payable have been paid when due and payable. Seller knows of no proposed Tax assessment against it that is not being actively contested by it in good faith and by appropriate proceeding.

(j) owns or possesses, or will own or possess in a timely manner, all patents, rights to patents, trademarks, copyrights and licenses necessary for the performance by the Seller of this Agreement and the transactions contemplated hereby, without any conflict with the rights of others.

(k) Seller has not assigned, transferred, conveyed, encumbered, sold or otherwise disposed of all or any portion of any Environmental Attributes to any Person other than Buyer.

(l) Seller has not assigned, transferred, conveyed, encumbered, sold or otherwise disposed of any of the Capacity Rights to any Person other than Buyer.

Section 12.3 Covenant of Seller Related to Seller's Status as Special Purpose Entity. Seller shall at all times on and after the Effective Date comply with the requirements of, and qualify as, a Special Purpose Entity.

Section 12.4 Covenant of Seller as to Investor. Sell shall inform all investors in Seller of the existence of this Agreement on or before the date of such Investor's initial investment in Seller.

Section 12.5 Covenant of Seller Related to Site Control. At all times after the Effective Date, Seller shall have Site Control which means that Seller shall: (i) own the Site; or (ii) be the lessee of the Site under a lease which permits Seller to perform its obligations under this Agreement. Seller shall provide Buyer with prompt notice of any change in the status of Seller's Site Control. Seller's assignment and transfer to Buyer of all of Seller's rights, title and interests to the Site do not require any approval or consent of any Person, except for such approvals or consents which have been obtained.

ARTICLE XIII
DEFAULT; TERMINATION AND REMEDIES; PERFORMANCE DAMAGE

Section 13.1 Default. Each of the following events or circumstances shall constitute a "***Default***" by the responsible Party (the "***Defaulting Party***"):

(a) *Buyer Payment or Performance Default.* Failure by the Buyer to make any payment or perform any of its other duties or obligations under this Agreement when and as due which is not cured within thirty (30) calendar days after receipt of notice thereof from the Seller; *provided, however*, that in the case of a default that does not involve the payment of money, if (A) such failure is reasonably susceptible of being remedied, but not within such thirty (30) day period but within one hundred eighty (180) days after the receipt of Seller's notice and (B) Buyer presents to Seller a plan Seller reasonably believes will cure such failure and Buyer is diligently proceeding to cure such failure in accordance with such plan, then the period for cure shall be extended for such period, not to exceed one hundred eighty (180) days, as may be necessary to cure such default.

(b) *Seller Payment or Performance Default.* Failure by Seller to make any payment or perform any of its other duties or obligations under this Agreement when and as due (other than any failure described in Section 13.1(i)) which is not cured within thirty (30) calendar days after receipt of notice thereof from the Buyer; *provided, however*, that in the case of a default that does not involve the payment of money, if (A) such failure is reasonably susceptible of being remedied, but not within such thirty (30) day period but within one hundred eighty (180) days after the receipt of Buyer's notice and (B) Seller presents to Buyer a plan Buyer reasonably believes will cure such failure and Seller is diligently proceeding to cure such failure in accordance with such plan, then the period for cure shall be extended for such period, not to exceed one hundred eighty (180) days, as may be necessary to cure such default. In the case of a breach of Section 6.7, Seller's cure shall include payment to Buyer of the excess, if any, of the amount that Seller received from the sale of any Facility Energy to any Person other than Buyer in breach of Section 6.7 over the amount that Buyer would have paid for such Facility Energy under this Agreement.

(c) *Buyer Breach of Representation and Warranty.* Inaccuracy in any material respect at the time made or deemed to be made of any representation or warranty made by the Buyer herein.

(d) *Seller Breach of Representation and Warranty.* Inaccuracy in any material respect at the time made or deemed to be made of any representation or warranty made by the Seller herein, unless, in the case of the representations and warranties set forth in Sections 12.1(f), (i) and (j), (i) the fact, circumstance or condition that is the subject of such representation or warranty is made true within thirty (30) days after Buyer has given notice thereof to Seller; provided, however, that if the fact, circumstance or condition that is the subject of such representation or warranty cannot be corrected within such thirty (30) day period and if Seller within such period of thirty (30) days commences, and thereafter proceeds with all due diligence, to correct the fact, circumstance or condition that is the subject of such representation or warranty, such period shall be extended for such further period, not to exceed an additional one hundred and fifty (150) days, as shall be necessary for Seller to correct the same with all due diligence, and (ii) such cure removes any adverse effect on Buyer of such fact, circumstance or condition being otherwise than as first represented, or such fact, circumstance or condition being otherwise than as first represented does not materially adversely affect Buyer.

(e) *Buyer Bankruptcy.* Bankruptcy of Buyer.

(f) *Seller Bankruptcy.* Bankruptcy of Seller.

(g) *Commercial Operation Date Default.* Seller fails to achieve Commercial Operation on or before the Commercial Operation Deadline.

(h) *Performance Security Failure.* The failure of Seller to maintain the Performance Security in compliance with Section 5.3 or replace such Performance Security at least fifteen (15) Business Days prior to its expiration, unless alternative Performance Security that complies with the requirements of Section 5.3 is provided within ten (10) Business Days after notice from Buyer of any such failure; or, with respect to any obligor providing the Performance Security for the benefit of Buyer:

(1) the failure of such obligor to honor a drawing properly made pursuant to the terms of such Performance Security, or make a payment pursuant thereto; or

(2) such obligor's long-term senior unsecured debt is not rated at least "A-" by S&P or "A3" by Moody's; or

(3) the Performance Security issued by such obligor shall fail to be in full force and effect in accordance with the terms of this Agreement prior to the satisfaction of all obligations of Seller under this Agreement; or

(4) such obligor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of its Performance Security; and

in the case of clauses (2) through (4) above, Seller has not, within five (5) Business Days after notice from Buyer, either (i) replaced the Performance Security with alternative Performance Security that complies with the requirements of Section 5.4, or (ii) tendered equivalent cash security to be placed in an escrow account with an escrow agent reasonably acceptable to Buyer, pursuant to an escrow agreement in form and substance acceptable to Buyer in the exercise of its sole discretion.

(i) *Insurance Default.* (A) The failure of Seller to maintain and provide acceptable evidence of the required insurance for the required period of coverage as set forth in Appendix F, which failure has not been cured within twenty-one (21) days of notice thereof from Buyer.

(j) *Fundamental Change.* Except in connection with an assignment to which Buyer has consented pursuant to Section 14.7, Seller consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another Person (other than an Affiliate of Seller) and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee Person fails to assume all the obligations of Seller under this Agreement by operation of law or pursuant to an agreement reasonably satisfactory to Buyer.

(k) *Failure to Maintain Minimum Generation.* Commencing in the second Contract Year, the failure of Seller to achieve the Minimum Generation for three consecutive Contract Years.

Section 13.2 Default Remedy.

(a) If Buyer is in Default for nonpayment, subject to any duty or obligation under this Agreement, Seller may continue to provide services pursuant to its obligations under this Agreement; *provided* that nothing in this Section 13.2(a) shall affect Seller's rights and remedies set forth in this Section 13.2. Seller's continued service to Buyer shall not act to relieve Buyer of any of its duties or obligations under this Agreement.

(b) Notwithstanding any other provision herein, if any Default has occurred and is continuing, the affected Party may, whether or not the dispute resolution procedure set forth in Section 14.3 has been invoked or completed, bring an action in any court of competent jurisdiction as set forth in Section 14.12 seeking injunctive relief in accordance with applicable rules of civil procedure.

(c) Except as expressly limited by this Agreement, if a Default has occurred and is continuing and the Buyer is the Defaulting Party, Seller may without further notice exercise any rights and remedies provided herein or otherwise available at law or in equity, including the right to terminate this Agreement pursuant to Section 13.3. No failure of Seller to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by Seller of any other right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power.

(d) Except as expressly limited by this Agreement, if a Default has occurred and is continuing and the Seller is the Defaulting Party, Buyer may without further notice exercise any rights and remedies provided for herein, or otherwise available at law or equity, including (i) application of all amounts available under the Performance Security against any amounts then payable by Seller to Buyer under this Agreement, and (ii) termination of this Agreement pursuant to Section 13.3. No failure of Buyer to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by Buyer of any right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power.

Section 13.3 Termination for Default.

(a) If Default occurs, the Party that is not the Defaulting Party (the "***Non Defaulting Party***") may, for so long as the Default is continuing and without limiting any other rights or remedies available to the Non-Defaulting Party under this Agreement, by notice ("***Termination Notice***") to the Defaulting Party (i) establish a date (which shall be no earlier than the date of such notice and no later than twenty (20) days after the date of such notice) ("***Early Termination Date***") on which this Agreement shall terminate, and (ii) withhold any payments due in respect of this Agreement; *provided*, upon the occurrence of any Default of the type described in Sections 13.1(e) or (f), this Agreement shall automatically terminate, without notice or other action by either Party as if an Early Termination Date had been declared immediately prior to such event.

(b) If an Early Termination Date has been designated, the Non-Defaulting Party shall calculate in a commercially reasonable manner its Gains, Losses and Costs resulting from the termination of this Agreement. The Gains, Losses and Costs relating to the Energy and Environmental Attributes which would have been required to be delivered under this Agreement had it not been terminated shall be determined by comparing the amounts Buyer would have paid therefor under this Agreement to the amounts Buyer reasonably expects to be available in the market under a replacement contract for this Agreement covering the same products and having a term equal to the Remaining Term at the date of the Termination Notice adjusted to account for differences in transmission, if any. The Non-Defaulting Party shall not be required to enter into any such replacement agreement in order to determine its Gains, Losses and Costs or the Termination Payment.

(c) For purposes of the Non-Defaulting Party's determination of its Gains, Losses and Costs and the Termination Payment, it shall be assumed, regardless of the facts, that Seller would have sold, and Buyer would have purchased, each day during the Remaining Term (i) Facility Energy in an amount equal the Assumed Daily Deliveries, and (ii) the Environmental Attributes associated therewith. The ***"Assumed Daily Deliveries"*** is an amount equal to the greater of (x) the quotient of the Guaranteed Generation divided by 365, and (y) the average daily deliveries of Facility Energy during the Delivery Term, if any.

(d) The Non-Defaulting Party shall aggregate its Gains, Losses and Costs as so determined into a single net amount (the ***"Termination Payment"***) and notify the Defaulting Party thereof. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. If the Non-Defaulting Party's aggregate Losses and Costs exceed its aggregate Gains, the Defaulting Party will, within ten (10) Business Days of receipt of such notice, pay the net amount to the Non-Defaulting Party, which amount shall bear interest at the Interest` Rate from the Early Termination Date until paid. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, the amount of the Termination Payment shall be zero.

(e) If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, the calculation issue shall be submitted to informal non-binding dispute resolution as provided in Section 14.3(a). Pending resolution of the dispute, the Defaulting Party shall pay the full amount of the Termination Payment calculated by the Non-Defaulting Party as and when required by this Agreement, subject to the Non-Defaulting Party refunding, with interest, at the Interest Rate, any amounts determined to have been overpaid.

(f) For purposes of this Agreement:

(i) "***Gains***" means, with respect to a Party, an amount equal to the present value of the economic benefit (exclusive of Costs), if any, resulting from the termination of its obligations under this Agreement, determined in a commercially reasonable manner;

(ii) "***Losses***" means, with respect to a Party, an amount equal to the present value of the economic loss (exclusive of Costs), if any, resulting from the termination of its obligations under this Agreement, determined in a commercially reasonable manner, including, in the case of Seller, foregone PTCs;

(iii) "***Costs***" means, with respect to a Party, brokerage fees, commissions and other similar third party transaction costs and third party expenses reasonably incurred in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace this Agreement, excluding attorneys' fees, if any, incurred in connection with enforcing its rights under this Agreement. Each Party shall use reasonable efforts to mitigate or eliminate its Costs.

(iv) In no event shall a Party's Gains, Losses or Costs include any penalties or similar charges imposed by the Non Defaulting Party.

(v) The Present Value Rate shall be used as the discount rate in all present value calculations required to determine Gains, Losses and Costs.

(g) At the time for payment of any amount due under this Section, each Party shall pay to the other Party all additional amounts, if any, payable by it under this Agreement.

ARTICLE XIV
MISCELLANEOUS

Section 14.1 Authorized Representative. Each Party hereto shall designate an authorized representative who shall be authorized to act on its behalf with respect to those matters contained herein (each an "***Authorized Representative***"), which shall be the functions and responsibilities of such Authorized Representatives. Each Party may also designate an alternate who may act for the Authorized Representative. Within thirty (30) calendar days after execution of this Agreement, each Party shall notify the other Party of the identity of its Authorized Representative, and alternate if designated, and shall promptly notify the other Party of any subsequent changes in such designation. The Authorized Representatives shall have no authority to alter, modify, or delete any of the provisions of this Agreement.

Section 14.2 Notices. With the exception of billing invoices pursuant to Section 11.2(b) hereof, all notices, requests, demands, consents, waivers and other communications which are required under this Agreement shall be in writing and shall be deemed properly sent if delivered in person or sent by facsimile transmission, reliable overnight courier, or sent by registered or certified mail, postage prepaid to the persons specified in Appendix C. In addition to the foregoing, the Parties may agree in writing at any time to deliver notices, requests, demands, consents, waivers and other communications through alternate methods, such as electronic mail.

Section 14.3 Dispute Resolution.

(a) In the event of any claim, controversy or dispute between the Parties arising out of or relating to or in connection with this Agreement (including any dispute concerning the validity of this Agreement or the scope and interpretation of this Section 14.3) (a "***Dispute***"), either Party (the "***Notifying Party***") may deliver to the other Party (the "***Recipient Party***") notice of the Dispute with a detailed description of the underlying circumstances of such Dispute (a "***Dispute Notice***"). The Dispute Notice shall include a schedule of the availability of the Notifying Party's senior officers (having a title of senior vice president (or its equivalent) or higher) duly authorized to settle the Dispute during the thirty (30) day period following the delivery of the Dispute Notice.

(b) The Recipient Party shall within five (5) Business Days following receipt of the Dispute Notice, provide to the Notifying Party a parallel schedule of availability of the Recipient Party's senior officers (having a title of senior vice president (or its equivalent) or higher) duly authorized to settle the Dispute. Following delivery of the respective senior officers' schedules of availability, the senior officers of the Parties shall meet and confer as often as they deem reasonably necessary during the remainder of the thirty (30) day period in good faith negotiations to resolve the Dispute to the satisfaction of each Party.

(c) In the event a Dispute is not resolved pursuant to the procedures set forth in Subsections 14.3(a) and 14.3(b) by the expiration of the thirty (30) day period set forth in Subsection 14.3(a), then either Party may pursue any legal remedy available to it in accordance with the provisions of Section 14.12 of this Agreement.

Section 14.4 Further Assurances. Each Party agrees to execute and deliver all further instruments and documents, and take all further action not inconsistent with the provisions of this Agreement that may be reasonably necessary to effectuate the purposes and intent of this Agreement.

Section 14.5 No Dedication of Facilities. Any undertaking by one Party hereto to the other Party under any provisions of this Agreement shall not constitute the dedication of the system or any portion thereof of either Party to the public or to the other Party or any other Person, and it is understood that any such undertaking by either Party shall cease upon the termination of such Party's obligations under this Agreement.

Section 14.6 Force Majeure.

(a) A Party shall not be considered to be in default in the performance of any of its obligations under this Agreement when and to the extent such Party's performance is prevented by a Force Majeure that, despite the exercise of due diligence, such Party is unable to prevent or mitigate, provided the Party has given a written detailed description of the full particulars of the Force Majeure to the other Party reasonably promptly after becoming aware thereof (and in any event within fourteen (14) days after the initial effect of the claimed Force Majeure) (the "***Force Majeure Notice***"), which notice shall include, to the extent known, information with respect to the nature, cause and date and time of commencement of such event, and the anticipated scope and duration of the delay. The Party providing such notice shall be excused from fulfilling its obligations under this Agreement until such time as the Force Majeure has ceased to prevent performance or other remedial action is taken, at which time the Party shall promptly notify the other Party of the resumption of its obligations under this Agreement. If Seller is unable to deliver or Buyer is unable to receive Energy due to a Force Majeure, Buyer shall have no obligation to pay Seller for the Energy not delivered or received by reason thereof. It is understood by the Parties that the foregoing provisions shall not excuse any obligations of the Seller with respect to Shortfall Energy and Replacement Energy, as provided under Article IX, whether or not caused by Force Majeure. In no event shall Buyer be obligated to compensate Seller for any losses, expenses or liabilities that Seller may sustain as a consequence of any Force Majeure.

(b) The term "***Force Majeure***" means an event or circumstance, including, without limitation, any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, actions or failure to act on the part of a transmission provider not an affiliate of a Party, or action or failure to action on the part of any Governmental Authority, or a Wind Turbine Serial Defect Outage, (i) which prevents one Party from performing any of its obligations under this Agreement, (ii) which is not within the reasonable control of, or the result of negligence, willful misconduct, breach of contract, intentional act or omission or wrongdoing on the part of the affected Party (or any subcontractor or Affiliate of that Party, or any Person under the control of that Party or any of its subcontractors or Affiliates, or any Person for whose acts such subcontractor or Affiliate is responsible), and (iii) which by the exercise of due diligence the affected Party is unable to overcome or avoid or cause to be avoided; *provided*, nothing in this clause (iii) shall be construed so as to require either Party to accede or agree to any provision not satisfactory to it in order to settle and terminate a strike or labor dispute in which it may be involved. Any Party rendered unable to fulfill any of its obligations by reason of a Force Majeure shall exercise due diligence to remove such inability with reasonable dispatch within a reasonable time period and mitigate the effects of the Force Majeure. The relief from performance shall be of no greater scope and of no longer duration than is required by the Force Majeure. Without limiting the generality of the foregoing, a Force Majeure does not include any of the following (each an ***"Unexcused Cause"***): (1) any requirement to meet a renewable portfolio standard or any change (whether voluntary or mandatory) in any renewable portfolio standard that may affect the value of the Energy purchased hereunder; (2) events arising from the failure by Seller to construct, operate or maintain the Facilities in accordance with this Agreement; (3) any increase of any kind in any cost; (4) delays in or inability of a Party to obtain financing or other economic hardship of any kind; (5) Seller's ability to sell any Energy at a price in excess of those provided in this Agreement; (6) failure of Seller's construction contractor or subcontractors to provide goods or services, unless such failure is caused by a Force Majeure (7) any failure of Facility equipment that has not been maintained in accordance with Prudent Utility Practices; or (8) any changes in the financial condition of the Buyer, the Facility Lender or any subcontractor.

(c) For purposes of this Agreement, a Force Majeure shall be deemed to prevent and excuse Buyer from receiving Energy at the Point of Delivery only if the Force Majeure prevents the Transmission Provider from receiving Energy at the Point of Delivery.

(d) If a Force Majeure affecting a Party's ability to perform a material portion of its obligations under this Agreement continues (i) for a period of three hundred and sixty five (365) or more consecutive calendar days, or (ii) for an aggregate period of five hundred and forty (540) or more non-consecutive calendar days in any seven hundred and thirty consecutive day period in the case of any claimed Force Majeure event or series of claimed Force Majeure events, the unaffected Party shall have the right to terminate this Agreement effective upon notice to the affected Party no later than the later of (i) thirty (30) days after the right to terminate first arises under this Paragraph (d), or (ii) the date on which such Force Majeure, if ongoing, is remedied. If a Force Majeure affects some but not all of the wind turbines at the Facility, and if the Capacity of the remaining wind turbines is at least 36 MW, the unaffected Party shall not have the right to terminate this Agreement, but the unaffected Party shall have the right to amend this Agreement to exclude the affected wind turbines, and the Agreement shall remain in effect with respect to the remaining wind turbines, with appropriate adjustments to Guaranteed Generation based on the Capacity and other characteristics of the remaining wind turbines. For purposes of clarity, no claimed Force Majeure shall extend Seller's obligation to achieve Commercial Operation on or before June 30, 2010.

Section 14.7 Assignment of Agreement.

(a) Buyer may from time to time and at any time assign any or all of its rights, and delegate any or all of its obligations, under this Agreement in whole or in part to any other

Person without the consent of Seller. No such assignment or delegation shall relieve Buyer from any of its obligations under this Agreement unless such Person, at the time of such assignment or delegation, has a Credit Rating of "A" or higher from Standard & Poor's or "A" or higher from Moody's Investor Service.

(b) Except as set forth in this Section 14.7, Seller shall not assign any of its rights, or delegate any of its obligations, under this Agreement to any Person who is not an Affiliate of Seller without the prior consent of Buyer. Any purported assignment or delegation in violation of this provision shall be null and void and of no force or effect.

(c) There are no third party beneficiaries of this Agreement, and, except as provided in this Section 14.7, this Agreement shall not grant any rights enforceable by any Person not a party to this Agreement. Notwithstanding the foregoing, Buyer's consent shall not be required for Seller to collaterally assign this Agreement for the sole purpose of financing the Facility to any Facility Lender; *provided however* that the terms of such financing and the documentation relating thereto shall be consistent with the applicable terms and conditions of this Agreement; and *provided, further,* that prior to the date on which there is no longer any possibility that Buyer will purchase the Facility pursuant to Section 14.26, the Lien of any such Facility Lender shall be subject to Buyer's rights under Section 14.26. Seller shall provide Buyer with fifteen (15) days prior notice of any such assignment to any Facility Lender. Notwithstanding the foregoing or anything else expressed or implied herein to the contrary, Seller shall not assign, transfer, convey, encumber, sell or otherwise dispose of all or any portion of the Energy, Capacity Rights or Environmental Attributes (not including the proceeds thereof) to any Facility Lender. So long as any assignment of which Buyer has been notified, or any consolidation, modification or extension of any such assignment, shall remain outstanding, the following provisions shall apply:

(i) Buyer shall, upon serving upon Seller any notice pursuant to Section 13.1, also deliver (by using any one of the delivery methods specified in Section 14.2) a copy of such notice upon each collateral assignee at the United States postal address provided for in the notice referred to above. No notice issued by Buyer pursuant to Section 13.1 shall be deemed to have been duly given unless and until a copy thereof shall have been so delivered.

(ii) The making of an assignment as collateral pursuant to this Section shall not be deemed to constitute an assignment or transfer of this Agreement so as to require such collateral assignee, as such, to assume the performance of any of the terms or conditions on the part of Seller to be performed hereunder.

(d) To facilitate Seller's obtaining of financing to construct and operate the Facility, Buyer shall provide such consents to assignment and other documents (in form and substance reasonably satisfactory to Buyer and the Los Angeles City Attorney) as may be reasonably requested by Seller or any Facility Lender in connection with the financing of the Facility, including the acquisition of equity for the development, construction and operation of the Facility; provided however that the terms of such financing and the documentation relating thereto shall be consistent with the applicable terms and conditions of this Agreement. Seller shall reimburse, or shall cause the Facility Lender to reimburse, Buyer for the reasonable incremental direct expenses incurred by Buyer in the preparation, negotiation, execution and/or delivery of any documents requested by Seller or the Facility Lender, and provided by Buyer, pursuant to this Section 14.7(d).

(e) In no event shall LADWP be liable to Facility Lender for any claims, losses, expenses or damages whatsoever other than liability LADWP may have to Seller under this Agreement. In the event of any foreclosure, whether judicial or nonjudicial, or any deed in lieu of foreclosure, in connection with any deed of trust, mortgage, or other similar Lien, Facility Lender or its nominee will be bound by the covenants and agreements of Seller in this Agreement; *provided, however,* that until the Person who acquires title to the Facility executes and delivers to LADWP a written assumption of Seller's obligations under this Agreement in form and substance reasonably acceptable to LADWP, such Person will not be entitled to any of the benefits of this Agreement, and *provided, further,* that until any lender or its nominee executes such a written assumption providing otherwise, its liability for Seller's obligations shall be limited to the Facility assets, and no recourse shall be had against any other assets of such lender or nominee. Any sale or transfer of the Facility by Facility Lender must be made only to an entity that is reasonably acceptable to Buyer and has financial qualifications and operating experience equivalent to Seller.

Section 14.8 Ambiguity. The Parties acknowledge that this Agreement was jointly prepared by them, by and through their respective legal counsel, and any uncertainty or ambiguity existing herein shall not be interpreted against either Party on the basis that the Party drafted the language, but otherwise shall be interpreted according to the application of the rules on interpretation of contracts.

Section 14.9 Attorney Fees and Costs. In any action to enforce the terms of this Agreement each Party shall be responsible for its own attorney fees and costs. Each of the Parties to this Agreement was represented by its respective legal counsel during the negotiation and execution of this Agreement.

Section 14.10 Voluntary Execution. Both Parties hereto acknowledge that they have read and fully understand the content and effect of this Agreement that the provisions of this Agreement have been reviewed and approved by their respective counsel. The Parties to this Agreement further acknowledge that they have executed this Agreement voluntarily, subject only to the advice of their own counsel, and do not rely on any promise, inducement, representation or warranty that is not expressly stated herein.

Section 14.11 Entire Agreement. This Agreement (including all Appendices and Exhibits) contains the entire understanding concerning the subject matter herein and supersedes and replaces any prior negotiations, discussions or agreements between the Parties, or any of them, concerning that subject matter, whether written or oral, except as expressly provided for herein. This is a fully integrated document. Each Party acknowledges that no other party, representative or agent, has made any promise, representation or warranty, express or implied, that is not expressly contained in this Agreement that induced the other Party to sign this document. This Agreement may be amended or modified only by an instrument in writing signed by each Party.

Section 14.12 Governing Law. This Agreement was made and entered into in the City of Los Angeles and shall be governed by, interpreted and enforced in accordance with the laws of the State of California and the City of Los Angeles, without regard to conflict of law principles.

Section 14.13 Venue. All litigation arising out of, or relating to this Agreement, shall be brought in a state or federal court in the County of Los Angeles in the State of California. The Parties irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of California and waive any defense of forum non conveniens.

Section 14.14 Execution in Counterparts. This Agreement may be executed in counterparts and upon execution by each signatory, each executed counterpart shall have the same force and effect as an original instrument and as if all signatories had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signature thereon, and may be attached to another counterpart of this Agreement identical in form hereto by having attached to it one or more signature pages.

Section 14.15 Effect of Section Headings. Section headings appearing in this Agreement are inserted for convenience only and shall not be construed as interpretations of text.

Section 14.16 Waiver. The failure of either Party to this Agreement to enforce or insist upon compliance with or strict performance of any of the terms or conditions hereof, or to take advantage of any of its rights hereunder, shall not constitute a waiver or relinquishment of any such terms, conditions or rights, but the same shall be and remain at all times in full force and effect. Notwithstanding anything expressed or implied herein to the contrary, nothing contained herein shall preclude either Party from pursuing any available remedies for breaches not rising to the level of a Default, including without limitation recovery of damages caused by the breach of this Agreement and specific performance or any other remedy given under this Agreement or now or hereafter existing in law or equity or otherwise. Seller acknowledges that money damages may not be an adequate remedy for violations of this Agreement and that Buyer may, in its sole discretion, seek and obtain from a court of competent jurisdiction specific performance or injunctive or such other relief as such court may deem just and proper to enforce this Agreement or to prevent any violation hereof. Seller hereby waives any objection to specific performance or injunctive relief for any breach of Section 6.7. The rights granted herein are cumulative.

Section 14.17 Relationship of the Parties. This Agreement shall not be interpreted to create an association, joint venture or partnership between the Parties hereto or to impose any partnership obligation or liability upon either such Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

Section 14.18 Third Party Beneficiaries. This Agreement shall not be construed to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or any duty, obligation or undertaking established herein.

Section 14.19 Indemnification, Damage or Destruction; Insurance; Condemnation; Limit of Liability.

(a) **Indemnification.** Seller undertakes and agrees to indemnify and hold harmless the Buyer, its Board of Water and Power Commissioners ("***Board***"), and all of the officers and employees of each, and, at the option of Buyer, defend Buyer, and any and all of its Board, officers, agents, employees, advisors, assigns and successors in interest from and against any and all suits and causes of action, claims, charges, damages, demands, judgments, civil fines and penalties, or losses of any kind or nature whatsoever, for death, bodily injury or personal injury to any person, including Seller's employees and agents, or damage or destruction to any property of either Party, or third persons in any manner arising by reason of any breach of this Agreement by Seller, any failure of a representation of Seller to be true in all material respects or the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement on the part of Seller, or any of Seller's officers, agents, employees, or subcontractors of any tier, except to the extent caused by the negligence or willful misconduct of Buyer, its Board, officers, agents, or employees.

(b) **Damage or Destruction.** In the event of any damage or destruction of the Facility or any part thereof, to the extent of insurance proceeds paid (but only if Seller is in compliance with the insurance requirements of this Agreement), the Facility or such part thereof shall be diligently repaired, replaced or reconstructed by the Seller so that the Facility or such part thereof shall be restored to substantially the same general condition and use as existed prior to such damage or destruction, unless a different condition or use is approved by the Buyer. Proceeds of Insurance with respect to such damage or destruction maintained as provided in this Agreement shall be applied to the payment for such repair, replacement or reconstruction of the damage or destruction. If at any time after the tenth anniversary of the Commercial Operation Date all or substantially all the Facility is damaged or destroyed and Seller determines in good faith that the repair or reconstruction of the Facility is not commercially reasonable, at the election of Seller, Seller and Buyer shall enter into good faith negotiations to determine what the Termination Payment would be if this Agreement were then terminated and, upon the payment of such agreed amount by Seller to Buyer, this Agreement will terminate.

(c) **Insurance.** Seller shall obtain and maintain the Insurance coverages listed in Appendix F on substantially the terms set forth in Appendix F with any variances to be acceptable to Buyer in the exercise of its reasonable discretion.

(d) **Condemnation Or Other Taking.** For the Agreement Term, Seller shall immediately notify Buyer of the institution of any proceeding for the condemnation or other taking of the Facility, or any portion thereof. Buyer may participate in any such proceeding and Seller will deliver to Buyer all instruments necessary or required by Buyer to permit such participation. Without Buyer's prior consent, which consent shall not be unreasonably withheld or delayed, Seller (i) shall not agree to any compensation or award, and (ii) shall not take any action or fail to take any action which would cause the compensation to be determined. To the extent that it is commercially reasonable to do so and condemnation proceeds are paid by the condemnor for such purpose, all awards and compensation for the taking or purchase in lieu of condemnation of the Facility, or any portion thereof shall be applied toward the repair, restoration, reconstruction or replacement of the Facility.

(e) **Limitation of Liability**. Except to the extent included in the liquidated damages, indemnification obligations related to third party claims or other specific charges expressly provided for herein, neither Party hereunder shall be liable for special, incidental, exemplary, indirect, punitive or consequential damages arising out of a Party's performance or non-performance under this Agreement, whether based on or claimed under contract, tort (including such Party's own negligence) or any other theory at law or in equity. For avoidance of doubt, PTCs with respect to Imputed Energy shall not be considered to be special, incidental, exemplary, indirect, punitive or consequential damages.

Section 14.20 Severability. In the event any of the terms, covenants or conditions of this Agreement, or the application of any such terms, covenants or conditions, shall be held invalid, illegal or unenforceable by any court having jurisdiction, all other terms, covenants and conditions of this Agreement and their application not adversely affected thereby shall remain in force and effect, *provided* that the remaining valid and enforceable provisions materially retain the essence of the Parties' original bargain.

Section 14.21 Confidentiality.

(a) Each Party shall use reasonable efforts to cause its parent, subsidiary and Affiliates, and its and their respective directors, officers, employees and representatives, as a condition to receiving confidential information hereunder, to keep confidential, except as required by law, all documents, data, drawings, studies, projections, plans and other written information that relate to economic benefits to or amounts payable by either Party under this Agreement, and, with respect to documents, that are clearly marked "Confidential" at the time a Party shares such information with the other Party ("***Confidential Information***"). The provisions of this Section 14.21 shall survive and shall continue to be binding upon the Parties for period of one (1) year following the date of termination of this Agreement. Notwithstanding the foregoing, information shall not be considered confidential which (i) is disclosed with the prior written consent of the originating Party, (ii) was in the public domain prior to disclosure or is or becomes publicly known or available other than through the action of the receiving Party in violation of this Agreement, (iii) was lawfully in a Party's possession or acquired by a Party outside of this Agreement, which acquisition was not known by the receiving Party to be in breach of any confidentiality obligation, or (iv) is developed independently by a Party based solely on information that is not considered confidential under this Agreement.

(b) Either Party may, without violating this Section 14.21, disclose matters that are made confidential by this Agreement:

(i) to its counsel, accountants, auditors, advisors, other professional consultants, credit rating agencies, actual or prospective, co-owners, investors, lenders, underwriters, contractors, suppliers, and others involved in construction, operation, and financing transactions and arrangements for a Party or its subsidiaries, affiliates, or parent; and

(ii) to governmental officials and parties involved in any proceeding in which either Party is seeking a permit, certificate, or other regulatory approval or order necessary or appropriate to carry out this Agreement; to governmental officials or the public as required by any law, regulation, order, rule, order, ruling or other Requirement of Law, including without limitation oral questions, discovery requests, subpoenas, civil investigations or similar processes and laws or regulations requiring disclosure of financial information, information material to financial matters, and filing of financial reports. If a Party is requested or required, pursuant to any applicable law, regulation, order, rule, order, ruling or other Requirement of Law, discovery request, subpoena, civil investigation or similar process to disclose any of the Confidential Information, such Party shall provide prompt written notice to the other Party of such request or requirement so that at such other Party's expense, such other Party can seek a protective order or other appropriate remedy concerning such disclosure.

(c) Notwithstanding the foregoing or any other provision of this Agreement, Seller acknowledges that Buyer, as a California municipal corporation, is subject to disclosure as required by the California Public Records Act, Cal. Govt. Code §§ 6250 et. seq. ("***CPRA***") and the Ralph M. Brown Act, Cal. Govt. Code §§ 54950 et. seq. ("***Brown Act***"). Confidential Information of Seller provided to the Buyer pursuant to this Agreement will become the property of the Buyer and Seller acknowledges that Buyer shall not be in breach of this Agreement or have any liability whatsoever under this Agreement or otherwise for any claims or causes of action whatsoever resulting from or arising out of Buyer's copying or releasing to a third party any of the Confidential Information of Seller pursuant to the CPRA or Brown Act. Notwithstanding the foregoing or any other provision of this Agreement, Buyer may record, register, deliver and file all such notices, statements, instruments and other documents as may be necessary or advisable to render fully valid, perfected and enforceable under all applicable law the credit support contemplated by this Agreement and the rights, Liens and priorities of Buyer with respect to such credit support.

(d) If Buyer receives a CPRA request for Confidential Information of Seller, and Buyer determines that such Confidential Information, is subject to disclosure under the CPRA, then Buyer will notify the Seller of the request and its intent to disclose the documents. The Buyer, as required by the CPRA, will release such documents unless the Seller timely obtains a court order prohibiting such release. If Seller, at its sole expense, chooses to seek a court order prohibiting the release of Confidential Information pursuant to a CPRA request, then Seller shall defend, indemnify and hold harmless Buyer from and against all suits, claims, and causes of action brought against Buyer for Buyer's refusal to disclose Confidential Information of Seller to any person making a request pursuant to CPRA. Seller's indemnity obligations shall include, but are not limited to, all actual costs incurred by Buyer, and specifically including costs of experts and consultants, as well as all damages or liability of any nature whatsoever arising out of any such suits, claims, and causes of action brought against Buyer, through and including any appellate proceedings. Seller's obligations to Buyer under this indemnification provision shall be due and payable on a monthly, ongoing basis within thirty (30) days after each submission to Seller of Buyer's invoices for all fees and costs incurred by Buyer, as well as all damages or liability of any nature.

Section 14.22 Fixed-Rate Contract: Mobile-Sierra Clause. The Parties hereby stipulate and agree that this Agreement was entered into as a result of arms'-length negotiations between the Parties. Further, the Parties believe that the rates, terms and conditions of this Agreement are just and reasonable within the meaning of Sections 205 and 206 of the Federal

Power Act, 16 U.S.C. Sections 824d or 824e, and that the rates, terms and conditions of this Agreement will remain so over the life of the Agreement. The Parties waive all rights to challenge the validity of this Agreement or whether it is just and reasonable for and with respect to the entire term thereof, under Sections 205 and 206 of the Federal Power Act and to request the FERC to revise the terms and conditions and the rates or services specified in this Agreement, and hereby agree to make no filings at the FERC or with any other state or federal agency, board, court or tribunal challenging the rates, terms and conditions of this Agreement as to whether they are just and reasonable or in the public interest under the Federal Power Act. The Parties hereby further stipulate and agree that neither Party may bring any action, proceeding or complaint under Section 205 or 206 of the Federal Power Act, 16 U.S.C. 824d or 824e, seeking to modify, cancel, suspend, or abrogate the rates, terms and conditions of this Agreement, or to prevent this Agreement from taking effect. It is further agreed that, in the event any of the Parties challenges this Agreement for any other reason, they will not dispute the applicability of the public interest standard as that term has been defined and interpreted under the Federal Power Act and the cases of *United Gas Pipe Line Co. v. Mobile Gas Corp.*, 350 U.S. 332 (1956) and *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), and subsequent cases.

Section 14.23 LADWP Business Policies

(a) LADWP's Recycling Policy.

(1) The Buyer supports the use of recycled-content products of all types. Recycled-content products help conserve natural resources, including water and energy, and reduce demands upon landfills.

(2) The Seller shall submit all written documents on paper with a minimum of 30 percent post-consumer recycled content. Existing company/corporate letterhead/stationery that accompanies these documents is exempt from this requirement. Documents of two or more pages in length shall be duplex-copied (double-sided pages). Neon or fluorescent paper shall not be used in any written documents submitted to the Buyer.

(b) Non-Discrimination/Equal Employment Practices/Affirmative Action Construction & Non-Construction Agreements.

(1) During the performance of this Agreement, Seller shall not discriminate in its employment practices against any employee or applicant for employment because of race, religion, national origin, ancestry, sex, age or physical handicap. All subcontracts awarded under this Agreement shall contain a like nondiscrimination provision. The applicable provisions of Executive Order No. 11246 of September 24, 1965; Part 60-741 of 41 Code of Federal Regulations pertaining to handicapped workers, including, if applicable, 60-741.4 Affirmative Action Clause; and, if applicable, Sections 10.8 to 10.13 of the Los Angeles Administrative Code pertaining to nondiscrimination in employment in the performance of City of Los Angeles contracts are incorporated herein by reference and made a part hereof as if they were fully set forth herein.

(2) Each of the above documents, if approved, shall be effective for twelve (12) months following the date of approval for the Affirmative Action practices. An Affirmative Action plan shall be in effect and on file with the Buyer for the duration of this Agreement.

(c) **Supplier Diversity**. It is the policy of the Buyer to provide Minority Business Enterprises ("***MBEs***"), Women Business Enterprises ("***WBEs***") and all other business enterprises an equal opportunity to participate in the performance of all LADWP agreements/contracts. The Seller shall assist LADWP in implementing this policy and shall use its commercially reasonable efforts to attain MBE and WBE participation of 15 percent and 7 percent, respectively, and to ensure that all available business enterprises, including MBEs and WBEs, have an equal opportunity to compete for and participate in the work of this Agreement.

(1) **MBE/WBE Defined.** "Minority Business Enterprise" ("***MBE***") or "Women's Business Enterprise" ("***WBE***"), as used herein means a business enterprise that meets both of the following criteria:

(ii) A business that is at least 51 percent owned by one or more minority person(s) or women or, in the case of any business whose stock is publicly held, at least 51 percent of the stock is owned by one or more minority person(s) or women.

(iii) A business whose management and daily business operations are controlled by one or more minority person(s) or women.

(d) Service Contract Worker Retention And Living Wage Policy.

(1) **General Provisions:** This Agreement is subject to the Service Contractor Worker Retention Ordinance ("***SCWRO***"), Section 10.36 et. seq., and the Living Wage Ordinance ("***LWO***"), Section 10.37 et. seq., of the Los Angeles Administrative Code. These Ordinances require that, unless specific exemptions apply, employers who are awarded service contracts that involve expenditures in excess of $25,000, and have a duration of at least three months; and any persons who receive City of Los Angeles financial assistance of one million dollars or more in any 12-month period, shall comply with the following provisions of the ordinances:

(ii) Retention for a 90-day transition period, the employees who were employed for the preceding 12 months or more by the terminated contractor or subcontractor, if any, as provided for in the SCWRO;

(iii) Payment of a minimum initial wage rate to employees as defined in the LWO, of $9.08 per hour, with health benefits of at least $1.25 per hour, or otherwise $10.33 per hour without benefits.

(1) **Termination Provisions:** Under the provisions of Section 10.36.3(c) and Section 10.37.5 of the Los Angeles Administrative Code, the Buyer, shall have the authority, under appropriate circumstances, to (i) terminate this Agreement by written notice to Seller and (ii) otherwise pursue legal remedies that may be available, if the Seller or Seller's subcontractor violated the provisions of the referenced Code Section

in Paragraph (d)(1) and such violation has continued for thirty (30) days following notice from Buyer specifying the nature of such violation, provided, in the case of termination pursuant to Clause (i), that such violation is continuing at the time of Buyer's notice of termination.

(2) **Invoice Provisions:** All invoices related to SCWRO and LWO agreements shall contain the following statement:

> "The Seller/Contractor fully complies with Section 10.36 et. seq. And Section 10.37 et. seq., SCWRO and LWO, respectively, of the Los Angeles Administrative Code."

(e) **Child Support Policy.** Seller and any of its subcontractor(s) must fully comply with all applicable state and federal employment reporting requirements for the Seller's and any Seller's subcontractor(s)' employees. The Seller and any of its subcontractor(s) must fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment in accordance with the California Family Code. The Seller and any of its subcontractor(s) must certify that the principal owner(s) thereof (any person who owns an interest of 10 percent or more) are in compliance with any Wage and Earnings Assignment Orders or Notices of Assignment applicable to them personally. The Seller and any of its subcontractor(s) must certify that such compliance will be maintained throughout the term of this Agreement. Failure of the Seller and/or any its subcontractor(s) to fully comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignments or Notices of Assignment or failure of the principal owner(s) to comply with any Wage and Earnings Assignments or Notices of Assignment applicable to them personally shall constitute a default under this Agreement. Failure of the Seller and/or any its subcontractor(s) or principal owner(s) thereof to cure the default within ninety (90) days of notice of such default by the Buyer shall subject this Agreement to termination.

(f) **Current Los Angeles City Business Tax Registration Certificate Required**. The Seller shall obtain and keep in full force and effect during the term of this Agreement all Business Tax Registration Certificates required by the City of Los Angeles Business Tax Ordinance, Article 1, Chapter II, Section 21.00 and following, of the Los Angeles Municipal Code. Seller's Vendor Registration Number must be shown on all invoices submitted for payment. Failure to do so, may delay payment. For additional information regarding applicability of the City Business Tax Registration, contact the City of Los Angeles Clerk's Office at (213) 978-1521.

Section 14.24 Taxpayer Identification Number (TIN). Seller declares that its authorized TIN is 26-2052993. No payment will be made under this Agreement without a valid TIN number.

Section 14.25 Right of First Offer

(a) **Bona Fide Offer**. If, at any time before the expiration of the Agreement Term, Seller intends to solicit offers to purchase the Facility from unrelated third parties, then Seller shall, in accordance with this <u>Section 14.25</u>, first offer to sell to Buyer whatever it is prepared to sell to a third party for terms and conditions identical to those which Seller intends to request from third parties (the "***Bona Fide Offer***"); *provided, however*, that the sale of an ownership interest in the Facility primarily for the realization of PTCs and/or cost recovery deductions (and any subsequent offer to purchase ownership interests issued pursuant to such offer) shall be deemed not to be a Bona Fide Offer.

(b) **Offer to Buyer.** The Bona Fide Offer shall include the detailed terms and conditions and the proposed purchase and sale agreement and any other relevant Bona Fide Offer documents, if any. Seller shall also promptly answer any questions that Buyer may have concerning the Bona Fide Offer and shall meet with Buyer, if Buyer so elects and in Buyer's sole discretion, to discuss the Bona Fide Offer. Within thirty (30) days of receipt of the Bona Fide Offer, Buyer will indicate to Seller if it accepts the material terms and conditions thereof, subject to due diligence and the negotiation of a definitive document.

(c) **Buyer's Rejection of Offer**. If (i) Buyer does not accept the material terms and conditions of the Bona Fide Offer within the time period provided by Section 14.25(b) or (ii) a definitive acquisition agreement is not entered into within the time period provided by Section 14.25(d), or (iii) the closing of the sale of the Facility to Buyer has not occurred within thirty (30) days of the execution of the definitive acquisition agreement, or such longer period as may be required to obtain necessary third party approvals, then for a period of twelve (12) months after the expiration of the period described in clause (i), (ii) or (iii), as applicable, Seller shall have the right to enter into and close an agreement to sell the Facility to any third party upon a price not less than and upon other terms and conditions no more favorable, in the aggregate, to such third party than the terms of the Bona Fide Offer.

(d) **Buyer's Acceptance of Offer**. If Buyer accepts the material terms and conditions of the Bona Fide Offer as provided in Section 14.25(b), the parties shall within ninety (90) days from the date of the receipt by Buyer of all due diligence material from Seller fully negotiate an acquisition agreement that incorporates the terms and conditions of the Bona Fide Offer and, within thirty (30) days thereafter, obtain any necessary approvals for the execution of and execute and deliver such acquisition agreement. If, notwithstanding good faith efforts by the Parties, such acquisition agreement has not been entered into within such time, then Buyer shall be deemed to have rejected the offer effective on the expiration of such time.

(e) **Termination of Right of First Offer**. The right of first offer under this Section 14.25 shall terminate concurrently with the termination of this Agreement.

(f) **Access**. For thirty (30) days after the date of the Bona Fide Offer, the Seller will authorize and permit the Buyer and its representatives to have reasonable access during normal business hours, upon reasonable notice, to the Facility, and such records, operating materials and other information with respect to the Facility as the Buyer may from time to time reasonably request, and to make copies of such records and other documents, and to discuss the Facility with such third Persons as the Buyer reasonably considers necessary or appropriate for the purposes of familiarizing itself with the Facility, obtaining any necessary approvals of or permits for the transaction contemplated by this Section 14.25, and conducting an evaluation of the Facility. While at the Facility, Buyer and its representatives, advisors, engineers and consultants shall observe the safety procedures established by Seller, and shall not interfere in any material way with the development, construction, operation or maintenance of the Facility or any component thereof.

(g) **Enforcement**. The Parties acknowledge that money damages may not be an adequate remedy for Buyer in case of Seller's violation of any of the provisions in this Section 14.25 and that the Buyer may therefore, in its sole discretion, seek and obtain from a court of competent jurisdiction specific performance or injunctive or such other relief as such court may deem just and proper to enforce this Section 14.25 or to prevent any violation hereof.

Section 14.26 PTC Termination Offer

(a) In the event that any turbine that first becomes a Complete Turbine after January 1, 2009 is not eligible for PTCs at a level at least equal to the level that was in effect on the date that Seller executes this Agreement, due primarily to delays attributable to one or more events beyond Seller's reasonable control notwithstanding the fact that Seller has diligently pursued the development and construction of the Facility in accordance with Prudent Utility Practice (such turbine to be referred to as an "***Ineligible Turbine***"), then in lieu of the price set forth in paragraphs (1) and (3) of Appendix A, Buyer shall purchase the Energy and Environmental Attributes produced by such Ineligible Turbine in accordance with paragraph (4) of Appendix A. In the event that some, but not all, of the wind turbines at the Facility are Ineligible Turbines, the portion of the Energy and Environmental Attributes produced by the Facility purchased at the price set forth in paragraphs (1) and (3) of Appendix A, and the portion purchased at the price set forth in paragraph (4) of Appendix A, shall be determined on a pro-rata basis on the assumption that each Completed Turbine produced a similar amount of Energy and Environmental Attributes during a given period, or on such other basis as may be mutually acceptable to the Parties. In the event that Seller subsequently receives a PTC at a level at least equal to the level that was in effect on the date that Seller executes this Agreement with respect to any of the Energy and Environmental Attributes of the Facility that Buyer had purchased at the price set forth in paragraph (4) of Appendix A, Seller shall refund to Buyer the difference between the amount paid for such Energy and Environmental Attributes and the amount that would have been paid for such Energy and Environmental Attributes pursuant to paragraphs (1) and (3) of Appendix A together with interest thereon at the Prime Rate.

(b) In the event that, on July 1, 2009, twenty percent (20%) or less of the wind turbines at the Facility are Ineligible Turbines, then Seller may, by notice delivered on a date on or after July 1, 2009 and before December 1, 2009 (the "***Notice Date***"), and subject to Buyer's due diligence, request Buyer to purchase the Facility assets at a purchase price of $2430/kW of Capacity of the Facility. Buyer's obligation to purchase the Facility assets shall be conditioned on (i) Buyer's satisfaction in its sole and absolute discretion with the results of its due diligence review of the Facility pursuant to Section 14.26(d), and (ii) mutual agreement on the terms of the definitive acquisition agreement for the conveyance of the purchased assets.

(c) In the event that, on July 1, 2009, more than twenty percent (20%) of the wind turbines at the Facility are Ineligible Turbines, then Buyer may, by notice delivered on a date on or after July 1, 2009 and before December 1, 2009 (the "***Notice Date***"), and subject to Buyer's due diligence, require Seller to sell the Facility assets at a purchase price of $2430/kW of Capacity of the Facility. Buyer's right to purchase the Facility assets shall expire on the date when none of the wind turbines at the Facility are Ineligible Turbines. Buyer's purchase of the Facility assets shall be conditioned on (i) Buyer's satisfaction in its sole and absolute discretion with the results of its due diligence review of the Facility pursuant to Section 14.26(d), and (ii) mutual agreement on the terms of the definitive acquisition agreement for the conveyance of the purchased assets.

(d) Buyer shall within thirty (30) days of the Notice Date submit a list of requested due diligence items to Seller. Buyer shall have a period of sixty (60) days, commencing on the date that Seller delivers the last such due diligence item to Buyer, in which to conduct due diligence on the Facility. At the end of such sixty (60) day period, if Buyer is interested in purchasing the Facility, it shall evidence such interest by depositing the sum of One Hundred Fifty Thousand Dollars ($150,000.00) (the "***Deposit***") into an escrow account with an escrow agent reasonably satisfactory to Seller pursuant to an escrow agreement in form and substance acceptable to Seller in the exercise of its reasonable discretion. Interest on the Deposit will incur to the benefit of the Party entitled to receive the Deposit. The Deposit will be returned to Buyer if the Parties fail to execute a definitive acquisition agreement or the closing under the definitive acquisition agreement does not occur other than as a result of a default by Buyer. If Buyer fails to deliver the Deposit into escrow on or before the end of the sixty (60) day period, Buyer shall be deemed to have waived its right to purchase the Facility assets pursuant to this Section 14.26.

(e) If Buyer delivers the Deposit into an escrow account in accordance with Section 14.26(d), the Parties shall proceed to a closing on the purchase of the Facility assets. The Parties shall use commercially reasonable efforts to agree on the terms of such purchase, and to close the purchase on or before the date that is one hundred and twenty (120) days after the end of the due diligence period; *provided, however*, that in no event will the closing occur prior to December 1, 2009. If the closing has not occurred on or before the end of such one hundred and twenty (120) period (as such period may be extended due to the need for any third party approvals), Buyer shall be deemed to have waived its right to purchase the Facility pursuant to this Section 14.26. Any sale of the Facility shall be on an as-is, where-is basis, with no warranty of any sort from Seller regarding the tangible Facility assets; *provided, however*, that Seller shall assign to Buyer any warranty on the Facility assets or any component thereof that is assignable at the time of the closing.

(f) At any time prior to the date on which the closing of the sale of the Facility assets takes place pursuant to Section 14.26(e), Seller shall have the right to elect not to sell the Facility to Buyer. In the event that Seller exercises its right not to sell the Facility pursuant to this Section 14.26(e), the provisions of Section 14.26(a) shall no longer be applicable and all Energy sold to Buyer shall be paid for at the price set forth in paragraphs (1) and (3) of Appendix A, and, to the extent that Buyer has previously paid for Energy at the rate set forth in paragraph (4) of Appendix A, Seller shall refund to Buyer the difference between the amount that Buyer paid for such Energy, and the amount that Buyer would have paid for such Energy pursuant to paragraphs (1) and (3) of Appendix A together with interest thereon at the Prime Rate.

IN WITNESS WHEREOF, each Party was represented by legal counsel during the negotiation and execution of this Agreement and the Parties hereto have executed this Agreement as of the date set forth at the beginning of this Agreement.

DEPARTMENT OF WATER AND POWER OF THE CITY OF LOS ANGELES BY BOARD OF WATER AND POWER COMMISSIONERS OF THE CITY OF LOS ANGELES

Date: ________________

By: ____

And: ____
Secretary

APPROVED AS TO FORM AND LEGALITY
ROCKARD J. DELGADILLO, CITY ATTORNEY

JUL 28 2008

BY Fay A. Chu
FAY A. CHU
Assistant City Attorney

REQUIRES CITY COUNCIL APPROVAL

WILLOW CREEK ENERGY LLC

By: ________________________________

Its: VICE PRESIDENT

Agreement Reference Date:

By: ________________________________
[Title and Position of Signatory]

A/72497803.10

APPENDIX A
PAYMENT SCHEDULE

1. **Excess Energy**. The purchase price for Delivered Energy that is Excess Energy is Fifty-five Dollars and Seventy-five Cents ($55.75) per MWh for the first Contract Year and, for each Contract Year thereafter, the amount payable under this paragraph 1 for the prior Contract Year multiplied by One and Twenty-two and one-half Thousandths (1.0225).

2. **Startup and Test Energy**. The purchase price for Delivered Energy that is test Energy is Sixty-five Dollars ($65.00) per MWh.

3. **Monthly Delivered Energy Payment**. The purchase price for Delivered Energy that is not Excess Energy or startup or test Energy is Eighty-three Dollars and Seventy-five Cents ($83.75) per MWh for the first Contract Year and, for each Contract Year thereafter, the amount payable under this paragraph 3 for the prior Contract Year multiplied by One and Twenty-two and one-half Thousandths (1.0225).

4. **PTC Adder.** Upon the occurrence of the events set forth in Section 14.26(a), the price for Delivered Energy will be the price as follows:

A. **Excess Energy**. The purchase price for Delivered Energy that is Excess Energy is Fifty-five Dollars and Seventy-five Cents ($55.75) per MWh *plus*, with respect to Facility Energy from Ineligible Turbines, the PTC Adder for the first Contract Year and, for each Contract Year thereafter, the amount payable under this paragraph 4.A for the prior Contract Year multiplied by One and Twenty-two and one-half Thousandths (1.0225).

B **Monthly Delivered Energy Payment**. The purchase price for Delivered Energy that is not Excess Energy or startup or test Energy is Eighty-three Dollars and Seventy-five Cents ($83.75) per MWh *plus*, with respect to Facility Energy from Ineligible Turbines, the PTC Adder for the first Contract Year and, for each Contract Year thereafter, the amount payable under this paragraph 4.B for the prior Contract Year multiplied by One and Twenty-two and one-half Thousandths (1.0225).

For purposes of this Appendix A, "**PTC Adder**" shall mean an amount equal to (i)(A) the difference between Twenty-one Dollars ($21.00) per MWh and the amount of the PTC available for an Ineligible Turbine (if less than Twenty-one Dollars ($21.00)), divided by (B) Sixty-five Hundredths (0.65), multiplied by (ii) Five Tenths (0.5). By way of example, if the PTC that is available for an Ineligible Turbine is zero, the PTC Adder would be (($21.00-$0.00) per MWh/0.65)*0.5 or $16.15 per MWh.

APPENDIX B
FACILITY

1. Name of Facility: Willow Creek

   (a) Location: Morrow and Gilliam Counties, State of Oregon

2. Owner: Willow Creek Energy LLC

3. Operator: Invenergy Services LLC

4. Equipment:

   (a) Type of Facility: Wind
   (b) Capacity: Total nominal gross nameplate capacity (under expected average site conditions) is 72 MW

5. Planned Commercial Operation Date: December 31, 2008

6. General Description: The Willow Creek Project is a 72 MW wind project consisting of 48 GE 1.5 MW wind turbines. The wind turbines will connect to the collection station (called Horne Butte Substation) at 34.5kV. The point of interconnection is to a tap in the BPA 115kV line Boardman – Tower Road – Alkali. There will be one oil immersed step up transformer located at the collection station that will step up the voltage from 34.5kV to 115kV. There will be an 8-mile project owned 115-kV transmission line that will connect the collection substation to the tap on the 115kV Boardman-Tower Road-Alkali. The revenue meter will be located at the collection station and will be owned by Bonneville Power Authority. The meter will be compensated for the line losses from the collection station to the tap on the 115kV line.

7. Permits:

Permit or Approval	Responsible Agency	Current Status	Comments
Federal			
Aeronautical Obstruction Clearance	US Federal Aviation Administration ("FAA")	Determination of No Hazard: February 18, 2008. Expires February 18, 2009.	48 letters for 48 proposed turbines.
Endangered Species/Avian Impact Assessments	Consultant report. Northwest Wildlife Consultants.	Included in Wildlife Baseline Study, dated October 30, 2007	

Permit or Approval	Responsible Agency	Current Status	Comments
National Environmental Policy Act ("NEPA") Review Record of Decision ("ROD")	Bonneville Power Administration ("BPA")	ROD dated June 25, 2008	
Electric Wholesale Generator ("EWG") Authorization	Federal Energy Regulatory Commission ("FERC")	Notice of Self-Certification filed April 15, 2008, granted June 14, 2008	Required under the Public Utility Holding Company Act ("PUHCA")
State			
1200-C Construction Stormwater Discharge Permit	Oregon Department of Environmental Quality ("DEQ")	Issued: January 8, 2008	
Air Quality Permit	Oregon DEQ	Issued: January 31, 2008	Issued for temporary concrete batch plant only
Local			
Conditional Use Permit	Gilliam County, OR	Effective Date: January 27, 2005	Original CUP for 2004-2006. Extension approved thru January 27, 2009
Conditional Use Permit	Morrow County, OR	Effective Date: January 31, 2005	Extension approved thru January 31, 2007. Second extension approved thru January 31, 2008. Zoning letter states no need to extend once application for zoning is received by County.
Zoning Permit	Gilliam County, OR	Effective Date: August 14, 2007	
Zoning Permit	Morrow County, OR	Effective Date: February 22, 2008	
Zoning Permit for Construction of Transmission Line	Gilliam County, OR	Effective Date: January 17, 2008	
Zoning Permit for Construction of Transmission Line	Morrow County, OR	Effective Date: February 26, 2008	Transmission lines must be less than 200 feet in height.
Transmission Line Road Crossing Permit	Oregon Department of Transportation	Effective Date: February 22, 2008	

APPENDIX C
BUYER AND SELLER BILLING, NOTIFICATION AND SCHEDULING CONTACT INFORMATION

1. **Authorized Representative.** Correspondence pursuant to Section 14.1 shall be transmitted to the following addresses:

   1.1 If to Buyer:

   Department of Water and Power of the City of Los Angeles
   111 North Hope Street, Room 1250 JFB
   Los Angeles, California 90012
   Attention: Mohammed J. Beshir

   Or if sent electronically, send to all the emails listed below:

   Mohammed.Beshir@ladwp.com
   Son.Hoang@ladwp.com

   1.2 If to Seller:

   If to Seller:

   Willow Creek Energy LLC
   Attn: Asset Manager
   One South Wacker Drive, Suite 2020
   Chicago, IL 60302
   312-224-1400

2. Billings and payments pursuant to Section 11.1 and Appendix A shall be transmitted to the following addresses:

   2.1 If Billing to Buyer:

   Department of Water and Power of the City of Los Angeles
   Accounting Division - Accounts Payable Section
   P.O. Box 51211
   Room 424 JFB
   Los Angeles, California 90051-5511
   Attention: Supervisor of Accounts Payable

   Or if sent electronically, send invoice to all the emails listed below:

Bertha.Munoz@LADWP.com

John.Giese@LADWP.com

Andrew.Virzi@ladwp.com

2.2 If Payment to Buyer:

Department of Water and Power of the City of Los Angeles
Accounting Division - Accounts Payable Section
P.O. Box 51211
Room 424 JFB
Los Angeles, California 90051-5511
Attention: Supervisor of Accounts Payable

Or if sent electronically, send invoice to all the emails listed below:

Bertha.Munoz@LADWP.com

John.Giese@LADWP.com

Andrew.Virzi@ladwp.com

2.3 If Billing or Payment to Seller:

Willow Creek Energy LLC
Attn: Power Markets and Settlements
One South Wacker Drive, Suite 2020
Chicago, IL 60302
312-224-1400

3. All notices (other than Scheduling notices) required under the Agreement shall be sent by facsimile transmission, reliable overnight courier, and registered or certified mail, postage prepaid, to the address specified below.

If to Buyer:

Department of Water and Power of the City of Los Angeles
111 North Hope Street, Room 1250 JFB
Los Angeles, California 90012
Attention: Mohammed J. Beshir

Or if sent electronically, send to all the emails listed below:

Mohammed.Beshir@ladwp.com
Son.Hoang@ladwp.com

If to Seller:

Willow Creek Energy LLC
Attn: Asset Manager
One South Wacker Drive, Suite 2020
Chicago, IL 60302
312-224-1400

And

Willow Creek Energy LLC
Attn: General Counsel
One South Wacker Drive, Suite 2020
Chicago, IL 60302
(312) 224-1400

4. All notices related to scheduling of the Facility shall be sent to the following address:

If to Buyer:

Department of Water and Power of the City of Los Angeles
c/o Manager of Power Systems Contracts
P.O. Box 111
Room 1148 JFB
Los Angeles, California 90051
Attention: ECC Dispatcher
Phone: (818) 771-6771
Facsimile: (818) 771-6606

Or if sent electronically, send to all the emails listed below:

Mohammed.Beshir@ladwp.com
Son.Hoang@ladwp.com
John.Hormozi@ladwp.com

If to Seller:

Willow Creek Energy LLC
Attn: Scheduling
One South Wacker Drive, Suite 2020
Chicago, IL 60302
Phone: (312) 224-1400
Facsimile: (312) 224-1444

APPENDIX D
FORM OF ATTESTATION

Willow Creek Environmental Attribute Attestation and Bill of Sale

Willow Creek Energy LLC ("Seller") hereby sells, transfers and delivers to City of Los Angeles acting by and through the Department of Water and Power ("Buyer") the Environmental Attributes and Environmental Attribute Reporting Rights associated with the generation from the Facility described below:

Facility name and location:
Fuel Type:
Capacity (MW):_____ Operational Date:

As applicable: CEC Reg. no. ___ Energy Admin. ID no. ____ Q.F. ID no. ___

Dates	MWhrs generated
_______________ 200_	__________
_______________ 200_	__________
_______________ 200_	__________

in the amount of one Environmental Attribute or its equivalent for each megawatt hour generated; and Seller further attests, warrants and represents as follows:

i) the information provided herein is true and correct;

ii) its sale to Buyer is its one and only sale of the Environmental Attributes and associated Environmental Attribute Reporting Rights referenced herein;

iii) the Facility generated and delivered to the grid the Energy in the amount indicated as undifferentiated Energy; and

iv) Seller owns the Facility and each of the Environmental Attributes and Environmental Attribute Reporting Rights associated with the generation of the indicated Energy for delivery to the grid have been generated and sold by the Facility.

This serves as a bill of sale, transferring from Seller to Buyer all of Seller's right, title and interest in and to the Environmental Attributes and Environmental Attribute Reporting Rights associated with the generation of the Energy for delivery to the grid.

Contact Person: ____________________ tel:

APPENDIX E
FORM OF LETTER OF CREDIT

IRREVOCABLE AND UNCONDITIONAL DOCUMENTARY LETTER OF CREDIT NO.

Applicant:

Beneficiary:

CITY OF LOS ANGELES
ACTING BY AND THROUGH THE DEPARTMENT OF WATER AND POWER
Attn: Financial Services Organization
Finance and Risk Control
111 North Hope Street Room 465
Los Angeles, CA 90012

Amount:
Expiry Date:
Expiration Place:

Ladies and Gentlemen:

We hereby issue our Irrevocable Unconditional Documentary Letter of Credit in favor of the beneficiary by order and for the account of the applicant which is available at sight for USD $5,256,000.00 by sight payment

(a) upon presentation to us at our office at *[bank's address]*,[1] of: (i) your written demand for payment containing the text of Exhibit I and (ii) your signed statement containing the text of Exhibit II; or

(b) upon both your telephone or fax advice of demand to the attention of ____________________ at telephone and/or fax number _______________ and presentation to us by fax of: (i) your written demand for payment containing the text of Exhibit I and (ii) your statement containing the text of Exhibit II.[2] Funds may be drawn

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[1] Note to Issuer: The Letter of Credit must be payable in U.S. dollars within the continental U.S.
[2] Note to Issuer: If the office specified for presentation is outside of Los Angeles, California, alternative (b) must appear in the Letter of Credit when issued. If the office is in Los Angeles, California, alternative (b) may be included only if the bank establishes and maintains with the LADWP the necessary electronic arrangements.

under this Letter of Credit, from time to time, in one or more drawings, in amounts not exceeding in the aggregate the amount specified above.

Upon presentation to us in conformity with the foregoing, we will, within 60 minutes after such presentation (unless such presentation occurs after 3:00 p.m., Pacific Standard Time, on the day of such presentation, in which event payment will be made within 60 minutes after the opening of business at the office specified above on the next business day), but without any other delay whatsoever, irrevocably and without reserve or condition: (a) if the office set forth above for presentation is in Los Angeles, California, pay to your order in the account at the bank designated by you in the demand, the full amount demanded by you in the same-day funds which are immediately available to you, or (b) if the office set forth above for presentation is not in Los Angeles, California, issue payment instructions to the Federal Reserve wire transfer system in proper form to transfer to the account at the bank designated by you in the demand, the full amount demanded by you in the same-day funds which are immediately available to you in Los Angeles, California. We agree that if, on the expiration date of this Letter of Credit, the office specified above is not open for business, this Letter of Credit will be duly honored if the specified statements are presented by you within three (3) full banking days after such office is reopened for business.

Payment hereunder shall be made regardless of: (a) any written or oral direction, request, notice or other communication now or hereafter received by us from the Applicant or any other person except you, including without limitation any communication regarding fraud, forgery, lack of authority or other defect not apparent on the face of the documents presented by you, but excluding solely an effective written order issued otherwise than at our instance by a court of competent jurisdiction which order is legally binding upon us and specifically orders us not to make such payment; (b) the solvency, existence or condition, financial or other, of the Applicant or any other person or property from whom or which we may be entitled to reimbursement for such payment; and (c) without limiting clause (b) above, whether we are in receipt of or expect to receive funds or other property as reimbursement in whole or in part for such payment. We agree that we will not take any action to cause the issuance of an order described in clause (a) of the preceding sentence. We agree that the time set forth herein for payment of any demand(s) for payment is sufficient to enable us to examine such demand(s) and the related documents(s) referred to above with care so as to ascertain that on their face they appear to comply with the terms of this credit and that if such demand(s) and document(s) on their face appear to so comply, failure to make any such payment within such time shall constitute dishonor of such demand(s) and this credit.

The stated amount of this Letter of Credit may be increased or decreased, and the expiration date of this Letter of Credit may be extended, by an amendment to this Letter of Credit in the form of Exhibit III. Any such amendment shall become effective only upon acceptance by your signature on a hard copy amendment.

You shall not be bound by any written or oral agreement of any type between us and the Applicant or any other person relating to this credit, whether now or hereafter existing.

We hereby engage with you that your demand(s) for payment in conformity with the terms of this credit will be duly honored as set forth above. All fees and other costs associated with the issuance of and any drawing(s) against this Letter of Credit shall be for the account of the Applicant. All of the rights of the City of Los Angeles acting by and through the Department of Water and Power (LADWP) set forth above shall inure to the benefit of your successors. In this connection, in the event of a drawing made by a party other than the LADWP, such drawing must be accompanied by the following signed certification:

> "The undersigned does hereby certify that ____[drawer]____ is the successor by operation of law to the LADWP, a beneficiary named in [name of Bank] Letter of Credit no. __________.

[name and title]

Except so far as otherwise expressly stated herein, this documentary credit is subject to the "Uniform Customs and Practices for Documentary Credits," International Chamber of Commerce, in effect on the date of issuance of this credit.

Yours faithfully,

(name of issuing bank)

By________________________________

Title_______________________________

EXHIBIT I
DEMAND FOR PAYMENT

Re: Irrevocable and Unconditional Documentary Letter of Credit

No. ________________ Dated ___________, 20__

To Whom It May Concern:

Demand is hereby made upon you for payment to us of $___________ by deposit to our account no. __________ at [insert name of bank]. This demand is made under, and is subject to and governed by, your Irrevocable and Unconditional Documentary Letter of Credit no. __________ dated __________, 20__ in the amount of $5,256,000.00 established by you in our favor for the account of Willow Creek Energy LLC as the Applicant.

DATED: ____________________, 20__.

CITY OF LOS ANGELES ACTING BY AND THROUGH THE DEPARTMENT OF WATER AND POWER

By___________________________________

Title_________________________________

EXHIBIT II
STATEMENT

Re: Your Irrevocable and Unconditional Documentary Letter of Credit

No. ____________ Dated _______, 20_______

To Whom It May Concern:

Reference is made to your Irrevocable and Unconditional Documentary Letter of Credit no. _________, dated _________, 20____ in the amount of $5,256,000.00 established by you in our favor for the account of Willow Creek Energy LLC.

We hereby certify to you that $______________ is due and owing to us by the Applicant.

DATED: _____________, 20__.

CITY OF LOS ANGELES ACTING BY AND THROUGH THE DEPARTMENT OF WATER AND POWER

By______________________________

Title____________________________

EXHIBIT III
AMENDMENT

Re: Irrevocable and Unconditional Documentary Letter of Credit
No. ________________ Dated ________________, 20__

Beneficiary: Applicant:

CITY OF LOS ANGELES
ACTING BY AND THROUGH THE DEPARTMENT OF WATER AND POWER
Attn: Financial Services Organization
Finance and Risk Control
111 North Hope Street Room 465
Los Angeles, CA 90012

To Whom It May Concern:

The above referenced Irrevocable and Unconditional Documentary Letter of Credit is hereby amended as follows: by increasing / decreasing / leaving unchanged *(strike two)* the stated amount by $ _______________ to a new stated amount of $ __________________ or by extending the expiration date to _____________________ from ____________________. All other terms and conditions of the Letter of Credit remain unchanged.

This amendment is effective only when accepted by the LADWP, which acceptance may only be valid by a signature of an authorized representative.

Dated: ________________________

Yours faithfully,

(name of issuing bank)

By_________________________________
Title_______________________________

ACCEPTED

CITY OF LOS ANGELES
ACTING BY AND THROUGH THE DEPARTMENT OF WATER AND POWER

By_________________________________
Title_______________________________
Date_______________________________

APPENDIX F
INSURANCE

I. GENERAL REQUIREMENTS

Prior to the start of work, but not later than thirty (30) days after the date of award of contract, the Seller shall furnish to the LADWP evidence of coverage from insurers acceptable to the LADWP and in a form acceptable to the LADWP's Risk Management Section and the Office of the Los Angeles City Attorney. Such insurance shall be maintained by the Seller at the Seller's sole cost and expense."

Such insurance shall not limit or qualify the liabilities and obligations of the Seller assumed under this Agreement. LADWP shall not by reason of its inclusion under these policies incur liability to the insurance carrier for payment of premium for these policies.

Any insurance carried by LADWP which may be applicable shall be deemed to be excess insurance and the Seller's insurance is primary for all purposes despite any conflicting provision in the Seller's policies to the contrary.

Said evidence of insurance shall contain a provision that the policy cannot be cancelled or reduced in coverage or amount without Seller first giving thirty (30) calendar days prior notice thereof (ten (10) days for non-payment of premium) by registered mail to The Office of the City Attorney, Water and Power Division, Post Office Box 51111, GOB Room 340, Los Angeles, California 90051-0100.

Should any portion of the required insurance be on a "Claims Made" policy, the Seller shall, at the policy expiration date following completion of work, provide evidence that the "Claims Made" policy has been renewed or replaced with the same limits, terms and conditions of the expiring policy, or that an extended discovery period has been purchased on the expiring policy at least for the contract under which the work was performed.

Failure to maintain and provide acceptable evidence of the required insurance for the required period of coverage shall constitute a breach of contract, upon which the LADWP may immediately terminate or suspend the Agreement in accordance with Article 13 thereof.

Seller shall be responsible for all subcontractors' compliance with the insurance requirements.

II. SPECIFIC COVERAGES REQUIRED

A. Commercial Automobile Liability

The Seller shall provide Commercial Automobile Liability insurance which shall include coverages for liability arising out of the use of owned, non-owned, and hired vehicles for performance of the work as required to be licensed under the California or any other applicable state vehicle code. The Commercial Automobile Liability insurance shall have not less than $1,000,000.00 combined single limit per occurrence and shall apply to all operations of the Seller.

The Commercial Automobile Liability policy shall include_the City of Los Angeles, the, Board of Water and Power Commissioners of the City of Los Angeles, the Department of Water and Power of the City of Los Angeles, and their officers, agents, and employees while acting within the scope of their employment, as additional insureds with the Seller, and shall insure against liability for death, bodily injury, or property damage resulting from the performance of this Agreement. Evidence of insurance shall be provided on a LADWP Additional Insured Endorsements or an endorsement reasonably acceptable to the LADWP Risk Management Section and the Office of the Los Angeles City Attorney and such acceptance shall not be unreasonably withheld.

B. Commercial General Liability

The Seller shall provide Commercial General Liability insurance with Blanket Contractual and Independent Contractor Coverage, Broad Form Property Damage, Premises and Operations, Products and Complete Operations, fire and legal liability and personal injury coverage. This requirement may be satisfied by the ISO Occurrence Policy form (2001 edition) or its substantial equivalent without material alteration. Such insurance shall provide coverage for total limits actually arranged by the Seller, but not less than $10,000,000.00 combined single limit per occurrence. Should the policy have an aggregate limit, such aggregate limits should not be less than double the Combined Single Limit and be specific for this contract. Umbrella or Excess Liability Evidence of insurance shall be provided on a LADWP Additional Insured Endorsements or an endorsement reasonably acceptable to the LADWP Risk Management Section and the Office of the Los Angeles City Attorney and such acceptance shall not be unreasonably withheld. and shall provide for the following:

1. Include LADWP and its officers, agents, and employees as additional insureds with the Named Insured for the activities and operations under this Agreement.

2. Severability-of-Interest or Cross-Liability Clause such as: "The policy to which this endorsement is attached shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the company's liability."

3. A description of the coverages included under the policy.

C. Excess Liability

The Seller may use an Umbrella or Excess Liability Coverage written on a following form basis to satisfy coverage limits specified in this Agreement. The Seller shall require the carrier for Excess Liability to properly schedule and to identify the underlying policies as provided for LADWP on the LADWP Additional Insured Endorsement Form, or on an endorsement to the policy acceptable to LADWP's Risk Management Section and the Office of the Los Angeles City Attorney. Such policy shall include, as appropriate, coverage for Commercial General Liability, Commercial Automobile Liability, Employer's Liability, or other applicable insurance coverages.

D. Workers' Compensation/Employer's Liability Insurance

The Seller shall provide Workers' Compensation insurance covering all of the Seller's employees in accordance with the laws of any state in which the work is to be performed and including Employer's Liability insurance and a Waiver of Subrogation in favor of LADWP. The limit for Employer's Liability coverage shall be not less than $1,000,000.00 each accident and shall be a separate policy if not included with Workers' Compensation coverage. Evidence of insurance shall be provided on a LADWP Special Endorsements or an endorsement reasonably acceptable to the LADWP Risk Management Section and the Office of the Los Angeles City Attorney and such acceptance shall not be unreasonably withheld.

Workers' Compensation/Employer's Liability exposure may be self-insured *provided* that LADWP is furnished with a copy of the certificate issued by the state authorizing the Seller to self-insure. Seller shall notify LADWP's Risk Management Section by receipted delivery as soon as possible of the state withdrawing authority to self-insure.

E. Builders' Risk

Builder's Risk insurance shall be provided during the course of construction until the commercial operation date and shall be written on "all risk" type, shall be written in completed value form, and shall protect the Seller, the City of Los Angeles, the Board of Water and Power Commissioners of the City of Los Angeles, and the Department of Water and Power of the City of Los Angeles against risks of damage to buildings, structures, and materials and equipment whether on site or in transit from any location world wide. The amount of such insurance shall be not less than the insurable value of the work at completion. LADWP shall be a named additional insured on the policy. The Builder's Risk insurance shall provide for losses to be payable to the Seller and the aforementioned additional insured, as their interests may appear. The policy shall contain a provision that in the event of payment for any loss under the coverage provided, the insurance company shall have no rights of recovery against the Seller and the aforementioned named additional insured. The Builders' Risk policy shall insure against all risks of direct physical loss or damage to property from any cause including testing, ensuing loss, commissioning, settling and cracking of foundations, earthquake and flood.

G. Property All Risk Insurance

Seller shall procure and maintain an All Risk Physical Damage policy to insure the full replacement value of the property located at Facility as described in this Agreement. The policy shall include coverage for expediting expense, extra expense, mechanical breakdown, Business Interruption, ensuing loss from faulty workmanship or faulty materials and/or faulty design. This policy shall have an effective date of no later than the expiration of the Builder's Risk Policy in order to eliminate any gaps in coverage.

APPENDIX G
OPINION OF COUNSEL

[date]

[address]

Re: [agreement]

Ladies and Gentlemen:

I am internal counsel to Willow Creek Energy LLC, a Delaware limited liability company ("Willow Creek"), and in such capacity have represented Willow Creek in connection with the transactions contemplated by that certain [agreement] dated as of ___, 2008 (the "PPA"), by and among Willow Creek and __________. I am furnishing to you the opinions set forth in this letter pursuant to Section __________of the PPA.

All capitalized terms used herein and not otherwise defined shall have the meanings given to them in the PPA.

The opinions herein are delivered solely for the benefit of the addressee in connection with the transactions contemplated by the PPA and are with respect to the review, execution and delivery of the PPA.

In connection with rendering the opinions expressed below, I or other attorneys acting under my direction have examined originals or copies, certified or otherwise identified to my or their satisfaction as being true and correct copies of the PPA and such corporate records, agreements and instruments of Willow Creek and such other documents and certificates, and such matters of law, as I or they have deemed necessary, including, but not limited to Willow Creek's certificate of formation and operating agreement, as amended through the date on which Seller executes this Agreement, (the "Governing Documents"). In such examination, I or they have assumed the genuineness of all signatures, the authenticity of the documents submitted to me or them as originals and the conformity to authentic original documents of all documents submitted to me or them as certified or photostatic copies.

Whenever my opinion herein with respect to the existence or absence of facts is qualified to be "to my knowledge," such qualification is intended to signify that I do not know of (and have no reasonable basis to believe in the existence of) any fact or circumstance contradicting the statement of fact specifically referenced and there should be no implication that I know the statement is correct.

Based upon the foregoing examination and assumptions and upon other information that I have deemed necessary and subject to the additional matters set forth below, it is my opinion that:

1. Willow Creek is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware.

2. Willow Creek has the full limited liability company power and authority to enter into and deliver the PPA and to perform its obligations thereunder.

3. Willow Creek has duly authorized by all necessary limited liability company action the execution, delivery and performance of the PPA.

4. The execution, delivery and performance by Willow Creek of the PPA in accordance with the terms and provisions thereof, and the fulfillment by Willow Creek of any of the terms thereof, will not (i) result in any violation of the Governing Documents or other organizational document of Willow Creek; (ii) violate any judgment, decree, or order of any court or arbiter to which Willow Creek is a party or is bound; or (iii) to my knowledge, result in the breach of, or constitute a default under any indenture, mortgage, deed of trust, lease or sublease agreement to which Willow Creek is a party.

5. Other than as disclosed in the PPA there are no pending or, to my knowledge, threatened legal, governmental or regulatory (including investigations by or proceedings before FERC) actions, suits, proceedings or investigations before, or any injunctions, writs, preliminary restraining orders or any order of any nature issued by, any court, board of arbitration, commission or governmental official against or affecting Willow Creek, the outcome of which in the aggregate could be reasonably likely to materially adversely affect the financial position, operations or prospects of Willow Creek.

I am a member of the bar of the State of Illinois and this opinion is limited to the laws of the State of Illinois and the Limited Liability Company Act of the State of Delaware. In addition, I express no opinion as to (i) any federal or state securities laws and regulations, (ii) any federal or state tax laws and regulations, (iii) any federal or state pension or employee benefit laws and regulations or (iv) any energy, public utility or public utility holding company laws.

This letter and the opinions expressed herein are being furnished to the addressee only, are solely for the benefit of the addressee, are limited to the matters stated herein and no opinion is implied or may be inferred beyond the matters expressly stated. This letter and the opinions expressed herein may not be used or relied upon by the addressee for any purpose other than the purposes set forth herein and may not be relied upon for any purpose by any other person or entity without my prior written consent.

Sincerely,

Joseph Condo
Secretary and General Counsel