

10/29/2012

STANDARD OFFER POWER PURCHASE AGREEMENT

BETWEEN

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

AND

[_____]

DATED AS OF _____

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STANDARD OFFER POWER PURCHASE AGREEMENT

THIS STANDARD OFFER POWER PURCHASE AGREEMENT (“*Agreement*”) is entered into as of the Effective Date by and between the City of Los Angeles acting by and through the Department of Water and Power (“*Buyer*” or “*LADWP*”), a municipal corporation of the State of California, and [_____] (“*Seller*”), a [limited liability company/partnership/corporation/person] organized and existing under the laws of the State of [_____]. Each of Buyer and Seller is referred to individually in this Agreement as a “*Party*” and together they are referred to as the “*Parties*.”

RECITALS

WHEREAS, LADWP is subject to a “Renewables Portfolio Standard” designed to increase the amount of electricity it provides to its retail customers from renewable sources to at least 33% of its retail electricity sales by December 31, 2020; and

WHEREAS, Section 2 of Senate Bill 32 (Stats. 2009, Ch. 328) requires that a standard tariff be made available for electricity purchased from electric generating facilities that meet certain requirements and provides that the terms of such tariff may be made available in the form of a standard contract; and

WHEREAS, LADWP has established a demonstration project to assist in the development of an SB 32 program; and

WHEREAS, LADWP now seeks to purchase Energy generated by an Eligible Renewable Energy Facility located within the LADWP service territory; and

WHEREAS, Seller has Site Control over a Site located within the LADWP service territory suitable for an Eligible Renewable Energy Facility; and

WHEREAS, Seller desires to [build, own, and] operate at its own expense an Eligible Renewable Energy Facility [to be] located entirely on such Site and sell all the Energy generated together with all associated Capacity Rights and Environmental Attributes to LADWP; and

WHEREAS, the Parties desire to set forth the terms and conditions pursuant to which such sales and purchases of Energy, Capacity Rights and Environmental Attributes shall be made;

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

ARTICLE I DEFINITIONS AND INTERPRETATION

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

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

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

“**Ancillary Documents**” means the Interconnection Agreement, the Development Security Deposit and all other instruments, agreements, certificates and documents executed or delivered by or on behalf of either Party pursuant to or in connection with this Agreement.

“**Authorized Auditors**” means representatives of Buyer or Buyer’s Agents who are authorized to conduct audits on behalf of Buyer.

“**Authorized Representative**” means, with respect to each Party, the Person designated as such Party’s authorized representative pursuant to Section 12.1.

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

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

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

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

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

“**Capacity**” means the total nominal gross nameplate capacity of the Facility set forth in Appendix A.

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

“**CEC**” means the California Energy Resources Conservation and Development Commission, also known as the California Energy Commission, or its successor agency.

“**CEQA**” means the California Environmental Quality Act, as amended from time to time, and any successor statute.

“**Commercial Operation**” means all of the following have been satisfied by Seller:

- (a) Construction of the Facility has been completed in accordance with the terms and conditions of this Agreement and the Facility possesses all the characteristics, and satisfies all of the requirements, set forth for this Facility in this Agreement;
- (b) The Facility has successfully completed all testing required by Prudent Utility Practices or any Requirement of Law to be completed prior to full commercial operations;
- (c) Seller has obtained all Permits required for the construction, operation and maintenance of the Facility in accordance with this Agreement (including those identified in Appendix A), and all such Permits are final and non-appealable;
- (d) The Facility is both authorized and able to operate and deliver Energy at full Capacity in accordance with Prudent Utility Practices, the requirements of this Agreement and all Requirements of Law; and
- (e) Seller has caused the CEC to certify the Facility as RPS Compliant.

“**Commercial Operation Date**” means the date on which Seller demonstrates to Buyer’s reasonable satisfaction that Commercial Operation has occurred.

“**Commercial Operation Deadline**” means the Planned Commercial Operation Date as such date may be extended pursuant to Section 2.5.

“**Contract Year**” means (i) the twelve-month period beginning on the Commercial Operation Date and ending on the first anniversary of the Commercial Operation Date, and (ii) each succeeding period of twelve consecutive months following the period described in the preceding clause (i).

“**Default**” has the meaning set forth in Section 11.1.

“**Defaulting Party**” has the meaning set forth in Section 11.1.

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

“**Development Security Deposit**” means the development security deposit described in Section 3.6 that is required to be provided by Seller to Buyer.

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

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

“Electric Service Requirements” means all requirements prescribed in writing by LADWP in effect at the time this Agreement is executed, and all revisions thereto or replacements thereof, which are necessary and proper for the regulation of any electric service installed, operated, and maintained within the City of Los Angeles. The Electric Service Requirements shall be in conformance with the Charter of the City of Los Angeles and the Rules.

“Eligible Renewable Energy Facility” means an electric generation facility that complies with the requirements of Section 387.6 of the Public Utilities Code or any successor thereto.

“Energy” means electrical energy.

“Environmental Attributes” means any and all current or future fuel, emissions, air quality, or other environmental characteristics, credits, benefits, reductions, offsets, or allowances, howsoever entitled, named, registered, created, measured, allocated, or validated, that are at any time recognized or deemed of value (or both) by Buyer, applicable law, or any voluntary or mandatory program of any Governmental Authority or other Person that are attributable to Facility Energy and the emissions or other environmental characteristics of such generation or its displacement of conventional fossil fuel Energy generation, including the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water. Environmental Attributes include:

- (a) any REC or Renewable Energy Certificate;
- (b) any environmental attributes arising out of legislation or regulation concerned with oxides of nitrogen, sulfur, carbon, or any other greenhouse gas or chemical compound, with particulate matter, soot, or mercury;
- (c) any environmental attributes arising out of legislation or regulation implementing the United Nations Framework Convention on Climate Change (the “UNFCCC”), or the Kyoto Protocol to the UNFCCC;
- (d) any environmental attributes arising out of California’s greenhouse gas legislation and regulations, including California Assembly Bill 32 (Global Warming Solutions Act of 2006) and the regulations implemented pursuant to that act, including compliance instruments accepted under the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulation (or any successors thereto);
- (e) any environmental attributes arising out of any similar international, federal, state or local program;

- (f) any environmental attributes arising out of laws or regulations involving or administered by the CAMD, any successor agency and any similar state, regional or federal or intergovernmental entity or Person; and
- (g) all rights to report to any Person, and claim ownership of, the Environmental Attributes, including all evidences (if any) thereof such as RECs.

Environmental Attributes do not include any federal or state production tax credits. Environmental Attributes for purposes of this definition are separate from the Energy produced from the Facility.

“**EPA**” means Environmental Protection Agency and any successor agency.

“**EPS Compliant**,” when used with respect to the Facility at any time, means that the Facility satisfies the greenhouse gas emissions performance standard(s) applying at that time to electric generation facilities owned or operated (or both) by local publicly owned electric utilities, as established by the Governmental Authorities with jurisdiction over Buyer.

“**Facility**” means the Eligible Renewable Energy Facility, including all property interests and related transmission and other facilities described in Appendix A.

“**Facility Energy**” means Energy generated by the Facility and delivered to the Point of Delivery that qualifies for a Renewable Energy Certificate.

“**Facility Lender**” means any lender providing senior or subordinated construction, interim or long-term debt financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility.

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

“**Force Majeure**” means event or circumstance, including any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, or any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities (i) which prevents one Party from performing any of its obligations under this Agreement, (ii) which could not reasonably be anticipated as of the date of this Agreement, (iii) which is not within the reasonable control of, or the result of negligence, willful misconduct, breach of contract, intentional act or omission or wrongdoing on the part of the affected Party, and (iv) which despite the exercise of commercially reasonable efforts the affected Party is unable to overcome or avoid or cause to be avoided.

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

“**Insurance**” means the policies of insurance as set forth in Appendix D.

“Interconnection Agreement” means LADWP’s “STANDARD OFFER FOR CUSTOMER GENERATION INTERCONNECTION AGREEMENT” as amended, supplemented or otherwise modified from time to time.

“kWh” means kilowatt-hours.

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

“Los Angeles City Attorney” means Buyer’s Counsel as provided under the Charter of the City of Los Angeles Section 270, *et. seq.* or any successor.

“Milestone” means the date on which the seller has either obtained the permit or permits required to construct the Facility, or has submitted to Buyer in writing proof of solar panel procurement for the rated Capacity of the Facility.

“Milestone Deadline” means the date that is the six-month anniversary of the Effective Date.

“MWh” means megawatt-hours.

“NERC” means the North American Electric Reliability Corporation and any successor thereto.

“Non-Defaulting Party” has the meaning set forth in Section 11.3.

“Pacific Prevailing Time” means the local time in Los Angeles, California.

“Permit” means all applications, permits, licenses, franchises, certificates, concessions, consents, authorizations, certifications, self-certifications or approvals which are required to be filed, submitted, obtained or maintained by any Person with respect to the development, construction, equipping, financing, ownership, operation or maintenance of the Facility, the production, sale and delivery of Facility Energy, Capacity Rights and Environmental Attributes, or any other transactions or matter contemplated by this Agreement (including those pertaining to electrical, building, zoning, environmental and occupational safety and health requirements).

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

“Point of Delivery” means, when used with respect to any Energy sold and purchased under this Agreement, the point where that Energy is required to be delivered by Seller to Buyer under this Agreement, as set forth in Appendix A.

“Power Revenue Fund” means the fund in the City of Los Angeles’ treasury known as the “Power Revenue Fund” to which all revenue from every source collected by LADWP in

connection with its possession, management and control of the power assets is required to be deposited and credited.

“Program Guidelines” means guidelines for the Feed-in Tariff Demonstration Program adopted by the Board, including all amendments, revisions, and replacements thereof.

“Planned Commercial Operation Date” means the Planned Commercial Operation Date set forth in Appendix A, which shall be no later than the 18-month anniversary of the Effective Date, subject to extension pursuant to Section 2.5 and the Program Guidelines.

“Prudent Utility Practices” means those practices, methods, and acts, that are commonly used by a significant portion of the renewable energy generation industry in prudent engineering and operations to design and operate electric equipment lawfully and with safety, dependability, efficiency, and economy, including any applicable practices, methods, acts, guidelines, standards and criteria of FERC, NERC, WECC and compliance with all applicable Requirements of Law.

“Public Utilities Code” means the Public Utilities Code of the State of California.

“Purchase Price” is defined in Appendix C.

“REC” or **“Renewable Energy Certificate”** means a tradable environmental commodity that represents proof, in accordance with the WREGIS Operating Rules or any successor, that one (1) megawatt-hour (MWh) of energy was generated from an eligible renewable energy resource, as defined in Section 399.12 of the Public Utilities Code or any successor thereto.

“Renewables Portfolio Standard” means the procurement targets for eligible renewable energy resources Buyer is required to implement under Section 399.30 of the Public Utilities Code or any successor thereto.

“Requirement of Law” means the Rules, the Electric Service Requirements, the Program Guidelines, all federal, state and local laws, statutes, regulations, rules, codes or ordinances enacted, adopted, issued or promulgated by any federal, state, local or other Governmental Authority (including those pertaining to electrical, building, zoning, environmental, and occupational safety and health requirements).

“RPS Compliant,” when used with respect to the Facility at any time, means that all Energy generated by that Facility at that time would, if purchased by Buyer together with the associated Environmental Attributes (including RECs), be eligible to be credited against the Renewables Portfolio Standard.

“Rules” means The Rules Governing Electric Service in the City of Los Angeles adopted by the Board under Resolution No. 56, dated September 8, 1983, and all amendments, revisions, and replacements thereof.

“Site” means the real property (including all fixtures and appurtenances thereto) and related physical and intangible property generally identified in Appendix A as owned or leased by Seller where the Facility is located or will be located, and including any easements, rights-of-

way or contractual rights held or to be held by Seller for transmission lines and/or roadways servicing such Site or the Facility located (or to be located) thereon.

“*Site Control*” means that Seller shall: (i) own the Site; or (ii) be the lessee of the Site under a lease, which permits Seller to perform its obligations under this Agreement.

“*Station Service*” means the electric supply for the ancillary equipment used to operate a generating station or substation.

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

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

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

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

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

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

- (a) the singular number includes the plural number and vice versa;
- (b) reference to any Person includes such Person’s successors and assigns but, in case of a Party hereto, only if such successors and assigns are permitted by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;
- (c) reference to any agreement (including this Agreement), document, instrument or tariff means such agreement, document, instrument or tariff as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof;
- (d) reference to any Article, Section, or Appendix means such Article of this Agreement, Section of this Agreement, or such Appendix to this Agreement, as the case may be, and references in any Article or Section or definition to any clause means such clause of such Article or Section or definition;

- (e) “hereunder”, “hereof”, “hereto” and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article or Section or other provision hereof or thereof;
- (f) “including” (and with correlative meaning “include”) means including without limiting the generality of any description preceding such term;
- (g) reference to time shall always refer to Pacific Prevailing Time; and reference to any “day” shall mean a calendar day unless otherwise indicated.

ARTICLE II

EFFECTIVE DATE, TERM, AND EARLY TERMINATION

Section 2.1 Effective Date. Subject to Section 3.2, this Agreement is effective as of the Effective Date. On or prior to the Effective Date, each of the following must have occurred:

- (a) Buyer received satisfactory evidence that Seller has obtained Site Control for the Agreement Term;
- (b) Buyer received copies of all requisite resolutions and incumbency certificates of Seller and any other documents evidencing all actions taken by Seller to authorize the execution and delivery of this Agreement and all Ancillary Documents to which it is a party;
- (c) Buyer received all certificates and other documents required to establish that the insurance policies required by Appendix D are in full force and effect upon the Effective Date;
- (d) Buyer received a copy of Seller's completed Business Tax Registration Certificate;
- (e) Buyer has received the Seller's signed Certificate of Compliance with Child Support Obligations;
- (f) Buyer has received Seller's Equal Employment Practices Provisions Certification;
- (g) Buyer has received Seller's Affirmative Action Plan;
- (h) Buyer has obtained all necessary approvals (if any) of Buyer’s Board of Commissioners and/or the Los Angeles City Council, if applicable;
- (i) Buyer received an executed Interconnection Agreement from Seller; and
- (j) Buyer received the Development Security Deposit as set forth in Section 3.6.

Section 2.2 Agreement Term and Delivery Term. This Agreement shall have a delivery term (the “*Delivery Term*”) of [_____ (___)] Contract Years commencing on the Commercial Operation Date and ending on the [___] anniversary thereof, unless sooner terminated in accordance with the terms of this Agreement. The term of this Agreement (the “*Agreement Term*”) shall commence on the Effective Date and shall end upon the expiration or earlier termination of this Agreement in accordance with the terms hereof.

Section 2.3 Survivability. The provisions of this Article II, Article X, Article XI and Section 12.14 shall survive for a period of one year following the termination of this Agreement. The provisions of Article IX shall survive for a period of four (4) years following final payment made by Buyer hereunder or the expiration or termination date of this Agreement, whichever is later. The provisions of Article V, Article VI, and Article VIII shall continue in effect after termination to the extent necessary to provide for final billing and adjustments related to the period prior to termination of this Agreement.

Section 2.4 Early Termination. This Agreement may be terminated (i) by mutual written agreement of the Parties, (ii) when and as provided in Section 3.2, (iii) upon the occurrence of a Default, the Non-Defaulting Party may terminate this Agreement as set forth in Section 11.3, (iv) when and as provided in Section 12.21, or (v) by Buyer, in its sole discretion, (a) upon notice to Seller if Seller fails to achieve the Milestone on or before the Milestone Deadline, with the exception of Force Majeure, (b) upon notice to Seller if Seller fails to achieve Commercial Operation on or before the Commercial Operation Deadline, without exception, suspension or extension for reasons of Force Majeure or otherwise, (c) if Seller abandons the Facility, (d) if electric output from the Facility ceases for twelve (12) consecutive months, or (e) if Seller or the owner of the Site applies for or participates in any net metering program or receives ratepayer-funded on-site generation incentives for the Facility. Upon termination of this Agreement, Seller shall disconnect the Facility from LADWP’s distribution system at Seller’s expense. Any termination of this Agreement under this Section shall be without prejudice to the rights and remedies of either Party for Defaults occurring prior to such termination.

Section 2.5 Extension of Planned Commercial Operation Date. The Planned Commercial Operation Date may be extended for up to six (6) months. Seller must submit a request for extension of the Planned Commercial Operation Date to LADWP in writing, describing in reasonable detail the cause of the delay, at least thirty (30) days prior to the Planned Commercial Operation Date. Any decision to grant such extension will be made at the discretion of LADWP.

ARTICLE III DEVELOPMENT OF THE FACILITY

Section 3.1 Design and Permitting. Seller shall determine the proposed location, design, configuration and capacities of the Facility as it deems appropriate, subject only to the requirements of this Agreement and all applicable Requirements of Law. Seller, at its expense, shall timely take all steps necessary to obtain all Permits required to construct, maintain or operate the Facility and for the production, sale and delivery of Energy and Environmental

Attributes in accordance with the requirements of this Agreement and all applicable Requirements of Law. Seller shall represent the Facility as necessary in all meetings with and proceedings before all Governmental Authorities.

Section 3.2 CEQA Determinations. Any CEQA requirements shall be the responsibility of Seller. The Parties acknowledge and agree that Buyer reserves all of its rights and powers under CEQA that may be applicable, including the power to: (i) review the Facility and its environmental impacts; (ii) prepare and/or review environmental documents and studies; (iii) adopt feasible mitigation measures and/or alternatives in order to avoid or lessen any significant environmental impacts resulting from the project; (iv) determine that any significant impacts that cannot be mitigated are acceptable due to overriding considerations; and (v) decide to terminate this Agreement due to any significant adverse environmental effects resulting from the Facility. The parties therefore acknowledge and agree that Buyer has no obligation to purchase Energy under this Agreement until all of the following have occurred: (i) any applicable CEQA review has been completed; (ii) Buyer has decided, based on that review, to approve the purchase of Energy from the Facility; and (iii) the applicable period for any legal challenges under CEQA relating to the Facility has expired without any such challenge having been filed or, in the event of any such challenge, the challenge has been determined adversely to the challenger by final judgment or settlement. If Buyer, based upon its independent review of the Facility under CEQA, decides not to approve the purchase of Energy from the Facility and to terminate this Agreement, due to significant adverse environmental effects from the Facility, Buyer will give Seller notice thereof and this Agreement will terminate upon the giving of such notice.

Section 3.3 Construction and Ownership of the Facility. Seller shall use commercially reasonable and diligent efforts to site, develop, finance and construct the Facility. The Facility shall be owned by Seller during the Agreement Term, subject to Section 12.6. Seller shall develop the Facility, at its sole risk and expense, and in compliance with the requirements of this Agreement, Buyer's interconnection requirements, and all applicable Requirements of Law and Prudent Utility Practices.

Section 3.4 Milestone. Seller shall provide Buyer with documentation demonstrating that the Milestone has been met on or before the Milestone Deadline.

Section 3.5 Certification of Commercial Operation Date. Seller shall provide Buyer with a notice when Seller believes that all requirements to achieving Commercial Operation of the Facility as specified in the definition of "Commercial Operation" in Section 1.1 have been satisfied.

Section 3.6 Development Security Deposit. Seller shall deposit an amount of \$50 for each kilowatt of the nominal nameplate Capacity of the Facility to Buyer in the form of a check on or prior to the Effective Date. Buyer will return the amount of the Development Security Deposit to Seller within thirty (30) days after Commercial Operation has occurred. Seller shall forfeit and Buyer shall retain the entire Development Security Deposit if the Milestone is not met by the Milestone Deadline or Commercial Operation does not occur by the Commercial Operation Deadline. However, if failure to meet Milestone Deadline or

Commercial Operation is due to Force Majeure, Buyer will refund the Development Security Deposit.

ARTICLE IV OPERATION AND MAINTENANCE OF THE FACILITY

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

Section 4.2 General Operational Requirements. In addition to the requirements set forth in Section 4.1 and elsewhere in this Agreement, Seller shall, at all times: (i) employ qualified and trained personnel for operating and maintaining the Facility, (ii) operate and maintain the Facility with due regard for the safety, security and reliability of the interconnected facilities, LADWP's distribution system, and (iii) comply with operating and maintenance standards recommended by, and required by, the Facility's equipment suppliers.

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

Section 4.4 Outages. Seller shall notify Buyer as soon as Seller becomes aware of any current or planned outage at the Facility reasonably expected to last longer than 30 days. Seller shall take all reasonable measures and exercise commercially reasonable efforts to avoid outages and to limit the duration and extent of any outages. Seller shall promptly notify Buyer of any material damage or destruction affecting the Facility or of the institution of any proceeding for the condemnation or other taking of the Facility and shall keep Buyer apprised on the effect thereof on the ability of the Facility to deliver Facility Energy.

ARTICLE V COMPLIANCE DURING CONSTRUCTION AND OPERATION PERIOD

Section 5.1 The Facility. Seller warrants and guarantees that it will perform, or cause to be performed, all engineering, design and construction in a good and workmanlike manner and in accordance with applicable standards, Prudent Utility Practices, all applicable Requirements of Law, the Milestone and all other requirements of this Agreement. Seller also warrants and guarantees that throughout the Agreement Term Seller shall monitor the operation and maintenance of the Facility and that said operation and maintenance will be, in full compliance with all applicable standards, Prudent Utility Practices, Requirements of Law and other provisions of this Agreement. Without limiting the foregoing, Seller shall promptly repair

and/or replace, consistent with Prudent Utility Practice, any component of the Facility that may be damaged or destroyed or otherwise not operating properly and efficiently.

Section 5.1.1 Buyer's Right to Monitor In General. Buyer shall have the right and Seller shall permit Buyer and its representatives, advisors, engineers and consultants to observe, inspect and monitor all operations and activities at the Facility Site.

Section 5.1.2 Startup and Testing. Prior to the Commercial Operation Date and as a condition precedent to the achievement of the Commercial Operation Date, Buyer shall have the right to (i) review and monitor the performance and achievement of all initial performance tests and all other tests required under the Facility construction contracts that must be performed in order to achieve completion; (ii) be present to witness such initial performance tests and review the results thereof; and (iii) perform such detailed examinations, inspections, quality surveillance and tests as, in the judgment of Buyer, are appropriate and advisable to determine that all components of the Facility have been installed in accordance with this Agreement.

Section 5.2 Compliance with Standards; Insurance. Seller shall cause the Facility and all parts thereof to be designed, constructed, tested, operated and maintained to meet all of the requirements of this Agreement, all applicable Requirements of Law, all applicable requirements of the latest revision of the American Society for Testing and Materials, American Society of Mechanical Engineers, American Welding Society, EPA, Edison Electric Institute, Institute of Electrical and Electronics Engineers, Instrument Society of America, National Electrical Code, National Electric Safety Code, Occupational Safety & Health Administration, California Occupational Safety & Health Administration, as applicable, Uniform Building Code, Uniform Plumbing Code, and the applicable local County Fire Department Standards of the applicable county, and any successors thereto. Seller shall obtain and maintain, at its sole cost and expense, the Insurance coverage listed in Appendix D on substantially the terms set forth in Appendix D and shall refrain from taking any actions that would cause such insurance to lapse or otherwise not be effective. Such Insurance shall not be deemed to limit or qualify the liabilities or obligations Seller has assumed under this Agreement.

Section 5.3 Effect of Review by Buyer. Any review by Buyer of the design, construction, engineering, operation or maintenance of the Facility is solely for the information of Buyer. Buyer shall have no obligation to share the results of any such review with Seller, nor shall any such review or the results thereof (whether or not the results are shared with Seller) nor any failure to conduct any such review relieve Seller from any of its obligations under this Agreement.

Section 5.4 Inspection and Maintenance Reports. Seller shall provide an inspection and maintenance report on the Facility to Buyer prior to the end of the third full month of the second Contract Year, the fourth Contract Year and every second Contract Year thereafter. This report shall be prepared at Seller's expense by a California licensed contractor who is not the owner or operator of the Facility. A California licensed electrician shall perform the inspection of the electrical portion of the Facility.

**ARTICLE VI
PURCHASE AND SALE OF POWER; CAPACITY RIGHTS**

Section 6.1 Purchases by Buyer. On and after the Commercial Operation Date and continuing for the Delivery Term, Seller shall sell and deliver, and Buyer shall purchase and receive, all Facility Energy, together with all associated Environmental Attributes and Capacity Rights for the Purchase Price. In no event shall Buyer have any obligation or liability whatsoever for any debt pertaining to the Facility by virtue of Buyer's ownership of the Capacity Rights or otherwise. Seller represents and covenants that it has not assigned, transferred, conveyed, encumbered, sold or otherwise disposed of and will not in the future assign, transfer, convey, encumber, sell or otherwise dispose of any of the Capacity Rights to any Person other than Buyer or attempt to do any of the foregoing with respect to any of the Capacity Rights. Seller shall not report to any Person that any of the Capacity Rights belong to any Person other than Buyer. Buyer may, at its own risk and expense, report to any Person that the Capacity Rights belong to it. Buyer shall not be required to purchase and receive any Facility Energy if receiving such Facility Energy would cause or contribute to any adverse effects to Buyer's operation of a reliable and efficient electric grid as determined in Buyer's sole discretion. Any energy consumption by the Facility not used to generate a REC, will be billed to Seller pursuant to a separate electric service agreement.

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

Section 6.3 Energy to Come Exclusively from Facility. All Energy for sale and delivery pursuant to this Agreement shall come from the Facility and Seller shall not procure Energy from sources other than the Facility for sale and delivery pursuant to this Agreement.

Section 6.4 Sales to Third Parties. Seller shall not sell or otherwise transfer any Facility Energy, Capacity Rights or Environmental Attributes to any Person other than Buyer. Any purported sale or transfer in violation of this provision shall be null and void at inception and of no force or effect.

**ARTICLE VII
TITLE AND RISK OF LOSS**

Section 7.1 Title; Risk of Loss. Seller shall be responsible for any costs or charges imposed on or associated with the delivery of Energy up to the Point of Delivery, and Buyer shall be responsible for any costs or charges imposed on or associated with the delivery of Energy at and from the Point of Delivery. As between the Parties, Seller shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of all Energy prior to the Point of Delivery, and Buyer shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of all Energy at and from the Point of Delivery. Seller warrants that it will deliver all Energy and Environmental Attributes to Buyer free and clear of all Liens created by any Person other than Buyer. Title to and risk of loss as to all Energy and Environmental Attributes shall pass from Seller to Buyer at the Point of Delivery.

ARTICLE VIII
ENVIRONMENTAL ATTRIBUTES; EPS AND RPS COMPLIANCE

Section 8.1 Generation of Environmental Attributes. Upon Buyer's request, Seller shall take all actions and execute all documents or instruments necessary under applicable law, bilateral arrangements or other obligatory or voluntary Environmental Attribute programs of any kind to maximize the attribution, accrual, realization, generation, production, recognition and validation of Environmental Attributes throughout the Agreement Term.

Section 8.2 Transfer of Environmental Attributes. Seller shall transfer to Buyer, and Buyer shall receive from Seller, all right, title, and interest in and to all Environmental Attributes, whether now existing or acquired by Seller or that hereafter come into existence or are acquired by Seller during the Agreement Term. Seller agrees to transfer and make available to Buyer all Environmental Attributes, to the fullest extent allowed by applicable law, immediately upon Seller's production or acquisition of the Environmental Attributes.

Section 8.3 Conveyance of Environmental Attributes. Buyer may unilaterally elect to change the Environmental Attribute conveyance procedure for Buyer to be able to receive and report the Environmental Attributes purchased under the Agreement as belonging to Buyer. Buyer will provide written notice to Seller of such change in procedure, and Seller shall thereafter comply with such new procedures.

Section 8.4 Reporting of Ownership of Environmental Attributes. During the Agreement Term, Seller shall not report to any Person that the Environmental Attributes belong to any Person other than Buyer, and Buyer may report under any program that such Environmental Attributes purchased hereunder belong to it.

Section 8.5 Status of Facility. Seller warrants and guarantees that when complete, and at all times thereafter, the Facility will be both RPS Compliant and EPS Compliant and will be an Eligible Renewable Energy Facility. Seller will be responsible for having the CEC certify the Facility as RPS Compliant and maintaining such certification during the Agreement Term.

Section 8.6 WREGIS. Seller shall cause and allow LADWP to be the "Qualified Reporting Entity" and "Account Holder" (as such terms are defined by WREGIS) for the Facility.

ARTICLE IX
BILLING; PAYMENT; AUDITS; METERING; POLICIES

Section 9.1 Calculation of Energy Delivered; Statements; Payment. For each calendar month during the Delivery Term, commencing with the first calendar month in which Facility Energy is delivered by Seller to, and received by, Buyer under this Agreement, Buyer shall calculate the amount of Energy so delivered and received during such calendar month as determined from recordings produced by Buyer's meters maintained pursuant to Section 9.6, at or near midnight on the last day of the calendar month in question. In no event will Buyer be obligated to purchase Facility Energy in excess of 1.15 times the monthly production profile

submitted by Seller at time of application. The calculation methodology for the Purchase Price of Facility Energy that will be used is set forth in Appendix C.

Section 9.2 Payment. Not later than the 30th day of each calendar month, commencing with the next calendar month following Seller's first delivery of Facility Energy to Buyer under this Agreement, Buyer shall deliver to Seller a statement showing the amount of Facility Energy that was delivered by Seller, the total payment amount as calculated in accordance with Appendix C, and payment for that amount.

Section 9.3 Disputed Statement. In the event any portion of any statement or Environmental Attribute is in dispute, the undisputed amount shall be paid when due. The Party disputing a payment or Environmental Attribute shall promptly notify the other Party of the basis for the dispute. Disputes shall be discussed by the parties, who shall use reasonable efforts to amicably and promptly resolve the disputes.

Section 9.4 Buyer's Right of Setoff. In addition to any right now or hereafter granted under applicable law and not by way of limitation of any such rights, Buyer shall have the right at any time or from time to time without notice to Seller or to any other Person, any such notice being hereby expressly waived, to set off against any amount due to Seller from Buyer under this Agreement or otherwise any amount due to Buyer from Seller under this Agreement or otherwise, including any amounts due because of breach of this Agreement or any other obligation and any costs payable by Seller if and to the extent paid in the first instance by Buyer.

Section 9.5 Records and Audits. Seller shall maintain or cause to be maintained all records pertaining to the management of this Agreement, related subcontracts, and performance of services pursuant to this Agreement (including all billings, costs, metering, and Environmental Attributes), in their original form, sufficient to properly reflect all costs claimed to have been incurred and services performed pursuant to this Agreement. Buyer and the Authorized Auditors shall have the right to discuss such records with Seller's officers and independent public accountants (and by this provision Seller authorizes said accountants to discuss such billings and costs), all at such times and as often as may be reasonably requested. All records shall be retained, and shall be subject to examination and audit with fourteen (14) calendar days prior written notice by the Authorized Auditors, for a period of not less than four (4) years following final payment made by Buyer hereunder or the expiration or termination date of this Agreement, whichever is later. The Authorized Auditors will have the right to reproduce, photocopy, download, transcribe, and the like any such records. Any information provided by Seller on machine-readable media shall be provided in a format accessible and readable by the Authorized Auditors. To the extent that the Authorized Auditor's examination or audit reveals inaccurate, incomplete or non-current records, or records are unavailable, the records shall be considered defective. If the Authorized Auditor's examination or audit indicates Seller has been overpaid under a previous payment application, within fifteen (15) calendar days of notice to Seller of the identified overpayment Seller shall pay to Buyer the identified overpayment and, if the audit reveals that Buyer overpayment to Seller is more than five percent (5.0%) of the billings reviewed, all expenses and costs incurred by the Authorized Auditors arising out of or related to the examination or audit.

Section 9.6 Electric Metering Device. The Facility Energy made available to Buyer or Buyer's Agent by Seller under this Agreement shall be measured using one (1) Electric Metering Device installed, owned and maintained by Buyer. Buyer or its designee, at no expense to Seller, shall inspect and test all Electric Metering Devices as required. If an Electric Metering Device fails to register, or if the measurement made by an Electric Metering Device is found upon testing to be inaccurate by more than one percent (1.0%), an adjustment shall be made correcting all measurements by the inaccurate or defective Electric Metering Device for both the amount of the inaccuracy and the period of the inaccuracy. The adjustment period shall be determined as far as can be reasonably ascertained by Buyer from the best available data. If the period of the inaccuracy cannot be ascertained reasonably, any such adjustment shall be for a period equal to one-third of the time elapsed since the preceding test of the Electric Metering Devices. To the extent that the adjustment period covers a period of deliveries for which payment has already been made by Buyer, Buyer shall use the corrected measurements as determined in accordance with this Section 9.6 to recompute the amount due for the period of the inaccuracy and shall subtract the previous payments by Buyer for this period from such recomputed amount. Any difference shall be accounted for in the next statement Buyer sends to Seller.

Section 9.7 Power Revenue Fund. Any amounts payable by Buyer under this Agreement shall be payable solely from Buyer's Power Revenue Fund. No other fund or account held by or on behalf of Buyer (or any other department or division thereof) may be used to satisfy any such obligations.

Section 9.8 Taxes. Seller shall be responsible for and shall pay, before the due dates therefore, any and all federal, state and local Taxes incurred by it as a result of entering into this Agreement and all Taxes imposed or assessed with respect to the Facility, the Facility site, or any other assets of Seller, the sale or use of Energy and Environmental Attributes and all Taxes related to Seller's income.

ARTICLE X REPRESENTATIONS; WARRANTIES; SELLER'S COVENANTS

Section 10.1 Representations and Warranties of Buyer. Buyer makes the following representations and warranties to Seller as of the Effective Date:

- (a) Buyer is a validly existing California charter city and has the legal power and authority to own its properties, to carry on its business as now being conducted and to enter into this Agreement and all Ancillary Documents to which it is a party and carry out the transactions contemplated hereby and thereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement and all Ancillary Documents to which it is a party.
- (b) The execution, delivery and performance by Buyer of this Agreement and all Ancillary Documents to which it is a party have been duly authorized by all necessary action, and do not and will not require any consent or

approval of Buyer's regulatory/governing bodies, other than that which has been obtained.

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

Section 10.2 Representations, Warranties and Covenants of Seller. Seller makes the following representations, warranties and covenants to Buyer:

- (a) Seller is a [limited liability company/partnership/corporation/person] [duly organized, validly existing and in good standing under the laws of its respective state of incorporation or organization], is qualified to do business in the State of California and has the legal power and authority to own and lease its properties, to carry on its business as now being conducted and has all necessary authority, permits and approvals, including, to the extent required, any FERC authorization, to enter into this Agreement and all Ancillary Documents to which it is a party and to carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement and all Ancillary Documents to which it is a party.
- (b) The execution, delivery and performance by Seller of this Agreement and all Ancillary Documents to which it is a party, including the consummation of the transactions contemplated thereby and the fulfillment of and compliance with the provisions of this Agreement and all Ancillary Documents to which it is a party, have been duly authorized by all necessary action, and do not and will not require any consent or approval other than those which have already been obtained.
- (c) The execution and delivery of this Agreement and all Ancillary Documents to which Seller is a party, the consummation of the transactions contemplated hereby and thereby and the fulfillment of and compliance with the provisions of this Agreement and such Ancillary Documents, do not and will not conflict with or constitute a breach of or a default under, any of the terms, conditions or provisions of any Requirement of Law, or any organizational documents or any other agreement or instrument to which Seller is a party or by which it or any of its property is bound or result in or require the creation or imposition of any Lien upon any of the properties or assets of Seller, and Seller has obtained or shall timely obtain all Permits required for the performance of its obligations hereunder and there under and operation of the Facility in

accordance with the requirements of this Agreement and all Ancillary Documents to which it is a party.

- (d) This Agreement and all Ancillary Documents to which Seller is a party constitute the legal, valid and binding obligation of Seller which is party thereto enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.
- (e) There is no pending, or to the knowledge of Seller, threatened action or proceeding affecting Seller before any Governmental Authority, which purports to affect the legality, validity or enforceability of this Agreement or any Ancillary Documents to which it is a party.
- (f) Seller is not in violation of any Requirement of Law, which violations, individually or in the aggregate, would reasonably be expected to result in a material adverse effect on the business, assets, operations, condition (financial or otherwise) or prospects of Seller, or the ability of Seller to perform any of its obligations under this Agreement or any Ancillary Documents to which it is a party.
- (g) The CEQA authorizations or other Permits required to construct, maintain or operate the Facility and for the production, sale and delivery of Energy and Environmental Attributes in accordance with the requirements of this Agreement and all Ancillary Documents and all applicable Requirements of Law will be timely obtained in the ordinary course of business.
- (h) Seller owns or possesses, or will own or possess in a timely manner, all patents, rights to patents, trademarks, copyrights and licenses necessary for the performance by Seller of this Agreement and all Ancillary Documents to which it is a party and the transactions contemplated thereby, without any conflict with the rights of others.
- (i) At all times after the Effective Date, Seller shall have Site Control. Seller shall provide Buyer with prompt notice of any change in the status of Seller's Site Control.
- (j) Neither Seller nor, to Seller's knowledge, the owner of the Site has participated in or submitted any claim for receipt of funds under any net metering program or ratepayer-funded on-site generation incentives for the Facility. Seller waives all claims for eligibility for, and will not submit any claim for receipt of funds under, any net metering program or ratepayer-funded on-site generation incentives for the Facility.

ARTICLE XI
DEFAULT; TERMINATION AND REMEDIES

Section 11.1 Default. Each of the following events or circumstances shall constitute a “*Default*” by the responsible Party (the “*Defaulting Party*”):

- (a) *Buyer Payment or Performance Default.* Failure by Buyer to make any payment or perform any of its other duties or obligations under this Agreement or any Ancillary Documents to which it is a party when and as due which is not cured within thirty (30) calendar days after receipt of notice thereof from Seller.
- (b) *Seller Payment or Performance Default.* Failure by Seller to make any payment or perform any of its other duties or obligations under this Agreement or any Ancillary Documents to which it is a party when and as due which is not cured within thirty (30) calendar days after receipt of notice thereof from Buyer.
- (c) *Buyer Breach of Representation and Warranty.* Inaccuracy in any material respect at the time made or deemed to be made of any representation, warranty, certification or other statement made by Buyer in this Agreement or any Ancillary Document to which it is a party.
- (d) *Seller Breach of Representation and Warranty.* Inaccuracy in any material respect at the time made or deemed to be made of any representation, warranty, certification or other statement made by Seller in this Agreement or any Ancillary Documents to which it is a party.
- (e) *Buyer Bankruptcy.* Bankruptcy of Buyer.
- (f) *Seller Bankruptcy.* Bankruptcy of Seller.
- (g) *Insurance Default.* The failure of Seller to maintain and provide acceptable evidence of the required insurance for the required period of coverage as set forth in Appendix D.
- (h) *Fundamental Change.* Seller consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another Person and at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee Person fails to assume all the obligations of Seller under this Agreement and all Ancillary Documents to which it is a party pursuant to an agreement satisfactory to Buyer.

Section 11.2 Default Remedy. If a Default has occurred and is continuing, the remedy of the non-defaulting Party shall be the exercise of any rights and remedies provided for herein, or otherwise available at law or equity, including (i) application of all amounts available under the Development Security Deposit against any amounts then payable by Seller to Buyer

under this Agreement or any Ancillary Documents and (ii) termination of this Agreement pursuant to Section 11.3. No failure of either Party to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by either Party of any right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power.

Section 11.3 Termination for Default. If Default occurs, the Party that is not the Defaulting Party (the “*Non Defaulting Party*”) may, for so long as the Default is continuing and without limiting any other rights or remedies available to the Non-Defaulting Party under this Agreement, by notice to the Defaulting Party establish a date, which shall coincide with the last day of a statement period, but no later than thirty (30) days after the date of such notice, on which this Agreement shall terminate; provided that if a Default is due to the Bankruptcy of either Party, this Agreement shall automatically terminate on the occurrence of such event, without notice or other action by either Party.

ARTICLE XII MISCELLANEOUS

Section 12.1 Authorized Representative. Each Party hereto shall designate an authorized representative who shall be authorized to act on its behalf with respect to those matters contained herein (each an “*Authorized Representative*”), which shall be the functions and responsibilities of such Authorized Representatives. Each Party may also designate an alternate who may act for the Authorized Representative. Within thirty (30) calendar days after execution of this Agreement, each Party shall notify the other Party of the identity of its Authorized Representative, and alternate if designated, and shall promptly notify the other Party of any subsequent changes in such designation. The Authorized Representatives shall have no authority to alter, modify, or delete any of the provisions of this Agreement.

Section 12.2 Notices. With the exception of statements and payments in Section 9.2 hereof, all notices, requests, demands, consents, waivers and other communications which are required under this Agreement shall be in writing and shall be deemed properly sent if delivered in person or sent by facsimile transmission, reliable overnight courier, or sent by registered or certified mail, postage prepaid to the persons specified in Appendix B. In addition to the foregoing, the Parties may agree in writing at any time to deliver notices, requests, demands, consents, waivers and other communications through alternate methods, such as electronic mail.

Section 12.3 Further Assurances. Each Party agrees to execute and deliver all further instruments and documents, and take all further action not inconsistent with the provisions of this Agreement that may be reasonably necessary to effectuate the purposes and intent of this Agreement.

Section 12.4 No Dedication of Facilities. Any undertaking by one Party hereto to the other Party under any provisions of this Agreement shall not constitute the dedication of the system or any portion thereof of either Party to the public or to the other Party or any other Person, and it is understood and agreed that any such undertaking by either Party shall cease upon the termination of such Party’s obligations under this Agreement.

Section 12.5 Force Majeure. A Party shall not be considered to be in default in the performance of any of its obligations under this Agreement when and to the extent such Party's performance is prevented by a Force Majeure; *provided, however,* that the Party has given a written detailed description of the full particulars of the Force Majeure to the other Party reasonably promptly after becoming aware thereof.

Section 12.6 Assignment of Agreement. Buyer may from time to time and at any time assign any or all of its rights, and delegate any or all of its obligations, under this Agreement in whole or in part without the consent of Seller. Upon any such assignment and delegation of obligations by such an assignee, Buyer shall be relieved of and fully discharged from all its obligations hereunder, whether such obligations arose before or after the date of such assignment and delegation. Seller shall not assign any of its rights, or delegate any of its obligations, under this Agreement without the prior written consent of Buyer and unless Seller has provided written notice of such assignment or delegation to Buyer at least ten (10) Business Days before such assignment or delegation, other than collateral assignments to the extent described below, provided that a Seller may assign any of its rights, or delegate any of its obligations, under this Agreement without prior written consent if such assignment is to a retail customer of Buyer who owns the premises on which the Facility is located. Any purported assignment or delegation in violation of this provision shall be null and void and of no force or effect. To facilitate Seller's obtaining of financing to construct and operate the Facility, Buyer shall provide, at Seller's cost and expense, such consents to collateral assignment or other documents (in form and substance satisfactory to Buyer and the Los Angeles City Attorney) as may be reasonably requested by Seller or any Facility Lender in connection with the financing of the Facility. Notwithstanding the foregoing or anything else expressed or implied herein to the contrary, Seller shall not assign, transfer, convey, encumber, sell or otherwise dispose of all or any portion of the Facility Energy, Capacity Rights or Environmental Attributes (not including the proceeds thereof) to any Facility Lender.

Section 12.7 Entire Agreement. This Agreement (including all Appendices and Exhibits) contains the entire understanding concerning the subject matter herein and supersedes and replaces any prior negotiations, discussions or agreements between the Parties, or any of them, concerning that subject matter, whether written or oral, except as expressly provided for herein. This is a fully integrated document. Each Party acknowledges that no other party, representative or agent, has made any promise, representation or warranty, express or implied, that is not expressly contained in this Agreement that induced the other Party to sign this document. This Agreement may be amended or modified only by an instrument in writing signed by each Party.

Section 12.8 Governing Law; Venue. This Agreement was made and entered into in the City of Los Angeles and shall be governed by, interpreted and enforced in accordance with the laws of the State of California and the City of Los Angeles, without regard to conflict of law principles. All litigation arising out of, or relating to this Agreement, shall be brought in a state or federal court in the County of Los Angeles in the State of California. The Parties irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of California and waive any defense of forum non conveniens.

Section 12.9 Representation. Each party has been represented by legal counsel in the negotiations and execution of this Agreement.

Section 12.10 Execution in Counterparts. This Agreement may be executed in counterparts and upon execution by each signatory, each executed counterpart shall have the same force and effect as an original instrument and as if all signatories had signed the same instrument.

Section 12.11 Effect of Section Headings. Section headings appearing in this Agreement are inserted for convenience only and shall not be construed as interpretations of text.

Section 12.12 Waiver. The failure of either Party to this Agreement to enforce or insist upon compliance with or strict performance of any of the terms or conditions hereof, or to take advantage of any of its rights hereunder, shall not constitute a waiver or relinquishment of any such terms, conditions or rights, but the same shall be and remain at all times in full force and effect. Notwithstanding anything expressed or implied herein to the contrary, nothing contained herein shall preclude either Party from pursuing any available remedies for breaches not rising to the level of a Default, including recovery of damages caused by the breach of this Agreement and specific performance or any other remedy given under this Agreement or now or hereafter existing in law or equity or otherwise. Seller acknowledges that money damages may not be an adequate remedy for violations of this Agreement and that Buyer may, in its sole discretion, seek and obtain from a court of competent jurisdiction specific performance or injunctive or such other relief as such court may deem just and proper to enforce this Agreement or to prevent any violation hereof. Seller hereby waives any objection to specific performance or injunctive relief. The rights granted herein are cumulative.

Section 12.13 Relationship of the Parties. This Agreement shall not be interpreted to create an association, joint venture or partnership between the Parties hereto or to impose any partnership obligation or liability upon either such Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

Section 12.14 Third Party Beneficiaries. The provisions of this Agreement are solely for the benefit of the parties hereto. Nothing in this Agreement, whether expressed or implied, shall be construed to give to, or be deemed to create in, any other Person, whether as a third party beneficiary of this Agreement or otherwise, any legal or equitable right, remedy or claim in respect of this Agreement of any covenant, condition, provision duty, obligation or undertaking contained or established herein. This Agreement shall not be construed in any respect to be a contract in whole or in part for the benefit of any Person not a party hereto.

Section 12.15 Indemnification. To the fullest extent permitted by applicable law, except for the gross negligence or willful misconduct of LADWP, Seller undertakes and agrees to defend, indemnify and hold harmless LADWP, the City of Los Angeles, and each of their respective boards, commissioners, officers, agents, employees, assigns and successors in interest, as applicable (hereinafter, collectively, "Indemnitees") from and against any and all suits and causes of action (including proceedings before FERC), claims, losses, demands, penalties, judgments, costs, expenses, damages (including indirect, consequential, or incidental),

disbursements of any kind or nature whatsoever, including but not limited to attorney's fees (including allocated costs of internal counsel), other monetary remedies, and costs of litigation, damages, obligation or liability of any kind or nature whatsoever, in any manner arising by reason of, incident to, or connected in any manner with the performance, non-performance or breach of this Agreement, or any other act, error or omission or willful misconduct by or of the Seller or Seller's officers, employees, agents, contractors, sub-contractors of any tier, including but not limited to any such performance, non-performance, breach, act, error or omission or willful misconduct that results in intellectual property infringement or leads to death or injury to any person, including but not limited to Seller, Seller's officers, employees, agents, contractors or sub-contractors of any tier, or damage or destruction to property of any kind or nature whatsoever, of either Party hereto, or of third parties, or loss of use (hereinafter, collectively, "Indemnified Liabilities"). The provisions of this paragraph shall be in addition to, and not exclusive of, any other rights or remedies which Indemnitees have at law, in equity, under this Agreement or otherwise. To the extent that the undertakings to defend, indemnify, pay and hold harmless set forth in this subsection may be unenforceable in whole or in part because they are violative of any law or public policy, Seller shall contribute the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Indemnitees or any of them. The provisions of this paragraph shall survive the expiration or termination of this Agreement.

Section 12.16 Limitation of Liability. IN SIGNING THIS AGREEMENT, SELLER UNDERSTANDS AND AGREES, THAT, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, NONE OF LADWP, THE CITY OF LOS ANGELES, OR ANY OF THEIR RESPECTIVE BOARDS, COMMISSIONERS, OFFICERS, AGENTS, EMPLOYEES, ASSIGNS AND SUCCESSORS IN INTEREST, AS APPLICABLE, SHALL BE LIABLE, RESPONSIBLE, ANSWERABLE OR ACCOUNTABLE TO ANY PERSON UNDER ANY CIRCUMSTANCES (i) WITH RESPECT TO LADWP'S OBLIGATIONS UNDER OR IN CONNECTION WITH THIS AGREEMENT, EXCEPT THAT SUCH LIMITATION SHALL NOT LIMIT THE LIABILITY, IF ANY, OF LADWP FOR ITS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OR (ii) FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS, LOSS OF USE OR OTHER COSTS OF BUSINESS INTERRUPTION RELATED TO THIS AGREEMENT, WHETHER BASED ON STATUTE, TORT, CONTRACT, OR UNDER ANY OTHER THEORY OF LIABILITY. SELLER FURTHER UNDERSTANDS THAT THIS LIMITATION IS WITHOUT REGARD TO THE CAUSE OR CAUSES OF SUCH DAMAGES OR COSTS, INCLUDING NEGLIGENCE, BE IT SOLE, JOINT, CONTRIBUTORY, OR CONCURRENT, ACTIVE OR PASSIVE. ANY LIABILITY OF LADWP, THE CITY OF LOS ANGELES, OR ANY OF THEIR RESPECTIVE BOARDS, COMMISSIONERS, OFFICERS, AGENTS, EMPLOYEES, ASSIGNS AND SUCCESSORS IN INTEREST, AS APPLICABLE, SHALL BE LIMITED TO ACTUAL DIRECT DAMAGES, AND SUCH ACTUAL DIRECT DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED UNLESS EXPRESSLY PROVIDED FOR HEREIN.

Section 12.17 Severability. In the event any of the terms, covenants or conditions of this Agreement, or the application of any such terms, covenants or conditions, shall be held invalid, illegal or unenforceable by any court having jurisdiction, all other terms, covenants and

conditions of this Agreement and their application not adversely affected thereby shall remain in force and effect, *provided* that the remaining valid and enforceable provisions materially retain the essence of the Parties' original bargain.

Section 12.18 Disclosure of Information. Seller acknowledges that Buyer, as a California municipal corporation, is subject to disclosure as required by the California Public Records Act, Cal. Govt. Code §§ 6250 *et seq.* and the Ralph M. Brown Act, Cal. Govt. Code §§ 54950 *et seq.* Information of Seller provided to Buyer pursuant to this Agreement will become the property of Buyer and Seller acknowledges that Buyer shall not have any liability whatsoever under this Agreement or otherwise for any claims or causes of action whatsoever resulting from or arising out of Buyer's copying or releasing to a third party any of the information of Seller pursuant to either of the aforementioned Acts.

Section 12.19 Fixed-Rate Contract: Mobile-Sierra Clause. The Parties hereby stipulate and agree that this Agreement was entered into as a result of arms'-length negotiations between the Parties. Further, the Parties believe that, to the extent the sale of Energy under this Agreement is subject to Sections 205 and 206 of the Federal Power Act, 16 U.S.C. Sections 824d or 824e, the rates, terms and conditions of this Agreement are just and reasonable within the meaning of Sections 205 and 206 of the Federal Power Act, and that the rates, terms and conditions of this Agreement will remain so over the life of the Agreement. The Parties waive all rights to challenge the validity of this Agreement or whether it is just and reasonable for and with respect to the entire term thereof, under Sections 205 and 206 of the Federal Power Act and to request the FERC to revise the terms and conditions and the rates or services specified in this Agreement, and hereby agree to make no filings at the FERC or with any other state or federal agency, board, court or tribunal challenging the rates, terms and conditions of this Agreement as to whether they are just and reasonable or in the public interest under the Federal Power Act. The Parties hereby further stipulate and agree that neither Party may bring any action, proceeding or complaint under Section 205 or 206 of the Federal Power Act, 16 U.S.C. 824d or 824e, seeking to modify, cancel, suspend, or abrogate the rates, terms and conditions of this Agreement, or to prevent this Agreement from taking effect. It is further agreed that, absent the agreement of both Parties to a proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any provision of this section is unenforceable or ineffective as to such Party), a non-party, or FERC acting *sua sponte* shall solely be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Corp.*, 350 U.S. 332 (1956) and *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), and clarified by *Morgan Stanley Capital Group, Inc. v. Pub. Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008).

Section 12.20 No Agreement for Retail Electric Service. This Agreement does not constitute an agreement by LADWP to provide retail electrical service to Seller or any third party. Such arrangements must be made separately with LADWP.

Section 12.21 Attorneys' Fees. Both Parties hereto agree that in any action to enforce the terms of this Agreement, each Party shall be responsible for its own attorneys' fees and costs.

Section 12.22 LADWP Business Policies.

Section 12.22.1 Non-Discrimination. Unless otherwise exempt, this contract is subject to the non-discrimination provisions in Sections 10.8 through 10.8.2 of the Los Angeles Administrative Code, as amended from time to time. The Seller shall comply with the applicable non-discrimination and affirmative action provisions of the laws of the United States of America, the State of California, and the City of Los Angeles. In performing this contract, Seller shall not discriminate in its employment practices against any employee or applicant for employment because of such person's race, religion, national origin, ancestry, sex, sexual orientation, age, disability, domestic partner status, marital status or medical condition. Any subcontract entered into by Seller relating to this contract, to the extent allowed hereunder, shall include a like provision for work to be performed under this contract.

Failure of Seller to comply with this requirement or to obtain the compliance of its subcontractors with such obligations shall subject Seller to the imposition of any and all sanctions allowed by law, including but not limited to termination of Seller's contract with the Buyer.

Section 12.22.2 Equal Employment Practices. Unless otherwise exempt, this contract is subject to the equal employment practices provisions in Section 10.8.3 of the Los Angeles Administrative Code, as amended from time to time.

- A. During the performance of this contract, Seller agrees and represents that it will provide equal employment practices and Seller and each subcontractor hereunder will ensure that in his or her employment practices persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
 - 1. This provision applies to work or service performed or materials manufactured or assembled in the United States.
 - 2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
 - 3. Seller agrees to post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. Seller will, in all solicitations or advertisements for employees placed by or on behalf of Seller, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

- C. As part of the Buyer's supplier registration process, and/or at the request of the awarding authority, or the Board of Public Works, Office of Contract Compliance, Seller shall certify in the specified format that he or she has not discriminated in the performance of City of Los Angeles contracts against any employee or applicant for employment on the basis or because of race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.
- D. Seller shall permit access to and may be required to provide certified copies of all of his or her records pertaining to employment and to employment practices by the awarding authority or the Office of Contract Compliance for the purpose of investigation to ascertain compliance with the Equal Employment Practices provisions of City of Los Angeles contracts. On their or either of their request Seller shall provide evidence that he or she has or will comply therewith.
- E. The failure of any Seller to comply with the Equal Employment Practices provisions of this contract may be deemed to be a material breach of this contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard has been given to Seller.
- F. Upon a finding duly made that Seller has failed to comply with the Equal Employment Practices provisions of this contract, the contract may be forthwith canceled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the City of Los Angeles. In addition thereto, such failure to comply may be the basis for a determination by the awarding authority or the Board of Public Works that the Seller is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Charter of the City of Los Angeles. In the event of such a determination, Seller shall be disqualified from being awarded a contract with the Buyer and the City of Los Angeles for a period of two years, or until Seller shall establish and carry out a program in conformance with the provisions hereof.
- G. Notwithstanding any other provision of this contract, the Buyer shall have any and all other remedies at law or in equity for any breach hereof.

- H. The Board of Public Works shall promulgate rules and regulations through the Office of Contract Compliance, and provide necessary forms and required language to the awarding authorities to be included in City of Los Angeles Request for Bids or Request for Proposal packages or in supplier registration requirements for the implementation of the Equal Employment Practices provisions of this contract, and such rules and regulations and forms shall, so far as practicable, be similar to those adopted in applicable Federal Executive orders. No other rules, regulations or forms may be used by an awarding authority of the City of Los Angeles to accomplish the contract compliance program.
- I. Nothing contained in this contract shall be construed in any manner so as to require or permit any act which is prohibited by law.
- J. At the time a supplier registers to do business with the City of Los Angeles, or when an individual bid or proposal is submitted, Seller shall agree to adhere to the Equal Employment Practices specified herein during the performance or conduct of City of Los Angeles Contracts.
- K. Equal Employment Practices shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
 - 1. Hiring practices;
 - 2. Apprenticeships where such approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
 - 3. Training and promotional opportunities; and
 - 4. Reasonable accommodations for persons with disabilities.
- L. All Sellers subject to the provisions of this section shall include a like provision in all subcontracts awarded for work to be performed under the contract with the Buyer and shall impose the same obligations, including but not limited to filing and reporting obligations, on the subcontractors as are applicable to Seller. Failure of Seller to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject Seller to the imposition of any and all sanctions allowed by law, including but not limited to termination of the Seller's contract with the Buyer.

Section 12.22.3 Affirmative Action Program. Unless otherwise exempt, this contract is subject to the affirmative action program provisions in Section 10.8.4 of the Los Angeles Administrative Code, as amended from time to time.

- A. During the performance of this contract, Seller certifies and represents that Seller and each subcontractor hereunder will adhere to an affirmative action program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
 - 1. This provision applies to work or services performed or materials manufactured or assembled in the United States.
 - 2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
 - 3. Seller shall post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. Seller will, in all solicitations or advertisements for employees placed by or on behalf of Seller, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
- C. As part of the Buyer's supplier registration process, and/or at the request of the awarding authority or the Office of Contract Compliance, Seller shall certify on an electronic or hard copy form to be supplied, that Seller has not discriminated in the performance of City of Los Angeles contracts against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
- D. Seller shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of City of Los Angeles contracts, and on their or either of their request to provide evidence that it has or will comply therewith.

- E. The failure of Seller to comply with the Affirmative Action Program provisions of this contract may be deemed to be a material breach of this contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to Seller.
- F. Upon a finding duly made that Seller has breached the Affirmative Action Program provisions of this contract, the contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the City of Los Angeles. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said Seller is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such Seller shall be disqualified from being awarded a contract with the City of Los Angeles for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.
- G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that Seller has been guilty of a willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program provisions of a City of Los Angeles contract, there may be deducted from the amount payable to Seller by the City of Los Angeles under the contract, a penalty of ten dollars (\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a City of Los Angeles contract.
- H. Notwithstanding any other provisions of this contract, Buyer shall have any and all other remedies at law or in equity for any breach hereof.
- I. The Public Works Board of Commissioners shall promulgate rules and regulations through the Office of Contract Compliance and provide to the awarding authorities electronic and hard copy forms for the implementation of the Affirmative Action Program provisions of City of Los Angeles contracts, and rules and regulations and forms shall, so far as practicable, be similar to those adopted in applicable Federal Executive Orders. No other

rules, regulations or forms may be used by an awarding authority of the City of Los Angeles to accomplish this contract compliance program.

- J. Nothing contained in this contract shall be construed in any manner so as to require or permit any act which is prohibited by law.

- K. Seller shall submit an Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it registers to do business with the City of Los Angeles. The plan shall be subject to approval by the Office of Contract Compliance prior to award of the contract. The awarding authority may also require Sellers and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this section shall be effective for a period of twelve months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, Seller may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, Seller must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the contract is awarded.
 - 1. Every contract of \$5,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.

 - 2. Seller may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.

- L. The Office of Contract Compliance shall annually supply the awarding authorities of the City of Los Angeles with a list of contractors and suppliers who have developed Affirmative Action Programs. For each contractor and supplier the Office of Contract Compliance shall state the date the approval expires. The Office of Contract Compliance shall not withdraw its approval for any Affirmative Action Plan or change the Affirmative Action Plan

after the date of contract award for the entire contract term without the mutual agreement of the awarding authority and Seller.

- M. The Affirmative Action Plan required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by the Board of Public Works, Office of Contract Compliance or the awarding authority shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
1. Apprenticeship where approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
 2. Classroom preparation for the job when not apprenticeable;
 3. Pre-apprenticeship education and preparation;
 4. Upgrading training and opportunities;
 5. Encouraging the use of contractors, subcontractors and suppliers of all racial and ethnic groups, provided, however, that any contract subject to this ordinance shall require the Seller, subcontractor or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the Seller's, subcontractor's or supplier's geographical area for such work;
 6. The entry of qualified women, minority and all other journeymen into the industry; and
 7. The provision of needed supplies or job conditions to permit persons with disabilities to be employed, and minimize the impact of any disability.
- N. Any adjustments which may be made in Seller's or supplier's work force to achieve the requirements of the City's Affirmative Action Contract Compliance Program in purchasing and construction shall be accomplished by either an increase in the size of the work force or replacement of those employees who leave the work force by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.
- O. Affirmative Action Agreements resulting from the proposed Affirmative Action Plan or the pre-registration, pre-bid, pre-proposal or pre-award conferences shall not be confidential and may be publicized by Seller at his or her discretion. Approved

Affirmative Action Agreements become the property of the City and may be used at the discretion of the City in its Contract Compliance Affirmative Action Program.

- P. This ordinance shall not confer upon the City of Los Angeles or any agency, Board or Commission thereof any power not otherwise provided by law to determine the legality of any existing collective bargaining agreement and shall have application only to discriminatory employment practices by seller or suppliers engaged in the performance of City contracts.
- Q. All contractors subject to the provisions of this section shall include a like provision in all subcontracts awarded for work to be performed under the contract with Buyer and shall impose the same obligations, including but not limited to filing and reporting obligations, on the subcontractors as are applicable to Seller. Failure of Seller to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject Seller to the imposition of any and all sanctions allowed by law, including but not limited to termination of Seller's contract with Buyer.

Section 12.22.4 Compliance With Los Angeles City Charter

Section 470(c)(12). Seller, any subcontractors, and their principals are obligated to fully comply with City of Los Angeles Charter Section 470(c)(12) and related ordinances, regarding limitations on campaign contributions and fundraising for certain elected City officials or candidates for elected City office if the contract is valued at \$100,000 or more and requires approval of a City elected official. Additionally, Seller is required to provide and update certain information to the City as specified by law. Any Seller subject to Charter Section 470(c)(12), shall include the following notice in any contract with a subcontractor expected to receive at least \$100,000 for performance under this contract:

Notice Regarding Los Angeles Campaign Contribution and Fundraising Restrictions:

As provided in Charter Section 470(c)(12) and related ordinances, you are subcontractor on City of Los Angeles contract #_____. Pursuant to City Charter Section 470(c)(12), subcontractor and its principals are prohibited from making campaign contributions and fundraising for certain elected City officials or candidates for elected City office for 12 months after the City contract is signed. Subcontractor is required to provide to Seller names and addresses of the subcontractor's principals and contact information and shall update that information if it changes during the 12 month time period. Subcontractor's information included must be provided to Seller within 10 business days. Failure to comply may result in termination of contract or any other available legal remedies

including fines. Information about the restrictions may be found at the City Ethics Commission's website at <http://ethics.lacity.org/> or by calling 213/978-1960.

Seller, Subcontractors, and their Principals shall comply with these requirements and limitations. Violation of this provision shall entitle the Buyer to terminate this Agreement and pursue any and all legal remedies that may be available.

Section 12.22.5 Child Support Policy. Seller and any of its subcontractor(s) must fully comply with all applicable state and federal employment reporting requirements for Seller's and any Seller's subcontractor(s)' employees. Seller and any of its subcontractor(s) must fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment in accordance with the California Family Code. Seller and any of its subcontractor(s) must certify that the principal owner(s) thereof (any person who owns an interest of 10 percent or more) are in compliance with any Wage and Earnings Assignment Orders or Notices of Assignment applicable to them personally. Seller and any of its subcontractor(s) must certify that such compliance will be maintained throughout the term of this Agreement. Failure of Seller and/or any of its subcontractor(s) to fully comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignments or Notices of Assignment or failure of the principal owner(s) to comply with any Wage and Earnings Assignments or Notices of Assignment applicable to them personally shall constitute a Default under this Agreement. Failure of Seller and/or any of its subcontractor(s) or principal owner(s) thereof to cure the default within ninety (90) days of notice of such Default by Buyer shall subject this Agreement to termination.

Section 12.22.6 Living Wage Ordinance. Seller and any of its subcontractor(s) must fully comply with the City of Los Angeles Living Wage Ordinance (LWO), Los Angeles Administrative Code Sections 10.37 *et seq.* Unless approved for an exemption, contractors under contracts primarily for the furnishing of services to or for the City and that involve an expenditure in excess of \$25,000 and a contract term of at least three (3) months, lessees and licensees of City property, and certain recipients of City financial assistance, shall comply with the provisions of the LWO. Seller who believes that they meet the qualifications for one of the exemptions described in the LWO List of Statutory Exemptions may apply for exemption from the Ordinance by submitting an application for Non-Coverage or Exemption (Form OCC/LW-10), or the Non-Profit/One-Person Contractor Certification of Exemption (OCC/LW-13). The List of Statutory Exemptions, the Application, and the Certification can be found at the City of Los Angeles Office of Contract Compliance at <http://bca.lacity.org>.

Section 12.22.7 Los Angeles City Business Tax Registration Certificate. Seller shall obtain and keep in full force and effect during the term of this Agreement all Business Tax Registration Certificates required by the City of Los Angeles Business Tax Ordinance, Article 1, Chapter II, Section 21.00 and following, of the Los Angeles Municipal Code. Seller's Vendor Registration Number must be shown on all invoices submitted for payment. Failure to do so, may delay payment. For additional

information regarding applicability of the City Business Tax Registration, contact the City of Los Angeles Clerk's Office at (213) 978-1521.

Section 12.22.8 Taxpayer Identification Number (TIN). Seller declares that its authorized TIN is [_____]. No payment will be made under this Agreement without a valid TIN number.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date set forth at the beginning of this Agreement.

CITY OF LOS ANGELES acting by and through
the DEPARTMENT OF WATER AND POWER

Date: _____

By: _____
Name

Title

[SELLER]

Date: _____

By: _____
Name

Title

APPENDIX A
FACILITY

1. Name of Facility: [name]
 - (a) Site: [city, county and state]
 - (b) Point of Delivery [circuit #]
2. Owner of Property: [name]
3. Owner and Operator of Facility: [name]
4. Equipment:
 - (a) Type of Facility: [generation type]
 - (b) Capacity:

Total nominal gross nameplate capacity (under expected average site conditions):
[XXXX] kW (AC)

Total nominal net capacity (under expected average site conditions): [XXXX] kW (AC)
6. Planned Commercial Operation Date: [XXXX 1, 20XX]
7. Permits: [to be filled in based on specific project requirements]

APPENDIX B
BUYER AND SELLER BILLING, NOTIFICATION AND CONTACT INFORMATION

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

1.1 If to Buyer:

Department of Water and Power of the City of Los Angeles
111 North Hope Street, Room 940 JFB
Los Angeles, California 90012
Attention: FiT Program Administrator

Telephone: (213) 367-4122
Facsimile: (213) 267-2591
Email: fit@ladwp.com

1.2 If to Seller:

[_____]

[_____]

[_____]

Attention:

Telephone: [XXX]
Facsimile: [XXX]

2. Statements and payments shall be transmitted to the following addresses:

2.1 If to Buyer:

Department of Water and Power of the City of Los Angeles
P.O. Box 51111
Los Angeles, California 90051-0100
Attention: Accounts Receivable

2.2 If to Seller:

[_____]

[_____]

[_____]

Attention:

Telephone: [XXX]
Facsimile: [XXX]

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

If to Buyer:

Department of Water and Power of the City of Los Angeles
111 North Hope Street, Room 940 JFB
Los Angeles, California 90012
Attention: FiT Program Administrator

Telephone: (213) 367-4122
Facsimile: (213) 267-2591
Email: fit@ladwp.com

If to Seller:

[_____]

[_____]

[_____]

Attention:

Telephone: [(XXX) XXX-XXX]
Facsimile: [(XXX) XXX-XXXX]

APPENDIX C
CALCULATION OF MONTHLY PAYMENT

1. The Purchase Price and monthly payment for Facility Energy will be calculated as the sum of Facility Energy delivered at each hour multiplied by the Base Price for Energy (BPE) and the Time-of-Delivery (TOD) multiplier for each particular hour.
2. The BPE for this agreement is \$[_____.__] per kilowatt-hour.
3. TOD multipliers will be applied to the BPE as outlined in the table below:

Time of Delivery Multiplier				
		High Peak	Low Peak	Base
Period	Months	M-F (1:00 pm - 5:00 pm)	M-F (10:00 am - 1:00 pm) M-F (5:00 pm - 8:00 pm)	M-F (8:00 pm - 10:00 am) All Day Saturday, Sunday
High Season	Jun-Sep	2.25	1.10	0.50
Low Season	Oct-May	1.30	0.90	0.50

APPENDIX D **INSURANCE**

I. GENERAL REQUIREMENTS

Prior to the Effective Date, Seller shall furnish LADWP evidence of coverage from insurers acceptable to the LADWP and in a form acceptable to LADWP's Risk Management Section and the Office of the Los Angeles City Attorney. LADWP shall not by reason of its inclusion under these policies incur liability to the insurance carrier for payment of premium for these policies.

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

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

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

II. SPECIFIC COVERAGES REQUIRED

A. Commercial General Liability

Seller shall provide Commercial General Liability insurance with Blanket Contractual Liability, Independent Contractors, Broad Form Property Damage, Premises and Operations, Products and Completed Operations, fire Legal Liability and Personal Injury coverages included. Such insurance shall provide coverage for total limits actually arranged by Seller, but not less than \$1,000,000.00 combined single limit per occurrence. Should the policy have an aggregate limit, such aggregate limits should not be less than double the Combined Single Limit and be specific for this contract. Umbrella or Excess Liability coverages may be used to supplement primary coverages to meet the required limits. Evidence of such coverage shall be on LADWP's Additional Insured Endorsement form or on an endorsement to the policy acceptable to the Risk Management Section and the Office of the Los Angeles City Attorney, and shall provide for the following:

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

2. Severability-of-Interest or Cross-Liability Clause such as: “The policy to which this endorsement is attached shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the company’s liability.”
3. A description of the coverages included under the policy.

B. Excess Liability

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

III. APPLICABLE TERMS AND CONDITIONS

A. Additional Insured Status Required

Seller shall procure at its own expense, and keep in effect at all times during the term of this Agreement, the types and amounts of insurance specified on Exhibit A, the Contract Insurance Requirements. The specified insurance shall also, either by provisions in the policies, by the City of Los Angeles’ own endorsement form or by other endorsement attached to such policies, include and insure City of Los Angeles, LADWP, the Board, and all of its officers, employees and agents, their successors and assigns, as Additional Insureds, against the area of risk described herein as respects Seller's acts, errors or omissions in the performance of this contract or other related functions performed by or on behalf of Seller. Such insurance shall not limit or qualify the liabilities and obligations of the Seller assumed under the contract.

B. Severability of Interests and Cross Liability Required

Each specified insurance policy (other than Workers' Compensation and Employers' Liability and Property coverages) shall contain a Severability of Interest and Cross Liability clause which states, "It is agreed that the insurance afforded by this policy shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability," and a Contractual Liability Endorsement which shall state, "Such insurance as is afforded by this policy shall also apply to liability assumed by the insured under this Agreement with the City of Los Angeles."

C. Primary and Non-Contributing Insurance Required

All such insurance shall be Primary and Non-contributing with any other insurance held by the City of Los Angeles or LADWP where liability allegedly arises out of or results

from the acts or omissions of Seller, its agents, employees, officers, assigns, or any person or entity acting for or on behalf of Seller. Any insurance carried by the City of Los Angeles or LADWP which may be applicable shall be deemed to be excess insurance and the Seller's insurance is primary for all purposes despite any conflicting provision in the Seller's policies to the contrary.

D. Deductibles Subject to Department's Discretion

Deductibles and/or self-insured retentions shall be at the sole discretion of the Risk Manager of LADWP (hereinafter referred to as "Risk Manager"). LADWP shall have no liability for any premiums charged for such coverage(s), nor for payment of deductibles. The inclusion of the City of Los Angeles or LADWP, its Board, and all of its officers, employees and agents, and their agents and assigns, as additional insureds, is not intended to, and shall not, make them, or any of them a partner or joint venturer with Seller in its operations.

E. Proof of Insurance for Renewal or Extension Required

At least ten (10) days prior to the expiration date of any of the policies required on Exhibit A, "Contract Insurance Requirements," documentation showing that the insurance coverage has been renewed or extended shall be filed with LADWP. If such coverage is canceled or reduced in coverage, Seller shall, within fifteen (15) days of such cancellation or reduction of coverage, file with the Department evidence that the required insurance has been reinstated or provided through another insurance company or companies.

F. Submission of Acceptable Proof of Insurance and Notice of Cancellation

Seller shall provide proof to LADWP's Risk Manager of all specified insurance and related requirements either by production of the actual insurance policy(ies), by use of LADWP's own endorsement form(s), by other written evidence of insurance acceptable to the Risk Manager, but always in a form acceptable to the Risk Manager and the Office of the City Attorney. The documents evidencing all specified coverages shall be filed with LADWP prior to Seller beginning operations hereunder. Said proof shall contain at a minimum, the applicable policy number, the inclusive dates of policy coverages, the date the protection begins for LADWP, and the insurance carrier's name. It shall bear an original signature of an authorized representative of said carrier, and shall provide that such insurance shall not be subject to cancellation, material reduction in coverage or non-renewal except after written notice by certified mail, return receipt requested, to the City Attorney of the City of Los Angeles at least thirty (30) calendar days prior to the effective date thereof. The notification shall be sent by registered mail to: Risk Management Section, L.A. Water and Power, Post Office Box 51111, JFB Room 465, Los Angeles, California 90051-0100.

G. Failure to Maintain and Provide as Cause for Termination

Failure to maintain and provide acceptable evidence of the required insurance for the required period of coverage shall constitute a breach of contract, upon which LADWP

may immediately terminate or suspend the agreement.

H. Periodic Right to Review/Update Insurance Requirements

LADWP and Seller agree that the insurance policy limits specified on the attached Contract Insurance Requirements page may be reviewed for adequacy annually throughout the term of this Agreement by the Risk Manager/City Attorney, who may thereafter require Seller to adjust the amounts and types of insurance coverage however the Risk Manager/City Attorney deems to be adequate and necessary. The City of Los Angeles reserves the right to have submitted to it, upon request, all pertinent information about the agent and carrier providing such insurance, including applicable license and ratings.

I. Specific Insurance Requirements

Specific insurance requirements are set forth in Exhibit A, "Contract Insurance Requirements."

EXHIBIT A - CONTRACT INSURANCE REQUIREMENTS

CONTRACT INSURANCE REQUIREMENTS -- DEPARTMENT OF WATER AND POWER For Contractors, Service Providers, Vendors, and Tenants

Agreement/Activity/Operation: Feed In Tariff Agreements for Sale of Power
 Reference/Agreement: _____
 Term of Agreement: _____
 Contract Administrator and Phone: _____
 Buyer and Phone Number: _____
 Risk Manager /Date: _____ AMN/4-14-11

Contract-required types and amounts of insurance as indicated below by checkmark are the minimum which must be maintained. All limits are Combined Single Limit (Bodily Injury/Property Damage) unless otherwise indicated. Firm 30 day Notice of Cancellation required by Receipted Delivery.

PER OCCURRENCE LIMITS

- () WORKERS' COMPENSATION(Stat. Limits)/Employer's Liability: () _____
- | | |
|---------------------------------------|--|
| () Broad Form All States Endorsement | () US L&H (Longshore and Harbor Workers) |
| () Jones Act (Maritime Employment) | () Outer Continental Shelf |
| () Waiver of Subrogation | () Black Lung (Coal Mine Health and Safety) |
| () Other: _____ | () Other: _____ |
- () AUTOMOBILE LIABILITY: () _____
- | | |
|---------------------------|------------------------|
| () Owned Autos | () Any Auto |
| () Hired Autos | () Non-Owned Auto |
| () Contractual Liability | () Additional Insured |
| () MCS-90 (US DOT) | () Trucker's Form |
| () Waiver of Subrogation | () Other: _____ |
- (x) GENERAL LIABILITY: () Limit Specific to Project () Per Project Aggregate (\$1,000,000.00)
- | | | |
|----------------------------------|-------------------------------|-------------------------------|
| () Broad Form Property Damage | (x) Contractual Liability | (x) Personal Injury |
| (x) Premises and Operations | (x) Products/Completed Ops. | (x) Independent Contractors |
| () Fire Legal Liability | () Garagekeepers Legal Liab. | () Child Abuse/Molestation |
| () Corporal Punishment | () Collapse/Underground | () Explosion Hazard |
| () Watercraft Liability | () Pollution | (x) Addition Insured Status |
| () Waiver of Subrogation | () Airport Premises | () Hangarkeepers Legal Liab. |
| () Marine Contractors Liability | () Other: _____ | () Other: _____ |
- () PROFESSIONAL LIABILITY: () _____
- | | | |
|---------------------------|-------------------------------|---------------------------|
| () Contractual Liability | () Waiver of Subrogation | () 3 Year Discovery Tail |
| () Additional Insured | () Vicarious Liability Endt. | () Other: _____ |
- () AIRCRAFT LIABILITY: () _____
- | | | |
|----------------------------------|---------------------------|--------------------------------|
| () Passenger Per Seat Liability | () Contractual Liability | () Hull Waiver of Subrogation |
| () Pollution | () Additional Insured | () Other: _____ |
- () PROPERTY DAMAGE: () Loss Payable Status (AOIMA) () _____
- | | | |
|------------------------------------|----------------------------------|----------------------------------|
| () Replacement Value | () Actual Cash Value | () Agreed Amount |
| () All Risk Form | () Named Perils Form | () Earthquake: _____ |
| () Builder's Risk:\$_____ | () Boiler and Machinery | () Flood: _____ |
| () Transportation Floater:\$_____ | () Contractors Equipment\$_____ | () Loss of Rental Income: _____ |
| () Scheduled Locations/Propt. | () Other: _____ | () Other: _____ |
- () WATERCRAFT: () _____
- | | | |
|------------------------------|------------------|------------------------|
| () Protection and Indemnity | () Pollution | () Additional Insured |
| () Waiver of Subrogation | () Other: _____ | () Other: _____ |
- () POLLUTION: () _____
- | | | |
|---------------------------|----------------------------|------------------------|
| () Incipient/Long Term | () Sudden and Accidental | () Additional Insured |
| () Waiver of Subrogation | () Contractor's Pollution | () Other: _____ |
- () CRIME: () Joint Loss Payable Status () Additional Insured () _____
- | | | |
|-------------------------|--------------------------------|---------------------------------|
| () Fidelity Bond | () Financial Institution Bond | () Loss of Monies/Securities |
| () Employee Dishonesty | () In Transit Coverage | () Wire Transfer Fraud |
| () Computer Fraud | () Commercial Crime | () Forgery/Alteration of Docs. |
| () Other: _____ | () Other: _____ | |
- () ASBESTOS LIABILITY: () Additional Insured () _____



PER OCCURRENCE LIMITS		
() _____ (type of coverage)		(\$ _____)
() _____	() _____	() _____
() _____	() _____	() _____
() _____	() _____	() _____
() _____ (type of coverage)		(\$ _____)
() _____	() _____	() _____
() _____	() _____	() _____
() _____	() _____	() _____
() _____ (type of coverage)		(\$ _____)
() _____	() _____	() _____
() _____	() _____	() _____
() _____	() _____	() _____