
AMENDED AND RESTATED MASTER POWER PURCHASE & SALE AGREEMENT



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AMENDED AND RESTATED MASTER POWER PURCHASE AND SALE AGREEMENT

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AMENDED AND RESTATED MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This *Amended and Restated Master Power Purchase and Sale Agreement* (“*Master Agreement*”) is made as of the following date: August 22, 2002 (“*Effective Date*”). The *Master Agreement* and the 2002A Transaction, together with the exhibits, schedules and any written supplements hereto, shall be referred to as the “*Agreement*.” The Parties to this *Master Agreement* are the following:

Name (“GWF Energy LLC” or “Party A”)

Name (California Department of Water Resources, acting solely under the authority and powers created by AB1-X, codified as Sections 80000 through 80270 of the California Water Code (the “Act”), and not under its powers and responsibilities with respect to the “State Water Resources Development System” or “Party B” or “Department”)

All Notices:

All Notices: California Department of Water Resources/CERS

Street: 4300 Railroad Avenue

Street: 3310 El Camino Avenue, Suite 120

City: Pittsburg, California Zip: 94565

City: Sacramento, California Zip: 95821

Attn: Controller (for Invoices, Scheduling, Payments & Credit and Collections)

Attn: Executive Manager Power Systems

Phone: (925) 431-1424

Phone: (916) 574-0339

Facsimile: (925) 431-0516

Facsimile: (916) 574-2152

Duns: _____

Duns: _____

Federal Tax ID Number: _____

Federal Tax ID Number: 52-1692634

Invoices:

Invoices: DWR/CERS Settlements Unit Attn:

Attn: _____

Doreen Singh Phone: (916) 574-0309

Phone: (925) 431-1424

Facsimile: (916) 574-1239

Facsimile: (925) 431-0516

Scheduling:

Scheduling:

Attn: _____

Attn: Chief Water and Power Dispatcher

Phone:

Phone: (916) 574-0161

Facsimile:

Facsimile: (916) 574-2569

Payments:

Payments:

Attn: _____

Attn: Cash Receipts Section

Phone: (925) 431-1424

Phone: (916) 653-6892

Facsimile: (925) 431-0516

Facsimile: (916) 654-9882

Wire Transfer:

Wire Transfer:

BNK: _____

BNK: Bank of America (Sacramento Main Branch)

ABA: _____

ABA: Routing #121000358

ACCT: _____

ACCT: #14365-80598

Credit and Collections:
Attn: _____
Phone: _____
Facsimile: _____

Credit and Collections:
Attn: _____
Phone: _____
Facsimile: _____

With additional Notices of an Event of Default to:
Attn: PSEG California Corp., 35 Waterview Blvd.,
Parsippany, NJ 07054
Attn: General Counsel
Phone: (973) 541-6000
Facsimile: (973) 541-0547

With additional Notices of an Event of Default to:
Attn: Deputy Controller
Phone: (916) 653-6148
Facsimile: (916) 653-8230

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

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

Article Two

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

Article Four

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

Article Five

Events of Default; Remedies Cross Default for Party A:
 Party A: _____ Cross Default Amount \$ _____
 Other Entity: _____ Cross Default Amount \$ _____
 Cross Default for Party B:
 Party B: _____ Cross Default Amount \$ _____
 Other Entity: _____ Cross Default Amount \$ _____

5.6 Closeout Setoff

- Option A (Applicable if no other selection is made.)
- Option B - Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows: _____
- Option C (No Setoff)
- Not Applicable (Section revised)

Article Eight

Credit and Collateral Requirements

8.1 Party A Credit Protection:

(a) Financial Information:

- Option A
- Option B Specify: _____
- Option C Specify: _____

Not Applicable

(b) Credit Assurances:

- Not Applicable
- Applicable

(c) Collateral Threshold:

- Not Applicable
- Applicable

If applicable, complete the following:

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

Party B Independent Amount: \$ _____

Party B Rounding Amount: \$ _____

(d) Downgrade Event:

- Not Applicable
- Applicable

See Section 5.5(b)

If applicable, complete the following:

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

Other:
Specify: _____

(e) Guarantor for Party B: _____

Guarantee Amount: _____

8.2 Party B Credit Protection:

(a) Financial Information:

- Option A
- Option B Specify: _____
- Option C Specify: _____
- Not Applicable

(b) Credit Assurances:

- Not Applicable
- Applicable - See Sec. 8.1

Applicable - See Sec. 8.1

(c) Collateral Threshold:

Not Applicable

Applicable

If applicable, complete the following:

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

Party A Independent Amount: \$ _____

Party A Rounding Amount: \$ _____

(d) Downgrade Event:

Not Applicable

Applicable

If applicable, complete the following:

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

Other:
Specify: _____

(e) Guarantor for Party A: See Sec. 8.1

Guarantee Amount: See Sec. 8.1

Article 10

Confidentiality Confidentiality Applicable If not checked, inapplicable.

Schedule M

Not Applicable -- all provisions in text

Party A is a Governmental Entity.

Party B is a Governmental Entity.

Add Section 3.6. If not checked, inapplicable

Add Section 8.6. If not checked, inapplicable

Other Changes

Specify, if any:

See attachment.

This Master Agreement amends and supersedes that certain Master Power Purchase and Sale Agreement dated May 11, 2001 (the "Prior Agreement") by and between the Parties. As of the effective date of this Master Agreement, the Prior Agreement shall be of no force or effect.

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

GWF Energy LLC, a Delaware
limited liability company

California Department of Water Resources, acting
solely under the authority and powers created by
AB1-X, codified as Sections 80000 through 80270
of the California Water Code (the "Act"), and not
under its powers and responsibilities with respect to
the State Water Resources Development System

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

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

GENERAL TERMS AND CONDITIONS

ARTICLE ONE: GENERAL DEFINITIONS

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

1.2 “Actual Availability” has the meaning set forth in Section E.3 of the 2002A Transaction.

1.3 “Adjusted Contract Quantity” has the meaning set forth in Section E.3 of the 2002A Transaction.

1.4 “Adjusted Potential Contract Quantity” has the meaning set forth in Section E.2 of the 2002A Transaction.

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

1.6 “Agreement” has the meaning set forth in the Cover Sheet.

1.7 “Actual Heat Rate” or “AHR” has the meaning set forth in Section I.2(a) of the 2002A Transaction.

1.8 “AHR Hours” has the meaning set forth in Section I.2(a) of the 2002A Transaction.

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

1.10 “Ancillary Services Energy” has the meaning set forth in Section 3.2(d)(3).

1.11 “Annual Dispatch Plan” has the meaning set forth in Section 3.2(b).

1.12 “Annual Fuel Plan” is described in Section L.6 of the 2002A Transaction.

1.13 “Availability Adjustment” has the meaning set forth in Section F of the 2002A Transaction.

1.14 “Availability Notice” has the meaning set forth in Section E.2 of the 2002A Transaction.

1.15 “Availability Threshold” is equal to the sum for all Units in a Phase, which achieved their Commercial Operation Date at least two months prior to the period for which the calculation is made, of the product of (i) the average Actual Availability of such Unit over such period and (ii) the Phase Weighting Factor for such Unit; provided that the calculation is made using the same period for each Unit and adjustment is made in the event the Phase Weighting Factors change during such period.

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

1.17 “Bonds” has the meaning set forth in California Water Code 80010(a).

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

1.19 “Buyer” means the Party to a Transaction that is obligated to purchase and receive, or cause to be received, the Product, as specified in the Transaction. For the 2002A Transaction, Buyer is Party B.

1.20 “CAISO” means the California Independent System Operator Corporation, or any successor entity thereto, that oversees and administers those portion of the California transmission system assigned to its control and that provides non-discriminatory transmission services within the area recognized as the “CAISO Controlled Grid” pursuant to a FERC-approved tariff.

1.21 “CAISO Charges” has the meaning set forth in Section 3.2(k) hereof.

1.22 “CAISO Requirements” means the applicable and valid obligations, rules and regulations as defined and set forth in CAISO’s FERC-approved tariff with associated protocols and operating procedures, CAISO Participating Generator Agreement, CAISO Meter Services Agreement for ISO Metered Entities, Scheduling Coordinator Agreement, and/or similar agreements, policies and guidelines adopted by the CAISO pursuant to its FERC-approved tariff.

1.23 “CAISO Schedule Adjustments” means adjustments that CAISO imposes on the preferred day-ahead schedule during the CAISO day-ahead scheduling process or preferred hour-ahead schedule during the CAISO hour-ahead scheduling process.

1.24 “Capacity” means the continuous demand-carrying ability for which a Unit is rated pursuant to this Agreement.

1.25 “Capacity Payment” has the meaning set forth in Section F of the 2002A Transaction.

1.26 “Claiming Party” has the meaning set forth in Section 3.3.

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

1.28 “Commercial Operation” of a Unit means that such Unit has been completed, has passed all material performance tests pursuant to Section B-2 of the 2002A Transaction, Seller or the owner of the Unit has all necessary permits to operate the Unit at the output level for which it was designed, the Unit is capable of operating on a sustained basis at substantially the output level for which it was designed, and all interconnections, the capacity rating of the interconnection facilities, the interconnection agreement, and transmission connection are sufficient for the delivery of the full output of the Unit to the CAISO-controlled grid.

1.29 “Commercial Operation Date” or “COD” means, (a) with respect to Phase I, Unit 1, September 2, 2001, (b) with respect to Phase I, Unit 2, September 6, 2001, (c) with respect to Phase II, Units 1 and 2, July 1, 2002, and (d) with respect to each of Phase III, Unit 1 and Phase III, Unit 2, the date on which Seller delivers its written report of performance test results that substantially complies with the test procedure set forth in Section B.2 of the 2002A Transaction, together with a certification that the requirements for Commercial Operation have been achieved, signed by a duly authorized officer of Seller. Department’s acceptance or rejection thereof shall occur within five (5) Business Days after the Department’s receipt of such written report of performance test results; provided, however that failure by the Department to respond within such five (5) Business Days shall be deemed an acceptance; and provided further, however, that if, upon the Department’s review of such performance test results, adjustments, corrections or modifications are made to the mathematical calculations contained therein, such adjustments, corrections or modifications shall only affect, if applicable, the determination of Contract Quantity as would otherwise be the case pursuant to Section B.2 of the 2002A Transaction, and shall not be deemed to be a basis for a rejection by the Department of the occurrence of the Commercial Operation Date as otherwise set forth herein.

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

1.31 “Contract Quantity” has the meaning set forth in Section B.2 of the 2002A Transaction.

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

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

1.33 "CPUC" means the California Public Utilities Commission.

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

1.35 "Day-Ahead Effective Energy Schedule" has the meaning set forth in Section 3.2(c).

1.36 "Day-Ahead Physical Energy Schedule" has the meaning set forth in Section 3.2(c).

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

1.38 "Delivery Period" means the period of delivery for a Unit pursuant to the 2002A Transaction, as specified in the 2002A Transaction.

1.39 "Delivery Point" means the point at which the Product will be delivered and received, as specified in Section G of the 2002A Transaction.

1.40 "Designated Hourly Fuel Cost" has the meaning set forth in Section L.2 of the 2002A Transaction.

1.41 "Dispatch Energy" is that portion of Unadjusted Metered Energy as further defined in Section 3.2(d)(2).

1.42 "Downgrade Event" has the meaning set forth in Section 5.5(b).

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

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

1.45 "Effective Energy Schedule" is the product of the Physical Energy Schedule and the GMM pursuant to the CAISO Requirements.

1.46 "Electric Metering Equipment" means electric meters and associated equipment including, without limitation, metering transformers and meters for measuring kilowatt-hours and reactive volt-ampere hours, including check meters, if any, utilized in determining the amount of Energy or Ancillary Services produced by the operation of a Unit.

1.47 “Energy” means the electrical Energy produced, flowing or supplied by a Unit, being the integral with respect to time of the instantaneous power, measured in units of watt-hours or standard multiples thereof, *e.g.*, 1,000 Wh=1kWh, 1,000 kWh=1 MWh, etc.

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

1.49 “Event of Default” has the meaning set forth in Section 5.1.

1.50 “Excused Hour” has the meaning set forth in Section E.3 of the 2002A Transaction.

1.51 “Excused Outage” with respect to a Unit, is all or that portion of an outage or derating of a Unit for which Seller is excused from its contractual obligation to make the Unit available to Buyer for Scheduling and operation for one or more of the following reasons: (a) Force Majeure; (b) transmission at or immediately downstream of the Delivery Point is unavailable; (c) 15 days of scheduled outages per Unit per year; (d) with respect to only the Phase I Units, the installation and/or upgrade of environmental abatement equipment on such Units required for compliance with the air permits for such Units beginning June 1, 2002; (e) a failure to deliver Energy in response to a schedule which is inconsistent with the Unit’s Operating Limits or limitation on the number of starts per unit (as set forth in the 2002A Transaction), annual limits on operating hours (as set forth in the 2002A Transaction) or not timely made in accordance with Section 3.2; and (f) reductions to Buyer’s schedules directed by the CAISO; provided that none of the conditions described in (b), (e) or (f) above shall constitute Excused Outages if independent of such conditions the Unit is unable to operate to produce Energy and such inability is not due to a condition described in (a), (c), or (d) above; and provided further that (c) and (d) above are subject to agreement of the Parties with respect to the duration of such outages and Section M of the 2002A Transaction, as described therein.

1.52 “Facility” or “Facilities” means all of the Units collectively.

1.53 “FERC” means the Federal Energy Regulatory Commission or any successor government agency.

1.54 “Final Effective Energy Schedule” has the meaning set forth in Section 3.2(d) hereof.

1.55 “Final Physical Energy Schedule” for an hour is the Physical Energy Schedule that exists at the close of the CAISO scheduling processes, as further defined in Section 3.2(d).

1.56 “Firm” means, with respect to a Transaction, that Seller shall be relieved of its obligations to deliver Energy or provide Capacity without liability only to the extent that, and for the period during which, such performance is prevented by an Excused Outage.

1.57 “Fixed Fuel Charge” has the meaning set forth in Section H of the 2002A Transaction.

1.58 “Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under one or more Transactions, which event or circumstance was not reasonably foreseeable as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the claiming party, and which, by the exercise of due diligence, the claiming party is unable to overcome or avoid or cause to be avoided, including, but not limited to: shortages of materials or supplies (except if caused by Seller’s failure to maintain sufficient inventories and stores of spare parts), strikes or labor disruptions (except strikes or labor disputes resulting in a finding of unsafe working conditions by Seller or unfair labor practices by Seller), interruptions or curtailment of fuel supply or fuel transportation, distribution or storage, water supply or transmission, drought, flood, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance, sabotage, inability to obtain and maintain applicable governmental approvals from a governmental authority resulting solely from the enactment, repeal or amendment of any applicable law or in the interpretation or application of any applicable law by such governmental authority, in each case occurring after the effective date hereof, or the failure of such governmental authority to comply with statutorily mandated permitting time requirements. Notwithstanding anything herein to the contrary, Force Majeure does not include any permit-related matters prior to COD for any applicable Unit. Force Majeure shall not include any events such as, but not limited to, events arising from the failure to operate and maintain the Project in accordance with Prudent Utility Practice; economic factors including the price of gas or gas transmission; curtailment of interruptible gas transportation if Seller, pursuant to an Annual Fuel Plan, has made arrangements for such supply that are characterized as “firm” or “non-interruptible” and such interruption, curtailment or unavailability is due to Seller’s negligence in administering such arrangements; the cost of variable and fixed operation and maintenance costs; events that merely increase the cost of a Party’s performance; failure of third parties to provide goods or services essential to a Party’s performance except to the extent caused by an Force Majeure event; or the inability of a Party to obtain financing.

1.59 “Fuel Cost” has the meaning set forth in Section L.2 of the 2002A Transaction.

1.60 “Fuel Index” shall mean an index formula price in \$/MMBtu agreed to by Buyer and Seller as specified in the Annual Fuel Plan that is reflective of the total cost of fuel inclusive of all transportation, fees, taxes and charges delivered to the Facility, during the hours in which Buyer Scheduled Energy from the Facilities. (Example: The midpoint of the price range published for gas flow on the day delivered as shown in Gas Daily Online, Gas Daily Price survey, PG&E citygate/SoCal Gas California Border Large packages, plus marketer’s margin, applicable intrastate transport fees, taxes and charges.)

1.61 “Fund” and “Special Fund” means the California Department of Water Resources Electric Power Fund in the California State Treasury established by Section 80200 of the California Water Code.

1.62 “Gas Metering Equipment” means Seller’s Gas Metering Equipment and Utility’s Gas Metering Equipment, collectively.

1.63 “GMM” means the Generation Meter Multiplier, or an appropriate successor factor, used by CAISO to adjust energy deliveries for system losses.

1.64 “Governmental Entity” means the State of California Department of Water Resources separate and apart from its power and responsibilities with respect to the State Water Resources Development System.

1.65 “Gross Domestic Product-Implicit Price Deflator” or “GDP-IPD” has the meaning set forth in Section J of the 2002A Transaction.

1.66 “Guaranteed Heat Rates” or “GHR” has the meaning set forth in Section I.1 of the 2002A Transaction.

1.67 “Heat Rate Adjustment” has the meaning set forth in Section I.2(h) of the 2002A Transaction.

1.68 “Hourly Unit Availability Factor” has the meaning set forth in Section E.3 of the 2002A Transaction.

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

1.70 “ISO Conditions” means 59° F and relative humidity of 60% at the site of the applicable Unit.

1.71 “Lender” has the meaning set forth in Section 10.5(b) hereof.

1.72 “Market Quotation Average Price” shall mean the average of the good faith quotations solicited from not less than three (3) Reference Market-makers; provided, however, that the Party soliciting such quotations shall use commercially reasonable efforts to obtain good faith quotations from at least five (5) Reference Market-makers and, if at least five (5) such quotations are obtained, the Market Quotation Average Price shall be determined disregarding the highest and lowest quotations.

1.73 “Market Value” shall have the meaning set forth in Section 5.3.

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

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

1.76 “Natural Gas LDC” shall mean the entit(y)(ies) providing natural gas local distribution transportation service to a Unit(s), which currently will be either Southern California Gas Company or Pacific Gas & Electric Company.

1.77 “NERC” means the North American Electric Reliability Council or any successor organization thereto.

- 1.78 “Non-Defaulting Party” has the meaning set forth in Section 5.2.
- 1.79 “Operations Committee” has the meaning set forth in Section P of the 2002A Transaction.
- 1.80 “Operating Procedures” has the meaning set forth in Section P of the 2002A Transaction.
- 1.81 “Operating Limits” has the meaning set forth in Section N of the 2002A Transaction.
- 1.82 “Per Unit Market Price” means the applicable price per MWh of energy and/or per MW of capacity determined in accordance with Section 5.3.
- 1.83 “Phase” or “Phases” means any of Phase I, Phase II, and/or Phase III as the context requires, and as further defined in Section A of the 2002A Transaction.
- 1.84 “Phase III Completion Date” means that date, specified by Seller, on which the Seller has conducted the four-hour performance test on the applicable Phase III Unit described in Section B.2 of the 2002A Transaction and which test is the basis of the COD certification relative to the applicable Phase III Unit.
- 1.85 “Phase III Completion Deadline” has the meaning set forth in Section 5.5(a) hereof.
- 1.86 “Phase Weighting Factor” will be determined by dividing a Unit’s Contract Quantity (as determined pursuant to Section B.2 of the 2002A Transaction) by the sum of the Contract Quantities for all of the Units in the same Phase which have achieved their Commercial Operation Date.
- 1.87 “Physical Energy Schedules” means the quantity of Energy Scheduled to and from the Delivery Point in MWh unadjusted by any Energy loss factors.
- 1.88 “Potential Contract Quantity” has the meaning set forth in Section E.2 of the 2002A Transaction.
- 1.89 “Preliminary Fuel Cost” has the meaning set forth in Section L.2 of the 2002A Transaction.
- 1.90 “Preliminary Hourly Fuel Cost” has the meaning set forth in Section L.2 of the 2002A Transaction.
- 1.91 “Present Value Rate” shall mean the sum of 0.50% plus the yield reported on page “USD” of the Bloomberg Financial Markets Services Screen (or, if not available, any other nationally recognized trading screen reporting on-line intraday trading in United States government securities) at 11:00 a.m. (New York City, New York time) for the United States

government securities having a maturity that matches the average remaining term of this Agreement.

1.92 “Product” means electric Capacity, Energy or other product(s) related thereto as specified in the 2002A Transaction.

1.93 “Project Financing” shall have the meaning set forth in Section 8.1(a)(ii) hereof.

1.94 “Prudent Utility Practice” has the meaning set forth in Section M of the 2002A Transaction.

1.95 “Quantity” means that quantity of the Product that Seller agrees to make available or sell and deliver, or cause to be delivered, to Buyer, and that Buyer agrees to purchase and receive, or cause to be received, from Seller as specified in the Agreement. Quantity shall equal the Final Physical Energy Schedule(s).

1.96 “Recording” has the meaning set forth in Section 2.3.

1.97 “Reference Market-maker” means any marketer, trader or seller of or dealer in firm energy products whose long-term unsecured senior debt is rated BBB or better by S&P and Baa2 or better by Moody’s.

1.98 “Regulatory Change” has the meaning set forth in Section 5.7(d) hereof.

1.99 “Regulatory Event” has the meaning set forth in Section 10.9 hereof.

1.100 “Replacement Agreement” means any agreement identical to this Agreement excluding provisions relating to Department’s status as a governmental agency or to the original start date(s) of this Agreement, including but not limited to Sections 3.2(d)(3), 3.5, 3.6, 3.7, 3.8, 3.9, 3.10 and 3.11, together with such additional changes as Seller and Qualified Electric Corporation shall mutually agree. Such Replacement Agreement shall state that it is a Replacement Agreement within the meaning of this Agreement and that it constitutes a novation for which there is adequate consideration.

1.101 “Replacement Contract” means a contract having a term, quantity, delivery rate, delivery point and product substantially similar to the remaining Term, quantity, delivery rate, Delivery Point and Product to be provided under this Agreement.

1.102 “Reserved Capacity” has the meaning set forth in Section 3.2(c).

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

1.104 “Schedule” or “Scheduling” means the actions of Seller, Buyer and/or their designated representatives, including each Party’s Scheduling Coordinators and Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity and

type of Product to be delivered on any given day or days during the Delivery Period at a specified Delivery Point.

1.105 “Scheduling Coordinator” means an entity, as defined from time to time by the CAISO, which as of the date hereof is defined by the CAISO as an entity certified by the CAISO for the purposes of undertaking the functions currently specified in Section 2.2.6 of the FERC-approved CAISO Electric Tariff.

1.106 “Scheduling Reduction Factor” has the meaning set forth in Section B.2 of the 2002A Transaction.

1.107 “Seller” means the Party to a Transaction that is obligated to sell and deliver, or cause to be delivered, the Product, as specified in the Transaction. For the 2002A Transaction, Seller is Party A.

1.108 “Seller’s Gas Metering Equipment” means revenue-quality natural gas meters and associated equipment, including check meters, if any, utilized in determining the natural gas consumption of a single Unit.

1.109 “Settlement Agreement” means that certain Settlement Agreement executed on even date herewith, by and among Buyer; Seller; the Governor of the State of California, acting on behalf of all agencies, departments, boards, subdivisions, and commissions of the executive branch of the State of California (including but not limited to the Electricity Oversight Board); the CPUC; and the People of the State of California, by and through the Attorney General of the State of California.

1.110 “Start Date” has the meaning set forth in Section C of the 2002A Transaction.

1.111 “Start-up and Shutdown Fuel Cost Adjustments” has the meaning set forth in Section L.2 of the 2002A Transaction.

1.112 “Suspend” means that from the Suspension Date until the date the Party suspending the Agreement designates, all obligations of each Party are excused, including without limitation all obligations with respect to the accrual of payments or hours of non-availability, and obligations to buy, sell, Schedule or deliver Energy, provided however any and all obligations to invoice and pay amounts accrued with respect to performance occurring before the Suspension Date shall not be excused.

1.113 “Suspension Date” has the meaning set forth in Section 5.4.

1.114 “Summer Season” means the period including June, July, August and September.

1.115 “Target Availability” has the meaning set forth in Section E.3 of the 2002A Transaction.

1.116 “Term” has the meaning set forth in Section 10.1.

1.117 “Terminated Transaction” has the meaning set forth in Section 5.2.

1.118 “Termination Payment” has the meaning set forth in Section 5.2.

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

1.120 “Transmission Provider” means the CAISO or any entity or entities with whom the Parties Schedule delivery of the Product at the Delivery Point in a particular Transaction.

1.121 “Trust Estate” means all revenues under any obligation entered into, and rights to receive same, and moneys on deposit in the Fund and income or revenue derived from the investment thereof.

1.122 “Unadjusted Metered Energy” means the Unit’s actual physical Energy production (in MWh) as measured by the Electric Metering Equipment and in accordance with CAISO Requirements unadjusted by any Energy loss factors.

1.123 “Unit(s)” means an individual electric generator and its associated plant and apparatus whose electrical output is capable of being separately identified and metered.

1.124 “Unit’s Operating Limits” has the meaning set forth in Section N of the 2002A Transaction and tables, schedules or exhibits set forth thereto.

1.125 “Utility’s Gas Metering Equipment” means natural gas meters and associated equipment, including check meters, if any, utilized in determining the amount of natural gas delivered by the Natural Gas LDC to each site.

1.126 “Variable O&M Payment” has the meaning set forth in Section J of the 2002A Transaction.

1.127 “Variable O&M Rates” are provided in Section J of the 2002A Transaction.

1.128 RESERVED

1.129 “Weighting Factor” will be determined by dividing a Unit’s Contract Quantity (as determined pursuant to Section B.2 of the 2002A Transaction) by the sum of the Contract Quantities for all of the Units which have achieved their Commercial Operation Date.

1.130 “Winter Season” means the period including the months January, February, March, October, November and December.

1.131 “2002A Transaction” means the Transaction described in the attached Attachment 1 to Exhibit A dated August 22, 2002.

ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS

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

2.2 Governing Terms. Unless otherwise specially agreed, the 2002A Transaction between the Parties shall be governed by this Agreement. This Master Agreement (including all exhibits, schedules and any written supplements hereto), any designated collateral, credit support, guarantee or similar arrangement between the Parties and the 2002A Transaction shall form a single integrated and stand-alone agreement between the Parties.

2.3 Recording. Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording ("Recording") of all telephone conversations between the Parties to this Master Agreement, and that any such Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees. The Recording, and the terms and conditions described therein, if admissible, shall be the controlling evidence for the Parties' agreement with respect to a particular Transaction in the event a confirmation is not fully executed (or deemed accepted) by both Parties.

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

3.1 Seller's and Buyer's Obligations. With respect to the 2002A Transaction, Seller shall sell and deliver, or cause to be delivered, and Buyer shall receive, or cause to be received, the Quantity of the Product at the Delivery Point, and Buyer shall pay Seller the Contract Price. Seller shall have no obligation to deliver the Product during an Excused Hour. Seller shall be responsible for any costs or charges associated with the Product or its Scheduling or delivery up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its Scheduling or receipt at and from the Delivery Point.

3.2 Transmission and Scheduling. (a) Seller shall arrange and be responsible for transmission service to the Delivery Point, if any, and shall obtain Scheduling Coordinator services necessary to deliver the Product to the Delivery Point. Seller shall be responsible for all charges due to the CAISO, and entitled to receive all payments from the CAISO, related to deviations of Unadjusted Metered Energy from the Final Physical Energy Schedule for the Units (inclusive of charges for imbalance Energy and replacement reserves). Buyer shall arrange and be responsible for transmission service at and from the Delivery Point. Buyer shall arrange for and be solely responsible for any Ancillary Services necessary to support its purchase, transmission and use of the Product.

(b) During the term of this Agreement, Buyer shall provide Seller, on an annual basis by June 1, 2001 and thereafter no later than May 1 each year, with projections of the amount of the Product it will require for each day of the twelve month period commencing September 1 ("Annual Dispatch Plan"). In addition, Buyer shall provide Seller on a monthly basis, with projections of the amount of the Product it will require as Reserved Capacity or the Physical Energy Schedule for each day and each hour of the following month; and on a weekly basis, Buyer shall provide Seller with projections of the amount of the Product it will require as

Reserved Capacity or the Physical Energy Schedule each day and each hour of the following week. Except as the Annual Dispatch Plan is applied with respect to the Annual Fuel Plan, the projections required pursuant to this Section 3.2(b) are non-binding.

(c) On the day preceding delivery of Energy, no later than the earlier of (a) 5:50 a.m. Pacific Standard Time and (b) thirty (30) minutes before the time required to schedule gas purchases or market power sales (in each case as such time may change from time to time consistent with normal Western Systems Coordinating Council (WSCC) prescheduling guidelines and practices), Buyer shall (i) Schedule with Seller the Capacity for each Unit it wishes to reserve for each hour of the following day (“Reserved Capacity”); and/or (ii) Schedule with Seller with respect to each Unit, stated as a Physical Energy Schedule, the hours Seller is to submit to the CAISO as the day-ahead preferred schedule for CAISO scheduling of such Unit to produce Physical Energy Schedules that Buyer will purchase during such hour(s) of the following day. Seller shall submit or cause to be submitted to the CAISO in its preferred schedule the delivery of the Product to Buyer as Effective Energy Schedules and Buyer shall accept such schedule. Seller shall issue an Availability Notice, if necessary, informing Buyer of any CAISO Schedule Adjustments. The Physical Energy Schedule that results from CAISO’s day-ahead scheduling process shall be the “Day-Ahead Physical Energy Schedule.” Similarly, the Effective Energy Schedule that results from CAISO’s day-ahead scheduling process shall be the “Day-Ahead Effective Energy Schedule.”

(d) (1) Due to any reason including, but not limited to, CAISO Schedule Adjustments or changes in the Unit’s Adjusted Potential Contract Quantity (including due to changes in ambient conditions), Buyer’s election to start the reserved Unit, or Buyer’s election to cease Unit operation, Buyer may revise the Day-Ahead Physical Energy Schedule and Day-Ahead Effective Energy Schedule consistent with the CAISO Scheduling processes (provided that Buyer may not Schedule a Unit that it has not designated as Reserved Capacity or Scheduled day-ahead in accordance with Section 3.2(c)), and the Seller shall make corresponding schedule changes as necessary. In addition, Seller may revise the Day-Ahead Physical Energy Schedule and Day-Ahead Effective Energy Schedule due to changes in a Unit’s Adjusted Potential Contract Quantity or due to CAISO Schedule Adjustments, consistent with the CAISO Scheduling processes, and the Buyer shall make corresponding schedule changes as necessary; provided that if CAISO directs the operation of a Unit during an hour in which Buyer has designated such Unit as Reserved Capacity and has not Scheduled it to operate, then Buyer shall not be obligated to make any schedule changes, and such Unit’s operation during such hour shall be governed by Section 3.2(h). No later than one (1) hour before Seller must convey its preferred hour-ahead Energy schedules to its Scheduling Coordinator for submission into the CAISO’s hour-ahead scheduling process, Seller shall provide Buyer an Availability Notice informing Buyer of changes, if any, to the Unit’s availability (due to a forced outage or Excused Outage) or the Unit’s Adjusted Potential Contract Quantity for any upcoming hour and the associated Effective Energy Schedules and the reason(s) for such change(s). No later than forty-five (45) minutes before Seller must convey its preferred hour-ahead Energy schedules to its Scheduling Coordinator for submission into the CAISO’s hour-ahead scheduling process, Buyer may (i) Schedule with Seller a Physical Energy Schedule for the start-up of any Unit for which Buyer has Reserved Capacity; and/or (ii) Schedule with Seller with respect to each Unit then operating its election to cease Unit operation, provided however that if such election to cease Unit operation is made prior to the end of the Unit’s Reserved Capacity for that day the election

will not revise the total hours that will be counted against Buyer for that Unit on that day pursuant to Section E.1 of the 2002A Transaction. Seller shall submit or cause to be submitted in its preferred hour-ahead schedule the delivery of the Product to Buyer as an Effective Energy Schedule and Buyer shall accept such schedule. Seller shall issue an Availability Notice, if necessary, informing Buyer of any CAISO Schedule Adjustments imposed on the preferred hour-ahead schedule during the CAISO hour-ahead scheduling process. The Physical Energy Schedule that results from CAISO's hour-ahead scheduling process shall be the Final Physical Energy Schedule. Similarly, the Effective Energy Schedule that results from CAISO's hour-ahead scheduling process shall be the Final Effective Energy Schedule.

(2) Buyer may issue dispatch instructions related to reserved capacity, for real-time response by Seller outside of any CAISO scheduling process, and Seller shall comply with such dispatch instructions provided that the quantity of Energy which is dispatched by Buyer must be dispatched on a thirty (30) minute-ahead basis and must otherwise be an amount which will permit all Units necessary to supply such amount to operate between 80% and 100% load, and must otherwise comply with the ramp times, minimum run times, shut down times and other Operating Limits of such Units, including the provisions of Sections E.1, K and N of the 2002A Transaction; any Energy delivered by Seller pursuant to such Buyer dispatch shall be "Dispatch Energy". Buyer shall pay CAISO imbalance charges, and receive CAISO imbalance revenues, resulting from schedule deviations caused by such dispatch instructions. Buyer shall pay all actual Fuel Costs incurred in connection with any Dispatch Energy, including all fuel imbalance charges.

(3) With respect to Units in Phase I, Phase II and Phase III, for so long as Department is Buyer, Seller shall make bids into the CAISO Ancillary Services markets if and as instructed by Buyer during hours for which Buyer has reserved capacity with respect to such Units, and shall comply with any resulting dispatch instructions from CAISO pursuant to all CAISO protocols; provided, however, that compliance with such Ancillary Services provisions or dispatch instructions would cause the Units to be dispatched according to Prudent Utility Practice including without limitation, consistent with all applicable technical limitations, legal (including permitting) limitations, and Operating Limits, including the provisions of Sections E.1, K and N of the 2002A Transaction, and provided that the quantity of Energy which is dispatched by CAISO must be dispatched on a thirty (30) minute-ahead basis and must otherwise be an amount which will permit all Units necessary to supply such amount to operate between 80% and 100% load ("Ancillary Service Energy"); and provided further that Buyer shall be responsible for all incremental costs and liabilities that arise in connection with or as a result of compliance with such dispatch instructions. Any such CAISO dispatch hereunder shall be treated as Ancillary Services Energy. Any resulting CAISO Ancillary Service-related revenues received or charges paid by CAISO to Seller shall be passed on to Buyer. At such time that Department is not Buyer hereunder, this Section 3.2(d)(3) shall be of no force or effect. Buyer shall pay all actual Fuel Costs incurred in connection with any Ancillary Services Energy, including all fuel imbalance charges.

(e) All hours in which Buyer Schedules a Unit, whether to provide Reserved Capacity or Energy, will be counted against the total hours that may be Scheduled by Buyer in a given year from such Unit, as provided in Section E.1 of the 2002A Transaction, except for (i) hours in which Buyer has Scheduled Energy from a Unit and the Final Physical Energy Schedule

is subsequently reduced to zero because such Unit subsequently becomes unavailable or (ii) hours in which Buyer is unable to Schedule Energy from Reserved Capacity that has been scheduled pursuant to Section 3.2(c) because such Unit subsequently becomes unavailable. In exercising its Scheduling rights, Buyer may only reserve a Unit or establish a Physical Energy Schedule for a Unit at 80% to 100% of such Unit's Adjusted Potential Contract Quantity, as it exists from time-to-time, and only for hours in which the Unit has been designated as available, in each case in accordance with the latest Availability Notice. Buyer must Schedule under this Section 3.2 in a manner consistent with the provisions of Section E.1 of the 2002A Transaction (annual limits on operating hours), Sections K and N of the 2002A Transaction (the Units' Operating Limits and the limitation on the number and frequency of starts permitted for each Unit) and the CAISO Requirements. Seller may reject any schedule, without liability, that does not meet the requirements of the prior sentence; provided that Seller will make a good faith effort to provide notice to Buyer and accommodate corrections made prior to Buyer's Scheduling deadline. Buyer shall purchase and receive each Final Physical Energy Schedule. With respect to each Physical Energy Schedule, Seller shall Schedule, or cause to be Scheduled, and Buyer shall Schedule or cause to be Scheduled, the Final Effective Energy Schedule (such quantity as determined by Seller) at the Delivery Point.

(f) (1) Seller shall provide (i) the Quantity of Energy required by the Final Physical Energy Schedule in accordance with this Section 3.2, relying on CAISO imbalance energy as required, provided that in the event of a change in the availability of a Unit or the Adjusted Potential Contract Quantity, Seller shall provide notice to Buyer and submit Scheduling changes to the CAISO as required, and Buyer shall make corresponding Scheduling changes as required, and Seller's obligation to provide such Final Physical Energy Schedule as existing at the time of such notice shall not continue beyond the period beginning at the top of the second hour following issuance of Seller's notice, and (ii) the Quantity of Energy required by a dispatch instruction by Buyer or by CAISO on Buyer's account.

(2) In the event that (A) Seller willfully and intentionally fails to make available to Buyer in any hour, through the Scheduling process described in this Section 3.2 and in Section E of the 2002A Transaction, any material portion of the Adjusted Potential Contract Quantity for a Unit, (B) such failure to deliver is unexcused and Seller did not believe in good faith such failure was excused (with a valid basis for such belief), (C) such failure to deliver is a result of Seller's affirmative determination not to deliver energy from the Facilities at the Delivery Point to Buyer in fulfillment of a properly submitted and accepted Schedule, and (D) such Energy is willfully diverted to a third party, other than as expressly permitted herein, then such an event shall be an Event of Default and Buyer shall be entitled to damages set forth in Article V.

(3) In the event that (A) Seller willfully and intentionally fails to make available to Buyer in any hour, through the Scheduling process described in this Section 3.2 and in Section E of the 2002A Transaction, any material portion of the Adjusted Potential Contract Quantity for a Unit, (B) such failure to deliver is unexcused and Seller did not believe in good faith such failure was excused (with a valid basis for such belief), (C) such failure to deliver is a result of Seller's affirmative determination not to deliver energy from the Facilities at the Delivery Point to Buyer in fulfillment of a properly submitted and accepted Schedule, and (D) such failure occurs during such time as a day-ahead CAISO warning of a potential stage alert

has been issued or any stage alert is in effect for such hours, then, Seller shall pay, as liquidated damages and not as a penalty, for each such event: the amount of One Million, Five Hundred Thousand Dollars (\$1,500,000) provided that such reduction shall not reduce the Capacity Payment below zero; and provided further that all such failures of any Units occurring during any calendar day shall comprise one such event. Such liquidated damages shall be due and owing during the next billing cycle. The Parties agree that damages at the time of breach would be very difficult to measure accurately and that the foregoing liquidated damage amount is a reasonable estimate of the amount necessary to compensate Buyer for the breach.

(g) Subject to the limitations set forth in this Agreement, Seller will operate each Unit in accordance with CAISO's Final Physical Energy Schedule or if applicable, a dispatch instruction by Buyer. Buyer shall have first priority use of Reserved Capacity. However, except for hours in which Buyer has Scheduled Reserved Capacity or Scheduled Energy from a Unit pursuant to Section 3.2, Seller shall have unrestricted use of such Unit and may dispatch or commit such Unit for such purposes as it elects in its sole discretion.

(h) Should CAISO dispatch a Unit at any time when Seller has such unrestricted use, the costs and benefits of such dispatch shall be borne by Seller and such dispatch hours will not count against the annual limits on operating hours that Buyer may reserve or Schedule, unless and until such dispatch continues into an hour when Buyer has Scheduled or reserved the Unit's Capacity. Should CAISO dispatch a Unit that Buyer has designated as Reserved Capacity at any time when Buyer has not Scheduled Energy from such Unit, the costs and benefits of such dispatch shall be borne by Seller and such dispatch hours will count against the annual limits on operating hours that Buyer may reserve or Schedule.

(i) The Scheduling procedures and related statements of rights and obligations in this Section 3.2 contemplate continuation of the existing market design and CAISO Requirements. However, this Section is subject in all respects to Section 5.7(b).

(j) (i) Seller shall provide, in its capacity as Scheduling Coordinator for the Units, or through the Scheduling Coordinator selected by Seller in its sole discretion, consistent with the CAISO Requirements, all notices and other information to the CAISO regarding the Units' operational status and proposed schedule as required by CAISO Requirements and this Agreement.

(ii) Each Party shall at all times during the Delivery Period for the Transaction, in connection with the exercise of its rights and performance of its obligations hereunder, adhere to the provisions of this Agreement, CAISO Requirements and applicable law and, without limiting the foregoing, to the applicable operating policies, criteria and/or guidelines of NERC, CAISO Requirements, and any other regional or subregional operational and reliability requirements; provided that capital expenditures or increases in expenses for operations and maintenance required for compliance with a change in law shall be governed by Section 5.7(a) or (c), as applicable. In the event that a Party receives notice of a change or proposed change to the CAISO Requirements that would require a Party to take or refrain from taking an action that would be inconsistent with such Party's rights and/or obligations hereunder, the Party receiving notice will promptly provide notice to the other Party to the extent practicable that such CAISO Requirement conflicts with the rights and/or obligations of a Party under this Agreement and the Parties shall proceed according to Section 5.7(b).

(k) To the extent that either Party Schedules or fails to Schedule with the CAISO in accordance with this Agreement as necessary for the CAISO to receive and transmit the Physical Energy Schedule and such action or inaction results in the imposition of CAISO charges on either Party (“CAISO Charges”), the Party whose action or failure to act caused the CAISO Charges to be assessed shall bear such costs. In the event that such CAISO Charges are assessed on a Party due to the other Party’s action or inaction, the Party receiving the charge shall provide the other Party notice of such event, together with all supporting documentation demonstrating the other Party’s responsibility for such charge and Seller shall include it in its monthly invoice, subject to Section 6.5 as a credit or charge to Buyer, as applicable.

3.3 Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under the Transaction, such Party (the “Claiming Party”) shall give notice and details of the Force Majeure to the other Party as soon as practicable and provide the other Party with the expected duration of the Force Majeure and the date upon which it expects such Force Majeure to end. Unless agreed to otherwise, the Claiming Party shall be excused from the performance of its obligations with respect to such Transaction for so long as and to the extent, prevented by such Force Majeure (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure); provided, however, in the event that Seller is the Claiming Party, Buyer shall continue to pay the Contract Price, except that Buyer’s obligation to pay the Capacity Payment as it relates to the Unit(s) (or portion thereof) affected by the Force Majeure shall be suspended for the period commencing 45 days after the commencement of the Force Majeure and continuing until the day the Unit(s) affected by the Force Majeure are again available to Buyer for Scheduling. The Claiming Party shall provide notice and details of the Force Majeure to the other Party as soon as practicable and shall remedy the Force Majeure with all reasonable dispatch. For all Force Majeure events expected to have or having a duration of greater than one (1) month, the Claiming Party shall provide the non-Claiming Party with monthly progress reports on the progress of remedying such Force Majeure. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure except as set forth herein. Pursuant to the terms of Section 5.5(d) hereof, any Force Majeure which interrupts Seller’s performance of its obligations under this Agreement, with respect to a Unit, for a continuous period of more than twelve (12) months (or, with respect to any Force Majeure which is caused by unavailability of third party infrastructure, for a continuous period of more than eighteen (18) months) shall be considered an event upon which Buyer may terminate this Agreement with respect to such Unit.

3.4 Buyer’s Deliveries . (a) On the Effective Date and as a condition to the obligations of the Seller under this Agreement, Buyer shall provide the Seller hereto an opinion of general counsel of the Buyer in form and substance reasonably satisfactory to the Seller to the effect that the Master Agreement has been duly authorized, executed, and delivered by the Buyer and constitutes a valid and binding obligation of the Buyer enforceable in accordance with its terms except as enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium, or other laws affecting the enforcement of creditors’ rights generally or by general principles of equity, regardless of whether such enforceability is considered in proceeding in equity or at law, or by principles of public policy.

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

3.6 Payments Under Agreement an Operating Expense. (a) Payments under this Agreement shall constitute an operating expense of the Fund payable prior to all Bonds, notes or other indebtedness secured by a pledge or assignment of the Trust Estate or payments to the California general fund.

(b) Any Termination Payment owed by Buyer to Seller under this Agreement will be deemed to accrue on the Early Termination Date, regardless of when due, and will constitute an operating expense of the Fund when due payable prior to all Bonds, notes or other indebtedness secured by a pledge or assignment of the Trust Estate or payments to the California general fund (it being understood that in the event of an acceleration under the Bonds, such accelerated amounts will not be payable prior to payment of the Termination Payment).

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

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

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

3.10 Application of Government Code and the Public Contracts Code .. Seller has stated that, because of the administrative burden and delays associated with such requirements, it would not enter into this Agreement if the provisions of the California Government Code and the California Public Contracts Code applicable to state contracts, including but not limited to, advertising and competitive bidding requirements and prompt payment requirements would apply to or be required to be incorporated in this Agreement. Accordingly, pursuant to Section

80014(b) of the California Water Code, Buyer has determined that it would be detrimental to accomplishing the purposes of Division 27 (commencing with Section 80000) of the California Water Code to make such provisions applicable to this Agreement and that such provisions and requirements are therefore not applicable to or incorporated in this Agreement.

3.11 Segregation of Funds . To the best knowledge of Buyer, the electric corporations (as defined in the Act) have established segregated accounts for amounts payable to Buyer in accordance with applicable CPUC decisions. Buyer is receiving money from each of the electric corporations and to the best knowledge of Buyer such amounts are in accordance with the applicable CPUC decisions. Buyer shall establish the terms and conditions for the segregation of moneys received by electrical corporations pursuant to Section 80106 of the Water Code pending their transfer to Buyer in accordance with Section 80112 of the Water Code in a manner so as to ensure that such moneys shall be treated as moneys of Buyer for all purposes. Buyer shall take all action necessary to ensure compliance by each of the electric corporations with the provisions of Section 80112 of the Water Code and the terms and conditions established by Buyer pursuant thereto.

3.12 Governmental Approvals . Seller shall, at its expense, acquire and maintain in effect, from any and all government agencies with jurisdiction over Seller and/or the construction or operation of the Projects, all required governmental approvals, in each case necessary at that time (i) for the construction of the Units in accordance with this Agreement; and (ii) for the operation of the Units to produce the Contract Quantity. Seller shall cause the Units to be operated in substantial compliance with each Unit's governmental approvals.

ARTICLE FOUR: RESERVED

ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES

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

- (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within ten (10) Business Days after written notice;
- (b) any representation or warranty made by such Party in Section 10.2 is false or misleading in any material respect when made or when deemed made or repeated and such false representation or warranty materially and adversely affects the ability of either Party to perform its obligations under this Agreement and such condition is not remedied within thirty (30) Business Days after written notice;
- (c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver the Product, the exclusive remedies for which are (i) the Availability Adjustment set forth

in the 2002A Transaction and (ii) Section 5.5(c)) if such failure is not remedied within thirty (30) Business Days after written notice;

- (d) such Party becomes Bankrupt;
- (e) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets (or in the case of Buyer, substantially all of the Fund or its responsibilities with respect to purchasing Energy for use by, or on behalf of, consumers other than itself) to another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party; and
- (f) with respect to Seller's Guarantors (only for so long as a guaranty is provided by any such Guarantor pursuant to Section 8.1(a)(i)):
 - (i) if any representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated and such false representation or warranty materially and adversely affects the ability of the Guarantor to perform its obligations under the guaranty and such condition is not remedied within thirty (30) Business Days after written notice;
 - (ii) the failure of a Guarantor to make any payment required or to perform any other material covenants in any guaranty made in connection with this Agreement and such failure shall not be remedied within three (3) Business Days after written notice;
 - (iii) a Guarantor becomes Bankrupt;
 - (iv) the failure of a Guarantor's guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of Seller under the 2002A Transaction without the written consent of the Buyer;
 - (v) a Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of the guaranty made pursuant to Section 8.1(a); or
 - (vi) in the event Buyer becomes aware of a default by a Guarantor pursuant to this clause (f), it shall notify the other Guarantor thereof in writing specifying the nature of the default. Notwithstanding the foregoing, a default by a Guarantor under this clause (f) shall not give rise to any rights by the Buyer under this Agreement if the other Guarantor cures such default within five

Business Days thereafter or takes such action so as to render clause (f) inapplicable to the defaulting Guarantor.

5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the “Non-Defaulting Party”) shall have the right, subject to Section 10.5(b), (i) to designate a day, no earlier than the day such notice is effective and no later than twenty (20) days after such notice is effective, as an early termination date (“Early Termination Date”) to accelerate all amounts owing between the Parties and to liquidate and terminate all, but not less than all, Transactions (each referred to as a “Terminated Transaction”) between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-Defaulting Party shall be entitled to a payment upon termination of this Agreement as the result of an Event of Default (the “Termination Payment”) which shall be the aggregate of the Market Value and Costs calculated in accordance with Section 5.3 which shall be paid (net of any payments withheld by the Non-Defaulting Party pursuant to Section 5.2(ii) above) together with interest thereon, no later than one hundred eighty (180) days after receipt of written notice of an Early Termination Date. The Termination Payment shall accrue interest at the Interest Rate plus six percent (6%) during the period between receipt of written notice of an Early Termination Date and payment in full of the Termination Payment. Prior to issuance of such notice of termination to the Defaulting Party, the Non-Defaulting Party may exercise any remedies available to it at law or otherwise, including, but not limited to, the right to seek injunctive relief to prevent irreparable injury to the Non-Defaulting Party. Notwithstanding the other provisions of this Agreement, if the Non-Defaulting Party has the right to liquidate or terminate all obligations arising under this Agreement under the provisions of this Article 5 because the Defaulting Party is Bankrupt, then this Agreement and the Transaction shall automatically terminate, without notice, as if the Early Termination Date was the day immediately preceding the events listed in Section 5.1.

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

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

(b) To ascertain the Per Unit Market Price of a Replacement Contract with a term of less than one year, the Non-Defaulting Party may consider, among other valuations, quotations from leading dealers in Energy contracts, the settlement prices on established, actively

traded power exchanges, other bona fide third party offers and other commercially reasonable market information.

(c) To ascertain the Per Unit Market Price of a Replacement Contract with a term of one year or more, the Non-Defaulting Party shall use the Market Quotation Average Price; provided, however, that if there is not an actively traded market for such Replacement Contract or if the Non-Defaulting Party is unable to obtain reliable quotations from at least three (3) Reference Market-makers, the Non-Defaulting Party shall use the methodology set forth in paragraph (b).

(d) In no event, however, shall a party's Market Value or Costs include any penalties, ratcheted demand charges or similar charges imposed by the Non-Defaulting Party.

If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, the calculation issue shall be submitted to dispute resolution as provided in Section 10.12 of this Agreement. Pending resolution of the dispute, the Defaulting Party shall pay the undisputed amount of the Termination Payment calculated by the Non-Defaulting Party no later than one hundred eighty (180) days after receipt of written notice of an Early Termination Date.

5.4 Suspension of Performance. Notwithstanding any other provision of this Master Agreement, if an Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon three (3) days written notice to the Defaulting Party, shall have the right (i) to Suspend its performance under any or all Transactions as of the date set forth in the notice ("Suspension Date") and (ii) to the extent an Event of Default shall have occurred and be continuing, to exercise any remedy available at law or in equity, including, without limitation cover costs for unmitigated losses incurred by the Non-Defaulting Party during periods in which it has suspended performance.

5.5 Other Termination/Suspension/Damages Provisions.

- (a) If the Phase III Completion Date of a Phase III Unit has not occurred by June 1, 2003, Seller shall pay to Buyer, as liquidated damages and not as a penalty, relative to each such Phase III Unit, the sum of \$17,500 for each day after June 1, 2003 that the Phase III Completion Date of such Phase III Unit has not occurred except, and to the extent, Seller's performance is excused by Force Majeure. Such liquidated damages shall be due and owing during the next billing cycle(s). The Parties agree that damages at the time of breach would be very difficult to measure accurately and that the foregoing liquidated damage amount is a reasonable estimate of the amount necessary to compensate Buyer for such breach. Buyer, at its option, shall be entitled to terminate this Agreement upon ten (10) Business Days written notice with respect to any Phase III Unit which has not achieved its Phase III Completion Date by its Phase III Completion Deadline of July 1, 2003; provided however that the July 1, 2003 Phase III Completion Deadline will be extended day for day to the extent Seller's performance is excused by Force Majeure.

- (b) Upon the occurrence of the following event (“Downgrade Event”): Upon the issuance of the Bonds, for so long as the Bonds are outstanding, the failure of the Buyer to maintain a rating of either Baa3 or better by Moody’s or BBB- or better by S&P on the Bonds, which failure continues for thirty (30) Business Days or, if the Bonds are not outstanding and the Buyer has obtained a rating based on the ability of the Fund to pay its obligations under this Agreement, the failure to maintain a rating of either Baa3 or better by Moody’s or BBB- or better by S&P, which failure continues for thirty (30) Business Days;

Seller shall have the following right:

Seller may, upon written notice to Buyer, terminate this Agreement upon ten (10) Business Days written notice.

- (c) In the event that the Availability Threshold of Phase I or Phase II for the Summer Season is less than 75% in two of any three consecutive Summer Seasons, or in the event the Availability Threshold of Phase III is less than 70% in two of any three consecutive Summer Seasons, Buyer may terminate this Agreement as to such Phase upon ten (10) Business Days written notice;
- (d) Buyer shall be entitled to terminate this Agreement for any Unit upon ten (10) Business Days written notice if Seller’s performance from such Unit has been interrupted by Force Majeure for a continuous period of greater than twelve (12) months (or, with respect to any Force Majeure which is caused by unavailability of third party infrastructure, for a continuous period of greater than eighteen (18) months).
- (e) In the event of early termination under this Section 5.5, neither Party shall be liable to the other for the payment of damages related to such early termination.

5.6 Failure To Deliver Energy. Except as provided in Sections 3.2(f)(2), 3.3, and 5.5(a), (c) and (d), in no event shall a failure by Seller to deliver Energy from a Unit be deemed to be an Event of Default or cause for termination, suspension or action for damages, as the sole remedy of Buyer for Seller’s failure to provide Capacity or deliver Energy is the Availability Adjustment.

5.7 Regulatory Changes.

- (a) Seller shall be entitled to pass through to Buyer any liability, loss, cost, damage and expense, including gross-up, arising out of a tax or other imposition enacted by the California state legislature after the date of this Agreement that is not of general applicability and is instead directed at the generation, sale, purchase, ownership and/or transmission of electric power, natural gas and/or other utility or energy goods and services, but

only insofar as such liability, loss, cost, damage and expense relates to a Transaction hereunder or reflects an increase in Seller's cost of service in connection therewith. Buyer shall be entitled to the benefit or reduction of or credit with respect to any such tax or other imposition enacted by the California state legislature after the date of this Agreement but only insofar as such reduction of tax or other imposition relates to a Transaction hereunder or reflects a decrease in Seller's cost of service in connection therewith.

- (b) Should the FERC authorize any changes to the CAISO Requirements that materially change the Scheduling of deliveries or the methods or processes CAISO uses to determine charges or payments to Scheduling Coordinators, and such changes materially affect the provisions of this Agreement, the Parties agree to enter good faith negotiations as soon as practicable to modify the Agreement to account for such changes to the CAISO Requirements, attempting in all events to restore or maintain for each Party as nearly as possible, its respective rights and obligations and benefits under this Agreement.
- (c) Should the United States or any agency thereof, including FERC, impose a tax or other imposition materially reducing the benefits of this Agreement to Seller and such tax or imposition is not of general applicability and is instead directed at the generation, sale, purchase, ownership and/or transmission of electric power, Fuel and/or other utility or energy goods and services ("Regulatory Change") that adversely affects Seller's costs of providing Capacity or Energy and the aggregate adverse effect on Seller's cost for any Phase (taking into account all such Regulatory Changes and all Units) is in the aggregate at least \$2.5 million in any calendar year, then:
 - (i) Seller shall provide notice to Buyer of such occurrence (such notice not to be issued prior to September 1, 2003) together with a proposal to adjust the Contract Price, and workpapers that demonstrate that such adjustment is reasonably calculated to collect no more than the amount of such increased costs (provided that Seller shall not include recovery for any such cost incurred prior to September 1, 2003) and shall request, by such notice, that Buyer respond to such proposed adjustment within thirty (30) days; and
 - (ii) if after a period of seventy-five (75) days after delivery by Seller of the aforesaid notice, Buyer and Seller have not reached agreement as to an adjustment to the Contract Price that is satisfactory to Seller, in its reasonable discretion, Seller shall have the option to terminate the agreement as to such Phase upon ten (10) Business Days notice and neither Party shall have any further liability to the

other, including with respect to a Termination Payment, other than such obligations as survive the termination of the Agreement with respect to obligations incurred prior to termination.

ARTICLE SIX: PAYMENT AND NETTING

6.1 Billing Period. Each month Seller shall bill Buyer, and Buyer shall pay Seller, the Contract Price for the previous month. Unless otherwise specifically agreed upon by the Parties in the 2002A Transaction, the calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments). As soon as practicable after the end of each month, each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

6.2 Basis of Invoice. Seller shall provide invoice data, disaggregated by transaction components, in a commercially reasonable template format specified by Buyer. Seller's invoice to Buyer will be based upon calculations employing the Unadjusted Metered Energy and the Final Physical Energy Schedules for each Unit and natural gas delivered for use in a Unit as measured by the Gas Metering Equipment, if natural gas is supplied by Seller, and in any event as adjusted in accordance with the terms of the 2002A Transaction. The amount of Unadjusted Metered Energy, the Final Physical Energy Schedules, natural gas delivered and the cost of natural gas delivered will be adjusted in subsequent months' invoices when applicable actual data is available. Seller's invoice to Buyer with respect to the CAISO Charge will be based upon data and costs provided by the CAISO, but will be subject to adjustment in subsequent months' invoices based on adjustments or final data and costs provided by CAISO. Seller's invoice to Buyer shall include the meter data for each Unit, the records of the Final Physical Energy Schedules, the Fuel Cost, the Fixed Fuel Charge, the data and calculations made with respect to the Heat Rate Adjustment, the Actual Availability for each Unit, any adjustments due to the CAISO Requirements, and any taxes that Seller has had to pay.

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

6.4 Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered; provided that if the error is traceable to an error or adjustment in charges assessed by the CAISO, then in order for an adjustment to the invoices pursuant to this Agreement to be recognized and to affect the payment obligations of

the Parties hereunder, the Party seeking the adjustment must bring the error to the attention of the other Party before the earlier of (i) five (5) Business Days before expiration of the time period during which the Party assessed such charge by the CAISO may dispute the charge with the CAISO and (ii) five (5) Business Days of the time the invoice under this Agreement that contained the error was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.4 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance pursuant to a Transaction occurred, the right to payment for such performance is waived.

6.5 Netting of Payments. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date pursuant to the 2002A Transaction through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Products during the monthly billing period under this Master Agreement pursuant to the 2002A Transaction, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

6.6 Payment Obligation Absent Netting. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, interest, and payments or credits, that Party shall pay such sum in full when due.

ARTICLE SEVEN: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL

BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE EIGHT: SECURITY

8.1 Credit or Collateral Requirements.

- (a) On or before the Commercial Operation Date of Phase I, Seller shall take one of the following actions:
 - (i) Seller shall cause each of PSEG Global Inc. and Harbert Cogen, Inc. either (x) to execute and deliver to Buyer a guaranty substantially in the form attached hereto as Exhibit B which shall provide, among other things, that the maximum liability of a guarantor thereunder would not exceed \$15 million in the aggregate or (y) to issue in favor of Buyer an irrevocable standby letter of credit in form and substance reasonably satisfactory to Buyer that, in any event, can be drawn upon solely under the same terms and conditions as contemplated in the form of guaranty set forth in Exhibit B and with a stated amount of \$12.5 million; or
 - (ii) Seller shall execute in favor of and deliver to Buyer a deed of trust on the Facilities which shall provide that such deed of trust which secures payment obligations of Seller to Buyer hereunder (which secured payment obligations shall in no event exceed \$25 million) shall at all times be absolutely subject and subordinate to any deed of trust or other security instrument (the "Senior Lien") executed by Seller in favor of any party or parties providing construction and/or term financing for the Facilities ("Senior Financing"), provided that the amount of such Senior Financing shall not exceed 80% of the total cost incurred (or projected to be incurred, as determined by the senior lenders, when completed) by Seller in

connection with development and completion of the Facilities, and any renewal, modification, extension or replacement of such financing (as in effect from time to time, a “Project Financing”); or

- (iii) Seller shall cause to be issued to Buyer an irrevocable standby letter of credit in form and substance reasonably satisfactory to Buyer and with a stated amount of \$25 million.
- (b) Seller may at any time after an election has been made pursuant to Section 8.1(a) change such election, and Seller and Buyer shall execute such documents and instruments to effect such election change and release the previously elected security.
- (c) At any time that a deed of trust is outstanding in favor of Buyer, Buyer shall, upon the request of Seller, enter into a written agreement with Seller’s Lenders under a Project Financing which provides:
 - (i) that until the satisfaction in full by Seller of all indebtedness owed under a Project Financing, Buyer will not, without the prior written consent of the Lenders under a Project Financing, exercise any rights or remedies under the deed of trust in favor of Buyer or take any action with respect to any collateral securing the obligations under such deed of trust,
 - (ii) if Buyer’s deed of trust constitutes a first priority lien, such lien shall be subordinated to any Senior Lien granted to secure Project Financing, and
 - (iii) such other provisions as Seller’s lenders under a Project Financing may reasonably request.

ARTICLE NINE: GOVERNMENTAL CHARGES

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

9.2 Governmental Charges. Seller is liable for and shall pay, or cause to be paid, or reimburse the Buyer for if the Buyer has paid, all taxes applicable to the Product or a Transaction that arise prior to the Delivery Point. If the Buyer is required to remit such tax, the amount shall be deducted from any sums due to the Seller. Buyer is liable for and shall pay, cause to be paid, or reimburse the Seller for if the Seller has paid, all taxes applicable to the Product or a transaction arising at and from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product and are, therefore, the responsibility of Seller), including any taxes imposed or collected by a taxing authority with jurisdiction over the Buyer. Either Party, upon written request of the other Party, shall provide a certificate of exemption or

other reasonably satisfactory evidence of exemption if either Party is exempt from taxes, and shall use reasonable efforts to obtain and cooperate with the other Party in obtaining any exemption from or reduction of any tax. Taxes are any amounts imposed by a taxing authority with respect to the Product or a Transaction, except as parenthetically addressed above.

ARTICLE TEN: MISCELLANEOUS

10.1 Term of Master Agreement. The “Term” of this Master Agreement shall commence on the Effective Date and shall remain in effect until terminated by either Party upon thirty (30) days’ prior written notice; provided, however, that the 2002A Transaction shall not terminate until the day following the last day of the Delivery Period, unless terminated sooner pursuant to the express provisions of this Agreement or as a result of an Event of Default, and in each case such termination shall not affect or excuse the performance of either Party under any provision of this Agreement that by its terms survives any such termination, including without limitation payment of all obligations relating to the 2002A Transaction.

10.2 Representations and Warranties.

- (a) On the Effective Date and the date of entering into each Transaction, each Party represents and warrants to the other Party:
 - (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
 - (ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Master Agreement and the 2002A Transaction, except with respect to such regulatory authorizations relating to performance that are not required as of the date hereof;
 - (iii) the execution, delivery and performance of this Master Agreement and the 2002A Transaction are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or, subject to the exception set forth in Section 10.2(a)(ii), any law, rule, regulation, order or the like applicable to it;
 - (iv) this Master Agreement, the 2002A Transaction, and each other document executed and delivered in accordance with this Master Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses;
 - (v) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

- (vi) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Master Agreement and the 2002A Transaction;
 - (vii) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Master Agreement and the 2002A Transaction; and
 - (viii) it is acting for its own account, has made its own independent decision to enter into this Master Agreement and the 2002A Transaction and as to whether this Master Agreement and 2002A Transaction are appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Master Agreement and the 2002A Transaction.
- (b) In addition, Buyer represents and warrants to the Seller, and covenants that continuing throughout the term of this Master Agreement and the 2002A Transaction, and with respect to this Master Agreement and the 2002A Transaction, as follows: (i) all acts necessary to the valid execution, delivery and performance of this Master Agreement and the 2002A Transaction have been taken and performed as required under the Act, (ii) entry into and performance of this Master Agreement and the 2002A Transaction by Buyer are for a proper public purpose within the meaning of the Act and all other relevant constitutional, organic or other governing documents and applicable law, (iii) the term of this Master Agreement and the 2002A Transaction does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and applicable law, (iv) Buyer's obligations to make payments hereunder will be operating and maintenance expenses which enjoy first priority of payment at all times under any and all bond resolutions or indentures or other indebtedness to which it is a party or other governing documents and are to be made solely from a Special Fund, (v) entry into and performance of this Master Agreement and the 2002A Transaction by the Buyer will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any obligation of Buyer otherwise entitled to such exclusion, and (vi) obligations to make payments hereunder do not constitute any kind of indebtedness of the Buyer or create any kind of lien on, or security interest in, any property or revenues of Buyer which, in either case, is proscribed by any provision of the Act or any other relevant constitutional, organic or other governing documents and applicable law, any order or

judgment of any court or other agency of government applicable to it or the Trust Estate, or any contractual restriction binding on or affecting it or the Trust Estate.

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

10.4 Reserved.

10.5 Assignment.

- (a) Neither Party shall assign this Agreement or its rights or obligations hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, Seller (or, with respect to clause (i), Buyer) may, without the consent of the other Party, (i) transfer, sell, pledge, encumber or assign a security interest in this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, provided that Buyer may transfer, sell, pledge, encumber or assign a security interest solely to a bond trustee as security for payment of bonds issued by Buyer and that such bond trustee's sole remedy under any such assignment is to cure Buyer's payment default and enforce, through mandamus or otherwise, Buyer's obligations under this Agreement; (ii) transfer or assign this Agreement to an Affiliate of such Party which Affiliate's creditworthiness is equal to or higher than that of such Party, after giving effect to such transfer or assignment or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of its assets whose creditworthiness is equal to or higher than that of such Party after giving effect to such transfer or assignment; provided, however, that in each such case (other than in the case of (i) above), any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request. In addition, if another governmental entity is created or designated by law to carry out the rights, powers, duties and obligations of Buyer under the Act, then Buyer shall, as required by such law, transfer and assign all of its right, title and interest to this Agreement and the Fund to such other governmental entity; provided, that such governmental entity agrees to be bound by the terms of this Agreement and has substantially the same statutory authority as in the Act to recover its revenue requirements and such entity, or such entity's long-term senior unsecured indebtedness, is rated at least BBB- or higher by S&P or Baa3 by Moody's, or if not rated, has obtained a shadow rating of BBB- or higher by S&P or Baa3 by Moody's, in each case after giving effect to such assignment.

(b) (i) In connection with assignment of a security interest in this Agreement to a financial institution or other entity (the “Lender”) in connection with the construction and/or Project Financing of the Facilities by Seller pursuant to Section 10.5 (a)(i), the Buyer shall, at the Lender’s request, execute a consent to assignment in the form attached hereto as Exhibit C with such changes thereto as the Lender may reasonably request.

(ii) In connection with the assignment by Buyer of a security interest in this Agreement pursuant to Section 10.5 (a)(i) to a bond trustee as security for payment of bonds issued by Buyer, Seller shall, at such bond trustee’s request, execute a consent to assignment that provides the following:

(1) For so long as Buyer shall have outstanding and unpaid any financing liabilities during the term of this Agreement, the Seller agrees to promptly furnish to any such bond trustee known to Seller based on information provided by such bond trustee or Buyer a copy of any notice of an Event of Default by Buyer under this Agreement; and

(2) The Seller agrees that it will not terminate this Agreement unless a written notice of such termination shall have been given to and received by such bond trustee then known to Seller thirty days prior to the effective date of such termination and, prior to the effective date of such termination, such bond trustee has not cured or caused to be cured the Event of Default.

10.6 Novation. Notwithstanding the foregoing limitations on assignment, at any time after January 1, 2003, the Seller shall, upon the written request of Department, enter into a Replacement Agreement as may be agreed to by a Qualified Electric Corporation. This Agreement shall terminate upon the effective date of such Replacement Agreement. The occurrence of the effective date of the Replacement Agreement shall constitute a novation that shall relieve Department of any liability or obligation arising after the date of termination of the Agreement. Such Replacement Agreement shall state that it is a Replacement Agreement within the meaning of the Agreement and that it constitutes a novation for which there is adequate consideration. The effectiveness of such Replacement Agreement shall be subject to the condition precedent that the California Public Utilities Commission shall have conducted a just and reasonable review under Section 451 of the Public Utilities Code with respect to such Replacement Agreement and shall have issued an order determining that the charges under such Replacement Agreement are just and reasonable. “Qualified Electric Corporation” means an electrical corporation, as defined by AB 1X, whose long-term unsecured senior debt is rated BBB or better by Standard & Poor's Corporation and Baa2 or better by Moody's Investor Services and is not negative outlook or Credit Watch from either rating agency at the effective date of such Replacement Agreement.

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

10.8 Notices.

- (a) All notices, requests, statements or payments shall be made as specified in the Cover Sheet. Notices (other than for the Scheduling of deliveries, and such other communications related to day-to-day operations as specified in the Operating Procedures) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its addresses by providing notice of same in accordance herewith.
- (b) Seller will provide Buyer with a copy of its market-based tariff as filed with the FERC provided that a failure of Seller to do so will not be deemed a breach or failure to perform a material covenant or obligation of this Agreement.

10.9 General. This Master Agreement (including the exhibits, schedules and any written supplements hereto), and the 2002A Transaction (set forth in Exhibit A, and the attachments thereto) constitute the entire agreement between the Parties relating to the subject matter. Notwithstanding the foregoing, any collateral, credit support or similar arrangement between the Parties shall, upon designation by the Parties, be deemed part of this Agreement and shall be incorporated herein by reference. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. No amendment or modification to this Master Agreement or the 2002A Transaction shall be enforceable unless reduced to writing and executed by both Parties and this agreement may not be orally amended or modified, including by Recording pursuant to Section 2.3. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect outstanding Transactions under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any of its applicable tariffs are inconsistent with this Agreement. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable

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

10.10 Audit. Each Party has the right, at its sole expense and during normal working hours following reasonable notice, to have its third party auditor examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Master Agreement or the 2002A Transaction. If requested, a Party shall provide or make available to the other Party’s third party auditor statements evidencing the Quantity delivered at the Delivery Point or charges assessed on it by the CAISO. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

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

10.12 No Retail Services; No Agency.

- (a) Nothing contained in this Agreement shall grant any rights to or obligate Seller to provide any services hereunder directly to or for retail customers of any person; and Buyer covenants that all Energy delivered to it from a Unit will be used solely for resale and not for direct consumption.
- (b) In performing their respective obligations hereunder, neither Party is acting, or is authorized to act, as agent of the other Party.

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

disputes which may arise under this Agreement or from any dispute concerning Agreement terms. Therefore, both Parties agree to use their best efforts to resolve all such disputes as rapidly as possible on a fair and equitable basis. Toward this end both Parties agree to develop and follow a process of presenting, rapidly assessing, and settling claims and other disputes on a fair and equitable basis. This process shall consist of (1) presentation of the claim by the claiming Party in writing, with supporting documentation, if any, and a specification of the amounts due or other remedies which if provided by the other Party would resolve the claiming Party's claim; (2) response by the other Party to the claiming Party's written presentation of its claim, in writing, accepting, rejecting or setting forth a counter proposal to the claiming Party's claim, along with any written explanation or supporting documentation the other Party elects to provide, which is to be delivered within seven (7) Business Days of receipt of the claiming Party's presentation of its claim; and (3) a meeting of the Parties' representatives with knowledge and authority to resolve the dispute within two (2) Business Days of receipt by the claiming Party of the other Party's written response. If any dispute or claim arising under this Agreement cannot be readily resolved by the Parties pursuant to the process referenced in this Section 10.13, the Parties shall have all rights available under law or equity.

10.14 Fixed Rate Contract. The Parties hereby stipulate and agree that, under the facts and circumstances known to them at this time, this Agreement was entered into as a result of arms'-length negotiations between the Parties. Further, the Parties believe that the rates, terms and conditions of this Agreement are just and reasonable within the meaning of Sections 205 and 206 of the Federal Power Act, 16 U.S.C. Sections 824d and 824e, and that the rates, terms and conditions of this Agreement will remain so over the life of the Agreement. The Parties waive all rights to challenge the validity of this Agreement or whether it is just and reasonable for and with respect to the entire term thereof, including any rights under Sections 205 and 206 of the Federal Power Act 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 any Transaction hereunder, or to prevent this Agreement or any Transaction hereunder from taking effect. It is further agreed that, in the event any of the Parties challenges this Agreement for any other reason, they will not dispute the applicability of the public interest standard as that term has been defined and interpreted under the Federal Power Act and the cases of *United Gas Pipe Line Co. v. Mobile Gas Corp.*, 350 U.S. 332 (1956), and *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), and subsequent cases.

EXHIBIT A

**MASTER POWER PURCHASE AND SALE AGREEMENT
2002A TRANSACTION**

This confirmation letter shall confirm the Transaction agreed to on August 22 2002 between GWF Energy LLC (“Party A”) and California Department of Water Resources, acting solely under the authority and powers created by AB1X, codified as Sections 80000 through 80270 of the California Water Code (the “Act”), and not under its powers and responsibilities with respect to the California State Water Resources Development System (“Party B”) regarding the sale/purchase of the Product under the terms and conditions as follows:

Seller: Party A

Buyer: Party B

Product:

Into _____, Seller’s Daily Choice

Firm (LD)

Firm (No Force Majeure)

System Firm

(Specify System: _____)

Unit Firm

(Specify Unit(s): _____)

Other: Firm Capacity and Energy (as defined, to exclude Excused Outages)

Transmission Contingency (If not marked, no transmission contingency)

FT-Contract Path Contingency Seller Buyer

FT-Delivery Point Contingency Seller Buyer

Transmission Contingent Seller Buyer

Other transmission contingency

(Specify: _____)

Contract Quantity: See attached

Delivery Point: See attached

Contract Price: The sum of the Capacity Payments, Energy Price, and such other amounts, including the CAISO Charges, as set forth in this Agreement.

Energy Price: See Attachment 1 to this Exhibit A

Other Charges: See Attachment 1 to this Exhibit A

Delivery Period: For each Unit of Phase I and Phase II, commencing on the Commercial Operation Date of such Unit and terminating on December 31, 2011. For each Unit of Phase III, commencing on the later of the Commercial Operation Date of such Unit and June 1, 2003, and terminating on October 31, 2012.

Special Conditions: See Attachment 1 to this Exhibit A

Scheduling: See Attachment 1 to this Exhibit A

Option Buyer: N.A.

Option Seller: N.A.

Type of Option: _____

Strike Price: _____

Premium: _____

Exercise Period: _____

This confirmation letter is being provided pursuant to and in accordance with the Amended and Restated Master Power Purchase and Sale Agreement dated August 22, 2002 (the "Master Agreement") between Party A and Party B, and constitutes part of and is subject to the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

[Party A]

GWF Energy LLC

[Party B]

California Department of Water Resources,
acting solely under the authority and powers
created by AB1-X, codified as Sections 80000
through 80270 of the California Water Code
(the "Act"), and not under its powers and
responsibilities with respect to the California
State Water Resources Development System

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

[The next page that is not blank is page 5]

2002A TRANSACTION

A. Description of Facilities

1. A “Phase” is a group of Units that are, or are expected to be, developed and installed concurrently. The Phases constitute new California generation facilities located in NP15 as that zone was defined by CAISO as of April 20, 2001. A site may contain Units from one or more Phases. In sum, Seller will install up to six combustion turbines (each a “Unit”), at sites located in NP15. The following defines each Phase:

- (a) *Phase I:* This Phase consists of two (2) LM6000 SPRINT combustion turbine Units.
- (b) *Phase II:* This Phase consists of two (2) LM6000 SPRINT combustion turbine Units.
- (c) *Phase III:* This Phase consists of two (2) GE Frame 7EA combustion turbine Units.

2. The design of the Units as presently contemplated is further described below. The Seller reserves the right to make changes in the design, including without limitation changes necessitated to accommodate conditions imposed through permits or by regulatory agencies, provided that such changes do not affect any of the rights and obligations of the Parties under this Agreement including without limitation with respect to Contract Price, Contract Quantities, and Guaranteed Heat Rates.

- (a) *Phase I:* The Units conform to the Simple Cycle BACT requirements for NO_x, VOC, and CO. All emission reduction credits required to operate each Unit in this Phase from its Commercial Operation Date through the term of the Agreement have been purchased. Phase I Units are placed at the Hanford site and interconnect with the Henrietta-Kingsburg 115kv transmission line.
- (b) *Phase II:* The Phase II Units utilize water injection, in conjunction with an SCR and Oxidation Catalyst to conform to the Simple Cycle BACT requirements. All of the PM-10, VOC, and NO_x emission reduction credits required to operate for the term of the Agreement have been purchased. The Phase II Units are placed at the Henrietta site and interconnect with the Henrietta Sub-Station 70 kv bus.
- (c) *Phase III:* The Phase III Units will utilize a dry Lo-NO_x combustor with an SCR and Oxidation Catalyst to conform with the Simple Cycle BACT requirements for NO_x, VOC, and CO. All emission reduction credits required to operate each Unit in this Phase from its Commercial Operation Date through the term of the Agreement have been purchased. Generation from the two 7EA Units will be delivered to the Tesla Sub-Station 115kv bus.

B. Contract Quantity

1. The design capacity of each Unit at ISO Conditions at the Delivery Point for each Unit is as follows:

| | |
|------------|--------------------------------|
| Phase I: | Two (2) Units at 44.0 MWs each |
| Phase II: | Two (2) Units at 44.0 MWs each |
| Phase III: | Two (2) Units at 82.0 MWs each |
| Total: | 340 MW |

2. The Contract Quantity for each Unit for purposes of determining the Capacity Payment and establishing COD will be established by testing and adjustment as follows: On the Phase III Completion Date of each Phase III Unit, and thereafter during the period beginning June 1 and ending June 30 in each contract year; and during the period beginning June 1 and ending June 30 in each contract year for each Phase I Unit and each Phase II Unit, Seller will conduct a four hour performance test of each Unit, performed in accordance with ASME Code PTC 22 testing requirements except for the use of Seller's installed instrumentation, during operations using Seller's installed instrumentation, calibrated by Seller (except the Electric Metering Equipment which will be calibrated in accordance with CAISO Requirements) to determine the maximum MW output of each Unit as measured at the Delivery Point for such Unit. If Buyer requires instrumentation other than Seller's instrumentation, Buyer shall pay for such instrumentation. Buyer shall pay any incremental costs (including Fuel Costs) associated with any performance test conducted at Buyer's request. In addition, each of Buyer and Seller may request up to two additional tests per year (at any time) utilizing the same four hour test procedures. After each test, Seller will use performance curves certified by the original equipment manufacturer/architect engineer/vendor to adjust the test results to ISO Conditions. In addition, on or before April 30 of each year Seller will designate a "Scheduling Reduction Factor" for each Unit not to exceed 5% of such Unit's test results, which will remain in effect until replaced (no earlier than the following April 30). The ISO Condition-adjusted test results multiplied by the difference of one minus the Scheduling Reduction Factor will be the "Contract Quantity" for the Unit, effective on the first day of the month following the month in which Buyer receives written notice of the test results. In no event shall the Contract Quantity for all Units exceed 362 MW unless mutually agreed upon. Seller will provide forty-eight (48) hours notice to Buyer prior to each test, and provide Buyer with written notice of the test results and subsequent adjustment to the Contract Quantity within the later of five (5) Business Days of each test or as soon as practicable. Buyer is entitled to witness any test of a Unit. Buyer may request third party calibration of instrumentation used in any test, and in the event that a deviation equal to or more than 2% is found, Seller shall bear the cost of such calibration, and if the instrumentation is within 2% deviation then Buyer shall bear such cost. Notwithstanding anything herein to the contrary, Seller shall be permitted to conduct any tests described herein on any Phase III Unit prior to June 1, 2003.

3. To the extent possible, Seller and Buyer will seek to schedule each four-hour test of a Unit during periods in which the Buyer has Scheduled such Unit to operate and the Energy Price applicable during such test will be allocated as it would during any period of operation at Buyer's request, except that Seller will bear any incremental cost of operation solely due to testing. To the extent that testing of a Unit cannot be scheduled to coincide with periods in which Buyer has Scheduled the Unit to operate, the cost of the annual test will be borne by Buyer and the cost of any retest will be borne by the Party requesting it.

C. **Start Date and Commercial Operation Date**

The Commercial Operation Date ("Start Date") for each of the Units, by Phase, are as follows:

| | |
|--------------------------|-------------------|
| Phase I, Unit 1: | September 2, 2001 |
| Phase I, Unit 2: | September 6, 2001 |
| Phase II, Units 1 and 2: | July 1, 2002 |

The projected Commercial Operation Date for the Phase III Units is June 1, 2003.

Except as provided in 5.5(a), neither Seller nor Buyer shall incur any obligation or right, including penalties, delay damages, bonuses or the right to declare an Event of Default, terminate or suspend performance under the Agreement, in the event that the Commercial Operation Date of a Unit does not occur on the Start Date for such Unit, provided that Buyer's obligation to pay a monthly Capacity Payment with respect to such Unit will not commence until the Commercial Operation Date for such Unit (and the first monthly Capacity Payment applicable to a Unit will be prorated if the Commercial Operation Date for such Unit is other than on the first day of the month).

D. **Construction Information**. Seller shall provide information regarding the status of construction activities and the then expected Commercial Operation Dates of the Phase III Units, including status of accomplishing major development and construction milestones including obtaining all permits, acquisition and installation of major equipment, and start-up testing. Department may inspect the Units, the Unit construction sites or on-site Seller data and information pertaining to the Units reasonably necessary to verify the information provided pursuant to this provision during business hours upon reasonable notice. Seller will not materially decrease the nameplate capacity below that which is referenced in the applicable permit or change the design of the units in a manner that materially impairs Seller's obligations or materially alters Department's rights or obligations hereunder without the written approval of Department, not to be unreasonably withheld.

E. **Availability**

1. Buyer may reserve Capacity or Schedule Energy from each Unit up to the following number of hours during each calendar year (commencing with the Commercial Operation Date for such Unit) in an amount equal to the Adjusted Potential Contract Quantity for such Unit for that day if the Unit is declared available by Seller in Seller's Availability Notice, in

accordance with the Scheduling requirements set forth in Section 3.2 (as applicable to such Unit) and other limitations as provided in this 2002A Transaction.

| | |
|--|----------------------|
| <u>Phase I Units:</u> 2002: | 3,000 hours |
| 2003 through 2011: | 2,000 hours per year |
| <u>Phase II Units:</u> 2002: | 3,000 hours |
| 2003 through 2011: | 2,000 hours per year |
| <u>Phase III Units:</u> commencing on the later of the Commercial Operation Date of each Unit and June 1, 2003 through October 31, 2012: | 2,000 hours per year |

Buyer may not Schedule any hours during the months of April or May. Notwithstanding anything herein to the contrary, such months will not be subject to any availability targets or calculations.

2. Seller will provide Buyer daily notices of each Unit’s availability, Potential Contract Quantity and Adjusted Potential Contract Quantity; and thereafter, with respect to such hours and such Units which Buyer has Scheduled to operate on a day-ahead basis, Seller will provide timely notices of subsequent changes in the availability, Potential Contract Quantity and Adjusted Potential Contract Quantity of such Unit, and with respect to such hours and such Units which Buyer has not Scheduled to operate, Seller will provide timely notices of subsequent changes in availability and Potential Contract Quantity only (each such notice, an “Availability Notice”). “Potential Contract Quantity” of a Unit is the Unit’s Contract Quantity as adjusted for all known outages and derations of such Unit (but not adjusted for ambient conditions). “Adjusted Potential Contract Quantity” of a Unit is the Unit’s Potential Contract Quantity, adjusted for ambient conditions as forecasted at the time of the applicable Availability Notice utilizing the performance curves specified in Section B.2 of this 2002A Transaction. Seller’s initial Availability Notice for each day to be Scheduled shall be provided to Buyer at least two (2) hours prior to Buyer’s day-ahead Scheduling deadline provided for in Section 3.2 (c).

3. The Actual Availability of each Unit will be separately calculated each month and compared to the Unit’s Target Availability. Such comparison will be used to determine the Capacity Payment. The “Target Availability” of each Unit is:

| | |
|---------------|-----|
| Summer Season | 98% |
| Winter Season | 94% |

The “Actual Availability” or “AA” (for each Unit, for each calendar month) equals the average Hourly Unit Availability Factor as calculated over all hours in the billing month, which can be expressed as follows:

$$AA = (\sum_{hours} \text{Hourly Unit Availability Factors}) / (\text{Number of Hours} - \text{Excused Hours})$$

Where:

“Number of Hours” is equal to 24 hours multiplied by the number of days in the applicable billing month;

“Hourly Unit Availability Factor” is determined for each Unit for each hour that is not an Excused Hour as follows:

(i) for each hour in which the Unit is Scheduled by Buyer (including dispatch instructions by Buyer or by CAISO on Buyer's account), as the quotient of Adjusted Potential Contract Quantity for that Unit for that hour, divided by the Adjusted Contract Quantity of that Unit for that hour; or

(ii) for each hour in which the Unit is neither Scheduled by Buyer nor dispatched by Buyer or CAISO on Buyer's account, as the quotient of the Potential Contract Quantity of that Unit for that hour, divided by the Contract Quantity of that Unit for that hour;

“Adjusted Contract Quantity” is a Unit’s Contract Quantity adjusted for the ambient conditions used to determine the corresponding Adjusted Potential Contract Quantity as provided by Seller in the final Availability Notice (from which the Final Physical Energy Schedule was established), utilizing the same performance curves specified in Section B.2 of this 2002A Transaction; and

“Excused Hour” for a Unit is an hour during which a Unit is affected by an Excused Outage.

Buyer shall have the right to appoint a third party auditor to audit Buyer’s records regarding any Unit in order to verify Seller’s claims of availability. In the event that Buyer determines that a Unit’s Hourly Unit Availability Factor has been communicated as 1 by Seller when records reflect the Hourly Unit Availability Factor was actually 0, then Seller shall pay Buyer an amount equal to the number of such hours in a month in which such inaccuracy occurred, if any, multiplied by two multiplied by the quotient of the Capacity Payment for such Unit for such month divided by the number of hours in such month.

F. **Capacity Payment**

Commencing effective with the Commercial Operation Date of each Unit, Buyer shall pay Seller (in arrears) each month during the Delivery Period the Capacity Payment applicable to such Unit. The “Capacity Payment” for each Unit (by month) equals:

Contract Quantity (by Unit) * Capacity Payment Rate * (1.00 + Availability Adjustment)

The “Capacity Payment Rate” is the applicable rate set forth as Table 1 to this Exhibit A which lists the Capacity Payment Rates in \$/kW-month for each month of the contract. In no event, however, can the Capacity Payment (for any Unit or for all Units together) equal an amount that is less than zero.

“Availability Adjustment” for the months of the Summer Season equals:
(((Target Availability (for such Unit) — Actual Availability (for such Unit))/
Target Availability (for such Unit)) * -2)

“Availability Adjustment” for the months of the Winter Season equals:
(((Target Availability (for such Unit) — Actual Availability (for such Unit))/
Target Availability (for such Unit)) * -1)

Examples:

- If the Contract Quantity of a Phase I Unit is 44,000 kW and during March 2003 its Actual Availability as determined pursuant to Section E.3 of the 2002A Transaction is 99%, then the Availability Adjustment for such Unit for March 2003 is .053 (*i.e.*, $[(.94 - .99)/.94 * -1 = .053]$) and the Capacity Payment is \$838,761 (*i.e.*, $44,000 \text{ kW} * \$18.10/\text{kW-month} * (1.00 + .053)$).
- If the Contract Quantity of a Phase II Unit is 44,000 kW and during June 2003 its Actual Availability as determined pursuant to Section E.3 of the 2002A Transaction is 90%, then the Availability Adjustment for such Unit for June 2003 is -.163 (*i.e.*, $[(.98-.90)/.98* -2 = -.163]$) and the Capacity Payment equals \$666,375 (*i.e.*, $44,000 \text{ kW} * \$18.10/\text{kW-month} * (1.00 + (-.163))$).
- If the Contract Quantity of a Phase III Unit is 82,000 kW and during June 2003 its Actual Availability as determined pursuant to Section E.3 of the 2002A Transaction is 98%, then the Availability Adjustment for such Unit for June 2003 is 0 (*i.e.*, $[(.98-.98)/.98* -2 = 0]$) and the Capacity Payment equals \$2,646,140 (*i.e.*, $82,000 \text{ kW} * \$32.27/\text{kW-month} * (1.0 + 0)$).

G. Delivery Point(s) and Interconnections

1. The Delivery Point for each Unit shall be the point of interconnection with the CAISO-controlled grid of the transmission facilities connecting each Unit thereto. Each Unit will deliver in the CAISO zone where it is interconnected with the CAISO controlled grid. As of April 20, 2001, all interconnection points are in NP 15. However, CAISO may redefine zones over time. The delivery zone for each Phase will always be the zone that contains the Unit. Systems losses and congestion management are Buyer’s responsibility.

2. Seller shall be responsible for completing the natural gas and electric interconnections for each Unit such that the interconnections are capable of supporting operation of the associated Unit at its full design capacity. Seller will provide Buyer documentation reasonably requested by Buyer to confirm such interconnection capabilities.

H. Energy Price

1. Each month, Buyer will pay Seller an Energy Price in U.S. dollars calculated as follows:

$$\text{Energy Price (in \$)} = \text{FC} - (\text{Heat Rate Adjustment} * \text{FC}) + \text{Variable O\&M Payment} + \text{Fixed Fuel Charge}$$

Where; for each Unit,

FC = Fuel Cost, as provided in Section L.2 hereof.

FC' = FC, or if Buyer supplies its own fuel, the sum over all hours in which the Final Physical Energy Schedule is positive of the products of (i) the Fuel Index for such hour and (ii) the product of Physical Energy Schedule during such hour and the AHR.

Heat Rate Adjustment and Variable O&M Payment are calculated as set forth in Sections I and J below.

“Fixed Fuel Charge” is any fixed fuel costs (*i.e.*, commodity, capacity or transportation reservation charges, use-or-pay charges, or take-or-pay charges, balancing administrative charges, and the like) incurred by Seller in providing fuel to the Facility on behalf of Buyer in accordance with an approved Annual Fuel Plan, but not recovered through the Fuel Cost, which amount shall be a component of the Energy Price and in addition to all other amounts, including the Capacity Payments, paid Seller by Buyer each month. In addition, to the extent actual annual Scheduling of Energy by Buyer deviates from the projections of Energy dispatches contained in Buyer’s Annual Dispatch Plan for that year provided pursuant to Section 3.2(b) of the Agreement, Buyer shall pay to Seller any costs incurred in contracting for fuel supply pursuant to the Annual Fuel Plan that cannot otherwise be collected from Buyer and which Seller, despite its reasonable efforts, was unable to mitigate. In the event that an Annual Fuel Plan approved by Buyer provides for a firm supply of fuel commodity or transportation for that year and, due to reasons outside of Seller’s reasonable control, such firm supply or transportation is interrupted or becomes unavailable, Seller shall use reasonable efforts to mitigate such failure of supply or transportation, and any costs greater than those contained in the approved Annual Fuel Plan will be paid by Buyer; provided that Seller will pass-through to Buyer any compensation, damages or other benefits it receives as a result of such interruption or unavailability.

I. **Guaranteed Heat Rate (GHR)**

1. Attached as Tables 2 and 3 are the Guaranteed Heat Rates (“GHRs”) for each Unit, shown both at ISO Conditions, and also as adjusted for various ambient conditions. Such GHRs are shown in Btu/kWh HHV for dispatch at 100% of Adjusted Potential Contract Quantity (higher heating value or “HHV”) during hours of steady state operation. Hours Scheduled or dispatched at less than 100% load (Adjusted Potential Contract Quantity) are not subject to the Guaranteed Heat Rates.

2. Each month Seller will perform a comparison of the AHR for the Units that have achieved their Commercial Operation Date to their GHRs, as follows:

- (a) For every month, Seller will measure the Actual Heat Rate (“AHR”) for each Unit for all hours in which the following three conditions are

satisfied (“AHR Hours”): (i) the Unit was Scheduled at 100% of Adjusted Potential Contract Quantity by Buyer, (ii) Seller delivered the full Final Physical Energy Schedule for such Unit to Buyer and (iii) the Unit operated at steady-state (no ramping up or down and no planned or unplanned discontinuation of operations). Such AHR will be measured in Btu/kWh HHV using the Designated Hourly Fuel Consumption for such hour divided by the Final Physical Energy Schedule for such Hour. For purposes of this calculation, the “Designated Hourly Fuel Consumption” for a Unit is the product of (i) Final Physical Energy Schedule divided by Unadjusted Metered Energy, multiplied by (ii) actual fuel consumption of such Unit for such hour as measured by Seller’s Gas Metering Equipment.

- (b) The hourly AHRs for each Unit will be added together and then divided by the number of AHR Hours for such Unit Scheduled by Buyer in that month, providing a “Unit Monthly AHR.”
- (c) Each Unit Monthly AHR will be multiplied by that Unit’s Weighting Factor, the product of which shall be the “Weighted Unit Monthly AHR.”
- (d) The Weighted Unit Monthly AHRs for every Unit which has achieved its Commercial Operation Date will then be added together, providing the “Facility Monthly AHR.”
- (e) In each month, for each Unit which has achieved its Commercial Operation Date, Seller will use Tables 2 and 3 to determine the GHR (adjusted for the actual ambient air conditions in such hour) for each of the AHR Hours of such Unit in that month. Such hourly GHRs for such Unit will be added together and then divided by the number of AHR Hours of such Unit in that month, providing a “Unit Monthly GHR.”
- (f) Each Unit Monthly GHR will be multiplied by that Unit’s Weighting Factor, the product of which shall be the “Weighted Unit Monthly GHR.”
- (g) The Weighted Unit Monthly GHRs for every Unit which has achieved its Commercial Operation Date will then be added together, providing the “Facility Monthly GHR.”
- (h) The Facility Monthly GHR will be subtracted from the Facility Monthly AHR. Any positive difference will then be divided by the Facility Monthly AHR, the quotient of which shall be the “Heat Rate Adjustment” to be used in the calculation of the monthly Energy Price, contained in Section H above. If the above difference is zero or negative, the Heat Rate Adjustment equals zero.

3. The Operations Committee shall evaluate, and may recommend to the Parties, procedures to provide incentives to Seller to maintain low actual heat rates for the Units.

J. **Variable O&M Payments**

The Variable O&M Payment for each monthly billing period equals the applicable Variable O&M Rate for each Unit (set forth below) multiplied by the sum of the total Final Physical Energy Schedule and Dispatch Energy or Ancillary Services Energy for each such Unit during the billing period. The Variable O&M Rates are set forth below, by Unit.

| | |
|------------------|--------------|
| Phase I Units: | \$5.00/MW-Hr |
| Phase II Units: | \$5.00/MW-Hr |
| Phase III Units: | \$5.00/MW-Hr |

K. **Start-ups**

Start-up fuel costs and shut-down fuel costs will be included within the Fuel Cost as described in Section L.2, except for re-starts as set forth below.

Buyer may not request more than two starts per Unit per day for any Phase I or Phase II Unit, and not more than one start per Unit per day for any Phase III Unit. A CAISO requested start (not on Buyer's account) of Reserved Capacity shall not preclude Buyer from requesting a same day start of the same Unit. Should a re-start(s) be required due to a Unit becoming unavailable for any reason not resulting from Buyer's actions or inactions, such re-start(s) shall not count toward Buyer's allotment of starts, nor shall any Start-up and Shutdown Fuel Cost Adjustments for such re-starts be charged to Buyer.

L. **Fuel Cost and Fuel Supply**

1. Seller shall arrange for natural gas transportation to the Facilities which transportation may be interruptible, the interruption of which shall not reduce the Actual Availability of a Unit (assuming the Unit is capable of operation but for lack of natural gas). In the event Buyer notifies Seller in its annual review of the Annual Fuel Plan described below that it wishes for Seller to arrange for firm natural gas transportation, Seller shall use commercially reasonable efforts to obtain firm transportation service but shall have no liability in the event that firm transportation is not available. Seller's cost of natural gas transportation shall be included in the calculation of the Fuel Cost.

2. Seller will allocate for Buyer's account all actual fuel costs incurred by Seller for each Unit for all hours in which Energy was Scheduled or dispatched by Buyer or by CAISO on Buyer's account from such Unit by Buyer utilizing (for purposes of allocating fuel usage to the specific hours in which the Unit operated with respect to Buyer's Schedule and as between Units) the meter data from Seller's Gas Metering Equipment. Such amount allocated to Buyer's account will be deemed the "Preliminary Fuel Cost" and will include all actual variable fuel costs, including transportation, fuel used for start-up and shutdown, fees, taxes and other charges, delivered to the Units, as such costs are determined in accordance with the then-current Annual Fuel Plan; provided, however, that any fixed fuel costs incurred by Seller in providing fuel to the Facility pursuant to the Annual Fuel Plan shall be recovered by Seller from Buyer in the form of the monthly Fixed Fuel Charge, as provided in Section H above and shall be excluded from the Preliminary Fuel Cost. In addition, the Preliminary Fuel Cost will be adjusted as follows: For each Unit for each hour in which such Unit is dispatched by Buyer, the portion of the

Preliminary Fuel Cost allocated to such hour (the "Preliminary Hourly Fuel Cost") will be multiplied by the ratio of (i) the sum of the Final Physical Energy Schedule for such hour and any Dispatch Energy or Ancillary Services Energy generated in response to a dispatch instruction by Buyer or by CAISO on Buyer's account to (ii) the Unadjusted Metered Energy for such hour and such resulting product will be deemed the "Designated Hourly Fuel Cost"; provided, however, that in an hour during which a Unit is ramping due to a start-up or shutdown to accommodate Buyer's Schedule, and such start-up or shutdown is subject to inclusion in Fuel Cost under Section K, then, solely for purposes of this section, the following adjustments ("Start-up and Shutdown Fuel Cost Adjustments") shall be made: 1) the Preliminary Hourly Fuel Cost shall be increased by the cost of fuel in the immediately preceding (for a start-up) or succeeding (for a shutdown) hour associated with Buyer's start-up or shutdown, and 2) the Unadjusted Metered Energy for such hour shall be increased by the Unadjusted Metered Energy occurring during the start-up or shutdown of such Unit in the immediately preceding (for a start-up) or succeeding (for a shutdown) hour, provided that such immediately preceding or succeeding hour is not an hour in which Energy was Scheduled from such Unit by Buyer. The sum of the Designated Hourly Fuel Costs will equal the "Fuel Cost" for such month; provided that, for an hour in which the Final Physical Energy Schedule is greater than zero, if the Unadjusted Metered Energy equals zero, then the Designated Hourly Fuel Cost for such hour will be set equal to the total actual cost of natural gas for the day in which such hour occurred divided by the Unadjusted Metered Energy delivered during the day in which such hour occurred, multiplied by the Final Physical Energy Schedule for such hour.

3. To the extent any natural gas transportation or commodity imbalance charge is incurred by Seller and such imbalance charge was a result of (i) an AHR for a Unit in excess of the ambient temperature adjusted GHR for such Unit as provided herein, (ii) a Unit outage other than an Excused Outage, (iii) a failure by Seller to Schedule natural gas in accordance with Buyer's day-ahead Energy Schedule, provided that Buyer has provided notice of its day-ahead Energy Schedule prior to the deadline set forth in Section 3.2 for Scheduling, or (iv) intra-day Scheduling by Seller, such imbalance charge shall be paid by Seller. To the extent any natural gas transportation or commodity imbalance charge is incurred by Seller and such imbalance charge was a result of (i) intra-day Scheduling by Buyer pursuant to Section 3.2 hereof, (ii) late notice of a day-ahead Energy schedule or changes to such day-ahead Energy schedule after the deadline set forth in Section 3.2 for day-ahead Scheduling, (iii) an Excused Outage, or (iv) if Seller has contracted for a firm fuel commodity supply but interruptible fuel transportation and such transportation is curtailed or interrupted, resulting in a commodity imbalance charge, or (v) if Buyer furnishes natural gas for all or a portion of its load and fails to nominate and deliver quantities of natural gas matching the requirements for the hours dispatched including due to non-compliance with any transportation balancing order issued by the natural gas transporter (such as operational flow orders or emergency flow orders), such imbalance charge shall be passed through to Buyer. Notwithstanding anything to the contrary herein, in the event Buyer elects not to supply fuel under an Annual Fuel Plan, Seller shall ensure that Buyer obtains a pro-rata portion (commensurate with its dispatch of the Units) of the same benefits that Buyer would have obtained had Buyer elected to Supply Fuel, including balancing provisions that offer no less benefit than the LDC would provide for the same period.

4. The Party providing natural gas under the Annual Fuel Plan shall nominate and schedule for delivery all the natural gas to be received by the Units in accordance with

established pipeline nomination guidelines and practices and transporters' tariff(s). For example, under current guidelines, practices and tariffs, in order to nominate the necessary natural gas supplies without charges or penalties, exclusive of holidays, Seller, as natural gas provider, will require, at a minimum, 24 hours notice prior to the actual time on a weekday, Tuesday through Friday, that the Unit is Scheduled for dispatch, and notice by 7:00 am CST/CDT, Friday if the Unit is Scheduled for dispatch on Saturday, Sunday or Monday. Thus, in order to meet the current deadlines for natural gas nominations, without penalty, Buyer must provide notice of its Day-Ahead Physical Energy Schedule for a Monday in accordance with Section 3.2(c) no later than 6:00 a.m. on the previous Friday. Buyer acknowledges that volumes and deliveries of natural gas not nominated and scheduled at least 24 hours in advance are subject to limited marketplace availability and charges or penalties associated with the nomination and scheduling procedures and deadlines set forth in natural gas transporters' tariffs may apply.

5. It is contemplated that an Annual Fuel Plan may provide for both Parties to supply natural gas for use in the Units. The Parties intend that the quantity of natural gas actually delivered and received each day at each of Seller's Units will equal the quantity to be used by that Unit but it is recognized that due to operating conditions, the quantities of natural gas delivered and received may not be in balance in any one particular day. Seller will establish an operational balancing account for the purpose of balancing the natural gas supply and any non-volumetric costs associated with such account, such as administrative charges, will be included in the monthly invoice to Buyer and shall be paid by Buyer. Volumetric costs associated with the operational balancing account will be subject to the allocation provisions in Section L.3. Seller will use a contracted gas marketer or other means to establish and maintain such a balancing account. Seller shall use commercially reasonable efforts to secure the best cost and terms for gas management services. Seller will obtain a minimum of two (2) competitive bids from qualified gas marketers for these services. Within seven (7) days of presentation to Buyer, Buyer shall:

(a) accept the best evaluated proposal and Seller will perform (or cause to be performed) such gas management services in accordance with the Annual Fuel Plan; or

(b) elect to perform gas management services in accordance with the Annual Fuel Plan and charge Seller a gas management fee for all gas used by Seller for non-Department dispatch of the Units. Such fee shall not exceed the best evaluated proposal referred to in the immediately preceding Section 5(a).

6. (i) Unless Buyer elects to provide natural gas to the Facility as provided in item (ii) below, Seller shall supply natural gas to each of the Units pursuant to an Annual Fuel Plan. Seller will propose in an Annual Fuel Plan to Buyer on or before July 1, 2001 and each June 1 thereafter, for the twelve-month period commencing on September 1 of each year. On or before July 1, Buyer shall either approve such plan or submit to Seller a reasonable alternate plan. The Annual Fuel Plan will reflect operational requirements of Buyer and will address the commodity and transportation requirement.

(ii) Buyer shall have the right, which must be expressed in writing to Seller by July 1, 2001 and each July 1 thereafter to elect to supply natural gas to the Facilities, utilizing Seller's Natural Gas LDC transportation arrangements for the remainder of the term of the

2002A Transaction. In the event of such exercise, the commodity portion of the Fuel Cost shall be zero. If Buyer elects in any year of this Agreement to supply its own fuel commodity for the Facilities, any such supply shall be coordinated with any previously approved Annual Fuel Plan in a manner which does not displace other natural gas commodity and/or firm transportation positions taken by the Seller in accordance with such prior approved Annual Fuel Plan unless Buyer elects to assume responsibility for such natural gas positions as part of its supply plan. Any fuel supplied by Buyer to Seller shall be delivered to such point(s) on the Natural Gas LDC system(s) as are designated by Seller.

M. Emissions and Operations

Except as provided in Section 5.7, Seller is responsible to obtain plant permits and any emission offsets in order to supply Energy at Contract Capacity for up to the hours specified for each Unit in Section E.1 of the 2002A Transaction.

Seller will operate and maintain the Units in accordance with Prudent Utility Practice. “Prudent Utility Practice” means those practices, methods and procedures, as modified from time to time, that are currently and commonly used in electric utilities to design, engineer, select, construct, operate, and maintain electric power facilities and equipment dependably, reliably, safely, efficiently, and economically, with due regard to the state-of-the-art in the electric power industry, as applied in the Western Systems Coordinating Council (WSCC) area. Subject to its obligation to comply with CAISO Requirements, Seller will use its best efforts to ensure that scheduled maintenance will be done during off-peak hours, and will provide Buyer with reasonable notice of such scheduled maintenance, provided, however, that under no circumstances will scheduled outages occur in the months of July, August or September without prior approval from Buyer which shall not be unreasonably withheld or delayed. Further, all provisions relating to scheduled maintenance, including the provisions in subsections (c) and (d) of Section 1.51 defining Excused Outage, are subject to adjustment with respect to timing, in accordance with CAISO Requirements.

N. Unit’s Operating Limits

For each Unit, the Unit’s Operating Limits include any dispatch limitations, Scheduling limitations, maintenance requirements, operating limits, start times, ramp rates, etc. as listed in original equipment manufacturer/architect engineer/vendor specifications which are to be provided by Seller to Buyer, provided, however, that a minimum run time of three (3) hours shall apply to each Unit for each start. Buyer’s dispatch of a Unit must be in accordance with the Unit’s Operating Limits and with the CAISO Requirements.

O. Reports

Commencing with execution of this Agreement, each Party shall supply the other with written monthly progress reports, in the case of Buyer describing progress toward issuance of Bonds related to the Fund, and in the case of Seller, describing progress toward achievement of the Commercial Operation Date for each Unit. If the Commercial Operation Date of a Unit has not occurred by the Start Date for such Unit, then thereafter Seller will provide bi-weekly progress reports relative to such Unit.

P. **Operations Committee; Operating Procedures**

1. Buyer and Seller shall establish an Operations Committee consisting of four members. Each of Buyer and Seller shall be permitted to appoint two such members. The Operations Committee shall develop written procedures governing operations, not in contravention or amendment of any right or obligation set forth herein (the "Operating Procedures") prior to September 1, 2001. Such Operating Procedures shall include, but not be limited to, (1) procedures for Scheduling, (2) methods of day-to-day communications, (3) conducting four hour Capacity tests, (4) key personnel lists for each of Buyer and Seller, (5) format and delivery of Availability Notices, (6) coordinating arrangements for the delivery of natural gas, and (7) record keeping; provided that failure to agree on such procedures shall not relieve either of the Parties of its rights and obligations under this Agreement.

2. During the term of the Agreement, the Operations Committee shall administer the Operation Procedures, address and resolve operational issues as they arise from time-to-time (not in contravention of the terms of this Agreement) and shall operate by unanimous consent of the members.

Q. **Metering**

1. Electricity.

(i) Energy delivered by Seller shall be metered at the Delivery Point for each Unit consistent with CAISO Requirements. The Electric Metering Equipment shall be used to determine conclusively, subject to Section Q.7, the amount of Unadjusted Metered Energy from each Unit.

(ii) Seller shall be responsible for performing, or causing to be performed on or before the Commercial Operation Date, and shall bear all costs and expenses of the installation, maintenance, testing and initial calibration of the Electric Metering Equipment and the maintenance and testing of the electrical facilities and protective apparatus, including any transmission equipment and related facilities, necessary to interconnect each Unit at the Delivery Point to the relevant electrical system. All Electric Metering Equipment must operate in conformance with the CAISO Requirements.

2. Natural Gas.

(i) Natural gas delivered for use in a Unit shall be metered on a continuous real-time basis by Utility's Gas Metering Equipment and by Seller's Gas Metering Equipment. Measurement of natural gas for the purpose of determining inputs to the Fuel Cost and the AHR of a Unit shall be measured by Seller's Gas Metering Equipment. Measurement of natural gas for the purpose of determining the amount of gas delivered by the gas transporter and for determining imbalances, and other charges that are assessed by the gas transporter or gas supplier will be measured by the Utility's Gas Metering Equipment.

(ii) As between the Parties, Seller shall be responsible for performing, or causing to be performed, and shall bear all costs and expenses of the installation, maintenance,

repair, testing and initial calibration of the Gas Metering Equipment (to the extent not otherwise installed, maintained, tested and calibrated by the delivering pipeline(s) or supplier of natural gas to the Facility).

3. Change in Measurement Method. If, at any time during the term of the 2002A Transaction a new method or technique is developed with respect to electricity or natural gas measurement, or the determination of the factors used in electricity or natural gas measurement, such new method or technique may be substituted for the method set forth in this Section Q when in the opinion of the Parties, employing such new method or technique is advisable, and they so agree in writing.

4. Industry Standards. All Electric Metering Equipment and Gas Metering Equipment, whether owned by Seller or by a third party, shall be operated, maintained and tested by and/or on behalf of Seller in accordance with Prudent Utility Practices and CAISO Requirements, as applicable, in the case of the Electric Metering Equipment, and in accordance with the applicable American Gas Association and Gas Industry Standards Board in the case of the Gas Metering Equipment.

5. Access. Each Party shall have the right to receive reasonable advance notice with respect to, and to be present at the time of, any installing, cleaning, changing, repairing, inspecting, testing, calibrating or adjusting of Electric Metering Equipment and Gas Metering Equipment irrespective of whether such Electric Metering Equipment or Gas Metering Equipment is owned or operated by Seller or by a third party. The records from such Electric Metering Equipment and Gas Metering Equipment shall be the property of Seller, but upon reasonable advance Notice, Seller shall make available to Buyer's third party auditor all data, records and charts relating to the Electric Metering Equipment and Gas Metering Equipment, together with measurements and calculations therefrom, for inspection and verification.

6. Installations. Any installations, maintenance, repair, inspections, cleaning, changing, testing or calibration of Electric Metering Equipment and Gas Metering Equipment shall be scheduled by Seller; provided, however, that installation, maintenance, repair, inspections, cleaning, changing, testing or calibration which will or could affect deliveries of natural gas or Energy shall not be made without the prior written consent of Buyer, which shall not be unreasonably withheld, and shall be scheduled to the extent possible and consistent with CAISO Requirements to coincide with periods of outages of the Unit.

7. Calibration. Seller at its sole cost and expense shall inspect and calibrate, or cause to be inspected, all Electric Metering Equipment and Gas Metering Equipment, periodically, but not less frequently than annually or as required by the Transmission Provider or CAISO. Correction shall be made when any test shall show a measurement error of more than (i) in the case of Gas Metering Equipment, two percent (2%) or such lower percentage as may be established by applicable tariff of the delivery pipeline(s), or (ii) in the case of Electric Metering Equipment, per CAISO Requirements. Correction to amounts billed and/or paid shall be made for the period during which the measurement instruments were in error. If the period cannot be ascertained, correction with respect to natural gas billings shall be made for the last half of the period elapsed since the last test date; and the electric billings shall be

corrected in accordance with CAISO Requirements. The measuring instrument shall be adjusted immediately to measure accurately.

8. Data. At Buyer's option and cost, (a) for the hours dispatched by Buyer, Seller shall provide to Buyer CAISO metering settlement data on a monthly basis and (b) Seller shall provide to Buyer CAISO metering data on a real-time basis via telecommunications, which data shall not be specific to any customer of Seller.

R. **Records**.

The Parties shall, for three (3) years or such longer period as may be required by FERC or the Transmission Provider, each keep and maintain accurate and detailed records relating to the Facility's hourly deliveries of Energy and natural gas consumption. Such records shall be made available for inspection by either Party's third party auditor during normal business hours upon reasonable notice.

TABLE 1

Capacity Table (\$/kW-Month)

| Phase I & II | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | |
|-------------------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|---------|
| January | | \$18.10 | \$17.07 | \$16.05 | \$15.34 | \$14.34 | \$13.96 | \$12.96 | \$12.57 | \$12.48 | |
| February | | \$18.10 | \$17.07 | \$16.05 | \$15.34 | \$14.34 | \$13.96 | \$12.96 | \$12.57 | \$12.48 | |
| March | | \$18.10 | \$17.07 | \$16.05 | \$15.34 | \$14.34 | \$13.96 | \$12.96 | \$12.57 | \$12.48 | |
| April | | \$18.10 | \$17.07 | \$16.05 | \$15.34 | \$14.34 | \$13.96 | \$12.96 | \$12.57 | \$12.48 | |
| May | | \$18.10 | \$17.07 | \$16.05 | \$15.34 | \$14.34 | \$13.96 | \$12.96 | \$12.57 | \$12.48 | |
| June | \$35.45 | \$18.10 | \$17.07 | \$16.05 | \$15.34 | \$14.34 | \$13.96 | \$12.96 | \$12.57 | \$12.48 | |
| July | \$35.45 | \$18.10 | \$17.07 | \$16.05 | \$15.34 | \$14.34 | \$13.96 | \$12.96 | \$12.57 | \$12.48 | |
| August | \$35.45 | \$18.10 | \$17.07 | \$16.05 | \$15.34 | \$14.34 | \$13.96 | \$12.96 | \$12.57 | \$12.48 | |
| September | \$35.45 | \$18.10 | \$17.07 | \$16.05 | \$15.34 | \$14.34 | \$13.96 | \$12.96 | \$12.57 | \$12.48 | |
| October | \$35.45 | \$18.10 | \$17.07 | \$16.05 | \$15.34 | \$14.34 | \$13.96 | \$12.96 | \$12.57 | \$12.48 | |
| November | \$35.45 | \$18.10 | \$17.07 | \$16.05 | \$15.34 | \$14.34 | \$13.96 | \$12.96 | \$12.57 | \$12.48 | |
| December | \$27.60 | \$18.10 | \$17.07 | \$16.05 | \$15.34 | \$14.34 | \$13.96 | \$12.96 | \$12.57 | \$12.48 | |
| Total Year | \$240.28 | \$217.20 | \$204.84 | \$192.60 | \$184.08 | \$172.08 | \$167.52 | \$155.52 | \$150.84 | \$149.76 | |
| Phase III | | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 |
| January | | | \$17.91 | \$16.89 | \$15.87 | \$15.17 | \$12.55 | \$11.00 | \$10.00 | \$8.50 | \$8.00 |
| February | | | \$17.91 | \$16.89 | \$15.87 | \$15.17 | \$12.55 | \$11.00 | \$10.00 | \$8.50 | \$8.00 |
| March | | | \$17.91 | \$16.89 | \$15.87 | \$15.17 | \$12.55 | \$11.00 | \$10.00 | \$8.50 | \$8.00 |
| April | | | \$17.91 | \$16.89 | \$15.87 | \$15.17 | \$12.55 | \$11.00 | \$10.00 | \$8.50 | \$8.00 |
| May | | | \$17.91 | \$16.89 | \$15.87 | \$15.17 | \$12.55 | \$11.00 | \$10.00 | \$8.50 | \$8.00 |
| June | | \$32.27 | \$17.91 | \$16.89 | \$15.87 | \$15.17 | \$12.55 | \$11.00 | \$10.00 | \$8.50 | \$8.00 |
| July | | \$32.27 | \$17.91 | \$16.89 | \$15.87 | \$15.17 | \$12.55 | \$11.00 | \$10.00 | \$8.50 | \$8.00 |
| August | | \$32.27 | \$17.91 | \$16.89 | \$15.87 | \$15.17 | \$12.55 | \$11.00 | \$10.00 | \$8.50 | \$8.00 |
| September | | \$32.27 | \$17.91 | \$16.89 | \$15.87 | \$15.17 | \$12.55 | \$11.00 | \$10.00 | \$8.50 | \$8.00 |
| October | | \$32.27 | \$17.91 | \$16.89 | \$15.87 | \$15.17 | \$12.55 | \$11.00 | \$10.00 | \$8.50 | \$8.00 |
| November | | \$32.27 | \$17.91 | \$16.89 | \$15.87 | \$15.17 | \$12.55 | \$11.00 | \$10.00 | \$8.50 | |
| December | | \$32.27 | \$17.91 | \$16.89 | \$15.87 | \$15.17 | \$12.55 | \$11.00 | \$10.00 | \$8.50 | |
| Total Year | | \$225.89 | \$214.92 | \$202.68 | \$190.44 | \$182.04 | \$150.60 | \$132.00 | \$120.00 | \$102.00 | \$80.00 |

TABLE 2
Guaranteed Heat Rate
Phase I and II
LM 6000 Sprint

Site Design Conditions:

Elevation 235 Ft
 Relative Humidity 60%
 Load 100%

Inlet DP 4.5 in H2O
 Outlet DP 11.6 in H2O
 Available Gas Pressure 200 psig

| Ambient Temperature (Degrees F) | Heat Rate (btu/kWh) |
|------------------------------------|------------------------|
| 15 | 10,337 |
| 16 | 10,337 |
| 17 | 10,337 |
| 18 | 10,336 |
| 19 | 10,336 |
| 20 | 10,336 |
| 21 | 10,335 |
| 22 | 10,335 |
| 23 | 10,335 |
| 24 | 10,334 |
| 25 | 10,334 |
| 26 | 10,333 |
| 27 | 10,333 |
| 28 | 10,333 |
| 29 | 10,332 |
| 30 | 10,332 |
| 31 | 10,332 |
| 32 | 10,331 |
| 33 | 10,331 |
| 34 | 10,331 |
| 35 | 10,330 |
| 36 | 10,330 |
| 37 | 10,329 |
| 38 | 10,329 |
| 39 | 10,329 |
| 40 | 10,328 |
| 41 | 10,328 |
| 42 | 10,328 |
| 43 | 10,327 |
| 44 | 10,327 |
| 45 | 10,290 |
| 46 | 10,297 |
| 47 | 10,304 |
| 48 | 10,311 |

| Ambient Temperature (Degrees F) | Heat Rate (btu/kWh) |
|------------------------------------|------------------------|
| 49 | 10,318 |
| 50 | 10,325 |
| 51 | 10,327 |
| 52 | 10,324 |
| 53 | 10,320 |
| 54 | 10,317 |
| 55 | 10,314 |
| 56 | 10,311 |
| 57 | 10,319 |
| 58 | 10,329 |
| 59 | 10,340 |
| 60 | 10,350 |
| 61 | 10,360 |
| 62 | 10,370 |
| 63 | 10,375 |
| 64 | 10,381 |
| 65 | 10,386 |
| 66 | 10,391 |
| 67 | 10,399 |
| 68 | 10,407 |
| 69 | 10,417 |
| 70 | 10,426 |
| 71 | 10,436 |
| 72 | 10,446 |
| 73 | 10,456 |
| 74 | 10,464 |
| 75 | 10,471 |
| 76 | 10,477 |
| 77 | 10,483 |
| 78 | 10,489 |
| 79 | 10,495 |
| 80 | 10,508 |
| 81 | 10,521 |
| 82 | 10,534 |

| Ambient Temperature (Degrees F) | Heat Rate (btu/kWh) |
|------------------------------------|------------------------|
| 83 | 10,548 |
| 84 | 10,561 |
| 85 | 10,580 |
| 86 | 10,607 |
| 87 | 10,634 |
| 88 | 10,662 |
| 89 | 10,688 |
| 90 | 10,716 |
| 91 | 10,729 |
| 92 | 10,739 |
| 93 | 10,749 |
| 94 | 10,758 |
| 95 | 10,768 |
| 96 | 10,777 |
| 97 | 10,781 |
| 98 | 10,785 |
| 99 | 10,788 |
| 100 | 10,792 |
| 101 | 10,796 |
| 102 | 10,819 |
| 103 | 10,856 |
| 104 | 10,894 |
| 105 | 10,930 |
| 106 | 10,968 |
| 107 | 11,005 |
| 108 | 11,064 |
| 109 | 11,123 |
| 110 | 11,182 |
| 111 | 11,241 |
| 112 | 11,301 |
| 113 | 11,357 |
| 114 | 11,409 |
| 115 | 11,461 |

TABLE 3

**Guaranteed Heat Rate
Phase III
7EA Simple Cycle**

Site Design Conditions:

Elevation 250 Ft
Relative Humidity 60%
Load 100%

Inlet DP 4.5 in H2O
Outlet DP 12 in H2O
Available Gas Pressure 500 psig
Gas Preheat Level 365 deg F

| Ambient Temperature (Degrees F) | Heat Rate (btu/kWh) |
|---------------------------------|---------------------|
| 15 | 11,636 |
| 16 | 11,642 |
| 17 | 11,648 |
| 18 | 11,654 |
| 19 | 11,659 |
| 20 | 11,665 |
| 21 | 11,670 |
| 22 | 11,675 |
| 23 | 11,679 |
| 24 | 11,684 |
| 25 | 11,678 |
| 26 | 11,693 |
| 27 | 11,698 |
| 28 | 11,703 |
| 29 | 11,708 |
| 30 | 11,713 |
| 31 | 11,718 |
| 32 | 11,723 |
| 33 | 11,727 |
| 34 | 11,733 |
| 35 | 11,738 |
| 36 | 11,743 |
| 37 | 11,748 |
| 38 | 11,753 |
| 39 | 11,758 |
| 40 | 11,764 |
| 41 | 11,773 |
| 42 | 11,782 |
| 43 | 11,791 |
| 44 | 11,800 |
| 45 | 11,809 |
| 46 | 11,819 |
| 47 | 11,828 |
| 48 | 11,838 |

| Ambient Temperature (Degrees F) | Heat Rate (btu/kWh) |
|---------------------------------|---------------------|
| 49 | 11,847 |
| 50 | 11,857 |
| 51 | 11,866 |
| 52 | 11,876 |
| 53 | 11,886 |
| 54 | 11,896 |
| 55 | 11,855 |
| 56 | 11,904 |
| 57 | 11,872 |
| 58 | 11,880 |
| 59 | 11,890 |
| 60 | 11,898 |
| 61 | 11,908 |
| 62 | 11,917 |
| 63 | 11,926 |
| 64 | 11,935 |
| 65 | 11,944 |
| 66 | 11,954 |
| 67 | 11,963 |
| 68 | 11,972 |
| 69 | 11,981 |
| 70 | 11,991 |
| 71 | 12,000 |
| 72 | 12,009 |
| 73 | 12,019 |
| 74 | 12,029 |
| 75 | 12,038 |
| 76 | 12,048 |
| 77 | 12,058 |
| 78 | 12,068 |
| 79 | 12,078 |
| 80 | 12,088 |
| 81 | 12,098 |
| 82 | 12,108 |

| Ambient Temperature (Degrees F) | Heat Rate (btu/kWh) |
|---------------------------------|---------------------|
| 83 | 12,119 |
| 84 | 12,129 |
| 85 | 12,139 |
| 86 | 12,150 |
| 87 | 12,161 |
| 88 | 12,172 |
| 89 | 12,183 |
| 90 | 12,194 |
| 91 | 12,206 |
| 92 | 12,219 |
| 93 | 12,232 |
| 94 | 12,245 |
| 95 | 12,259 |
| 96 | 12,272 |
| 97 | 12,286 |
| 98 | 12,300 |
| 99 | 12,314 |
| 100 | 12,328 |
| 101 | 12,342 |
| 102 | 12,356 |
| 103 | 12,371 |
| 104 | 12,386 |
| 105 | 12,400 |
| 106 | 12,416 |
| 107 | 12,431 |
| 108 | 12,446 |
| 109 | 12,461 |
| 110 | 12,477 |
| 111 | 12,493 |
| 112 | 12,509 |
| 113 | 12,525 |
| 114 | 12,542 |
| 115 | 12,559 |

EXHIBIT B

GUARANTY AGREEMENT

from

to

State of California
Department of Water Resources,
Separate and apart from its powers and responsibilities with respect to the State Water Resources
Development System

Dated

_____, 20__

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GUARANTY AGREEMENT

THIS GUARANTY AGREEMENT is made and dated as of _____, 20__ between _____, a corporation organized and existing under the laws of the State of _____ (together with any permitted successors and assigns hereunder (the “Guarantor”), and the State of California Department of Water Resources separate and apart from its powers and responsibilities with respect to the State Water Resources Development System (“DWR”).

RECITALS

DWR and GWF Energy LLC, a limited liability company organized and existing under the laws of the State of Delaware (the “Company”), have entered into an Amended and Restated Master Power Purchase and Sale Agreement, dated August 22, 2002 (as amended from time to time, the “Power Purchase Agreement”) whereby the Company has agreed to sell and DWR has agreed to purchase energy and capacity on the terms and conditions set forth therein.

The Company is an indirect partially owned subsidiary of the Guarantor.

In consideration of the execution and delivery of the Power Purchase Agreement by DWR, the Guarantor agrees as follows:

ARTICLE I DEFINITIONS AND INTERPRETATION

SECTION 1.1.DEFINITIONS. For the purposes of this Guaranty, the term “Obligations” means the amounts payable by the Company pursuant to the terms of the Power Purchase Agreement. Any other capitalized word or term used but not defined herein is used as defined in the Power Purchase Agreement.

SECTION 1.2.INTERPRETATION. In this Guaranty, unless the context otherwise requires:

(A) References Hereto. The terms “hereby”, “hereof”, “herein”, “hereunder” and any similar terms refer to this Guaranty, and the term “hereafter” means after, and the term “heretofore” means before, the date of execution and delivery of this Guaranty.

(B) Gender and Plurality. Words of the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular number mean and include the plural number and vice versa.

(C) Persons. Words importing persons include firms, companies, associations, general partnerships, limited partnerships, trusts, business trusts, corporations and other legal entities, including public bodies, as well as individuals.

(D) Headings. The table of contents and any headings preceding the text of the Articles, Sections and subsections of this Guaranty shall be solely for convenience of reference and shall not constitute a part of this Guaranty, nor shall they affect its meaning, construction or effect.

(E) Entire Agreement; Authority. This Guaranty constitutes the entire agreement between the parties hereto with respect to the transactions contemplated by this Guaranty. Nothing in this Guaranty is intended to confer on any person other than the Guarantor, DWR and their permitted successors and assigns hereunder any rights or remedies under or by reason of this Guaranty.

(F) Counterparts. This Guaranty may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Guaranty.

(G) Applicable Law. This Guaranty shall be governed by and construed in accordance with the applicable laws of the State of California.

(H) Severability. If any clause, provision, subsection, Section or Article of this Guaranty shall be ruled invalid by any court of competent jurisdiction, the invalidity of any such clause, provision, subsection, Section or Article shall not affect any of the remaining provisions hereof, and this Guaranty shall be construed and enforced as if such invalid portion did not exist provided that such construction and enforcement shall not increase the Guarantor's liability beyond that expressly set forth herein.

(I) Approvals. All approvals, consents and acceptances required to be given or made by any party hereto under this Guaranty shall be at the sole discretion of the party whose approval, consent or acceptance is required.

(J) Payments. All payments required to be made by the Guarantor hereunder shall be made in lawful money of the United States of America.

ARTICLE II REPRESENTATIONS AND WARRANTIES OF THE GUARANTOR

SECTION 2.1. REPRESENTATIONS AND WARRANTIES OF THE GUARANTOR.
The Guarantor hereby represents and warrants that:

(A) Existence and Powers. The Guarantor is duly organized and validly existing under the laws of the State of _____, with full legal right, power and authority to enter into and perform its obligations under this Guaranty.

(B) Due Authorization and Binding Obligation. The Guarantor has duly authorized the execution and delivery of this Guaranty, and this Guaranty has been duly executed

and delivered by the Guarantor and constitutes the legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms except insofar as such enforcement may be affected by bankruptcy, insolvency, moratorium or by general equity principals of reorganization and other similar laws affecting creditors' rights generally and general principles of equity.

(C) No Conflict. Neither the execution or delivery by the Guarantor of this Guaranty nor the performance by the Guarantor of its obligations hereunder (1) to the Guarantor's knowledge conflicts with, violates or results in a breach of any law or governmental regulation applicable to the Guarantor, (2) conflicts with, violates or results in a material breach of any term or condition of the Guarantor's corporate charter or by-laws or any judgment, decree, agreement or instrument to which the Guarantor is a party or by which the Guarantor or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, agreement or instrument, or (3) to the Guarantor's knowledge will result in the creation or imposition of any material encumbrance of any nature whatsoever upon any of the properties or assets of the Guarantor except as permitted hereby.

(D) No Governmental Approval Required. No approval, authorization, order or consent of, or declaration, registration or filing with, any governmental authority is required of the Guarantor for the valid execution and delivery by the Guarantor of this Guaranty, except such as shall have been duly obtained or made.

(E) No Litigation. There is no action, suit or other proceeding, at law or in equity, before or by any court or governmental authority, pending or, to the Guarantor's knowledge, threatened against the Guarantor which has a likelihood of an unfavorable decision, ruling or finding that would materially and adversely affect the validity or enforceability of this Guaranty.

(F) No Legal Prohibition. The Guarantor has no knowledge of any applicable law in effect on the date as of which this representation is being made which would prohibit the performance by the Guarantor of this Guaranty and the transactions contemplated by this Guaranty.

(G) Consent to Agreements. The Guarantor is fully aware of the terms and conditions of the Power Purchase Agreement.

(H) Consideration. This Guaranty is made in furtherance of the purposes for which the Guarantor has been organized, and the assumption by the Guarantor of its obligations hereunder will result in a material benefit to the Guarantor.

ARTICLE III GUARANTY COVENANTS

SECTION 3.1. GUARANTY TO DWR. Subject to the limitation on liability set forth in Section 4.9, the Guarantor hereby absolutely, presently, irrevocably and unconditionally guarantees to DWR that if, on any date, (i) the Company's net worth (determined in accordance

with generally accepted accounting principles of the United States of America then in effect) is less than twenty five million United States Dollars (\$25,000,000), and (ii) any Obligation is due and payable, it shall fully and promptly pay within three (3) Business Days after receipt of notice from DWR of default in payment thereof by the Company pursuant to Section 5.1(a) of the Power Purchase Agreement, 50% of such Obligation to an account specified by DWR in such notice up to a cumulative guaranty amount during the term hereof of fifteen million United States Dollars (\$15,000,000) provided that DWR simultaneously proceeds against the guaranty or letter of credit posted by _____ relative to the other 50% of such Obligation. Notwithstanding the unconditional nature of Guarantor's obligations as set forth herein, the Guarantor shall have the right to assert the defenses provided in Section 3.4 hereof against claims made under this Guaranty.

SECTION 3.2. RIGHT OF DWR TO PROCEED AGAINST GUARANTOR. This Guaranty shall constitute a guaranty of payment and not of collection or performance, and the Guarantor specifically agrees that in the event of a failure by the Company to pay any Obligation guaranteed hereunder, DWR shall have the right to proceed first and directly against the Guarantor under this Guaranty and without proceeding against the Company or exhausting any other remedies against the Company which DWR may have. Without limiting the foregoing, the Guarantor agrees that it shall not be necessary, and that the Guarantor shall not be entitled to require, as a condition of enforcing the liability of the Guarantor hereunder, that DWR (1) file suit or proceed to obtain a personal judgment against the Company or any other person that may be liable for the Obligations or any part of the Obligations, (2) make any other effort to obtain payment of the Obligations from the Company other than providing the Company with any notice of such payment as may be required by the terms of the Power Purchase Agreement or required to be given to the Company under applicable law, (3) foreclose against or seek to realize upon any security for the Obligations, or (4) exercise any other right or remedy to which DWR is or may be entitled in connection with the Obligations or any security therefor or any other guarantee thereof, except to the extent that any such exercise of such other right or remedy may be a condition to the Obligations of the Company or to the enforcement of remedies under the Power Purchase Agreement. Upon any unexcused failure by the Company in the payment of any Obligation and the giving of such notice or demand, if any, to the Company and Guarantor as may be required in connection with such Obligation and this Guaranty, the liability of the Guarantor shall be effective and shall immediately be paid. Notwithstanding DWR's right to proceed directly against the Guarantor, DWR (or any successor) shall not be entitled to more than a single full payment of the obligations in regard to any breach thereof.

SECTION 3.3. GUARANTY ABSOLUTE AND UNCONDITIONAL. The obligations of the Guarantor hereunder are absolute, present, irrevocable and unconditional and shall remain in full force and effect until the Company shall have fully discharged the Obligations in accordance with their respective terms, and except as provided in Section 3.4 hereof, shall not be subject to any counterclaim, set-off, deduction or defense (other than full and strict compliance with, or release, discharge or satisfaction of, such Obligations) based on any claim that the Guarantor may have against the Company, DWR or any other person. Without limiting the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged or in any way modified by reason of any of the following (whether with or without notice to, knowledge by or further consent of the Guarantor):

- (1) the extension or renewal of this Guaranty or the Purchase Power Agreement;
- (2) any exercise or failure, omission or delay by DWR in the exercise of any right, power or remedy conferred on DWR with respect to this Guaranty or the Power Purchase Agreement except to the extent such failure, omission or delay gives rise to an applicable statute of limitations defense with respect to a specific claim;
- (3) any permitted transfer or assignment of rights or obligations under this Guaranty or the Power Purchase Agreement by any party thereto;
- (4) any permitted assignment for the purpose of creating a security interest in all or any part of the respective interests of DWR or any other person in this Guaranty or the Power Purchase Agreement;
- (5) any renewal, amendment, change or modification in respect of any of the Obligations or terms or conditions of the Power Purchase Agreement;
- (6) the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all the assets, marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, moratorium, arrangement, composition with creditors or readjustment of, or other similar proceedings against the Company or the Guarantor, or any of the property of either of them, or any allegation or contest of the validity of this Guaranty or the Power Purchase Agreement in any such proceeding (it is specifically understood, consented and agreed to that, to the extent permitted by law, this Guaranty shall remain and continue in full force and effect and shall be enforceable against the Guarantor to the same extent and with the same force and effect as if any such proceeding had not been instituted and as if no rejection, stay, termination, assumption or modification has occurred as a result thereof, it being the intent and purpose of this Guaranty that the Guarantor shall and does hereby waive all rights and benefits which might accrue to it by reason of any such proceeding);
- (7) except as permitted by Sections 4.1 or 4.2 hereof, any sale or other transfer by the Guarantor or any affiliate of any of the capital stock or other interest of the Guarantor or any affiliate in the Company now or hereafter owned, directly or indirectly, by the Guarantor or any affiliate, or any change in composition of the interests in the Company;
- (8) any failure on the part of the Company for any reason to perform or comply with any agreement with the Guarantor;
- (9) the failure on the part of DWR to provide any notice to the Guarantor which is not required to be given to the Guarantor pursuant to this Guaranty and to the Company as a condition to the enforcement of Obligations pursuant to the Power Purchase Agreement;

(10) any failure of any party to this Guaranty or the Power Purchase Agreement to mitigate damages resulting from any default by the Company or the Guarantor under any Power Purchase Agreement;

(11) the merger or consolidation of any party to this Guaranty or the Power Purchase Agreement into or with any other person, or any sale, lease, transfer, abandonment or other disposition of any or all of the property of any of the foregoing to any person;

(12) any legal disability or incapacity of any party to this Guaranty or the Power Purchase Agreement; or

(13) the fact that entering into the Power Purchase Agreement by the Company was invalid or in excess of the powers of the Company.

Should any money due or owing under this Guaranty not be recoverable from the Guarantor due to any of the matters specified in subparagraphs (1) through (13) above, then, in any such case, such money, together with all additional sums due hereunder, shall nevertheless be recoverable from the Guarantor as though the Guarantor were principal obligor in place of the Company pursuant to the terms of the Power Purchase Agreement and not merely a guarantor and shall be paid by the Guarantor forthwith subject to the terms of this Guaranty. Notwithstanding anything to the contrary expressed in this Guaranty, nothing in this Guaranty shall be deemed to amend, modify, clarify, expand or reduce the Company's rights, benefits, duties or obligations under the Power Purchase Agreement.

SECTION 3.4. DEFENSES, SET-OFFS AND COUNTERCLAIMS. Notwithstanding any provision contained herein to the contrary, the Guarantor shall be entitled to exercise or assert any and all legal or equitable rights or defenses which the Company may have under the Power Purchase Agreement or under applicable law (other than bankruptcy or insolvency of the Company and other than any defense which the Company has expressly waived in the Power Purchase Agreement or the Guarantor has expressly waived in Section 3.5 hereof or elsewhere hereunder), and the obligations of the Guarantor hereunder are subject to such counterclaims, set-offs or defenses which the Company is permitted to assert pursuant to the Power Purchase Agreement, if any.

SECTION 3.5. WAIVERS BY THE GUARANTOR. The Guarantor hereby unconditionally and irrevocably waives:

(1) notice from DWR of its acceptance of this Guaranty;

(2) notice of any of the events referred to in Section 3.3 hereof, except to the extent that notice is required to be given as a condition to the enforcement of Obligations;

(3) to the fullest extent lawfully possible, all notices which may be required by statute, rule of law or otherwise to preserve intact any rights against the Guarantor, except any notice to the Company required pursuant to the Purchase Power Agreement or applicable as a condition to the performance of any Obligation;

(4) to the fullest extent lawfully possible, any statute of limitations defense based on a statute of limitations period which may be applicable to guarantors (or parties in similar relationships) which would be shorter than the applicable statute of limitations period for the underlying claim;

(5) any right to require a proceeding first against the Company;

(6) any requirement that the Company be joined as a party to any proceeding for the enforcement of any term of the Power Purchase Agreement or this Guaranty;

(7) the requirement of, or the notice of, the filing of claims by the DWR in the event of the receivership or bankruptcy of the Company; and

(8) all demands upon the Company or any other person and all other formalities the omission of any of which, or delay in performance of which, might, but for the provisions of this Section 3.5, by rule of law or otherwise, constitute grounds for relieving or discharging the Guarantor in whole or in part from its absolute, present, irrevocable, unconditional and continuing obligations hereunder.

SECTION 3.6. PAYMENT OF COSTS AND EXPENSES. The Guarantor agrees to pay DWR on demand all reasonable costs and expenses, legal or otherwise (including counsel fees), incurred by or on behalf of DWR in successfully enforcing by legal proceeding observance of the covenants, agreements and obligations contained in this Guaranty against, arbitration or otherwise the Guarantor, other than the costs and expenses that DWR incurs in performing any of its obligations under the Power Purchase Agreement, where such obligations are a condition to performance by the Company of its Obligations.

SECTION 3.7. SUBORDINATION OF RIGHTS. The Guarantor agrees that any right of subrogation or contribution which it may have against the Company as a result of any payment hereunder is hereby fully subordinated to the rights of DWR hereunder and under the Power Purchase Agreement and that the Guarantor shall not recover or seek to recover any payment made by it hereunder from the Company until the Company and the Guarantor shall have fully and satisfactorily paid or performed and discharged the Obligations giving rise to a claim under this Guaranty.

SECTION 3.8. SEPARATE OBLIGATIONS; REINSTATEMENT. The obligations of the Guarantor to make any payment shall (1) to the extent permitted by applicable law, constitute separate and independent obligations of the Guarantor from its other obligations under this Guaranty, (2) give rise to separate and independent causes of action against the Guarantor, and (3) apply irrespective of any indulgence granted from time to time by DWR. The Guarantor agrees that this Guaranty shall be automatically reinstated if and to the extent that for any reason any payment or performance by or on behalf of the Company is rescinded or must be otherwise restored by DWR, whether as a result of any proceedings in bankruptcy, reorganization or similar proceeding.

SECTION 3.9. TERM. This Guaranty shall remain in full force and effect from the date of execution and delivery hereof until all of the Obligations of the Company have been fully paid and performed; provided, however, that DWR and Guarantor may terminate this Guaranty prior to such time in the event that the Company provides, to DWR other credit or collateral as provided in Section 8.1(a) and (b) of the Power Purchase Agreement.

ARTICLE IV GENERAL COVENANTS

SECTION 4.1. MAINTENANCE OF CORPORATE EXISTENCE.

(A) Consolidation, Merger, Sale or Transfer. The Guarantor covenants that during the term of this Guaranty it will maintain its corporate existence, will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it, unless the successor entity (if other than the Guarantor) (a) assumes in writing all the obligations of the Guarantor hereunder and, if required by law, is duly qualified to do business in the State of California, and (b) delivers to DWR an opinion of counsel to the effect that its obligations under this Guaranty are legal, valid, binding and enforceable subject to applicable bankruptcy and similar insolvency or moratorium laws.

(B) Continuance of Obligations. If a consolidation, merger or sale or other transfer is made as permitted by this Section 4.1, the provisions of this Section 4.1 shall continue in full force and effect and no further consolidation, merger or sale or other transfer shall be made except in compliance with the provisions of this Section 4.1. No such consolidation, merger or sale or other transfer shall have the effect of releasing the initial Guarantor from its liability hereunder unless a successor entity has assumed responsibility for this Guaranty as provided in this Section 4.1.

SECTION 4.2. ASSIGNMENT. Without the prior written consent of DWR, this Guaranty may not be assigned by the Guarantor, except pursuant to Section 4.1 hereof. DWR shall not unreasonably withhold its consent if the Guarantor proposes to assign this Guaranty to an affiliate of the Guarantor and the creditworthiness of such affiliate is reasonably satisfactory to DWR.

SECTION 4.3. COMPLIANCE CERTIFICATES.

(a) Quarterly Compliance Certificates. Within 60 days after the end of each fiscal quarter of the Company, the Guarantor shall cause the Company to deliver to DWR a certificate of an authorized officer of the Company certifying as to the net worth of the Company as of the end of the preceding fiscal quarter (which net worth shall be determined in accordance with generally accepted accounting principles of the United States of America then in effect).

(b) Annual Compliance Certificates. Within 120 days after the end of each fiscal year of the Company, the Guarantor shall cause the Company to deliver to DWR a certificate of an independent nationally recognized auditor of the Company certifying as

to the net worth of the Company as of the end of the preceding fiscal quarter (which net worth shall be determined in accordance with generally accepted accounting principles of the United States of America then in effect).

SECTION 4.4. CONSENT TO JURISDICTION. The Guarantor irrevocably: (1) agrees that any legal proceeding arising out of this Guaranty shall be brought in the State or federal courts in California having appropriate jurisdiction; (2) consents to the jurisdiction of such court in any such legal proceeding; (3) waives any objection which it may have to the laying of the jurisdiction of any such legal proceeding in any of such courts; and (4) waives its right to a trial by jury in any legal proceeding in any of such courts.

SECTION 4.5. BINDING EFFECT. This Guaranty shall inure to the benefit of DWR and its permitted successors and assigns and shall be binding upon the Guarantor and its successors and assigns.

SECTION 4.6. AMENDMENTS, CHANGES AND MODIFICATIONS. This Guaranty may not be amended, changed or modified or terminated and none of its provisions may be waived, except with the prior written consent of DWR and of the Guarantor.

SECTION 4.7. LIABILITY. It is understood and agreed to by DWR that nothing contained herein shall create any obligation of or right to look to any director, officer, employee or stockholder of the Guarantor (or any affiliate thereof) for the satisfaction of any obligations hereunder, and no judgment, order or execution with respect to or in connection with this Guaranty shall be taken against any such director, officer, employee or stockholder.

SECTION 4.8. NOTICES. All notices, demands, requests and other communications hereunder shall be deemed sufficient and properly given if in writing and delivered in person to the following addresses or sent by first class mail and facsimile, to such addresses:

(a) If to the Guarantor:

(b) If to DWR:

Either party may, by like notice, designate further or different addresses to which subsequent notices shall be sent. Any notice hereunder signed on behalf of the notifying party by a duly authorized attorney at law shall be valid and effective to the same extent as if signed on behalf of such party by a duly authorized officer or employee. Notices and communications given by mail hereunder shall be deemed to have been given 5 days after the date of dispatch; all other notices shall be deemed to have been given upon receipt.

SECTION 4.9. LIMITATION ON LIABILITY. Notwithstanding anything to the contrary in this Guaranty, in no event shall the Guarantor's liability under this Guaranty exceed fifteen million United States Dollars (\$15,000,000).

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be executed in its name and on its behalf by its duly authorized officer as of the date first above written.

By: _____

Printed Name: _____

Title: _____

Accepted and Agreed to by:

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES,
Separate and apart from its powers and
Responsibilities with respect to the State Water
Resources Development System

By: _____

Printed Name: _____

Title: _____

EXHIBIT C

This CONSENT AND AGREEMENT (“Consent and Agreement”) is entered into as of [INSERT THE EXECUTION DATE], among California Department of Water Resources, acting solely under the authority and powers created by AB1-X, codified as Sections 80000 through 80270 of the California Water Code, and not under its powers and responsibilities with respect to the California State Water Resources Development System (the “Consenting Party”), [INSERT THE NAME OF THE AGENT FOR THE LENDERS], as agent on behalf of the Secured Parties (the “Assignee”) and GWF Energy LLC, a [Delaware] limited liability company (the “Assignor”).

WHEREAS, subject to the terms of [INSERT THE NAME OF THE LOAN AGREEMENT], dated as of [INSERT THE EXECUTION DATE] among the Assignor, Assignee, and the Lenders (as defined below) (as the same may be amended, modified or supplemented from time to time, the “Credit Agreement”), the Lenders have agreed to make certain loans to the Assignor to enable the Assignor to finance the development, construction, operation and maintenance of the Project (as defined below);

WHEREAS, pursuant to the Amended and Restated Master Power Purchase and Sale Agreement dated August 22, 2002 between Assignor and the Consenting Party (as the same may be amended, modified or supplemented from time to time, the “Assigned Agreement”), the Consenting Party has agreed to purchase electric capacity and energy from the Project; and

WHEREAS, the Assignor is required to assign the Assigned Agreement to the Assignee as collateral security pursuant to [INSERT THE NAME OF THE SECURITY DOCUMENT], dated as of [INSERT THE EXECUTION DATE] between Assignor and Assignee (as the same may be amended, modified or supplemented from time to time, the “Security Agreement”) and the Consenting Party is required by Assignee to execute and deliver this Consent and Agreement to the Assignee as a condition to providing the financing as set forth in the Credit Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties hereto agree as follows:

Section 1: Definitions. Any capitalized term used but not defined herein shall have the meaning specified for such term in the Assigned Agreement or, if not defined therein, in the Credit Agreement.

Section 2: Consent and Agreement. Notwithstanding anything to the contrary contained in the Assigned Agreement, the Consenting Party hereby acknowledges and irrevocably consents (i) to the pledge and assignment by the Assignor to the Assignee of all of the Assignor’s right, title and interest in, to and under the Assigned Agreement as security pursuant to the Security Agreement, (ii) to any subsequent transfer by the Collateral Agent of its rights hereunder to a successor Collateral Agent; and (iii) to the subsequent transfer of the Assigned Agreement to any person in connection with the Collateral Agent’s or any successor Collateral Agent’s exercise of its rights and remedies under the Credit Agreement and related documents following the occurrence of an Event of Default by the Company thereunder; provided, that such person shall have assumed in writing all of the duties and obligations of the

Company under the Assigned Agreement arising on or after the date of such assumption, and no default shall have occurred and be continuing under the Assigned Agreement except for any such default which has been cured or is in the process of being cured in accordance with Section 4.

Section 3: No Current Defaults. The Consenting Party hereby acknowledges and agrees that as of the date hereof (a) the Assigned Agreement is in full force and effect as to the Consenting Party and there are no amendments, modifications or supplements thereto, either oral or written, (b) the Consenting Party has not assigned, transferred, pledged or hypothecated the Assigned Agreement or any interest therein except for a transfer, sale, pledge, encumbrance or assignment of a security interest solely to a bond trustee as security for payment of bonds issued by the Consenting Party and that such bond trustee's sole remedy under any such assignment is to cure the Consenting Party's payment default and enforce, through mandamus or otherwise, the Consenting Party's obligations under the Assigned Agreement, (c) the Consenting Party has no knowledge of any default by the Assignor in any respect in the performance of any provision of the Assigned Agreement or an event or condition which would, with the giving of notice or lapse of time or both, constitute a default under the Assigned Agreement and (d) none of the Assignor's rights under the Assigned Agreement have been expressly waived in writing to the Consenting Party or, to the best of the Consenting Party's knowledge, have been otherwise waived.

Section 4: Notice of Assignor's Default and Termination. Notwithstanding anything to the contrary contained in the Assigned Agreement, so long as any loans, letters of credit, commitments or other Obligations are outstanding under the Credit Agreement or any of the other Loan Documents and until the same have been terminated or satisfied in full, as the case may be, the Consenting Party shall not except as provided in the Assigned Agreement exercise any right it may have under the Assigned Agreement, at law or in equity, to cancel, suspend or terminate the Assigned Agreement or any of its obligations under the Assigned Agreement, other than as the result of any default or other action or omission of the Assignor; provided that the Consenting Party shall not exercise any such right that may arise as a result of a default or other act or omission of the Assignor without first giving a copy of a notice of default to the Assignee, such notice to be coupled with an opportunity (a) to cure any such default, action or omission within thirty (30) days after the last day of the cure period available to the Assignor in the Assigned Agreement, such cure period to commence upon receipt of notice by the Assignee, (b) to commence in a diligent manner to cure the Event of Default if such Event of Default is capable of being cured (for so long as the Assignor diligently continues such efforts) or (c) to commence in a diligent manner to prosecute efforts to gain possession of the generating units that produce the Product (for so long as the Assignor diligently continues such efforts). Such notice of default, act or omission shall be in writing and shall be deemed to have been given (i) when presented personally to the Assignee at the address indicated below (or such other address as the Assignee may have specified by written notice delivered in accordance herewith), (ii) one (1) business day after being deposited for overnight delivery with a nationally recognized overnight courier service or such later day as demonstrated by a bona fide receipt therefor at the address indicated below (or such other address as the Assignee may have specified by written notice delivered in accordance herewith), (iii) when received by the Assignee, if deposited in a regularly maintained receptacle for the United States Postal Service, postage prepaid, registered or certified mail, return receipt requested, addressed to the Assignee at the address indicated below (or such other address as the Assignee may have specified by written notice delivered in

accordance herewith) or (iv) when transmitted by telecopy to the number specified below and the receipt thereof is confirmed telephonically by the recipient, provided that such telecopy is then promptly followed by a copy of such notice delivered by a method specified in clause (i), (ii) or (iii) immediately above.

If to Assignee:

[INSERT NAME OF THE AGENT FOR THE LENDERS]

Attention: _____

Tel: _____

Fax: _____

Except to the extent that automatic cancellation, suspension or termination occurs pursuant to the Assigned Agreement (including without limitation pursuant to Section 5.2 of the Assigned Agreement), no cancellation, suspension or termination of the Assigned Agreement by the Consenting Party, or any of the other actions taken by the Consenting Party under the Assigned Agreement, shall be binding upon the Assignee without such notice and the applicable extended cure periods specified in this Section 4. The Assignee may, but shall be under no obligation to, make any payment or perform any act required under the Assigned Agreement to be made or performed by the Assignor, with the same effect as if made or performed by the Assignor. If the Assignee fails to cure or rectify the effect of a default, action or omission within the extended cure periods specified in this Section 4, the Consenting Party shall have all its rights and remedies with respect to such default, action or omission as set forth in the Assigned Agreement.

Section 5: No Amendments Without Consent. The Consenting Party shall not amend the Assigned Agreement without the Assignee's prior written consent.

Section 6: Payments to Revenue Account. The Consenting Party hereby agrees that, so long as any loans, letters of credit, commitments or other Obligations are outstanding under the Credit Agreement or any of the other Loan Documents and until the same have been terminated or satisfied in full, as the case may be except as provided in the Assigned Agreement, all payments to be made by the Consenting Party with respect to the Assigned Agreement shall be made in lawful money of the United States of America, by check or in immediately available funds. The Assignor directs the Consenting Party to make and the Consenting Party hereby agrees to make all such payments (after giving effect to all netting and offset provisions set forth in the Assigned Agreement) with respect to the Assigned Agreement directly to the Assignee, for deposit into the Revenue Account (Account No. _____), or to such other person and/or at such other address or account as the Assignee may from time to time specify in writing to the Consenting Party.

Section 7: Protection of Assignee. In the event that either (a) any of the Assignor's interest in the Project shall be sold, assigned or otherwise transferred pursuant to the exercise of any right, power or remedy by the Assignee, or pursuant to judicial proceedings or (b) the Assigned Agreement is rejected under Title 11, United States Code, or other similar Federal or state statute and such rejection is approved by the appropriate court or is otherwise

effective pursuant to such statute, and in either such case the Assignee shall have arranged for the curing of any default, action or omission under the Assigned Agreement susceptible of being corrected by the Assignee or by a permitted purchaser at any judicial or non-judicial sale, then the Consenting Party shall, within fifteen (15) days after receipt of written request therefor, which request shall be made not more than thirty (30) days after the Collateral Agent's receipt of notice of the event described in clause (a) or (b) above, as applicable, execute and deliver an agreement to the Assignee, or its nominee, permitted purchaser, assignee, or transferee, as the case may be, for the remainder of the term of the Assigned Agreement, and with the same terms as are contained in the Assigned Agreement. References in this Consent and Agreement to "Assigned Agreement" shall be deemed also to refer to such new agreement. Such new agreement shall not be effective unless and until the defaults under the Assigned Agreement have been cured.

Section 8: Acknowledgment of Assignee's Obligations and Rights. The Assignee has no obligation hereunder to extend credit to the Consenting Party at any time for any purpose solely as a result or execution and delivery of this Consent and Agreement. The Assignee shall have no obligation to the Consenting Party under the Assigned Agreement until such time as the Assignee notifies the Consenting Party in writing of the Assignee's election to assume, or cause an assignee or designee to assume, the Assignor's obligations under the Assigned Agreement as contemplated in Section 2(iii). If the Assignor defaults in the performance of any of its covenants to the Assignee in any of the Loan Documents, the Assignee shall have the right, inter alia, to (a) declare all amounts due to the Assignee under the Loan Documents immediately due and payable, (b) take possession of the Project and complete and operate the same, (c) sell or otherwise transfer its interest in the Project to a permitted purchaser and any purchaser at such sale shall succeed to the Assignee's rights hereunder, provided that such permitted purchaser shall cure any defaults by the Assignor under the Assigned Agreement, and assume, or cause an assignee or designee to assume, and continue to perform the Assignor's obligations under the Assigned Agreement, and (d) provided that it or any designee or assignee thereof agrees to be bound by the terms and conditions of the Assigned Agreement as contemplated in Section 2(iii), exercise all rights of the Assignor under the Assigned Agreement in accordance with the terms thereof. Subject to the Assignee's compliance with the provisions of the Assigned Agreement and the terms of this Consent and Agreement, the Consenting Party shall cooperate with the Assignee in connection with the Assignee's exercise of such rights. Without limiting the generality of the foregoing, if an Event of Default occurs and is continuing under any of the Loan Documents, the Assignee or any of its designees or assignees shall (provided that it or any designee or assignee thereof agrees to be bound by the terms and conditions of the Assignment Agreement as contemplated in Section 2(iii)), upon notices thereof to the Consenting Party, have the full right and power to enforce directly against the Consenting Party all obligations of the Consenting Party under the Assigned Agreement and otherwise to exercise all remedies of the Assignor thereunder, and to make all demands and give all notices and make all requests required or permitted to be made by the Assignor under the Assigned Agreement and the Consenting Party shall have no liability to the Assignor for acting in response to demands and requests of the Assignee. The Assignee or any of its designees shall have the right, but not the obligation, to perform any act, duty or obligation required of the Assignor under the Assigned Agreement at any time of the Assignor; provided that, subject to Section 2, nothing herein shall require the Assignee or any of its designees or assignees to cure any default,

action or omission of the Assignor under the Assigned Agreement or to perform any act, duty or obligation of the Assignor under the Assigned Agreement.

Section 9: Representations. The Consenting Party represents and warrants to the Assignee as follows:

(i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

(ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;

(iii) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;

(iv) this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any equitable defenses;

(v) (a) it has not filed a petition or otherwise commenced, authorized or acquiesced in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or had any such petition filed or commenced against it, (b) it has not made an assignment or any general arrangement for the benefit of creditors, (c) it has not otherwise become bankrupt or insolvent (however evidenced), (d) it has not had a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, and (e) it is generally able to pay its debts as they fall due;

(vi) there is not pending or, to its knowledge, threatened against it any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;

Section 10: Binding Upon Successors. All agreements, covenants, conditions and provisions of this Consent and Agreement shall be binding upon and inure to the benefit of the successors and assigns of each of the parties hereto.

Section 11: Captions. The captions or headings at the beginning of each Section of this Consent and Agreement are for convenience only and are not a part of this Consent and Agreement.

Section 12: Governing Law. This Consent and Agreement shall be governed by and construed in accordance with the internal laws of the State of California.

Section 13: Amendment. This Consent and Agreement may be modified, amended or rescinded only by writing expressly referring to this Consent and Agreement and signed by all the parties hereto.

Section 14: Assignment of Claims. If the Assignee makes any payment to the Consenting Party pursuant to this Consent and Agreement or the Assigned Agreement originally required to be made by the Assignor, the Consenting Party shall, within ten (10) days after receipt of written request therefor, execute and deliver to the Assignee an assignment of the --- Consenting Party's claims against the Assignor for such payment in form and substance satisfactory to the Assignee.

Section 15: Severability. Every provision of this Consent and Agreement is intended to be severable. If any term or provision hereof is declared by a court of competent jurisdiction to be illegal, invalid or unenforceable for any reason whatsoever, such illegality, invalidity or unenforceability shall not affect the other terms and provisions hereof, which terms and provisions shall remain binding and enforceable, and to the extent possible all of such other provisions shall remain in full force and effect.

Section 16: Counterparts. This Consent and Agreement may be executed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

IN WITNESS WHEREOF, each of the Consenting Party, Assignee and Assignor has duly executed this Consent and Agreement as of the date first above written.

CALIFORNIA DEPARTMENT OF WATER
RESOURCES

By: _____
Name:
Title:

GWF ENERGY LLC

By: _____
Name:
Title:

[INSERT NAME OF THE AGENT FOR THE
LENDERS]

By: _____
Name:
Title:

By: _____
Name:
Title: