



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Adopt resolution authorizing the City Manager to execute a Master Power Purchase and Sale Agreement between the City of Lodi and the State of California Department of Water Resources (EUD)

MEETING DATE: October 30, 2001

PREPARED BY: Electric Utility Director

RECOMMENDED ACTION: That the City Council adopt a resolution authorizing the City Manager to execute a Master Power Purchase and Sale Agreement between the City of Lodi and the State of California Department of Water Resources.

BACKGROUND INFORMATION: In today's energy markets, most transactions are conducted under the general terms and conditions of a standardized master power purchase and sale agreement. These master agreements set forth the obligations of the parties related to performance under different types of energy related products. Once a master agreement is in place, the parties can concentrate their efforts on the commercial terms of different energy related transactions. Legal and administrative reviews of different transactions are greatly expedited using this process.

Approval of the Master Power Purchase and Sale Agreement between the City of Lodi and the State of California Department of Water Resources establishes the general obligations and rights of the parties without specifying the commercial terms of contemplated transactions. Specific Transaction terms will be presented and approvals sought in separately prepared documents appended to the master agreements as exhibits thereto.

The Electric Utility Department respectfully requests City Council authorization for the City Manager to execute the Master Power Purchase and Sale Agreement presented here in substantially final form.

FUNDING: Through existing Bulk Power Purchases

Handwritten signature of Alan N. Vallow in cursive.

Alan N. Vallow
Electric Utility Director

ANV/lst

C: City Attorney

APPROVED: _____

Handwritten signature of H. Dixon Flynn in cursive.
H. Dixon Flynn - City Manager

Master Power Purchase & Sale Agreement

City of Lodi --- CDWR

REVISED DRAFT 10/24/01

Version 2.1 (modified 4/25/00)

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MASTER POWER PURCHASE AND SALES AGREEMENT

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EXHIBIT B MASTER POWER PURCHASE AND SALE AGREEMENT CONFIRMATION LETTER

MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This Master Power Purchase and Sale Agreement ("Master Agreement") is made as of the following date: October ____, 2001 ("Effective Date"). The Master Agreement, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the "Agreement." The Parties to this Master Agreement are the following:

Name ("City of Lodi" or "Party A")

Name ("California Department of Water Resources, acting solely under the authority and powers created by AB1-X, codified as Sections 80000 through 80260 of the Water Code (the "Act"), and not under its powers and responsibilities with respect to the State Water Resources Development System" or "Party B")

All Notices:

All Notices: California Department of Water Resources

Street: 1416 Ninth Street

City: _____ Zip: _____

City: Sacramento, California Zip: 95814

Attn: Contract Administration

Attn: Executive Manager Power Systems

Phone: _____

Phone: (916) 653-5913

Facsimile: _____

Facsimile: (916) 653-0267

Duns: _____

Duns: _____

Federal Tax ID Number: _____

Federal Tax ID Number: 52-1692634

Invoices:

Invoices:

Attn: _____

Attn: Contracts Payable

Phone: _____

Phone: (916) 653-6404

Facsimile: _____

Facsimile: (916) 654-9882

Scheduling:

Scheduling:

Attn: _____

Attn: Chief Water and Power Dispatcher

Phone: _____

Phone: (916) 574-2693

Facsimile: _____

Facsimile: (916) 574-2569

Payments:

Payments:

Attn: _____

Attn: Cash Receipts Section

Phone: _____

Phone: (916) 653-6892

Facsimile: _____

Facsimile: (916) 654-9882

Wire Transfer:

Wire Transfer:

BNK: _____

BNK: Bank of America (Sacramento Main Branch)

ABA: _____

for: Department of Water Resources

ACCT: _____

ABA: Routing # 121000358

ACCT: #14365-80598

Credit and Collections:

Credit and Collections:

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

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

Attn: _____
Phone: _____
Facsimile: _____

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

Attn: Deputy Controller
Phone: (916) 653-6148
Facsimile: (916) 653-8230

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Party A Tariff Tariff N/A Dated _____ Docket Number _____
Party B Tariff Tariff N/A Dated _____ Docket Number _____

Article Two

Transaction Terms and Conditions [] Optional provision in Section 2.4. If not checked, inapplicable.

Article Four

Remedies for Failure to Deliver or Receive [] Accelerated Payment of Damages. If not checked, inapplicable.

Article Five

Events of Default; Remedies [] Cross Default for Party A: Not Applicable
[] Party A: _____ Cross Default Amount \$ _____
[] Other Entity: _____ Cross Default Amount \$ _____
[] Cross Default for Party B: Not Applicable
[] Party B: _____ Cross Default Amount \$ _____
[] Other Entity: _____ Cross Default Amount \$ _____

5.6 Closeout Setoff : Not Applicable

- [] Option A (Applicable if no other selection is made.)
[] Option B - Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows: _____
[] Option C (No Setoff)

Article 8

Credit and Collateral Requirements 8.1 Party A Credit Protection:

- (a) Financial Information:
[] Option A
[] Option B Specify: _____
[X] Option C Specify: annual audit, annual budget and all financial information sent to any seller under a power purchase agreement; Party B shall use reasonable commercial efforts to periodically prepare and make available to all sellers under power sales agreements, but not more frequently than

quarterly, financial information reasonably intended to apprise all such sellers of the financial condition of the Fund.

(b) Credit Assurances:

- Not Applicable
- Applicable

(c) Collateral Threshold:

- Not Applicable
- Applicable

If applicable, complete the following:

Party B Collateral Threshold: \$ _____; provided, however, that Party B's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party B has occurred and is continuing.

Party B Independent Amount: \$ _____

Party B Rounding Amount: \$ _____

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

- It shall be a Downgrade Event for Party B if Party B's Credit Rating falls below _____ from S&P or _____ from Moody's or if Party B is not rated by either S&P or Moody's

- Other:
Specify: _____

(e) Guarantor for Party B: Not Applicable

Guarantee Amount: _____

8.2 Party B Credit Protection:

(a) Financial Information:

- Option A
- Option B Specify: _____
- Option C Specify: annual audited financial statements and annual budget.

(b) Credit Assurances:

- Not Applicable
- Applicable

(c) Collateral Threshold:

- Not Applicable
- Applicable

If applicable, complete the following:

Party A Collateral Threshold: \$ _____; provided, however, that Party A's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party A has occurred and is continuing.

Party A Independent Amount: \$ _____

Party A Rounding Amount: \$ _____

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

It shall be a Downgrade Event for Party A if Party A's Credit Rating falls below _____ from S&P or _____ from Moody's or if Party A is not rated by either S&P or Moody's

Other:
Specify: _____

(e) Guarantor for Party A: Not Applicable

Guarantee Amount: _____

See New Section 5.8 for credit rating requirements

Article 10

Confidentiality

Confidentiality Applicable If not checked, inapplicable.

Schedule M

- Party A is a Governmental Entity or Public Power System
- Party B is a Governmental Entity or Public Power System
- Add Section 3.6. If not checked, inapplicable
- Add Section 8.4. If not checked, inapplicable

Other Changes

(a) Definitions.

- (1) Section 1.2 is amended by adding the following at the end of that section: "The attached Confirmations are hereby incorporated into the Agreement."
- (2) Section 1.11 is amended by adding the following sentence at the end of the current definition: "The Non-Defaulting Party shall use commercially reasonable efforts to mitigate or eliminate these Costs."

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- (3) Section 1.50 is amended by changing the reference from Section 2.4 to Section 2.5.
- (4) Section 1.51 shall be amended on the fifth line by deleting the phrase "at Buyer's option" and inserting the following phrase: "absent a purchase".
- (5) Section 1.53 shall be amended on the fifth line by deleting the phrase "at Seller's option" and inserting the following phrase: "absent a sale".
- (6) Sections 1.6, 1.24, 1.28, 1.33, 1.34, 1.35, 1.36, 1.46, 1.48 and 1.56 are amended by deleting the text in each of such sections and substituting therefor "[Intentionally omitted.]"
- (7) Section 1.59 is amended by changing "Section 5.3" to "Section 5.2."
- (8) Sections 1.62 through 1.106 are added to Article One as follows:
 - 1.62. "Actual Availability" means the monthly availability of the Facility, calculated pursuant to Special Condition 7 of the 2001B Transaction.
 - 1.63. "Actual Availability Factor" means the factor by which the Capacity Charge is adjusted for Actual Availability, calculated pursuant to Special Condition 7 of the 2001B Transaction.
 - 1.64. "Actual Starting Reliability" means the rolling 12-month starting reliability of the Facility, calculated pursuant to Special Condition 7 of the 2001B Transaction.
 - 1.65. "Actual Starting Reliability Factor" means the factor by which the Capacity Charge is adjusted for Actual Starting Reliability, calculated pursuant to Special Condition 7 of the 2001B Transaction.
 - 1.66. "Adjusted Capacity Charge" is the Capacity Charge, adjusted by the Actual Availability Factor and the Actual Starting Reliability Factor pursuant to Special Condition 7 of the 2001B Transaction.
 - 1.67. "Availability Hours" are the hours for which Actual Availability is calculated, as specified in Special Condition 7 of the 2001B Transaction.
 - 1.68. "Base Capacity Price" means the price shown in the Capacity Charge section of the Contract Price section of the 2001B Transaction, prior to any adjustment due to the Non-Firm Cost Components.
 - 1.69. "Call-Back Capacity" means the amount of Facility capacity Seller may reserve for itself pursuant to Special Condition 5 of the 2001B Transaction.
 - 1.70. "CAISO" means the California Independent System Operator Corporation, or any successor thereto, that oversees and administers those portions of the California transmission system assigned to its control and that provides non-discriminatory transmission services within the area recognized as the "CAISO Controlled Grid" pursuant to a FERC-approved tariff.
 - 1.71. "Capacity Charge" means a component of Contract Price, as set out in the 2001B Transaction.
 - 1.72. "Commercial Operations Date" means the Seller provides notice that the Facility has achieved Commercial Operations, as set out in Special Condition 3 of the 2001B Transaction
 - 1.73. "Contract Year" shall have the meaning set forth in Special Condition 5 of the 2001B Transaction.

- 1.74. "Extended Term Obligations" has the meaning set forth in Special Condition 12, paragraph (iv), of the 2001B Transaction.
- 1.75. "Facility" means the power plant specified in Special Condition 2 of the 2001B Transaction.
- 1.76. "Fixed O&M Charge" means a component of Contract Price, as set out in the 2001B Transaction.
- 1.77. "Fuel" means natural gas used to generate the Product at the Facility.
- 1.78. "Fuel Manager" means the person or entity designated to perform the fuel-related services of an Authorized Agent (as such term is defined in the utility tariff) in the Pacific Gas & Electric Company service area.
- 1.79. "Fuel Manager Services" means the commercial and operational services typically employed for optimum gas supply management including, without limitation, supply nomination, imbalance management, data reconciliation and invoicing, and daily spot purchasing where appropriate.
- 1.80. "Fuel Charge" means a component of Contract Price, as set out in the 2001B Transaction.
- 1.81. "Fuel Supply Period" means a six-month period beginning on a date to be agreed upon by the Parties, and each successive six-month period during the Delivery Period.
- 1.82. "Fuel Supply Plan" has the meaning set out in Special Condition 12, paragraph (i) of the 2001B Transaction.
- 1.83. "Fund" or "Special Fund" means the Department of Water Resources Electric Power Fund established by Section 80200 of the Water Code.
- 1.84. "Guaranteed Starting Reliability" is the minimum starting reliability of the Facility below which the Capacity Charge is subject to decrease, as set out in Special Condition 7 of the 2001B Transaction.
- 1.85. "Hourly Availability Factor" has the meaning set out in Special Condition 7 of the 2001B Transaction.
- 1.86. "Market Quotation Average Price" shall mean the average of the good faith quotations solicited from not less than three (3) Reference Market-makers; provided, however, that the Party soliciting such quotations shall use commercially reasonable efforts to obtain good faith quotations from at least five (5) Reference Market-makers and, if at least five (5) such quotations are obtained, the Market Quotation Average Price shall be determined disregarding the highest and lowest quotations.
- 1.87. "Market Value" shall have the meaning set forth in Section 5.3.
- 1.88. "Net Demonstrated Capacity" is the basis on which the Capacity Charge is calculated, as set out in Special Condition 4 of the 2001B Transaction.
- 1.89. "Non-Firm Cost Components" are Facility development costs for which the Base Capacity Price is subject to adjustment, pursuant to Special Condition 6 of the 2001B Transaction.
- 1.90. "Peak Period" is the hours during which Buyer may schedule energy from the Facility, as set out in Special Condition 8 of the 2001B Transaction.
- 1.91. "Period Starting Reliability Factor" has the meaning set out in Special Condition 7 of the 2001B Transaction.

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- 1.92. "Per Unit Market Price" means the applicable price per MWh determined in accordance with Section 5.3.
- 1.93. "Reference Market-maker" means any marketer, trader or seller of or dealer in firm energy products whose long-term unsecured senior debt is rated BBB or better by Standard & Poor's and Baa2 or better by Moody's Investor Services.
- 1.94. "Replacement Contract" means a contract having a term, quantity, delivery rate, delivery point and product substantially similar to the remaining Term, quantity, delivery rate, Delivery Point and Product to be provided under this Agreement.
- 1.95. "Schedule Coordinator" means an entity, as defined from time to time by the CAISO, which as of the date hereof is defined by the CAISO as an entity certified by the CAISO for the purposes of undertaking the functions currently specified in Section 2.2.6 of the FERC-approved CAISO Electric Tariff.
- 1.96. "Scheduled Maintenance" is the maximum annual excused maintenance allowance for the Facility, as set out in Special Condition 10 of the 2001B Transaction.
- 1.97. "Special Condition" means the paragraphs at the end of a Transaction containing additional terms and conditions.
- 1.98. "Spot Market" means the competitive purchase and sale of short-term (30 days or less) gas supplies available and traded at those certain delivery points on the gas pipeline system having sufficient trading volume to establish daily and monthly price discovery.
- 1.99. "Site Standard Conditions" means 59 degrees Fahrenheit and relative humidity of 60%. [verifying]
- 1.100. "Target Availability" is the minimum monthly availability below which the Capacity Charge is subject to decrease, as set out in Special Condition 7 of the 2001B Transaction.
- 1.101. "Trust Estate" means all revenues under any obligation entered into, and rights to receive the same, and moneys on deposit in the Fund and income or revenue derived from the investment thereof.
- 1.102. "2001A Transaction" means the transaction described in the Confirmation attached hereto as Exhibit A.
- 1.103. "2001B Transaction" means the transaction described in the Confirmation attached hereto as Exhibit B.
- 1.104. "Variable O&M Charge" means a component of Contract Price, as set out in the 2001B Transaction.
- 1.105. "WSCC" means the Western Systems Coordinating Council.

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(b) Transactions. Section 2.1 is hereby replaced as follows: "The Parties are entering into the 2001A Transaction and the 2001B Transaction pursuant to the terms and conditions of the Agreement."

(c) Governing Terms. Section 2.2 is amended by deleting the words "(including any Confirmations accepted in accordance with Section 2.3)" from the second sentence, and adding the following sentence to the end of the section:

"Notwithstanding the foregoing, the 2001A Transaction and the 2001B Transaction shall each be treated as stand-alone Transactions and accordingly, (a) provisions in the Master Agreement referring to offsetting or netting multiple Transactions shall not be applicable to the 2001A Transaction nor the 2001B Transaction, (b) an Event of Default with respect to any Transaction shall not affect any other Transaction, and (c) any event permitting suspension of performance with respect to any Transaction shall not permit suspension of performance under any other Transactions."

(d) Confirmation. Section 2.3 is amended by replacing the text of the Section with "The Parties have confirmed the 2001A Transaction and the 2001B Transaction in the Confirmations dated _____, attached hereto as Exhibits A and B, respectively."

(e) Additional Confirmation Terms. Section 2.4 is amended by replacing the text of the Section with "[Intentionally Omitted]."

(f) Recording. The last two sentences of Section 2.5 are hereby deleted.

(g) Declaration of an Early Termination Date and Calculation of Termination Payment.

(1) The last sentence of Section 5.2 is replaced in its entirety by the following: "The Non-Defaulting Party shall be entitled to a payment upon termination of this Agreement as the result of an Event of Default (the "Termination Payment") which shall be the aggregate of the Market Value and Costs calculated in accordance with Section 5.3 which shall be paid no later than one hundred eighty (180) days after receipt of written notice of an Early Termination Date. Prior to receipt of such notice of termination by the Defaulting Party, the Non-Defaulting Party may exercise any remedies available to it at law or otherwise, including, but not limited to, the right to seek injunctive relief to prevent irreparable injury to the Non-Defaulting Party."

(2) The following shall be added to the end of Section 5.2 (as amended by clause (1) immediately above): "Notwithstanding the other provisions of this Agreement, if the Non-Defaulting Party has the right to liquidate or terminate all obligations arising under this Agreement under the provisions of this Article 5 because the Defaulting Party either (a) is the subject of a bankruptcy, insolvency, or similar proceeding, or (b) applies for, seeks, consents to, or acquiesces in the appointment of a receiver, custodian, trustee, liquidator, or similar official for all or a substantial portion of its assets, then this Agreement and the Transaction shall automatically terminate, without notice, as if the Early Termination Date was the day immediately preceding the events listed in Section 5.1."

(3) Section 5.3 is replaced in its entirety by the following:

5.3. Termination Payment Calculations. The Non-Defaulting Party shall calculate the Termination Payment as follows:

(a) Market Value shall be (i) in the case Party B is the Non-Defaulting Party, the present value of the positive difference, if any, of (A) payments under a Replacement Contract based on the Per Unit Market Price, and (B) payments under this Agreement, or (ii) in the case Party A is the Non-Defaulting Party, the present value of the positive difference, if any, of (A) payments under this Agreement, and (B) payments under a Replacement Contract based on the Per Unit Market Price, in each case using the Present Value Rate as of the time of termination (to take account of the period between the time notice of termination was effective and when such amount would have otherwise been due pursuant to the relevant transaction). The "Present Value Rate" shall mean 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

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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 matches the average remaining term of this Agreement. It is expressly agreed that the Non-Defaulting Party shall not be required to enter into a Replacement Contract in order to determine the Termination Payment.

- (b) To ascertain the Per Unit Market Price of a Replacement Contract with a term of less than one year, the Non-Defaulting Party may consider, among other valuations, quotations from leading dealers in energy contracts, the settlement prices on established, actively traded power exchanges, other bona fide third party offers and other commercially reasonable market information.
- (c) To ascertain the Per Unit Market Price of a Replacement Contract with a term of one year or more, the Non-Defaulting Party shall use the Market Quotation Average Price; provided, however, that if there is an actively traded market for such Replacement Contract or if the Non-Defaulting Party is unable to obtain reliable quotations from at least three (3) Reference Market-makers, the Non-Defaulting Party shall use the methodology set forth in paragraph (b).
- (d) In no event, however, shall a party's Market Value or Costs include any penalties, ratcheted demand charges or similar charges imposed by the Non-Defaulting Party.
- (e) The Non-Defaulting Party shall use reasonable efforts to mitigate the amount of the Termination Payment, including, to the extent practicable, the mitigation or elimination of Costs.

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 dispute resolution as provided in Section 10.12 of this Agreement. Pending resolution of the dispute, the Defaulting Party shall pay the full amount of the Termination Payment calculated by the Non-Defaulting Party no later than one hundred eighty (180) days after receipt of written notice of an Early Termination Date."

- (4) Sections 5.4, 5.5, 5.6, 6.7 and 6.8 are amended by deleting the text in each of such sections and substituting therefor "[Intentionally omitted.]"
- (5) Section 5.7 is amended by deleting the reference to the "Potential Event of Default".
- (6) New Section 5.8 is added to Article 5 as follows:

"5.8. Other Termination/Suspension Provisions.

- (a) Party B shall be entitled to terminate this Agreement upon ten (10) Business Days written notice for any of the following conditions:
 - (i) Party A has not been granted regulatory authority from all applicable permitting authorities necessary to commence construction of the Facility by February 1, 2002; or
 - (ii) Party A's deliveries from the Facility are interrupted by Force Majeure for a continuous period exceeding 18 months; or
 - (iii) The Facility's Actual Availability is less than 60% two consecutive six-month periods; or
 - (iv) Party A has not provided evidence of a credit rating of unsecured long-term debt of Party A of Baa or better by Moody's, or BBB or better by S&P, prior to the earlier of the actual or expected Commercial Operations Date.

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- (b) Party A shall be entitled to terminate this Agreement upon ten (10) Business Days written notice for any of the following conditions:
 - (i) Party A determines that it cannot obtain all required permits or the Facility cannot be financed and constructed to meet Party A's obligations under this Agreement prior to _____, 2001; or
 - (ii) Party A determines that, due to issues related to the California Environmental Quality Act (CEQA), approval to build the Facility cannot be obtained.
- (c) In the event of early termination under this Section 5.8, neither Party shall be liable to the other for the payment of any damages related to such early termination, including, but not limited to, the Termination Payment. In the event of such early termination, the Parties shall be mutually released from all rights and obligations, except for those rights and obligations that specifically survive such termination as set forth elsewhere herein."

(h) Term of Master Agreement. Add the following sentence to Section 10.1: "The 2001A Transaction and the 2001B Transaction shall each terminate on the day following the last day of their respective Delivery Periods, unless terminated sooner pursuant to the express provisions of this Agreement or as a result of an Event of Default".

(i) Representations and Warranties. Any references to "Confirmation accepted in accordance with Section 2.3" shall be deleted. Party B shall not be deemed to make the representations set forth in clauses (ix) and (xi) of Section 10.2.

(j) Indemnity. The phrase "To the extent permitted by law" is added at the beginning of the first two sentences of Section 10.4.

(k) Assignment.

(1) In Section 10.5, the phrase "either Party may, without the consent of the other Party (and without relieving itself from liability hereunder)" shall be replaced with "Party A (or, with respect to clause (i) (iv) or (v), Party B) may, without the consent of the other Party" and add the following clauses (iv) and (v) in the first proviso in Section 10.5: "(iv) transfer and assign all of its right, title and interest to this Agreement and the Fund to another governmental entity created or designated by law to carry out the rights, powers, duties and obligations of the Department under the Act; or (v) transfer or assign this Agreement to any electrical corporation, as defined in the Act, whose long-term unsecured senior debt is rated BBB or better by Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.), or its successor, and Baa2 or better by Moody's Investor Services, Inc., or its successor;"

(2) Add the following proviso to the end of Section 10.5: ";provided, further, however, that in the event this Agreement is pledged or assigned to a bond trustee pursuant to clause (i) as collateral for bonds issued by Party B, such bond trustee shall not be required to agree in writing to be bound by the terms and conditions hereof."

(3) Add the following sentence to end of Section 10.5: "Notwithstanding the foregoing Party A may assign its rights under this Agreement to Enron upon a merger of Party A's energy business with that of Enron."

(l) Governing Law. In Section 10.6, "New York" shall be replaced with "California."

(m) General. The phrase "Except to the extent herein provided for," shall be deleted from the fourth sentence of Section 10.8, and the phrase "and this agreement may not be orally amended or modified, including by Recording pursuant to Section 2.5" shall be added to the end of such fourth sentence.

(n) Additional Provisions.

(1) New Section 3.7 is added to Article III as follows:

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“Section 3.7. Payments Under Agreement an Operating Expense. Payments under this Agreement shall constitute an operating expense of the Fund payable prior to all bonds, notes or other indebtedness secured by a pledge or assignment of the Trust Estate or payments to the general fund.”

(2) New Section 3.8 is added to Article 3 as follows:

“Section 3.8. Party B Rate Covenant; No Impairment. In accordance with Section 80134 of the Water Code, Party B covenants that it will, at least annually, and more frequently as required, establish and revise revenue requirements sufficient, together with any moneys on deposit in the Fund, to provide for the timely payment of all obligations which it has incurred, including any payments required to be made by Party B pursuant to this Agreement. As provided in Section 80200 of the Water Code, while any obligations of Party B pursuant to this Agreement remain outstanding and not fully performed or discharged, the rights, powers, duties and existence of Party B and the Public Utilities Commission shall not be diminished or impaired in any manner that will affect adversely the interests and rights of Party A under this Agreement.”

(3) New Section 3.9 is added to Article 3 as follows:

“Section 3.9. No More Favorable Terms. Party B shall not provide in any power purchase agreement payable from the Trust Estate for (i) collateral or other security or credit support with respect thereto, (ii) a pledge or assignment of the Trust Estate for the payment thereof, or (iii) payment priority with respect thereto superior to that of Party A, without in each case offering such arrangements to Party A.”

(4) New Section 3.10 is added to Article 3 as follows:

“Section 3.10. Sources of Payment; No Debt of State. Party B’s obligation to make payments hereunder shall be limited solely to the Fund. Any liability of Party B arising in connection with this Agreement or any claim based thereon or with respect thereto, including, but not limited to, any Termination Payment arising as the result of any breach or Potential Event of Default or Event of Default under this Agreement, and any other payment obligation or liability of or judgment against Party B hereunder, shall be satisfied solely from the Fund. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF CALIFORNIA ARE OR MAY BE PLEDGED FOR ANY PAYMENT UNDER THIS AGREEMENT. Revenues and assets of the State Water Resources Development System shall not be liable for or available to make any payments or satisfy any obligation arising under this Agreement.”

(5) New Section 3.12 is added to Article 3 as follows:

“Section 3.12. Application of Government Code and the Public Contracts Code. Party A has stated that, because of the administrative burden and delays associated with such requirements, it would not enter into this Agreement if the provisions of the Government Code and the Public Contracts Code applicable to state contracts, including, but not limited to, advertising and competitive bidding requirements and prompt payment requirements would apply to or be required to be incorporated in this Agreement. Accordingly, pursuant to Section 80014(b) of the Water Code, Party B has determined that it would be detrimental to accomplishing the purposes of Division 27 (commencing with Section 80000) of the Water Code to make such provisions applicable to this Agreement and that such provisions and requirements are therefore not applicable to or incorporated in this Agreement.”

(6) New Section 10.12 is added to Article 10 as follows:

“10.12. Dispute Resolution. Both Parties understand and appreciate that their long term mutual interests will be best served by affecting a rapid and fair resolution of any claims or disputes which may

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arise under this Agreement or from any dispute concerning Agreement terms. Therefore, both Parties agree to use their best efforts to resolve all such disputes as rapidly as possible on a fair and equitable basis. Toward this end both Parties agree to develop and follow a process of presenting, rapidly assessing, and settling claims and other disputes on a fair and equitable basis. This process shall consist of (1) presentation of the claim by the claiming Party in writing, with supporting documentation, if any, and a specification of the amounts due or other remedies which if provided by the other Party would resolve the claiming Party's claim; (2) response by the other Party to the claiming Party's written presentation of its claim, in writing, accepting, rejecting or setting forth a counter proposal to the claiming Party's claim, along with any written explanation or supporting documentation the other Party elects to provide, which is to be delivered within seven (7) Business Days of receipt of the claiming Party's presentation of its claim; and (3) a meeting of the Parties' representatives with knowledge and authority to resolve the dispute within two (2) Business Days of receipt by the claiming Party of the other Party's written response. If any dispute or claim arising under this Agreement cannot be readily resolved by the Parties pursuant to the process referenced in this Section 10.12, the Parties shall have all rights available under law or equity."

(7) New Section 10.13 is added to Article 10 as follows:

"10.13. No Retail Services; No Agency. (a) Nothing contained in this Agreement shall grant any rights to or obligate Party A to provide any services hereunder directly to or for retail customers of any person.

(b) In performing their respective obligations hereunder, neither Party is acting, or is authorized to act, as agent of the other Party."

(o) **Schedule M.** Schedule M shall be amended as follows:

(1) "Special Fund" shall mean the Fund.

(2) In Section A, the following is added to the end of the definition of the term "Governmental Entity or Public Power System": "In the case of Party B, "Governmental Entity or Public Power System" means the State of California Department of Water Resources separate and apart from its powers and responsibilities with respect to the State Water Resources Development System".

(3) In Section D, delete Section 3.5 and replace it with the following:

"Section 3.5 No Immunity Claim. California law authorizes suits based on contract against the State or its agencies, and each Party agrees that it will not assert any immunity it may have as a state agency against such lawsuits filed in state court."

(p) **Schedule P.** Schedule P shall be amended as follows:

(1) Add the following clause to the end of the definition of Unit Firm:

“;provided, however, that for purposes of calculating the Actual Availability of the Facility in order to determine the Adjusted Capacity Charge, Forced Outages shall be considered periods of unavailability.”

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

Party A Name

City of Lodi

Party B Name

California Department of Water Resources, acting solely under the authority and powers created by AB1-X, codified as Sections 80000 through 80260 of the Water Code (the "Act"), and not under its powers and responsibilities with respect to the State Water Resources Development System

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

DISCLAIMER: This Master Power Purchase and Sale Agreement was prepared by a committee of representatives of Edison Electric Institute ("EEI") and National Energy Marketers Association ("NEM") member companies to facilitate orderly trading in and development of wholesale power markets. Neither EEI nor NEM nor any member company nor any of their agents, representatives or attorneys shall be responsible for its use, or any damages resulting therefrom. By providing this Agreement EEI and NEM do not offer legal advice and all users are urged to consult their own legal counsel to ensure that their commercial objectives will be achieved and their legal interests are adequately protected.

GENERAL TERMS AND CONDITIONS

ARTICLE I. GENERAL DEFINITIONS

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

1.2. "Agreement" has the meaning set forth in the Cover Sheet. The attached Confirmations are hereby incorporated into the Agreement.

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

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

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

1.6. "Claiming Party" has the meaning set forth in Section 3.3.

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

1.8. "Confirmation" has the meaning set forth in Section 2.3.

1.9. "Contract Price" means the price in \$U.S. (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of the Product, as specified in the Transaction.

1.10. "Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by

such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace a Terminated Transaction; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with the termination of a Transaction. The Non-Defaulting Part shall use commercially reasonable efforts to mitigate or eliminate these costs.

1.11. "Credit Rating" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issues rating by S&P, Moody's or any other rating agency agreed by the Parties as set forth in the Cover Sheet.

1.12. "Cross Default Amount" means the cross default amount, if any, set forth in the Cover Sheet for a Party.

1.13. "Defaulting Party" has the meaning set forth in Section 5.1.

1.14. "Delivery Period" means the period of delivery for a Transaction, as specified in the Transaction.

1.15. "Delivery Point" means the point at which the Product will be delivered and received, as specified in the Transaction.

1.16. "Downgrade Event" has the meaning set forth on the Cover Sheet.

1.17. "Early Termination Date" has the meaning set forth in Section 5.2.

1.18. "Effective Date" has the meaning set forth on the Cover Sheet.

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

1.20. "Event of Default" has the meaning set forth in Section 5.1.

1.21. "FERC" means the Federal Energy Regulatory Commission or any successor government agency.

1.22. "Force Majeure" means an event or circumstance which prevents one Party from performing its obligations under one or more Transactions, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer's markets; (ii) Buyer's inability economically to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller's supply; or (iv) Seller's ability to sell the Product at a price greater than the Contract Price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission

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Provider unless (i) such Party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the Delivery Point and (ii) such curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the Transmission Provider’s tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred. The applicability of Force Majeure to the Transaction is governed by the terms of the Products and Related Definitions contained in Schedule P.

1.23. “Guarantor” means, with respect to a Party, the guarantor, if any, specified for such Party on the Cover Sheet.

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

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

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

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

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

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

1.30. “Party A Collateral Threshold” means the collateral threshold, if any, set forth in the Cover Sheet for Party A.

1.31. “Party B Collateral Threshold” means the collateral threshold, if any, set forth in the Cover Sheet for Party B.

1.32. “Party A Independent Amount” means the amount , if any, set forth in the Cover Sheet for Party A.

1.33. "Party B Independent Amount" means the amount , if any, set forth in the Cover Sheet for Party B.

1.34. "Party A Rounding Amount" means the amount, if any, set forth in the Cover Sheet for Party A.

1.35. "Party B Rounding Amount" means the amount, if any, set forth in the Cover Sheet for Party B.

1.36. "Party A Tariff" means the tariff, if any, specified in the Cover Sheet for Party A.

1.37. "Party B Tariff" means the tariff, if any, specified in the Cover Sheet for Party B.

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

1.39. "Product" means electric capacity, energy or other product(s) related thereto as specified in a Transaction by reference to a Product listed in Schedule P hereto or as otherwise specified by the Parties in the Transaction.

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

1.41. "Recording" has the meaning set forth in Section 2.5.

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

1.43. "S&P" means the Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.) or its successor.

1.44. "Sales Price" means the price at which Seller, acting in a commercially reasonable manner, resells at the Delivery Point any Product not received by Buyer, deducting from such proceeds any (i) costs reasonably incurred by Seller in reselling such Product and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Product

to the third party purchasers, or Absent a Sale, the market price at the Delivery Point for such Product not received as determined by Seller in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer's liability. For purposes of this definition, Seller shall be considered to have resold such Product to the extent Seller shall have entered into one or more arrangements in a commercially reasonable manner whereby Seller repurchases its obligation to purchase and receive the Product from another party at the Delivery Point.

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

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

1.47. "Strike Price" means the price to be paid for the purchase of the Product pursuant to an Option.

1.48. "Terminated Transaction" has the meaning set forth in Section 5.2.

1.49. "Termination Payment" has the meaning set forth in Section 5.2.

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

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

1.106. "Actual Availability" means the monthly availability of the Facility, calculated pursuant to Special Condition 7 of the 2001B Transaction.

1.107. "Actual Availability Factor" means the factor by which the Capacity Charge is adjusted for Actual Availability, calculated pursuant to Special Condition 7 of the 2001B Transaction.

1.108. "Actual Starting Reliability" means the rolling 12-month starting reliability of the Facility, calculated pursuant to Special Condition 7 of the 2001B Transaction.

1.109. "Actual Starting Reliability Factor" means the factor by which the Capacity Charge is adjusted for Actual Starting Reliability, calculated pursuant to Special Condition 7 of the 2001B Transaction.

1.110. "Adjusted Capacity Charge" is the Capacity Charge, adjusted by the Actual Availability Factor and the Actual Starting Reliability Factor pursuant to Special Condition 7 of the 2001B Transaction.

1.111. "Availability Hours" are the hours for which Actual Availability is calculated, as specified in Special Condition 7 of the 2001B Transaction.

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- 1.112. "Base Capacity Price" means the price shown in the Capacity Charge section of the Contract Price section of the 2001B Transaction, prior to any adjustment due to the Non-Firm Cost Components.
- 1.113. "Call-Back Capacity" means the amount of Facility capacity Seller may reserve for itself pursuant to Special Condition 5 of the 2001B Transaction.
- 1.114. "CAISO" means the California Independent System Operator Corporation, or any successor thereto, that oversees and administers those portions of the California transmission system assigned to its control and that provides non-discriminatory transmission services within the area recognized as the "CAISO Controlled Grid" pursuant to a FERC-approved tariff.
- 1.115. "Capacity Charge" means a component of Contract Price, as set out in the 2001B Transaction.
- 1.116. "Commercial Operations Date" means the Seller provides notice that the Facility has achieved Commercial Operations, as set out in Special Condition 3 of the 2001B Transaction
- 1.117. "Contract Year" shall have the meaning set forth in Special Condition 5 of the 2001B Transaction.
- 1.118. "Extended Term Obligations" has the meaning set forth in Special Condition 12, paragraph (iv), of the 2001B Transaction.
- 1.119. "Facility" means the power plant specified in Special Condition 2 of the 2001B Transaction.
- 1.120. "Fixed O&M Charge" means a component of Contract Price, as set out in the 2001B Transaction.
- 1.121. "Fuel" means natural gas used to generate the Product at the Facility.
- 1.122. "Fuel Manager" means the person or entity designated to perform the fuel-related services of an Authorized Agent (as such term is defined in the utility tariff) in the Pacific Gas & Electric Company service area.
- 1.123. "Fuel Manager Services" means the commercial and operational services typically employed for optimum gas supply management including, without limitation, supply nomination, imbalance management, data reconciliation and invoicing, and daily spot purchasing where appropriate.
- 1.124. "Fuel Charge" means a component of Contract Price, as set out in the 2001B Transaction.
- 1.125. "Fuel Supply Period" means a six-month period beginning on a date to be agreed upon by the Parties, and each successive six-month period during the Delivery Period.
- 1.126. "Fuel Supply Plan" has the meaning set out in Special Condition 12, paragraph (i) of the 2001B Transaction.
- 1.127. "Fund" or "Special Fund" means the Department of Water Resources Electric Power Fund established by Section 80200 of the Water Code.
- 1.128. "Guaranteed Starting Reliability" is the minimum starting reliability of the Facility below which the Capacity Charge is subject to decrease, as set out in Special Condition 7 of the 2001B Transaction.
- 1.129. "Hourly Availability Factor" has the meaning set out in Special Condition 7 of the 2001B Transaction.
- 1.130. "Market Quotation Average Price" shall mean the average of the good faith quotations solicited from not less than three (3) Reference Market-makers; provided, however, that the Party soliciting such quotations shall use commercially reasonable efforts to obtain good faith quotations from at least

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five (5) Reference Market-makers and, if at least five (5) such quotations are obtained, the Market Quotation Average Price shall be determined disregarding the highest and lowest quotations.

- 1.131. "Market Value" shall have the meaning set forth in Section 5.3.
- 1.132. "Net Demonstrated Capacity" is the basis on which the Capacity Charge is calculated, as set out in Special Condition 4 of the 2001B Transaction.
- 1.133. "Non-Firm Cost Components" are Facility development costs for which the Base Capacity Price is subject to adjustment, pursuant to Special Condition 6 of the 2001B Transaction.
- 1.134. "Peak Period" is the hours during which Buyer may schedule energy from the Facility, as set out in Special Condition 8 of the 2001B Transaction.
- 1.135. "Period Starting Reliability Factor" has the meaning set out in Special Condition 7 of the 2001B Transaction.
- 1.136. "Per Unit Market Price" means the applicable price per MWh determined in accordance with Section 5.3.
- 1.137. "Reference Market-maker" means any marketer, trader or seller of or dealer in firm energy products whose long-term unsecured senior debt is rated BBB or better by Standard & Poor's and Baa2 or better by Moody's Investor Services.
- 1.138. "Replacement Contract" means a contract having a term, quantity, delivery rate, delivery point and product substantially similar to the remaining Term, quantity, delivery rate, Delivery Point and Product to be provided under this Agreement.
- 1.139. "Schedule Coordinator" means an entity, as defined from time to time by the CAISO, which as of the date hereof is defined by the CAISO as an entity certified by the CAISO for the purposes of undertaking the functions currently specified in Section 2.2.6 of the FERC-approved CAISO Electric Tariff.
- 1.140. "Scheduled Maintenance" is the maximum annual excused maintenance allowance for the Facility, as set out in Special Condition 10 of the 2001B Transaction.
- 1.141. "Special Condition" means the paragraphs at the end of a Transaction containing additional terms and conditions.
- 1.142. "Spot Market" means the competitive purchase and sale of short-term (30 days or less) gas supplies available and traded at those certain delivery points on the gas pipeline system having sufficient trading volume to establish daily and monthly price discovery.
- 1.143. "Site Standard Conditions" means 59 degrees Fahrenheit and relative humidity of 60%. [verifying]
- 1.144. "Target Availability" is the minimum monthly availability below which the Capacity Charge is subject to decrease, as set out in Special Condition 7 of the 2001B Transaction.
- 1.145. "Trust Estate" means all revenues under any obligation entered into, and rights to receive the same, and moneys on deposit in the Fund and income or revenue derived from the investment thereof.
- 1.146. "2001A Transaction" means the transaction described in the Confirmation attached hereto as Exhibit A.

- 1.147. "2001B Transaction" means the transaction described in the Confirmation attached hereto as Exhibit B.
- 1.148. "Variable O&M Charge" means a component of Contract Price, as set out in the 2001B Transaction.
- 1.149. "WSCC" means the Western Systems Coordinating Council.

ARTICLE II. TRANSACTION TERMS AND CONDITIONS

2.1 Transactions. The Parties are entering into the 2001A Transaction and the 2001B pursuant to the terms and conditions of the Agreement.

Governing Terms. Unless otherwise specifically agreed, each Transaction between the Parties shall be governed by this Master Agreement. This Master Agreement (including all exhibits, schedules and any written supplements hereto), , the Party A Tariff, if any, and the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions shall form a single integrated agreement between the Parties. Any inconsistency between any terms of this Master Agreement and any terms of the Transaction shall be resolved in favor of the terms of such Transaction.

"Notwithstanding the foregoing, the 2001A Transaction and the 2001B Transaction shall each be treated as stand-alone Transactions and accordingly, (a) provisions in the Master Agreement referring to offsetting or netting multiple Transactions shall not be applicable to the 2001A Transaction nor the 2001B Transaction, (b) an Event of Default with respect to any Transaction shall not affect any other Transaction, and (c) any event permitting suspension of performance with respect to any Transaction shall not permit suspension of performance under any other Transactions."

Confirmation. Section 2.3 is amended by replacing the text of the Section with "The Parties have confirmed the 2001A Transaction and the 2001B Transaction in the Confirmations dated _____, attached hereto as Exhibits A and B, respectively.

2.2 Recording. Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording ("Recording") of all telephone conversations between the Parties to this Master Agreement, and that any such Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees.

ARTICLE III. OBLIGATIONS AND DELIVERIES

3.1 Seller's and Buyer's Obligations. With respect to each Transaction, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Quantity of the Product at the Delivery Point, and Buyer shall pay Seller the Contract Price; provided, however, with respect to Options, the obligations set forth in the

preceding sentence shall only arise if the Option Buyer exercises its Option in accordance with its terms. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its receipt at and from the Delivery Point.

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

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

(3) New Section 3.7 is added to Article III as follows:

"Section 3.7. Payments Under Agreement an Operating Expense. Payments under this Agreement shall constitute an operating expense of the Fund payable prior to all bonds, notes or other indebtedness secured by a pledge or assignment of the Trust Estate or payments to the general fund."

(6) New Section 3.8 is added to Article III as follows:

"Section 3.8. Party B Rate Covenant; No Impairment. In accordance with Section 80134 of the Water Code, Party B covenants that it will, at least annually, and more frequently as required, establish and revise revenue requirements sufficient, together with any moneys on deposit in the Fund, to provide for the timely payment of all obligations which it has incurred, including any payments required to be made by Party B pursuant to this Agreement. As provided in Section 80200 of the Water Code, while any obligations of Party B pursuant to this Agreement remain outstanding and not fully performed or discharged, the rights, powers, duties and existence of Party B and the Public Utilities Commission shall not be diminished or impaired in any manner that will affect adversely the interests and rights of Party A under this Agreement."

(7) New Section 3.9 is added to Article III as follows:

"Section 3.9. No More Favorable Terms. Party B shall not provide in any power purchase agreement payable from the Trust Estate for (i) collateral or other security or credit support with respect thereto, (ii) a pledge or assignment of the Trust Estate for the payment thereof, or (iii) payment priority

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with respect thereto superior to that of Party A, without in each case offering such arrangements to Party A.”

(8) New Section 3.10 is added to Article III as follows:

“Section 3.10. Sources of Payment; No Debt of State. Party B’s obligation to make payments hereunder shall be limited solely to the Fund. Any liability of Party B arising in connection with this Agreement or any claim based thereon or with respect thereto, including, but not limited to, any Termination Payment arising as the result of any breach or Potential Event of Default or Event of Default under this Agreement, and any other payment obligation or liability of or judgment against Party B hereunder, shall be satisfied solely from the Fund. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF CALIFORNIA ARE OR MAY BE PLEDGED FOR ANY PAYMENT UNDER THIS AGREEMENT. Revenues and assets of the State Water Resources Development System shall not be liable for or available to make any payments or satisfy any obligation arising under this Agreement.”

(9) New Section 3.12 is added to Article III as follows:

“Section 3.12. Application of Government Code and the Public Contracts Code. Party A has stated that, because of the administrative burden and delays associated with such requirements, it would not enter into this Agreement if the provisions of the Government Code and the Public Contracts Code applicable to state contracts, including, but not limited to, advertising and competitive bidding requirements and prompt payment requirements would apply to or be required to be incorporated in this Agreement. Accordingly, pursuant to Section 80014(b) of the Water Code, Party B has determined that it would be detrimental to accomplishing the purposes of Division 27 (commencing with Section 80000) of the Water Code to make such provisions applicable to this Agreement and that such provisions and requirements are therefore not applicable to or incorporated in this Agreement.”

ARTICLE IV. REMEDIES FOR FAILURE TO DELIVER/RECEIVE

4.1 Seller Failure. If Seller fails to schedule and/or deliver all or part of the Product pursuant to a Transaction, and such failure is not excused under the terms of the Product or by Buyer’s failure to perform, then Seller shall pay Buyer, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if “Accelerated Payment of Damages” is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

4.2 Buyer Failure. If Buyer fails to schedule and/or receive all or part of the Product pursuant to a Transaction and such failure is not excused under the terms of the Product or by Seller’s failure to perform, then Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if “Accelerated Payment of Damages” is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

ARTICLE V. EVENTS OF DEFAULT; REMEDIES

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

- (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;
- (b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;
- (c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party’s obligations to deliver or receive the Product, the exclusive remedy for which is provided in Article Four) if such failure is not remedied within three (3) Business Days after written notice;
- (d) such Party becomes Bankrupt;
- (e) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article Eight hereof;
- (f) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;
- (g) if the applicable cross default section in the Cover Sheet is indicated for such Party, the occurrence and continuation of (i) a default, event of default or other similar condition or event in respect of such Party or any other party specified in the Cover Sheet for such Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet), which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable or (ii) a default by such Party or any other party specified in the Cover Sheet for such Party in making on the due date therefor one or more payments, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet);
- (h) with respect to such Party’s Guarantor, if any:

- (i) if any representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;
- (ii) the failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure shall not be remedied within three (3) Business Days after written notice;
- (iii) a Guarantor becomes Bankrupt;
- (iv) the failure of a Guarantor's guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under each Transaction to which such guaranty shall relate without the written consent of the other Party; or
- (v) a Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any guaranty.

5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate all, but not less than all, Transactions (each referred to as a "Terminated Transaction") between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. "The Non-Defaulting Party shall be entitled to a payment upon termination of this Agreement as the result of an Event of Default (the "Termination Payment") which shall be the aggregate of the Market Value and Costs calculated in accordance with Section 5.3 which shall be paid no later than one hundred eighty (180) days after receipt of written notice of an Early Termination Date. Prior to receipt of such notice of termination by the Defaulting Party, the Non-Defaulting Party may exercise any remedies available to it at law or otherwise, including, but not limited to, the right to seek injunctive relief to prevent irreparable injury to the Non-Defaulting Party."

"Notwithstanding the other provisions of this Agreement, if the Non-Defaulting Party has the right to liquidate or terminate all obligations arising under this Agreement under the provisions of this Article 5 because the Defaulting Party either (a) is the subject of a bankruptcy, insolvency, or similar proceeding, or (b) applies for, seeks, consents to, or acquiesces in the appointment of a receiver, custodian, trustee, liquidator, or similar official for all or a substantial portion of its assets, then this Agreement and the Transaction shall automatically terminate, without notice, as if the Early Termination Date was the day immediately preceding the events listed in Section 5.1."

"5.3. **Termination Payment Calculations.** The Non-Defaulting Party shall calculate the Termination Payment as follows:

- (f) Market Value shall be (i) in the case Party B is the Non-Defaulting Party, the present value of the positive difference, if any, of (A) payments under a Replacement Contract based on the Per Unit

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Market Price, and (B) payments under this Agreement, or (ii) in the case Party A is the Non-Defaulting Party, the present value of the positive difference, if any, of (A) payments under this Agreement, and (B) payments under a Replacement Contract based on the Per Unit Market Price, in each case using the Present Value Rate as of the time of termination (to take account of the period between the time notice of termination was effective and when such amount would have otherwise been due pursuant to the relevant transaction). The "Present Value Rate" shall mean 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 matches the average remaining term of this Agreement. It is expressly agreed that the Non-Defaulting Party shall not be required to enter into a Replacement Contract in order to determine the Termination Payment.

- (g) To ascertain the Per Unit Market Price of a Replacement Contract with a term of less than one year, the Non-Defaulting Party may consider, among other valuations, quotations from leading dealers in energy contracts, the settlement prices on established, actively traded power exchanges, other bona fide third party offers and other commercially reasonable market information.
- (h) To ascertain the Per Unit Market Price of a Replacement Contract with a term of one year or more, the Non-Defaulting Party shall use the Market Quotation Average Price; provided, however, that if there is an actively traded market for such Replacement Contract or if the Non-Defaulting Party is unable to obtain reliable quotations from at least three (3) Reference Market-makers, the Non-Defaulting Party shall use the methodology set forth in paragraph (b).
- (i) In no event, however, shall a party's Market Value or Costs include any penalties, ratcheted demand charges or similar charges imposed by the Non-Defaulting Party.
- (j) The Non-Defaulting Party shall use reasonable efforts to mitigate the amount of the Termination Payment, including, to the extent practicable, the mitigation or elimination of Costs.

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 dispute resolution as provided in Section 10.12 of this Agreement. Pending resolution of the dispute, the Defaulting Party shall pay the full amount of the Termination Payment calculated by the Non-Defaulting Party no later than one hundred eighty (180) days after receipt of written notice of an Early Termination Date."

5.2 Closeout Setoffs.

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

“5.8. Other Termination/Suspension Provisions.

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- (d) Party B shall be entitled to terminate this Agreement upon ten (10) Business Days written notice for any of the following conditions:
 - (i) Party A has not been granted regulatory authority from all applicable permitting authorities necessary to commence construction of the Facility by February 1, 2002; or
 - (ii) Party A's deliveries from the Facility are interrupted by Force Majeure for a continuous period exceeding 18 months; or
 - (iii) The Facility's Actual Availability is less than 60% two consecutive six-month periods; or
 - (iv) Party A has not provided evidence of a credit rating of unsecured long-term debt of Party A of Baa or better by Moody's, or BBB or better by S&P, prior to the earlier of the actual or expected Commercial Operations Date.
- (e) Party A shall be entitled to terminate this Agreement upon ten (10) Business Days written notice for any of the following conditions:
 - (i) Party A determines that it cannot obtain all required permits or the Facility cannot be financed and constructed to meet Party A's obligations under this Agreement prior to _____, 2001; or
 - (ii) Party A determines that, due to issues related to the California Environmental Quality Act (CEQA), approval to build the Facility cannot be obtained.
- (f) In the event of early termination under this Section 5.8, neither Party shall be liable to the other for the payment of any damages related to such early termination, including, but not limited to, the Termination Payment. In the event of such early termination, the Parties shall be mutually released from all rights and obligations, except for those rights and obligations that specifically survive such termination as set forth elsewhere herein."

ARTICLE VI. PAYMENT AND NETTING

6.1 Billing Period. Unless otherwise specifically agreed upon by the Parties in a Transaction, the calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments and, if "Accelerated Payment of Damages" is specified by the Parties in the Cover Sheet, payments pursuant to Section 4.1 or 4.2 and Option premium payments pursuant to Section 6.7). As soon as practicable after the end of each month, each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

6.2 Timeliness of Payment. Unless otherwise agreed by the Parties in a Transaction, all invoices under this Master Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

6.3 Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.3 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance of a Transaction occurred, the right to payment for such performance is waived.

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

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

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

ARTICLE VII. LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND

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MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE VIII. CREDIT AND COLLATERAL REQUIREMENTS

8.1 Party A Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.1(a) is specified on the Cover Sheet, Section 8.1(a) Option C shall apply exclusively. If none of Sections 8.1(b), 8.1(c) or 8.1(d) are specified on the Cover Sheet, Section 8.1(b) shall apply exclusively.

(a) Financial Information. Option A: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party B's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Party B's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as Party B diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial

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statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party A may request from Party B the information specified in the Cover Sheet.

(b) Credit Assurances. If Party A has reasonable grounds to believe that Party B's creditworthiness or performance under this Agreement has become unsatisfactory, Party A will provide Party B with written notice requesting Performance Assurance in an amount determined by Party A in a commercially reasonable manner. Upon receipt of such notice Party B shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party A. In the event that Party B fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party A plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold, then Party A, on any Business Day, may request that Party B provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold (rounding upwards for any fractional amount to the next Party B Rounding Amount) ("Party B Performance Assurance"), less any Party B Performance Assurance already posted with Party A. Such Party B Performance Assurance shall be delivered to Party A within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party B, at its sole cost, may request that such Party B Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party B's Independent Amount, if any, (rounding upwards for any fractional amount to the next Party B Rounding Amount). In the event that Party B fails to provide Party B Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.1(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party A as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party B to

Party A, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party B, then Party A may require Party B to provide Performance Assurance in an amount determined by Party A in a commercially reasonable manner. In the event Party B shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party B shall deliver to Party A, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party A.

8.2 Party B Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.2(a) is specified on the Cover Sheet, Section 8.2(a) Option C shall apply exclusively. If none of Sections 8.2(b), 8.2(c) or 8.2(d) are specified on the Cover Sheet, Section 8.2(b) shall apply exclusively.

(a) Financial Information. Option A: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party A's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Party's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as such Party diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party B may request from Party A the information specified in the Cover Sheet.

(b) Credit Assurances. If Party B has reasonable grounds to believe that Party A's creditworthiness or performance under this Agreement has become unsatisfactory, Party B will provide Party A with written notice requesting Performance Assurance in an amount determined by Party B in a commercially reasonable manner. Upon receipt of such notice Party A shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party B. In the event that Party A fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party B plus Party A's Independent Amount, if any, exceeds the Party A Collateral Threshold, then Party B, on any Business Day, may request that Party A provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party A's Independent Amount, if any, exceeds the Party A Collateral Threshold (rounding upwards for any fractional amount to the next Party A Rounding Amount) ("Party A Performance Assurance"), less any Party A Performance Assurance already posted with Party B. Such Party A Performance Assurance shall be delivered to Party B within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party A, at its sole cost, may request that such Party A Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party A's Independent Amount, if any, (rounding upwards for any fractional amount to the next Party A Rounding Amount). In the event that Party A fails to provide Party A Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.2(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party B as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party A to Party B, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party A, then Party B may require Party A to provide Performance Assurance in an amount determined by Party B in a commercially reasonable manner. In the event Party A shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party A shall deliver to Party B, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount

not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party B.

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

ARTICLE IX. GOVERNMENTAL CHARGES

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

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

ARTICLE X. MISCELLANEOUS

Term of Master Agreement. The term of this Master Agreement shall commence on the Effective Date and shall remain in effect until terminated by either Party upon (thirty) 30 days' prior written notice; provided, however, that such termination shall not affect or excuse the performance of either Party under any provision of this Master Agreement that by its terms survives any such termination and, provided further, that this Master Agreement and any other documents executed and delivered hereunder shall remain in effect with respect to the Transaction(s) entered into prior to the effective date of such termination until both Parties have fulfilled all of their obligations with respect to such Transaction(s), or such Transaction(s) that have been terminated under Section 5.2 of this Agreement. "The 2001A Transaction and the 2001B Transaction shall each terminate on the day following the last day of their respective Delivery Periods, unless terminated sooner pursuant to the express provisions of this Agreement or as a result of an Event of Default".

10.1

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

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

as a result of its entering into or performing its obligations under this Master Agreement and each Transaction ;

- (viii) it is acting for its own account, has made its own independent decision to enter into this Master Agreement and each Transaction and as to whether this Master Agreement and each such Transaction is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Master Agreement and each Transaction ;
- (ix) it has entered into this Master Agreement and each Transaction in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Products referred to in the Transaction to which it is a Party;
- (x) the material economic terms of each Transaction are subject to individual negotiation by the Parties.

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

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

10.5 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, Party A (or, with respect to clause (i) (iv) or (v), Party B) may, without the consent of the other Party, (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request. "(iv) transfer and assign all of its right, title and interest to this Agreement and the Fund to another governmental entity created or designated by law to carry out the rights, powers, duties and obligations of the Department under the Act; or (v) transfer or assign this Agreement to any electrical corporation, as defined in the Act, whose long-term unsecured

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senior debt is rated BBB or better by Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.), or its successor, and Baa2 or better by Moody's Investor Services, Inc., or its successor;"

10.5

Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT. NOTWITHSTANDING THE FOREGOING, IN RESPECT OF THE APPLICABILITY OF THE ACT AS HEREIN PROVIDED, THE LAWS OF THE STATE OF CALIFORNIA SHALL APPLY.

10.6

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

10.8 General. This Master Agreement (including the exhibits, schedules and any written supplements hereto), the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmation accepted in accordance with Section 2.3) constitute the entire agreement between the Parties relating to the subject matter. Notwithstanding the foregoing, any collateral, credit support or margin agreement or similar arrangement between the Parties shall, upon designation by the Parties, be deemed part of this Agreement and shall be incorporated herein by reference. This Agreement shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. No amendment or modification to this Master Agreement shall be enforceable unless reduced to writing and executed by both Parties and this agreement may not be orally amended or modified, including by recording pursuant to section 2.5. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect outstanding Transactions under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement. This Agreement shall not impart any rights enforceable by any third party (other

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than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as "Regulatory Event") will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use their best efforts to reform this Agreement in order to give effect to the original intention of the Parties. The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights shall survive the termination of this Agreement for twelve (12) months. This Agreement shall be binding on each Party's successors and permitted assigns.

10.9 Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Master Agreement. If requested, a Party shall provide to the other Party statements evidencing the Quantity delivered at the Delivery Point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

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

10.11 Confidentiality. If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, neither Party shall disclose the terms or conditions of a Transaction under this Master Agreement to a third party (other than the Party's employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

"10.12. Dispute Resolution. Both Parties understand and appreciate that their long term mutual interests will be best served by affecting a rapid and fair resolution of any claims or disputes which may arise under this Agreement or from any dispute concerning Agreement terms. Therefore, both Parties agree to use their best efforts to resolve all such disputes as rapidly as possible on a fair and equitable basis. Toward this end both Parties agree to develop and follow a process of presenting, rapidly assessing, and settling claims and other disputes on a fair and equitable basis. This process shall consist of (1) presentation of the claim by the claiming Party in writing, with supporting documentation, if any, and a specification of the amounts due or other remedies which if provided by the other Party would resolve the claiming Party's claim; (2) response by the other Party to the claiming Party's written presentation of its claim, in writing, accepting, rejecting or setting forth a counter proposal to the claiming Party's claim, along

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with any written explanation or supporting documentation the other Party elects to provide, which is to be delivered within seven (7) Business Days of receipt of the claiming Party's presentation of its claim; and (3) a meeting of the Parties' representatives with knowledge and authority to resolve the dispute within two (2) Business Days of receipt by the claiming Party of the other Party's written response. If any dispute or claim arising under this Agreement cannot be readily resolved by the Parties pursuant to the process referenced in this Section 10.12, the Parties shall have all rights available under law or equity."

"10.13. No Retail Services; No Agency. (a) Nothing contained in this Agreement shall grant any rights to or obligate Party A to provide any services hereunder directly to or for retail customers of any person.

(b) In performing their respective obligations hereunder, neither Party is acting, or is authorized to act, as agent of the other Party."

SCHEDULE M

(THIS SCHEDULE IS INCLUDED IF THE APPROPRIATE BOX ON THE COVER SHEET IS MARKED INDICATING A PARTY IS A GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEM)

A. The Parties agree to add the following definitions in Article One.

“Act” means Sections 80000, 80002, 80002.5, 80003, 80004, 80010, 80012, 80014, 80016, 80100, 80102, 80104, 80106, 80108, 80110, 80112, 80114, 80116, 80120, 80122, 80130, 80132, 80134, 80200, 80250, 80260 and 80270 of the Water Code.

“Governmental Entity or Public Power System” means a municipality, county, governmental board, public power authority, public utility district, joint action agency, or other similar political subdivision or public entity of the United States, one or more States or territories or any combination thereof.

“Special Fund” means a Fund.

B. The following sentence shall be added to the end of the definition of “Force Majeure” in Article One.

If the Claiming Party is a Governmental Entity or Public Power System, Force Majeure does not include any action taken by the Governmental Entity or Public Power System in its governmental capacity.

C. The Parties agree to add the following representations and warranties to Section 10.2:

Further and with respect to a Party that is a Governmental Entity or Public Power System, such Governmental Entity or Public Power System represents and warrants to the other Party continuing throughout the term of this Master Agreement, with respect to this Master Agreement and each Transaction, as follows: (i) all acts necessary to the valid execution, delivery and performance of this Master Agreement, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the Act and the Public Power System’s ordinances, bylaws or other regulations, (ii) all persons making up the governing body of Governmental Entity or Public Power System are the duly elected or appointed incumbents in their positions and hold such positions in good standing in accordance with the Act and other applicable law, (iii) entry into and performance of this Master Agreement by Governmental Entity or Public Power System are for a proper public purpose within the meaning of the Act and all other relevant

constitutional, organic or other governing documents and applicable law, (iv) the term of this Master Agreement does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and applicable law, (v) the Public Power System's obligations to make payments hereunder are unsubordinated obligations and such payments are (a) operating and maintenance costs (or similar designation) which enjoy first priority of payment at all times under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law or (b) otherwise not subject to any prior claim under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law and are available without limitation or deduction to satisfy all Governmental Entity or Public Power System' obligations hereunder and under each Transaction or (c) are to be made solely from a Special Fund, (vi) entry into and performance of this Master Agreement and each Transaction by the Governmental Entity or Public Power System will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any obligation of Governmental Entity or Public Power System otherwise entitled to such exclusion, and (vii) obligations to make payments hereunder do not constitute any kind of indebtedness of Governmental Entity or Public Power System or create any kind of lien on, or security interest in, any property or revenues of Governmental Entity or Public Power System which, in either case, is proscribed by any provision of the Act or any other relevant constitutional, organic or other governing documents and applicable law, any order or judgment of any court or other agency of government applicable to it or its assets, or any contractual restriction binding on or affecting it or any of its assets.

D. The Parties agree to add the following sections to Article III:

Section 3.4 Public Power System's Deliveries. On the Effective Date and as a condition to the obligations of the other Party under this Agreement, Governmental Entity or Public Power System shall provide the other Party hereto (i) certified copies of all ordinances, resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery and performance by Governmental Entity or Public Power System of this Master Agreement and (ii) an opinion of counsel for Governmental Entity or Public Power System, in form and substance reasonably satisfactory to the Other Party, regarding the validity, binding effect and enforceability of this Master Agreement against Governmental Entity or Public Power System in respect of the Act and all other relevant constitutional organic or other governing documents and applicable law.

Section 3.5 No Immunity Claim. . California law authorizes suits based on contract against the State or its agencies, and each Party agrees that it will not assert any immunity it may have as a state agency against such lawsuits filed in state court.

G. The Parties agree to add the following sentence at the end of Section 10.6 - Governing Law:

NOTWITHSTANDING THE FOREGOING, IN RESPECT OF THE APPLICABILITY OF THE ACT AS HEREIN PROVIDED, THE LAWS OF THE STATE OF CALIFORNIA SHALL APPLY.

SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS

“Ancillary Services” means any of the services identified by a Transmission Provider in its transmission tariff as “ancillary services” including, but not limited to, regulation and frequency response, energy imbalance, operating reserve-spinning and operating reserve-supplemental, as may be specified in the Transaction.

“Capacity” has the meaning specified in the Transaction.

“Energy” means three-phase, 60-cycle alternating current electric energy, expressed in megawatt hours.

“Firm (LD)” means, with respect to a Transaction, that either Party shall be relieved of its obligations to sell and deliver or purchase and receive without liability only to the extent that, and for the period during which, such performance is prevented by Force Majeure. In the absence of Force Majeure, the Party to which performance is owed shall be entitled to receive from the Party which failed to deliver/receive an amount determined pursuant to Article Four.

“Firm Transmission Contingent - Contract Path” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product in the case of the Seller from the generation source to the Delivery Point or in the case of the Buyer from the Delivery Point to the ultimate sink, and (ii) such interruption or curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the applicable transmission provider’s tariff. This contingency shall excuse performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of “Force Majeure” in Section 1.23 to the contrary.

“Firm Transmission Contingent - Delivery Point” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission to the Delivery Point (in the case of Seller) or from the Delivery Point (in the case of Buyer) for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product, in the case of the Seller, to be delivered to the Delivery Point or, in the case of Buyer, to be received at the Delivery Point and (ii) such interruption or curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the applicable transmission provider’s tariff. This transmission contingency excuses performance for the duration of the interruption or curtailment, notwithstanding the provisions of the definition of “Force Majeure” in Section 1.23 to the contrary. Interruptions or curtailments of transmission other than the transmission either immediately to or from the Delivery Point shall not excuse performance.

“Firm (No Force Majeure)” means, with respect to a Transaction, that if either Party fails to perform its obligation to sell and deliver or purchase and receive the Product, the Party to

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which performance is owed shall be entitled to receive from the Party which failed to perform an amount determined pursuant to Article Four. Force Majeure shall not excuse performance of a Firm (No Force Majeure) Transaction.

“Into _____ (the “Receiving Transmission Provider”), Seller’s Daily Choice” means that, in accordance with the provisions set forth below, (1) the Product shall be scheduled and delivered to an interconnection or interface (“Interface”) either (a) on the Receiving Transmission Provider’s transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which Interface, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area; and (2) Seller has the right on a daily prescheduled basis to designate the Interface where the Product shall be delivered. An “Into” Product shall be subject to the following provisions:

1. Prescheduling and Notification. Subject to the provisions of Section 6, not later than the prescheduling deadline of 11:00 a.m. CPT on the Business Day before the next delivery day or as otherwise agreed to by Buyer and Seller, Seller shall notify Buyer (“Seller’s Notification”) of Seller’s immediate upstream counterparty and the Interface (the “Designated Interface”) where Seller shall deliver the Product for the next delivery day, and Buyer shall notify Seller of Buyer’s immediate downstream counterparty.

2. Availability of “Firm Transmission” to Buyer at Designated Interface; “Timely Request for Transmission,” “ADI” and “Available Transmission.” In determining availability to Buyer of next-day firm transmission (“Firm Transmission”) from the Designated Interface, a “Timely Request for Transmission” shall mean a properly completed request for Firm Transmission made by Buyer in accordance with the controlling tariff procedures, which request shall be submitted to the Receiving Transmission Provider no later than 30 minutes after delivery of Seller’s Notification, provided, however, if the Receiving Transmission Provider is not accepting requests for Firm Transmission at the time of Seller’s Notification, then such request by Buyer shall be made within 30 minutes of the time when the Receiving Transmission Provider first opens thereafter for purposes of accepting requests for Firm Transmission.

Pursuant to the terms hereof, delivery of the Product may under certain circumstances be redesignated to occur at an Interface other than the Designated Interface (any such alternate designated interface, an “ADI”) either (a) on the Receiving Transmission Provider’s transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which ADI, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area using either firm or non-firm transmission, as available on a day-ahead or hourly basis (individually or collectively referred to as “Available Transmission”) within the Receiving Transmission Provider’s transmission system.

3. Rights of Buyer and Seller Depending Upon Availability of/Timely Request for Firm Transmission.

A. Timely Request for Firm Transmission made by Buyer, Accepted by the Receiving Transmission Provider and Purchased by Buyer. If a Timely Request for Firm Transmission is made by Buyer and is accepted by the Receiving Transmission Provider and Buyer purchases such Firm Transmission, then Seller shall deliver and Buyer shall receive the Product at the Designated Interface.

i. If the Firm Transmission purchased by Buyer within the Receiving Transmission Provider's transmission system from the Designated Interface ceases to be available to Buyer for any reason, or if Seller is unable to deliver the Product at the Designated Interface for any reason except Buyer's non-performance, then at Seller's choice from among the following, Seller shall: (a) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, require Buyer to purchase such Firm Transmission from such ADI, and schedule and deliver the affected portion of the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, or (b) require Buyer to purchase non-firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by Seller, or (c) to the extent firm transmission is available on an hourly basis, require Buyer to purchase firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of such hourly firm transmission from the Designated Interface or an ADI designated by Seller.

ii. If the Available Transmission utilized by Buyer as required by Seller pursuant to Section 3A(i) ceases to be available to Buyer for any reason, then Seller shall again have those alternatives stated in Section 3A(i) in order to satisfy its obligations.

iii. Seller's obligation to schedule and deliver the Product at an ADI is subject to Buyer's obligation referenced in Section 4B to cooperate reasonably therewith. If Buyer and Seller cannot complete the scheduling and/or delivery at an ADI, then Buyer shall be deemed to have satisfied its receipt obligations to Seller and Seller shall be deemed to have failed its delivery obligations to Buyer, and Seller shall be liable to Buyer for amounts determined pursuant to Article Four.

iv. In each instance in which Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI pursuant to Sections 3A(i) or (ii), and Firm Transmission had been purchased by both Seller and Buyer into and within the Receiving Transmission Provider's transmission system as to the scheduled delivery which could not be completed as a result of the interruption or curtailment of such Firm Transmission, Buyer and Seller shall bear their respective transmission expenses and/or associated

congestion charges incurred in connection with efforts to complete delivery by such alternative scheduling and delivery arrangements. In any instance except as set forth in the immediately preceding sentence, Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI under Sections 3A(i) or (ii), Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with such alternative scheduling arrangements.

B. Timely Request for Firm Transmission Made by Buyer but Rejected by the Receiving Transmission Provider. If Buyer's Timely Request for Firm Transmission is rejected by the Receiving Transmission Provider because of unavailability of Firm Transmission from the Designated Interface, then Buyer shall notify Seller within 15 minutes after receipt of the Receiving Transmission Provider's notice of rejection ("Buyer's Rejection Notice"). If Buyer timely notifies Seller of such unavailability of Firm Transmission from the Designated Interface, then Seller shall be obligated either (1) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, to require Buyer to purchase (at Buyer's own expense) such Firm Transmission from such ADI and schedule and deliver the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, and thereafter the provisions in Section 3A shall apply, or (2) to require Buyer to purchase (at Buyer's own expense) non-firm transmission, and schedule and deliver the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by the Seller, in which case Seller shall bear the risk of interruption or curtailment of the non-firm transmission; provided, however, that if the non-firm transmission is interrupted or curtailed or if Seller is unable to deliver the Product for any reason, Seller shall have the right to schedule and deliver the Product to another ADI in order to satisfy its delivery obligations, in which case Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with Seller's inability to deliver the Product as originally prescheduled. If Buyer fails to timely notify Seller of the unavailability of Firm Transmission, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface, and the provisions of Section 3D shall apply.

C. Timely Request for Firm Transmission Made by Buyer, Accepted by the Receiving Transmission Provider and not Purchased by Buyer. If Buyer's Timely Request for Firm Transmission is accepted by the Receiving Transmission Provider but Buyer elects to purchase non-firm transmission rather than Firm Transmission to take delivery of the Product, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

D. No Timely Request for Firm Transmission Made by Buyer, or Buyer Fails to Timely Send Buyer's Rejection Notice. If Buyer fails to make a Timely Request for

Firm Transmission or Buyer fails to timely deliver Buyer's Rejection Notice, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

4. Transmission.

A. Seller's Responsibilities. Seller shall be responsible for transmission required to deliver the Product to the Designated Interface or ADI, as the case may be. It is expressly agreed that Seller is not required to utilize Firm Transmission for its delivery obligations hereunder, and Seller shall bear the risk of utilizing non-firm transmission. If Seller's scheduled delivery to Buyer is interrupted as a result of Buyer's attempted transmission of the Product beyond the Receiving Transmission Provider's system border, then Seller will be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for damages pursuant to Article Four.

B. Buyer's Responsibilities. Buyer shall be responsible for transmission required to receive and transmit the Product at and from the Designated Interface or ADI, as the case may be, and except as specifically provided in Section 3A and 3B, shall be responsible for any costs associated with transmission therefrom. If Seller is attempting to complete the designation of an ADI as a result of Seller's rights and obligations hereunder, Buyer shall co-operate reasonably with Seller in order to effect such alternate designation.

5. Force Majeure. An "Into" Product shall be subject to the "Force Majeure" provisions in Section 1.23.

6. Multiple Parties in Delivery Chain Involving a Designated Interface. Seller and Buyer recognize that there may be multiple parties involved in the delivery and receipt of the Product at the Designated Interface or ADI to the extent that (1) Seller may be purchasing the Product from a succession of other sellers ("Other Sellers"), the first of which Other Sellers shall be causing the Product to be generated from a source ("Source Seller") and/or (2) Buyer may be selling the Product to a succession of other buyers ("Other Buyers"), the last of which Other Buyers shall be using the Product to serve its energy needs ("Sink Buyer"). Seller and Buyer further recognize that in certain Transactions neither Seller nor Buyer may originate the decision as to either (a) the original identification of the Designated Interface or ADI (which designation may be made by the Source Seller) or (b) the Timely Request for Firm Transmission or the purchase of other Available Transmission (which request may be made by the Sink Buyer). Accordingly, Seller and Buyer agree as follows:

A. If Seller is not the Source Seller, then Seller shall notify Buyer of the Designated Interface promptly after Seller is notified thereof by the Other Seller with

whom Seller has a contractual relationship, but in no event may such designation of the Designated Interface be later than the prescheduling deadline pertaining to the Transaction between Buyer and Seller pursuant to Section 1.

B. If Buyer is not the Sink Buyer, then Buyer shall notify the Other Buyer with whom Buyer has a contractual relationship of the Designated Interface promptly after Seller notifies Buyer thereof, with the intent being that the party bearing actual responsibility to secure transmission shall have up to 30 minutes after receipt of the Designated Interface to submit its Timely Request for Firm Transmission.

C. Seller and Buyer each agree that any other communications or actions required to be given or made in connection with this "Into Product" (including without limitation, information relating to an ADI) shall be made or taken promptly after receipt of the relevant information from the Other Sellers and Other Buyers, as the case may be.

D. Seller and Buyer each agree that in certain Transactions time is of the essence and it may be desirable to provide necessary information to Other Sellers and Other Buyers in order to complete the scheduling and delivery of the Product. Accordingly, Seller and Buyer agree that each has the right, but not the obligation, to provide information at its own risk to Other Sellers and Other Buyers, as the case may be, in order to effect the prescheduling, scheduling and delivery of the Product

"Native Load" means the demand imposed on an electric utility or an entity by the requirements of retail customers located within a franchised service territory that the electric utility or entity has statutory obligation to serve.

"Non-Firm" means, with respect to a Transaction, that delivery or receipt of the Product may be interrupted for any reason or for no reason, without liability on the part of either Party.

"System Firm" means that the Product will be supplied from the owned or controlled generation or pre-existing purchased power assets of the system specified in the Transaction (the "System") with non-firm transmission to and from the Delivery Point, unless a different Transmission Contingency is specified in a Transaction. Seller's failure to deliver shall be excused: (i) by an event or circumstance which prevents Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Seller; (ii) by Buyer's failure to perform; (iii) to the extent necessary to preserve the integrity of, or prevent or limit any instability on, the System; (iv) to the extent the System or the control area or reliability council within which the System operates declares an emergency condition, as determined in the system's, or the control area's, or reliability council's reasonable judgment; or (v) by the interruption or curtailment of transmission to the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Seller's performance. Buyer's failure to receive shall be excused (i) by Force Majeure; (ii) by Seller's failure to perform, or (iii) by the interruption or curtailment of transmission from the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Buyer's performance.

In any of such events, neither party shall be liable to the other for any damages, including any amounts determined pursuant to Article Four.

“Transmission Contingent” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is unavailable or interrupted or curtailed for any reason, at any time, anywhere from the Seller’s proposed generating source to the Buyer’s proposed ultimate sink, regardless of whether transmission, if any, that such Party is attempting to secure and/or has purchased for the Product is firm or non-firm. If the transmission (whether firm or non-firm) that Seller or Buyer is attempting to secure is from source to sink is unavailable, this contingency excuses performance for the entire Transaction. If the transmission (whether firm or non-firm) that Seller or Buyer has secured from source to sink is interrupted or curtailed for any reason, this contingency excuses performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of “Force Majeure” in Article 1.23 to the contrary.

“Unit Firm” means, with respect to a Transaction, that the Product subject to the Transaction is intended to be supplied from a generation asset or assets specified in the Transaction. Seller’s failure to deliver under a “Unit Firm” Transaction shall be excused: (i) if the specified generation asset(s) are unavailable as a result of a Forced Outage (as defined in the NERC Generating Unit Availability Data System (GADS) Forced Outage reporting guidelines) or (ii) by an event or circumstance that affects the specified generation asset(s) so as to prevent Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, and which is not within the reasonable control of, or the result of the negligence of, the Seller or (iii) by Buyer’s failure to perform. In any of such events, Seller shall not be liable to Buyer for any damages, including any amounts determined pursuant to Article Four; provided, however, that for purposes of calculating the Actual Availability of the Facility in order to determine the Adjusted Capacity Charge, Forced Outages shall be considered periods of unavailability.

RESOLUTION NO. 2001-243

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING THE CITY MANAGER TO EXECUTE A MASTER POWER PURCHASE AND SALE AGREEMENT BETWEEN THE CITY OF LODI AND THE STATE OF CALIFORNIA DEPARTMENT OF WATER RESOURCES

WHEREAS, in today's energy markets, most transactions are conducted under the general terms and conditions of a standardized master power purchase and sale agreement; and

WHEREAS, these master agreements set forth the obligations of the parties related to performance under different types of energy related products. Once a master agreement is in place, the parties can concentrate their efforts on the commercial terms of different energy related transactions. Legal and administrative reviews of different transactions are greatly expedited using this process; and

WHEREAS, approval of the master power purchase and sale agreement between the City of Lodi and the State of California Department of Water Resources establishes the general obligations and rights of the parties without specifying the commercial terms of contemplated transactions. Specific Transaction terms will be presented and approvals sought in separately prepared documents appended to the master agreements as exhibits thereto; and

WHEREAS, the Electric Utility Department respectfully requests City Council authorization for the City Manager to execute the Master Power Purchase and Sale Agreement presented here in substantially final form.

NOW, THEREFORE, BE IT RESOLVED, that the Lodi City Council does hereby authorize the City Manager to execute the Master Power Purchase and Sale Agreement between the City of Lodi and the State of California Department of Water Resources, presented in substantially final form.

Dated: October 30, 2001

I hereby certify that Resolution No. 2001-243 was passed and adopted by the City Council of the City of Lodi in a special meeting held October 30, 2001 by the following vote:

- AYES: COUNCIL MEMBERS – Hitchcock, Howard and Mayor Nakanishi
- NOES: COUNCIL MEMBERS – None
- ABSENT: COUNCIL MEMBERS – Land
- ABSTAIN: COUNCIL MEMBERS – Pennino


 SUSAN J. BLACKSTON
 City Clerk