



**CITY OF LODI
COUNCIL COMMUNICATION**

AGENDA TITLE: Adopt Resolution **Authorizing** the City Manager to Execute an Amended and Restated Master **Confirmation** Agreement with Shell Energy North America **(EUD)**

MEETING DATE: August 20, 2008

PREPARED BY Electric **Utility** Director

RECOMMENDED ACTION: Adopt a resolution authorizing the City Manager to execute an Amended and Restated Master Confirmation Agreement with Shell Energy North America (Shell).

BACKGROUND INFORMATION: The Electric Utility Department (EUD) regularly purchases wholesale electric energy from the marketplace in order to stabilize/hedge costs by reducing its "open position." Such purchases are made pursuant to contracts with sellers that have grown in complexity following the 2001 energy crisis in California and as electricity prices have become more volatile.

It is now **common** practice for **wholesale** electric sellers and buyers to establish master agreements to govern future bilateral transactions. This is prudent from an efficiency standpoint and since market prices for electricity change from moment to moment making it impractical to **negotiate/consummate** contracts for deals "on the fly."

The proposed Master Confirmation Agreement (and Credit Annex) with Shell Energy North America utilizes the Western Systems Power Pool (WSPP) Agreement as a foundation. The WSPP is composed of over 300 members nationally and the core features of the WSPP agreement are time-tested and accepted by most parties in the energy marketplace. It supersedes an **earlier/outdated** agreement with a predecessor of Shell (Coral Power LLC) that was executed by the City in 2003.

It is recommended that the City Council approve execution of a Master **Confirmation** Agreement with Shell. The City Attorney has reviewed the attached agreement.

FISCAL IMPACT: There is no **cost** to execute the recommended agreement.

FUNDING: Not applicable.

George F. Morrow 4
George F. Morrow
Electric Utility Director U

APPROVED: Blair King
Blair King, City Manager

**AMENDED AND RESTATED
MASTER CONFIRMATION AGREEMENT
UNDER THE WSPP AGREEMENT
BETWEEN SHELL ENERGY NORTH AMERICA (US), L.P. AND
THE CITY OF LODI, CALIFORNIA**

This *Amended and Restated Master Confirmation Agreement* (this "Master Confirmation") dated August 1, 2008 (the "Effective Date") is by and between the **City of Lodi**, a California municipal corporation, and **Shell Energy North America (US), L.P.** ("Shell Energy"), a Delaware limited partnership, amends (successor in interest by merger to Coral Power, L.L.C.) restates, supersedes and replaces the following:

Master Confirmation Agreement under the Western Systems Power Pool Agreement dated effective as of April 24, 2003 (the "Original Master Confirmation") between **Coral Power, L.L.C.**, a Delaware Limited Liability Company ("Coral"), and **the City** of Lodi, California, a California Municipal Corporation ("Lodi").

Lodi and Shell Energy are collectively referred to herein as the "Parties" and individually as a "Party."

WHEREAS, this Master Confirmation is being provided pursuant to and in accordance with **WSP Agreement dated April 1, 2008** ("WSPP Agreement") as if Lodi and Shell Energy were members of WSPP Inc. but recognizing that Lodi is not a member and that it is not intended that it will become a member for purposes of this Master Confirmation.

WHEREAS, the Parties desire to further amend the Master Confirmation with respect to all transactions and confirmations between them;

NOW **THEREFORE**, in consideration of the mutual consents and agreements contained herein and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, Shell Energy and Lodi agree to the following terms and conditions.

GENERAL. This Master Confirmation shall govern all transactions between the Parties under the WSPP Agreement. By entering into this Master Confirmation, Shell Energy and Lodi intend to have these provisions modify, supplement and amend the WSPP Agreement and to have these provisions apply to all Confirmation Agreements and transactions between Shell Energy and Lodi. The WSPP Agreement, as modified, supplemented and amended by this Master Confirmation, shall be referred to as the "Agreement". Terms used but not defined herein shall have the meanings ascribed to them in the WSPP Agreement. In the event of any conflict between this Master Confirmation and the WSPP Agreement, this Master Confirmation shall control.

SPECIFIC MODIFICATIONS TO THE WSPP AGREEMENT

1. Change in Delivery Point Definition. In the event the delivery point is affected by a change in the geographic market encompassing the point of delivery, and is revised or divided into alternate areas, the Parties shall agree on the newly defined point or geographic area that most closely resembles the location, trading liquidity and congestion as the original delivery point.
2. Section 4.1c of the WSPP Agreement is modified by including "CAISO" as an equivalent abbreviated form of the defined term "California ISO" such that the definition now reads: "4.1c California ISO (or **CAISO**) .."

3. A new Section 4.1g shall be added in Section 4 as follows: “4.1g **“CAISO Energy”** means with respect to a Transaction, a Product under which the Seller shall sell and the Buyer shall purchase a quantity of *energy* equal to the hourly quantity without Ancillary Services (as defined in the CAISO Tariff) that is or will be scheduled as a schedule coordinator to schedule coordinator transaction pursuant to the applicable tariff and protocol provisions of the California Independent System Operator (“CAISO”) for which the only excuse for failure to deliver or receive is an “Uncontrollable Force” (as defined in the CAISO Tariff). A **CAISO** “Schedule Adjustment” (defined as a schedule change implemented by the CAISO that is neither caused by, or within the control of, either Party) shall not constitute an Uncontrollable Force (as defined in the Tariff).”
4. A new Section 4.1h shall be added in Section 4 as follows: “4.1h **CAISO Tariff**: the FERC approved tariff of CAISO, including all CAISO protocols, as the same may be amended from time to time.”
5. **Choice of Laws**: Section 24 of the WSPP Agreement is deleted and replaced with the following: “This Agreement and any Confirmation Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to the conflicts of laws rules thereof. Any dispute arising under this Agreement and any Confirmation Agreement shall be brought in the Federal District Court for the Northern District of California, or if such court declines jurisdiction, any California state court located within the geographical venue of the Federal District Court for the Northern District of California. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY **JURY** TRIAL WITH RESPECT TO ANY LITIGATION **ARISING** UNDER OR IN CONNECTION WITH **THIS** AGREEMENT.”
6. **Mobile-Sierra Provision**. To the extent of FERC jurisdiction, the standard of review for changes to any portion of this Agreement or any transaction entered into hereunder proposed by a Party, a non-party or the Federal Energy Regulatory Commission acting *sua monte* shall be the “public interest” standard of review set forth in United Gas Pipeline Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) (the “**Mobile-Sierra**” doctrine).
7. **No Challenge: Defense of Agreement**. Neither Party will exercise any of its respective rights under Section 205 or Section 206 of the Federal Power Acts to challenge or seek to modify any of the rates or other terms and conditions of this Agreement or any transactions entered into hereunder.
8. **Section 27. Creditworthiness**. Section 27 of the WSPP Agreement shall be modified **by** (i) replacing the words “Section 21.3” in the second sentence with the words “Sections 21.3 or 22.3”; and (ii) by adding the Credit Annex Attached hereto.
9. **Section 28. Payment Netting**.
 - (a) Section 28.1 of the WSPP Agreement is deleted in its entirety and replaced with the following: “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 electric energy, capacity, Products and/or Services, during the monthly billing period under this Agreement, 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.”
 - (b) Section 28.2 of the WSPP Agreement is deleted in its entirety. Furthermore, the Parties agree that Exhibit A of the WSPP Agreement shall not be applicable to any transaction under this Agreement.

10. Section 34. Dispute Resolution. Section 34 and Exhibit **D** of the WSPP Agreement are hereby deleted.
11. Section 9. Notice Information. Billing Addresses. All written notices under this Confirmation shall be deemed properly sent if delivered in person or sent by facsimile, or by registered or certified mail, postage prepaid to the persons specified below. Either Party **may** change addresses for notices by written notice to the other **Party**.

If to Lodi:	If to Shell Energy:
Notices: City of Lodi 1331 S. Ham Lane Lodi, California 95242 Attn: George Morrow Electric Utility Director Fax: (209) 333-6839; Fax: (209) 339-0851	Notices: Shell Energy North America (US), L.P. 909 Fannin, Plaza Level 1 Houston, Texas 77010 Phone: 713-767-5400; Fax: 713-767-5414 With a copy to: Shell Energy North America (US), L.P. 4445 Eastgate Mall, Suite 100 San Diego, California 92121 Attn: Commercial Advisor Phone: 858-526-2151; Fax: 858-320-2651 With a copy to General Counsel Phone: 713-767-5400; Fax: 713-230-2900
Wire Transfer: Bank: { _____ } ABA Routing: { _____ } For Deposit to: { _____ } Acct No. { _____ }	Wire Transfer: Bank: Citibank Acc. Name: Shell Energy North America (US), L.P. ABA: #021000089 ACCT: #30603873
Pre-scheduling: NCPA Phone: 916-781-4237 Fax: (916) 782-4239	Pre-scheduling: Attn: 24 Hour Operations (San Diego, California) Phone: 1-858-320-1500; Fax: 858-320-1550
Confirmations of Transactions Phone: 209-333-6764	Confirmations of Transactions Phone: 858-320-1500

12. Section 9.2 of the WSPP Agreement is modified as follows: insert the phrase “in writing” after the words “designated by **the Party**” in the third sentence of Section 9.2.
13. Section 10 of the WSPP Agreement is amended by inserting in the fourth sentence the words “loss, failure or” **after** the word “Seller’s” in sub-section (i). Section 10 is **further** amended by inserting at the end of the fourth sentence a new sub-section (iii) which reads, “; or (iii) Seller’s ability to sell capacity and/or energy to a market at a price more advantageous to Seller.”
14. Section 11 of *the* WSPP Agreement shall be modified by adding the following sentence at **the** end of the Section: “No waiver shall be deemed to have been given unless it is in writing.”

15. Section 12.2 of the WSPP Agreement shall be deleted in its entirety and replaced with the following: “12.2 Any notice sent pursuant to this Section shall be considered delivered (a) in three (3) Business Days if sent by mail, (b) when received if sent by hand delivery, or (c) on the date of confirmation if by facsimile or telegram (except that if a notice by hand-delivery, facsimile or telegram is received after 5 p.m. at the location of receipt on a Business Day, it shall be considered to be received on the next Business Day).”

16. ~~LIABILITY~~ AND DAMAGES

- (a) Section 21.3(a)(4) of the WSPP Agreement shall be modified by replacing the language beginning with “within the billing period” through the end of the sentence, with the following: “within seven (7) Business Days ~~from~~ the date that an invoice for such amount is received. The Performing Party may invoice the Non-Performing Party at any time following the Performing Party having incurred an amount under this Section, subject to the two-year limitation as specified in Section 9.4.”
- (b) Section 21.3(d) of the WSPP Agreement shall be modified by deleting the second and third sentences of the Section in their entirety and replacing them with “Upon resolution of the dispute, any excess amount of bills which may have been overpaid shall be returned by the owing Party upon determination of the correct amount, with interest accrued at the rate set forth in Section 9.4, prorated by days from the date of overpayment to the date of refund.”

17. DEFAULT

- (a) A new Section 22.1(f) is added to Section 22 of the WSPP Agreement as follows: “**An** Event of Default shall also include the failure by the Defaulting Party to schedule, deliver, or receive capacity and/or energy or Ancillary Services or other products sold and purchased under a specified Confirmation for three (3) consecutive calendar days and such failure is not excused pursuant to the product definition, this Agreement or under the terms of the specified Confirmation.”
- (b) Section 22.3(a) of the WSPP Agreement shall be modified by deleting the language beginning with “either quoted” in the first sentence through the end of the next full sentence and inserting in its place the following: “determined by the average of the good faith quotations for the economic equivalent of the remaining payments or deliveries in respect of the Terminated Transaction, 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 average shall be determined disregarding the highest and lowest quotations. **If** the Non-Defaulting Party is unable, after using commercially reasonable efforts, to obtain quotations from at least three (3) Reference Market-makers, then the Non-Defaulting Party shall determine the Settlement Amount in a commercially reasonable **manner**. As used above, the term “Reference Market-maker” means any marketer, trader or seller **of** or dealer in firm energy products selected by the Non-Defaulting Party, not including any affiliates thereof, whose long-term unsecured senior debt is rated BBB or better by S&P and Baa2 or better by Moody’s Investor Services, Inc. or its successor. If fewer ~~than~~ three quotations are obtained it shall be deemed that a market quotation average price cannot be determined per **this Section and** the Parties agree that the WSPP Agreement Section 22.3 (a) shall govern the terms of **this Section**.”
- (c) Section 22.3(c) of the WSPP Agreement shall be modified by deleting, in the third sentence, the language beginning with “shall pay the remaining amount” through the end of that sentence and **inserting** in its place the words “shall make no payment to the other **Party**, and notwithstanding

anything in this Agreement to the contrary, the amount by which such Gain exceeds the Losses and Costs for the purpose of this Agreement shall be deemed to be zero (0).”

- (d) Section 22.3(e) shall be deleted in its entirety.
- (e) Section 22.3(f) shall be modified by deleting, in the second sentence, the phrase “(except if the option under 22.3(e) has been invoked in which case the payment times in that provision would apply)”.
- (f) Section 22.3(g)(ii) of the **WSPP** Agreement shall be modified by adding the phrase “plus any amount due but not yet paid under Termination Transactions” after the phrase “in accordance with this Section 22.3” and before the semicolon.

18. Section 30 of the **WSPP** Agreement shall be modified by inserting, after the phrase “(1) required by law” and before the comma, the phrase “(as reasonably determined by counsel of the disclosing **Party**)”.

19. Section 32.4.2 of the **WSPP** Agreement shall be modified by inserting the following sentence at the end of the Section: “**If** there is any dispute relating to an oral agreement, each Party agrees that it will provide to the other **Party** promptly upon request any recording relating to such oral agreement.”

20. Section 35 of the **WSPP** Agreement is modified by inserting the following paragraph between the first and second sentences: “The Parties agree that each Party’s business consists in whole or in part of entering into forward contracts as or with merchants in capacity and/or energy, which is presently the subject of dealing in the forward contract trade. The parties **further** agree that the transactions entered into pursuant to any Confirmations hereunder (as provided in Section 22.3 of the **WSPP** Agreement) are forward contracts involving the sale of capacity and/or energy, which are presently the subject of dealing in the forward contract trade. No **Party** shall **assert** before any court or other governmental authority either that another **Party** is not, or shall not be treated **as** a forward contract merchant or that the transactions entered into pursuant to any Confirmations hereunder (as provided in Section 22.3 of the **WSPP** Agreement) are not, or shall not be treated **as** forward contracts under the United States Bankruptcy Code.”

Notwithstanding any contrary provision in the **WSPP** Agreement, any conflict between this Master Confirmation, including the Credit **Annex** attached hereto and made a part hereof, and the **WSPP** Agreement, shall be resolved in favor of this Master Confirmation, If any provision in this Master Confirmation is held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction, such provision so adjudged will be deemed separate, distinct, and independent, and the remainder of this Master Confirmation will be **and** remain in full force and effect.

Except to the extent herein provided for, no amendment or modification to the Agreement shall be enforceable unless reduced to writing and executed by both Parties.

In **WITNESS WHEREOF**, the Parties have caused this Master Confirmation to be duly executed by their authorized officers or agents effective as of the date first above **written**.

CITY OF LODI, a municipal Corporation

SHELL ENERGY NORTH AMERICA (US), L.P.

By: _____
Name: Blair King
Title: City Manager
Date:

By: Beth Bowman
Name: Beth Bowman
Title: Senior Vice President
Date: August 7, 2008

ATTEST:

Randi Johl, City Clerk

APPROVED AS TO FORM:

By: _____
D. Steven Schwabauer, City Attorney

Attachment: Credit Annex

WSPP Agreement Credit Support Addendum
by and between
Shell Energy North America (US), L.P. and the City of Lodi, California

The purpose of this Credit Support Addendum ("CSA"), effective as of August 7, 2008 ("Effective Date") is to confirm the agreement of **Shell Energy North America (US), L.P.** ("Shell Energy") and the **City of Lodi, California** ("Lodi") (herein sometimes referred to individually as a "Party" and collectively as the "Parties") regarding transactions consummated under the Master Confirmation Agreement between the Parties, effective as of August 1, 2008, as it may be amended from time to time ("MCA"). Pursuant to the terms and conditions of the MCA, Shell Energy and Lodi are executing this CSA to become effective as of the date hereof and to apply to each Confirmation (which term "Confirmation" shall include both written and oral transactions) for transactions agreed to by the Parties under the MCA. Each Confirmation for transactions agreed to under the MCA shall be deemed to include the following provisions, without requiring the Confirmation specifically to include such provisions or reference this CSA.

A. **Credit Terms.** Any capitalized terms used herein but not otherwise defined herein shall have the meaning ascribed to such terms in the MCA, which is incorporated by reference herein. Defined terms used in this CSA and not defined in the MCA shall have the meaning set forth in Paragraph F hereto.

(a) **Security Threshold.** As used in this CSA, "Security Threshold" means with respect to either Party on any date of determination, the lower of (x) US \$15,000,000; or (y) \$0 if a Material Adverse Change or an Event of Default has occurred and is continuing with respect to that Party or its Credit Support Provider, if any.

(b) **Material Adverse Change.** As used herein, "Material Adverse Change" means
(x) either Party's Credit Rating falls below **BBB-** by S&P or **Baa3** by Moody's or the Party is no longer rated by at least one of the foregoing; and/or
(y) a default has occurred with respect to indebtedness for borrowed money of the other Party or its Credit Support Provider, if any, that has resulted in an acceleration of such indebtedness in an aggregate amount in excess of US **\$50,000,000**; provided, however, with respect to either Party, a Material Adverse Change shall not be deemed to have occurred so long as that Party maintains a Credit Rating of at least **BBB-** by S&P or **Baa3** by Moody's.

(c) **Guaranties.**

(i) **Shell Enerev Guaranty.** Not applicable.

(ii) **Lodi Guaranty.** Not applicable

B. **Credit Requirements.** If at any time, and from time to time, during the term of the CSA, the Contract Exposure for a Party (the "Providing Party") exceeds such Party's Security Threshold, then the other Party (the "Requesting Party") may request that the Providing Party provide Performance Assurance in an amount equal to the amount by which its Contract Exposure exceeds its Security Threshold. **On** any Business Day (but **no** more frequently than weekly with respect to letters of credit and daily with respect to cash), the Providing Party, at its sole cost, may request that the amount of Performance Assurance be reduced based upon a decrease in the Contract Exposure as calculated on such Business Day. Any Performance Assurance being provided or returned shall be delivered within **two (2)** Business Days of the date of such request. The amount of Performance Assurance being provided by the Providing Party shall be rounded upwards to the next multiple of U.S. **\$100,000** and the amount of Performance Assurance being returned by the Requesting Party shall be rounded down to the next multiple of U.S. **\$100,000**. Neither Party shall be required to provide Performance Assurance as long as it maintains a Credit Rating of at least **BBB-** by S&P or **Baa3** by Moody's.

C. **Grant of Security Interest: Remedies.** To secure its obligations under the CSA, and to the extent it delivers Performance Assurance hereunder as the Providing Party, each Party hereby grants to the Requesting Party, as

secured party, a present and continuing security interest in, lien on, and right of setoff against, all Performance Assurance in the form of cash, and any and all proceeds resulting therefrom, held by or on behalf of the Requesting Party. The Providing Party agrees to take such further action as the Requesting Party may reasonably require in order to perfect, maintain and protect the Requesting Party's security interest in such collateral. Upon the occurrence and continuance of a Event of Default with respect to the Providing Party, then, unless the Providing Party has satisfied in full all of its payment and performance obligations under the CSA that are then due, the Requesting Party may (i) exercise any of the rights and remedies of a secured party under applicable law with respect to all Performance Assurance; (ii) exercise its right of setoff against any **and all** Performance Assurance; (iii) **draw** on any Letter of Credit issued for its benefit, and (iv) liquidate all Performance Assurance then held by the Requesting Party free **from** any claim or right of any nature whatsoever of the Providing Party. The Requesting Party shall either (x) apply the proceeds of the Performance Assurance realized upon exercise of such rights or remedies to reduce the Providing Party's obligations under the CSA, in such order as it elects, and the Providing Party shall remain liable for any amounts owing to the Requesting Party after such application, subject to the Requesting Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full, or (y) hold such proceeds **as** collateral security for the Providing Party's obligations under the CSA.

D. Credit Events Of Default. The following events ("Credit Events") shall be additional Events of Default under Section 22.1 of the MCA and the Non-Defaulting Party shall have the right to exercise any of the remedies provided for under Section 22.2 upon the occurrence of a Credit Event as provided herein:

(i) the failure by the Defaulting Party to establish, maintain, extend or increase Performance Assurance when required pursuant to this CSA; or

(ii) the occurrence of a Material Adverse Change with respect to the Defaulting Party; provided, such Material Adverse Change shall not be deemed to be **an** Event of Default if the Defaulting Party (x) establishes and **maintains** Performance Assurance in an amount equal to the Contract Exposure of the Defaulting Party as of such date, and (y) increases such Performance Assurance as the other Party shall from time to time request based upon any increase of such Contract Exposure; **or**

(iii) the failure of the Defaulting Party or **its** Credit Support Provider, if any, to timely provide financial **information** as required in this CSA and such failure is not remedied within **thirty** (30) days after written notice of such failure is given to the Defaulting Party.

E. Disputed Calculations

(a) If the Pledging Party disputes the amount of Performance Assurance requested by the Secured Party and such dispute relates to the amount of the Contract Exposure claimed by the Secured Party, then the Pledging Party shall (i) notify the Secured Party of the existence and nature of the dispute not later than the 12:00 p.m. Central Prevailing Time on the **first** Business Day following the date that the demand for Performance Assurance is made by the Secured Party, and (ii) provide Performance Assurance to or for the benefit of the Secured Party in **an** amount equal to the Pledging Party's own estimate, made in good faith and in a commercially reasonable manner, of the Pledging Party's Collateral Requirement. In all such cases, the Parties thereafter shall promptly consult with each other in order to reconcile the two conflicting amounts. If the Parties have not been able to resolve their dispute **or** before the second Business Day following the date that the demand is made by the Secured Party, then the Secured Party shall obtain market quotations from two Reference Market Makers within two **(2)** Business Days (taking the arithmetic average of those obtained to obtain the average Current Mark-to-Market Value; **provided, that,** if only one (1) quotation can be obtained, then that quotation shall be used and if no quotations can be obtained, Secured Party's original calculation shall be applicable) for the purpose of recalculating the Current Mark-to-Market Value of each transaction in respect of which the Parties disagree as to the Current Mark-to-Market Value thereof, and the Secured Party shall inform the Pledging Party of the results of such recalculation (in reasonable detail). Performance Assurance shall thereupon be provided, returned, or reduced, if necessary, on the next Business Day **in** accordance with the results of such recalculation.

(b) If the Secured Party disputes the amount of Performance Assurance to be reduced by the Secured Party and such dispute **relates** to the **amount** of the Contract **Exposure** claimed **by** the Secured **Party,** **then** the Secured Party shall (i) notify the Pledging Party of the existence and nature of the dispute not later than the 12:00 Central Prevailing Time

on the first Business Day following the date that the demand to reduce Performance Assurance is made by the Pledging Party and (ii) effect the reduction of Performance Assurance to or for the benefit of the Pledging Party in an amount equal to the Secured Party's own estimate, made in good faith and in a commercially reasonable manner, of the Pledging Party's Collateral Requirement. In all such cases, the Parties thereafter shall promptly consult with each other in order to reconcile the two conflicting amounts, If the Parties have not been able to resolve their dispute on or before the second Business Day following the date that the demand is made by the Pledging Party, then the Secured Party's Contract Exposure shall be recalculated by Secured Party requesting quotations from two (2) Reference Market-Maker within two (2) Business Days (taking the arithmetic average of those obtained to obtain the average Current Mark-to-Market Value; provided, that, if only one (1) quotation can be obtained, then that quotation shall be used and if no quotation can be obtained, Secured Party's original calculation shall be applicable) for the purpose of recalculating the Current Mark-to-Market Value of each transaction in respect of which the Parties disagree as to the Current Mark-to-Market Value thereof, and the Secured Party shall inform the Pledging Party of the results of such recalculation (in reasonable detail), Performance Assurance shall thereupon be provided, returned, or reduced, if necessary, on the next Business Day in accordance with the results of such recalculation.

F. **Financial Information.** Upon request by Shell Energy, Lodi or its Credit Support Provider, if any, shall deliver to Shell Energy (i) within 120 days following the end of its fiscal year, a copy of the audited consolidated financial statements for such fiscal year certified by independent certified public accountants and (ii) within 45 days after the end of each of the first three fiscal quarters of its fiscal year, a copy of the quarterly 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 or such other principles then in effect.

G. **Definitions.** With respect to this CSA the following definitions shall apply.

"**Calculation Date**" means any Business Day on which a Party chooses or is requested by the other Party to make the determinations referred to in Paragraph B and Paragraph E.

"**Collateral Requirement**" means the Secured Party's Contract Exposure minus the amount of Performance Assurance transferred to the Secured Party.

"**Contract Exposure**" means an amount equal to (x) the Termination Payment that would be payable from the Providing Party to the Requesting Party, as if an Early Termination Date had been declared pursuant to Section 22.2 of the WSPP Agreement, effective as of April 1, 2008, as it may be amended from time to time as referenced by the MCA (notwithstanding whether or not an Event of Default has occurred) and all transactions had been terminated; (y) plus the net amount of all other payments owed but not yet paid between the Parties, whether or not such amounts are then due, for performance already provided pursuant to any and all transactions conducted under the MCA; (z) less the amount of any Performance Assurance then held by the Requesting Party.

"**Credit Rating**" means (x) with respect to a Party or its Credit Support Provider, if any, the lower of its long-term senior unsecured debt rating (not supported by third party credit enhancement) or its issuer rating by the specified rating agency, and (y) with respect to a financial institution, the lower of its long-term senior unsecured debt rating (not supported by third party credit enhancement) or its deposit rating by the specified rating agency.

"**Credit Support Provider**" means a third party providing a guaranty for a Party pursuant to this CSA. With respect to Shell Energy, its Credit Support Provider is Not Applicable.

"**Current Mark-to-Market Value**" of an outstanding transaction, on any Calculation Date, means the amount, as calculated in good faith and in a commercially reasonable manner, which a Party to the MCA would pay to (a negative Current Mark-to-Market Value) or receive from (a positive Current Mark-to-Market Value) the other Party as the Settlement Amount (calculated, only for purposes of establishing Contract Exposure in connection with setting Performance Assurance levels, at the mid-point between the bid price and the offer.

"**Letter of Credit**" means one or more irrevocable, standby letters of credit from a Qualified Institution in a form reasonably acceptable to the requesting Party,

"**Moody's**" means Moody's Investors Service, Inc., or its successor.

“Performance Assurance” means collateral in the form of cash, Letters of Credit, or other security acceptable to the Requesting Party. If the collateral is in the form of cash, such cash **shall** be placed by the Requesting Party in a segregated, interest-bearing escrow account on deposit with a Qualified Institution and interest shall accrue to the Providing Party. The requirement to maintain a segregated escrow account shall not apply if the Requesting Party or its Credit Support Provider, as applicable, **has** a Credit Rating of at least A- by S&P or A3 by Moody’s.

“Pledging Party” means either Party, when that **Party** receives a demand for or is required to transfer Performance Assurance.

“Qualified Institution” means a major U.S. commercial bank having a Credit Rating of at least A- from Standard and Poor’s or A3 from Moody’s.

“Reference Market-maker” means a leading dealer in the relevant market selected by a Party determining its Contract Exposure in good faith **from** among dealers of the highest credit standing which satisfy all the criteria that such Party applies generally at the time in deciding whether to offer or to make **an** extension of credit.

“S&P” means Standard & Poor’s Ratings Services (a division of McGraw-Hill, Inc.) or its successor.

“Secured Party” means either Party, when that Party makes a demand for or is entitled to receive Performance Assurance.

“Settlement Amount” means, with respect to a transaction and the Non-Defaulting Party, the Losses or Gains, and Costs expressed in U.S. Dollars, which such **Party** incurs as a result of the liquidation of a Terminated transaction pursuant to Section 22.2 of the MCA.

H. **Obligations and Deliviers.** Lodi will deliver, upon execution of the CSA and **as** deemed necessary for further documentation: (a) Certified copies of all resolutions, and other documents evidencing the necessary authorizations of the, MCA, the Confirmation and **this** CSA (collectively the “Agreement”), and the transactions contemplated hereby, (b) Certified incumbency certificate or other evidence of authority and specimen signatures with respect to signatories executing the Agreement or any Credit Support Document(s).

I. **Successors.** In the event of an assignment of this **CSA** by Lodi **as** provided herein, the provisions of **this** CSA shall not be applicable to **any** such assignee. In such event an assignee will be required to meet the reasonable credit requirements of Shell Energy for the extension of unsecured credit before further deliveries of energy **are** made.

J. **Provisions Applicable to a Municipality.**

(i) **Definitions.** The Parties agree to add the following definitions in Section 24.

“Act” means California Constitution, Article 11, Section 9 and California Government Code, Section 34000 et seq.

“Special Fund” means a fund or account of Lodi set aside and or pledged to satisfy Lodi’s obligations hereunder out of which amounts shall be paid to satisfy all of Lodi’s obligations under **this** Agreement for the entire Delivery Period.

(ii) **Uncontrollable Forces.** The following sentence shall be added to the end of the definition of “Uncontrollable Force” in Section 10. “If the Claiming Party is Lodi, Uncontrollable Force does not include any action taken by Lodi in its governmental capacity.

(iii) **Representations And Warranties.** The **Parties** agree to add the following representations and warranties to Section 37: “Further, **Lodi** represents and warrants to the other Party continuing throughout the term of this CSA, with respect to **this** CSA and each transaction, **as** follows:

all acts necessary to the valid execution, delivery and performance of this CSA, 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 Lodi's ordinances, bylaws or other regulations,

all persons making up the governing body of Lodi 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,

entry into and performance of this CSA by Lodi 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,

the term of this Agreement does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and applicable law,

Lodi'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 Lodi's obligations hereunder and under each transaction or (c) are to be made solely from a Special Fund,

obligations to make payments hereunder do not constitute any kind of indebtedness of Lodi or create any kind of lien on, or security interest in, any property or revenues of Lodi 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, and

Lodi warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on grounds of sovereignty or similar grounds with respect to itself or its surplus revenues from (a) suit, (b) jurisdiction of court (including a court located outside the jurisdiction of its organization, subject to the law of proper venue), (c) relief by way of injunction, order for specific performance or recover of property, or (d) execution or enforcement of any valid judgment."

- (iv) The Parties agree to add the following sections:

Lodi's Deliveries. On the Effective Date and as a condition to the obligations of Shell Energy under this Agreement, Lodi shall provide to Shell Energy:

certified copies of all ordinances, resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery and performance by Lodi of this Master Confirmation, and

an opinion of counsel for Lodi, in form and substance reasonably satisfactory to Shell Energy, regarding the validity, binding effect and enforceability of this Master Confirmation against Lodi in respect of the Act and all other relevant constitutional organic or other governing documents and applicable law."

- (v) Security. The Parties agree to add the following to Section 27:

Lodi Security. With respect to each transaction, Lodi shall either (i) have created and set aside a Special Fund or (ii) upon execution of this CSA and prior to the commencement of each subsequent fiscal year of Lodi during any Delivery Period, have obtained all necessary budgetary approvals and certifications for payment of all of its obligations under this CSA for such fiscal year; any breach of this provision shall be deemed to have arisen during a fiscal period of Lodi for which budgetary approval or certification of its obligations under this CSA is in effect and, notwithstanding anything to the contrary in Section 21, an Early Termination Date shall automatically and without further notice occur hereunder as of such date wherein

Lodi shall be treated as the Defaulting Party. Lodi shall have allocated to the Special Fund or its general funds a revenue base that is adequate to cover Lodi's payment obligations hereunder throughout the entire Delivery Period."

(vi) **Governmental Security.** As security for payment and performance of Lodi's obligations hereunder, Lodi hereby pledges, sets over, assigns and grants to the other Party a security interest in all of Lodi's right, title and interest in and to Special Fund.

Notwithstanding any contrary provision in the MCA, any conflict between this CSA and the MCA shall be resolved in favor of this CSA. If any provision in this CSA is held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction, such provision so adjudged will be deemed separate, distinct, and independent, and the remainder of this CSA will be and remain in full force and effect.

IN WITNESS WHEREOF, the undersigned Parties have signed this CSA effective as of the date first set forth above,

CITY OF LODI

By: _____
Name: Blair King
Title: City Manager

**SHELL ENERGY NORTH
AMERICA (US), L.P.**

By: Beth Bowman
Name: Beth Bowman
Title: Sr. Vice President

APPROVED AS TO FORM:

D. Stephen Schwabauer, City Attorney

ATTEST:

Randi Johl, City Clerk

RESOLUTION NO. 2008-170

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING
THE CITY MANAGER TO EXECUTE AN AMENDED AND RESTATED
MASTER CONFIRMATION AGREEMENT WITH SHELL ENERGY
NORTH AMERICA

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize (i) the City Manager to execute an Amended and Restated Master Confirmation Agreement with Shell Energy North America and (ii) the Electric Utility Director to implement and administer such agreement including any necessary confirmations related to transactions thereunder.

Dated: August 20, 2008

I hereby certify that Resolution No. 2008-170 was passed and adopted by the City Council of the City of Lodi in a regular meeting held August 20, 2008, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Hitchcock, Johnson, Katzakian,
and Mayor Mounce

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None


RANDI JOHL
City Clerk