

## STANDARD NON-FIRM ENERGY PURCHASE AGREEMENT

This NON-FIRM ENERGY PURCHASE AGREEMENT (the "Agreement") is made and entered into as of the date set forth below, by and between the **California Department of Water Resources** acting solely under the authority and powers created by AB1-X, codified as Sections 80000 through 80260 of the Water Code (the "Act"), and not under its powers and responsibilities with respect to the State Water Resources Development System (the "Department"), an agency of the State of California, and **Soledad Energy, LLC** (a California Limited Liability Company) located at 959 Los Coches Drive, Soledad, California (the "Seller").

### WITNESSETH:

WHEREAS, the Department solicited bids for energy pursuant to a Request for Bids ("RFB") published by the Department on February 6, 2001, and

WHEREAS, the Department has determined to accept a bid of the Seller made pursuant to the RFB; and

WHEREAS, the RFB provides that "no binding commitment shall arise on the part of the Department to any Bidder under this Request for Bids until and unless the parties sign documents of agreement that become effective in accordance with their terms."

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

### ARTICLE I DEFINITIONS

Section 1.01. Definitions. The following terms shall have the respective meanings in this Agreement:

"Authorized Representative" shall mean the person or persons designated in Appendix B as having full authority to act on behalf of a party for all purposes hereof.

"Availability" means the ratio of 1) MWh delivered in a month to 2) the difference between the product of Contract Capacity and total hours in the month, and the MWh not generated in the month due to planned outages.

"Billing Address" means the billing address specified in Appendix B or as otherwise specified by the Department.

"Business Day" means any day other than a Saturday or Sunday or a (United States or Canadian, whichever is applicable) holiday. United States holidays shall be holidays observed by Federal Reserve member banks in New York City. Where the Seller has its principal place of business in the United States, Canadian holidays shall not apply. In situations where the Seller has its principal place of business within Canada, both United States and Canadian holidays shall be observed.

"CAISO" shall mean the California Independent System Operator.

"Contract Capacity" shall mean the maximum net capacity of the Generating Plant, as stated in Appendix A.

"Costs" shall have the meaning set forth in Section 6.03 hereof.

"Defaulting Party" shall have the meaning set forth in Section 6.01 hereof.

"Delivery Point" means the California Independent System Operator's zone into which energy supplied by the Seller will be delivered at the location described in Appendix A.

"Event of Default" shall have the meaning set forth in Section 6.01 hereof.

"Fund" means the Department of Water Resources Electric Power Fund as set forth in Water Code Section 80000 *et seq.* as established by February 1, 2001, Assembly Bill 1, First Extraordinary Session.

"Generating Plant" means the 13 MW (net) biomass fueled generating plant located at 959 Los Coches Drive, Soledad, California.

"Guarantee Agreement" means an agreement providing a guarantee issued by a parent company or another entity guaranteeing responsibility for specific obligations under this Agreement.

"Guarantor" means the entity providing a guarantee pursuant to a Guarantee Agreement.

"Commercial Operation Date" shall be the date on which Seller confirms in writing to Buyer that the Generating Plant has completed testing and start-up, and is capable of continuous generation at the Contract Capacity. The expected Commercial Operation Date is set forth in Appendix A.

"Invoice Month" means the calendar month after the delivery of Non-Firm Energy for which an invoice is being issued.

"Investment Grade" means with respect to the Seller a rating on the Seller's senior long-term unsecured debt obligations of "BBB" from S&P and "Baa" from Moody's.

"Letter of Credit" means an irrevocable, transferable, standby letter of credit, issued by an issuer acceptable to the Department.

"Market Quotation Average Price" shall mean the average of the good faith quotations solicited from not less than five (5) Reference Market-makers disregarding the highest and lowest quotations. If quotations cannot be obtained from five Reference Market-makers, the Market Quotation Price shall be the average of all quotations received.

"Market Value" shall have the meaning set forth in Section 6.03 hereof.

"Moody's" means Moody's Investor's Services, Inc., or its successor.

"Non-Defaulting Party" shall have the meaning set forth in Section 6.01 hereof.

"Non-Firm Energy" means all Unit Contingent scheduled energy from the Generating Plant, to be delivered to the Department at the Delivery Point. Non-Firm Energy is expected to be delivered approximately 8,000 hours per year, based on the expected Availability of the Generating Plant.

"Per Unit Market Price" means the applicable price per MWh determined in accordance with Section 6.03.

"Present Value Discount Rate" shall have the meaning set forth in Section 6.03 hereof.

"Purchase Price" means the price set forth in Appendix A.

"Reference Market-maker" means any marketer, trader or seller of or dealer in Non-Firm Energy products whose long-term unsecured senior debt is rated Investment Grade.

"Replacement Contract" means a contract having a term, transaction quantity, availability rate, delivery rate, Delivery Point and product configuration substantially similar to the remaining Term, transaction quantity, delivery rate, Delivery Point and product configuration of this Agreement.

"Replacement Price" means the price at which Department, acting in a commercially reasonable manner, purchases at the Delivery Point a replacement for any Non-Firm Energy not delivered by Seller hereunder, plus (i) costs reasonably incurred by Department in purchasing such substitute Non-Firm Energy and (ii) additional transmission or other charges, if any, reasonably incurred by Department to the Delivery Point, or at Department's option, the market price at the Delivery Point for such Non-Firm Energy not delivered as determined by Department in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Department be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller's

liability. For purposes of this definition, Department shall be considered to have purchased replacement Non-Firm Energy to the extent Department shall have entered into one or more arrangements in a commercially reasonable manner whereby Department repurchases Seller's unfulfilled obligation to sell and deliver the Non-Firm Energy from another party at the Delivery Point.

"Sale Price" means the price at which Seller, acting in a commercially reasonable manner, resells at the Delivery Point any Non-Firm Energy not received by Department, deducting from such proceeds any (i) costs reasonably incurred by Seller in reselling such Non-Firm Energy and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Non-Firm Energy to the third party purchasers, or at Seller's option, the market price at the Delivery Point for such Non-Firm Energy not received as determined by Seller in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Department's liability. For purposes of this definition, Seller shall be considered to have resold such Non-Firm Energy to the extent Seller shall have entered into one or more arrangements in a commercially reasonable manner whereby Seller makes an alternate sale of the Non-Firm Energy to a third party at the Delivery Point.

"Schedule Coordination Services" shall mean all services rendered by registered CAISO Schedule Coordinators that are necessary in order for electric power resources to be scheduled and delivered over the CAISO transmission grid in accordance with the CAISO Tariff.

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

"State" means the State of California.

"Term" shall have the meaning set forth in Section 2.04.

"Termination Payment" shall have the meaning set forth in Section 6.02 hereof.

"Uncontrollable Force" shall have the meaning set forth in Section 5.01 hereof.

"Unit Contingent" means that delivery of power is contingent upon the Generating Plant not being unavailable due to outage.

## **ARTICLE II PURCHASE AND SALE OF NON-FIRM ENERGY**

Section 2.01. Purchase and Sale of Non-Firm Energy. Seller shall sell and deliver, or cause to be sold and delivered, and the Department shall purchase and receive, or cause to be purchased and received, the Non-Firm Energy at the Delivery Point, beginning on the

Commercial Operation Date and continuing for the Term set in Appendix A to this Agreement, and for which the Department shall pay the Seller the Purchase Price. Seller shall be obligated to schedule to the Department and to generate the Non-Firm Energy at the Generating Plant's maximum capability available in each hour, and to operate the Generating Plant such that monthly actual generation is within plus or minus 10% of monthly scheduled generation. The Seller shall be responsible for any costs or charges imposed on or associated with the Non-Firm Energy up to the Delivery Point. The Department shall be responsible for any costs or charges imposed on or associated with the Non-Firm Energy or its receipt at and from the Delivery Point. In addition, Seller shall sell and deliver and Department shall purchase and receive any energy produced by the Generating Plant prior to the Commercial Operation Date, upon reasonable notice by Seller and according to the terms of this Agreement.

Section 2.02. Transmission and Scheduling. The Seller shall arrange and be responsible for transmission service to the Delivery Point, and shall obtain Schedule Coordination Services necessary to deliver the Non-Firm Energy to the Delivery Point. Seller shall be responsible for all CAISO costs and charges, including imbalance charges due to deviations from power schedules. The Department shall arrange and be responsible for transmission service at and from the Delivery Point and shall schedule with its transmission providers to receive the Non-Firm Energy at the Delivery Point. All deliveries shall be scheduled in accordance with CAISO requirements. The Seller shall be responsible for ensuring that Non-Firm Energy deliveries are scheduled consistent with the most recent rules adopted by the applicable NERC regional reliability council, or its successor. Risks of transmission curtailment or interruptions shall be the responsibility of the Seller up to the Delivery Point

Section 2.03. Sources of Payment; No Debt of State. The Department's obligation to make payments hereunder shall be limited solely to the Fund. Any liability of the Department 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 default or Event of Default under this Agreement, and any other payment obligation or liability of or judgement against the Department 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.

Section 2.04. Term. The term of this Agreement (the "Term") shall be set forth in Appendix A. This Agreement shall terminate upon expiration of the term specified in Appendix A.

Section 2.05 Maintenance. Seller may perform planned maintenance of the Generating Plant for up to 20 days per 12 month period. Seller has represented that its planned maintenance can be expected to be performed twice a year, before and after (but not during) the summer period between June and October. Seller shall use best efforts to ensure that no planned maintenance occurs during the summer period between June and October, and to provide 30 day notice to Department of all planned maintenance.

Section 2.06. Other Provisions. The additional terms contained in Appendix A are hereby incorporated by reference into this Agreement.

### **ARTICLE III REPRESENTATIONS AND WARRANTIES**

Section 3.01. Representations and Warranties of the Department. The Department makes the following representations and warranties:

(a) Pursuant to Water Code Section 80000 *et seq.* the Department is authorized and empowered to enter into the transactions contemplated by this Agreement and has taken all requisite action to carry out its obligations hereunder. By proper action of its officers, the Department has duly authorized the execution and delivery of this Agreement.

(b) The execution, delivery and performance by the Department of this Agreement and the consummation by the Department of the transactions herein contemplated have been duly authorized and will not violate any provision of law in any material respect, or any order or judgment of any court or agency of government having jurisdiction thereover, or be in material conflict with or result in a material breach of or constitute (with due notice and/or lapse of time) a material default under any material indenture, material agreement or other material instrument to which the Department is a party or by which it or any of its property is subject to or bound.

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

Section 3.02. Representations and Warranties of the Seller. The Seller makes the following representations and warranties:

(a) The Seller is a corporation or other such legal entity duly organized, validly existing and in good standing under the laws of the state in which it was formed or incorporated, is duly qualified to do business in and is in good standing under the laws of the State, is not in violation of any provision of its articles of incorporation or by-laws, has the power and authority to own its property and assets, to carry on its business as now being conducted by it and to execute, deliver and perform this Agreement. To the best of Seller's knowledge, the Seller is duly qualified to do business in every jurisdiction in which such qualification is necessary.

(b) The execution, delivery and performance of this Agreement and the consummation of the transactions by the Seller herein contemplated have been duly authorized by all material requisite action on the part of the Seller and will not violate any provision of law, any order or judgment of any court or agency of government, or the certificate of incorporation or by-laws of the Seller, or any material indenture, agreement or other instrument to which the Seller is a party

or by which it or any of its property is subject to or bound, or be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a material default under any such indenture, agreement or other instrument.

(c) This Agreement constitutes the legal, valid and binding obligations of the Seller enforceable against the Seller in accordance with its terms subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

(d) There is no substantive action or proceeding pending or, to the best knowledge of the Seller, threatened by or against the Seller by or before any court or administrative agency that might adversely affect the ability of the Seller to perform its obligations under this Agreement and all material authorizations, consents and approvals of governmental bodies or agencies required to be obtained by the Seller as of the date hereof in connection with the execution and delivery of this Agreement or in connection with the performance of the obligations of the Seller hereunder have been obtained.

(e) The Seller is solvent. No action has been instituted, with respect to the Seller, by the Seller or by another person or entity of a bankruptcy, reorganization, moratorium, liquidation or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditor's rights nor has any petition been presented or instituted for its winding-up or liquidation.

#### **ARTICLE IV PAYMENTS**

Section 4.01. Billing Period; Billing Address. The accounting and billing period for transactions under this Agreement shall be one (1) calendar month. Bills sent to the Department shall be sent to the Billing Address.

Section 4.02. Payments. Payments for amounts billed hereunder shall be made so that such payments are received by the Seller on or before the last Business Day of the Invoice Month or the 10th day after receipt of the bill, whichever is later. Payment shall be made at the location designated by the Seller to which payment is due. Payment shall be considered received when the Department mails payment. If the due date falls on a non-Business Day of either the Department or the Seller, then the payment shall be due on the next following Business Day.

Section 4.03 Late Payments. Amounts not paid on or before the due date shall be payable with interest accrued at the rate of one percent (1%) above the Pooled Money Investment Account rate accrued in accordance with Government Code Section 927.6(6) not to exceed 15%.

Section 4.04 Disputes. In case any portion of any bill is in dispute, the entire bill shall be paid when due. Any excess amount of bills which, through inadvertent errors or as a result of a dispute, have been overpaid shall be returned by the Seller upon determination of the correct

amount, with interest accrued at the rate provided in Section 4.03 hereof, prorated by days from the date of overpayment to the date of refund. Neither the Department nor the Seller shall have rights to dispute the accuracy of any bill or payment after a period of two (2) years from the date on which the first bill was delivered.

Section 4.05. Records Retention and Audit.

(a) Records Retention. The Department and the Seller, or any third party representative thereof, shall keep complete and accurate records, and shall maintain such records and other data as may be necessary for the purpose of ascertaining the accuracy of all relevant bills, data, estimates, or statements of charges submitted hereunder. Such records shall be maintained for a period of 3 years after final payment under this Agreement. Within three years from final payment under this Agreement, any party to any transaction may request in writing copies of the records of the other party to the extent reasonably necessary to verify the accuracy of any statement or charge. The party from which documents or data has been requested shall cooperate in providing the documents and data within a reasonable time period.

(b) Audit. Seller agrees that the Department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Seller agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Seller agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Seller agrees to include similar right of the State to audit records and interview staff in any contractors or suppliers related to performance of this Agreement.

**ARTICLE V**  
**UNCONTROLLABLE FORCES**

Section 5.01. Uncontrollable Forces. No party shall be considered to be in breach of this Agreement to the extent that a failure to perform its obligations under this Agreement shall be due to an Uncontrollable Force. The term " Uncontrollable Force " means any cause beyond the control of the party affected, including but not restricted to flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority, and action or nonaction by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority which by exercise of due diligence such party could not reasonably have been expected to avoid and to the extent which by exercise of due diligence it has been unable to overcome. No party shall, however, be relieved of liability for failure of performance to the extent that such failure is due to causes arising out of its own negligence or due to removable or remediable causes which it fails to remove or remedy within a reasonable time period. Nothing contained herein shall be construed to require a party to settle any strike or labor dispute in which it may be involved. Any party rendered unable to fulfill any of its obligations by reason of an Uncontrollable Force shall give prompt notice of such fact and shall exercise due diligence to remove such inability within a reasonable time period. If oral notice is provided, it shall be promptly followed by written notice. Notwithstanding the foregoing, an Uncontrollable Force

shall not be based on (i) the loss of the Department's markets; (ii) the Department's inability economically to use or resell the Non-Firm Energy purchased hereunder; (iii) the loss or failure of Seller's supplies including, but not limited to, Seller's own generating assets or contracts for the purchase of power or energy; or (iv) Seller's ability to sell the Non-Firm Energy at a price greater than the Purchase Price.

The Department shall not be relieved by operation of this Section 5.01 of any liability to pay for power delivered to the Department by the Seller or to make payments then due or which the Department is obligated to make with respect to performance which occurred prior to the Uncontrollable Force.

## **ARTICLE VI EVENTS OF DEFAULT**

Section 6.01. Events of Default. An "Event of Default" shall mean with respect to a party ("Defaulting Party"):

- (a) The failure by the Defaulting Party to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within five (5) Business Days after written notice of such failure is given to the Defaulting Party by the other party (the "Non-Defaulting Party"). The Non-Defaulting Party shall provide the notice by facsimile to the Authorized Representative specified in Appendix B for the Defaulting Party and also shall send the notice by overnight delivery to such Authorized Representative; or
- (b) The failure by the Defaulting Party to provide clear and good title as required by Section 10.01, to have made accurate representations and warranties as required by Sections 3.01 or 3.02 or to perform any other material covenant or obligation hereunder and such failure is not cured within five (5) Business Days after written notice thereof to the Defaulting Party. The Non-Defaulting Party shall provide the notice by facsimile to the designated contact person for the Defaulting Party and also shall send the notice by overnight delivery to such Authorized Representative; or
- (c) The institution, with respect to the Defaulting Party, by the Defaulting Party or by another person or entity, of a bankruptcy, reorganization, moratorium, liquidation or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditor's rights, or a petition is presented or instituted for its winding-up or liquidation; or
- (d) The failure by the Defaulting Party to provide adequate assurances of its ability to perform all of its outstanding material obligations to the Non-Defaulting Party under the Agreement pursuant to Section 7.01 of this Agreement, or
- (e) The Defaulting Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of

such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Defaulting 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 Non-Defaulting Party.

Section 6.02. Remedies for Events of Default. (a) If an Event of Default occurs, the Non-Defaulting Party shall possess the right to terminate this Agreement upon written notice (by facsimile or other reasonable means) to the Defaulting Party, such notice of termination to be effective immediately upon receipt. The payment associated with termination ("Termination Payment") shall be the aggregate of the Market Value and Costs calculated in accordance with Section 6.03. Subject to the provisions of Section 6.02 (b) hereof, the Termination Payment shall be the sole and exclusive remedy for the Non-Defaulting Party for a termination hereunder. Prior to receipt of such notice of termination by the Defaulting Party, the Non-Defaulting Party may exercise any remedies available to it at law or otherwise, including, but not limited to, the right to seek injunctive relief to prevent irreparable injury to the Non-Defaulting Party.

(b) Upon termination, the Non-Defaulting Party may withhold any payments it owes the Defaulting Party for any obligations incurred prior to termination under this Agreement until the Defaulting Party pays the Termination Payment to the Non-Defaulting Party.

Section 6.03. Termination Payment Calculations. The Non-Defaulting Party shall calculate the Termination Payment as follows:

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

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

of the NYMEX power futures contracts, any or all of the settlement prices on other established power exchanges and other bona fide third party offers; provided, however, that if there is no actively traded market for such Replacement Contract, the Non-Defaulting Party shall use the methodology set forth in paragraph (c).

(c) To ascertain the Per Unit Market Price of a Replacement Contract with a term of one year or more, the Non-Defaulting Party shall use the Market Quotation Average Price; provided, however, that if there is an actively traded market for such Replacement Contract, the Non-Defaulting Party shall use the methodology set forth in paragraph (b).

(d) "Costs" means brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred in terminating any specifically related arrangements pursuant to which the Non-Defaulting Party has hedged its obligations or entering into new arrangements which replace this Agreement, transmission and ancillary service costs caused by the termination of this Agreement incurred in connection with the Non-Defaulting Party enforcing its rights with regard to the termination of this Agreement. The Non-Defaulting Party shall use reasonable efforts to mitigate or eliminate these Costs.

(e) In no event, however, shall a party's Market Value or Costs include any penalties 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 8.01 of this Agreement. Pending resolution of the dispute, the Defaulting Party shall pay the full amount of the Termination Payment calculated by the Non-Defaulting Party within one hundred eighty (180) Business Days of receipt of written notice subject to the Non-Defaulting Party refunding, with interest, pursuant to Section 4.04, any amounts determined to have been overpaid.

## **ARTICLE VII CREDITWORTHINESS**

Section 7.01. Creditworthiness. Should Seller's creditworthiness, financial responsibility, or performance viability become unsatisfactory to the Department in the Department's reasonably exercised discretion, the Department may require the Seller to provide, at the Seller's option (but subject to the Department's acceptance based upon reasonably exercised discretion), either (i) the posting of a Letter of Credit, (ii) a cash prepayment, (iii) the posting of other acceptable collateral or security by the Seller, (iv) a Guarantee Agreement executed by a creditworthy entity; or (v) some other mutually agreeable method of satisfying the Department. The Seller's obligations under this Section 7.01 shall be in an amount sufficient to cover (1) in case the remaining Term is less than one year, 100% of the Termination Payment, or (2) in case the remaining Term is one year or more, 25% of the Termination Payment, in each case calculated as if Article VI applied. Events which may trigger the Department questioning

the Seller's creditworthiness, financial responsibility, or performance viability pursuant to the above include, but are not limited to, the following:

- (A) The Department has knowledge that the Seller (or its Guarantor, if applicable) is failing to perform or defaulting under other contracts.
- (B) The Seller or its Guarantor has long-term senior lien debt which is rated as Investment Grade and that debt falls below the Investment Grade rating by S&P or Moody's or is below Investment Grade and the rating of that debt is downgraded further by S&P or Moody's.
- (C) Other substantial adverse changes in the Seller's financial condition occur.
- (D) Substantial changes in market prices or other events occur which, in the sole judgment of the Department, materially and adversely impact the Seller's ability to perform under this Agreement.

If the Seller fails to provide such reasonably satisfactory assurances of its ability to perform a transaction hereunder within ten (10) Business Days of demand therefor, that may be considered an Event of Default under Section 6.01 of this Agreement and the Department shall have the right to exercise any of the remedies provided for under Article VI. Nothing contained in this Section 7.01 shall affect any credit agreement or arrangement, if any, between the parties.

## **ARTICLE VIII DISPUTE RESOLUTION**

Section 8.01. Dispute Resolution. If the parties are unable to resolve a dispute with respect to this Agreement, either party may send a notice to the other requesting a meeting at which senior officers or officials of the parties will attempt to resolve the dispute. If the parties are unable to resolve the dispute within ten (10) days after the meeting notice is received by the party to whom it is directed, either party may demand that the matter be submitted to a single neutral arbitrator with substantial relevant experience in the power industry. If the parties are unable to agree upon an arbitrator within ten (10) days of the demand, the arbitrator shall be appointed pursuant to California Code of Civil Procedures and the party applying for the appointment of the arbitrator shall request that the appointment be made on an expedited basis. Within ten (10) days of the appointment of the arbitrator, the party demanding arbitration shall submit to the arbitrator a reasonably detailed description of its position together with supporting material. Within a further ten (10) days, the other party shall respond by submitting to the arbitrator a reasonably detailed statement of its position together with supporting material. Each party shall at the same time as such submission deliver copies of its submission to the other party and shall promptly provide any additional explanation or information requested by the arbitrator. The arbitrator shall be instructed to use all reasonable efforts to render a written decision setting forth its findings and conclusions within thirty (30) days of the date on which the arbitration proceedings are concluded. The arbitrator's decision concerning the item or items in dispute

shall be final and binding on the parties. The parties shall bear their own costs and share the arbitrator's expenses equally.

## **ARTICLE IX REMEDIES FOR FAILURE TO DELIVER/RECEIVE**

Section 9.01. Department Failure. If Department fails to schedule receipt and /or receive all or part of the Non-Firm Energy and such failure is not excused under the terms of this Agreement or by Seller's failure to perform, then Department shall pay Seller, within ten (10) Business Days of invoice receipt, an amount for all such MWh of deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the Purchase Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

## **ARTICLE X MISCELLANEOUS**

Section 10.01. Title, Risk of Loss. The Seller warrants that it will transfer to the Department good title to the Non-Firm Energy sold under this Agreement, free and clear of all liens, claims, and encumbrances arising or attaching prior to the Delivery Point and that Seller's sale is in compliance with all applicable laws and regulations. **THE SELLER HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** Risk of loss of the Non-Firm Energy shall pass from the Seller to the Department at the Delivery Point(s).

Section 10.02. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State, without regard to the conflicts of laws rules thereof.

Section 10.03. Forum and Venue. All actions related to the matters which are the subject of this Agreement shall be forumed and venued in a court of competent jurisdiction in the County of Sacramento, State of California.

Section 10.04 Waiver of Trial by Jury. The parties do hereby expressly waive all rights to trial by jury on any cause of action directly or indirectly involving the terms, covenants or conditions of this Agreement or any matters whatsoever arising out of or in any way connected with this Agreement. The provision of this Agreement relating to waiver of a jury trial shall survive the termination or expiration of this Agreement.

Section 10.05. Amendment. Neither this Agreement nor any provision hereof may be amended, waived, discharged or terminated except by an instrument in writing signed by the Department and the Seller.

Section 10.06. Counterparts. This Agreement may be executed in any number of counterparts, and upon execution by the parties, each executed counterpart shall have the same force and effect as an original instrument and as if the parties had signed the same instrument.

Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.

Section 10.07. Taxes. The Purchase Price shall include full reimbursement for, and the Seller is liable for and shall pay, or cause to be paid, or reimburse the Department for if the Department has paid, all taxes applicable to the Non-Firm Energy that arise prior to the Delivery Point. If the Department is required to remit such tax, the amount shall be deducted from any sums due to the Seller. The Purchase Price does not include reimbursement for, and the Department 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 Non-Firm Energy arising at and from the Delivery Point, including any taxes imposed or collected by a taxing authority with jurisdiction over the Department. 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 Non-Firm Energy.

If Seller can demonstrate that its cost of service for this Agreement has been increased since the date of this Agreement directly and explicitly as a result of new taxes imposed by the State of California, then Department shall pay or promptly reimburse Seller for such increased costs of service. If Department can demonstrate that Seller's cost of service for this Agreement has been decreased since the date of this Agreement directly and explicitly as a result of changes in existing taxes imposed by the State of California, then Seller shall pay or promptly credit Department to account for such decreased costs of service.

Section 10.08. Transfer of Interest in Agreement. No party shall voluntarily assign or transfer this Agreement or any portion thereof without the written consent and approval of the other party, except in the case where Seller is transferring to an entity under common control of the Seller and the transferee has a credit quality at least as high as that of Seller in the reasonable judgment of the Department. Any successor or assignee of the rights of any party, whether by voluntary transfer, judicial or foreclosure sale or otherwise, shall be subject to all the provisions and conditions of this Agreement to the same extent as though such successor or assignee were the original party under this Agreement, and no assignment or transfer of any rights under this Agreement shall be effective unless and until the assignee or transferee agrees in writing to assume all of the obligations of the assignor or transferor and to be bound by all of the provisions and conditions of this Agreement. The execution of a mortgage or trust deed or a judicial or foreclosure sale made thereunder shall not be deemed a voluntary transfer within the meaning of this Section 10.08.

Anything herein to the contrary notwithstanding, the Department may transfer and assign this Agreement to any entity created or designated by law for such purpose and the Department shall have no further obligations hereunder; provided, however, that all right, title and interest in the Fund shall be transferred to such entity without any encumbrance for the benefit of all persons selling power or energy to the Department, including the Seller.

Section 10.09. Severability. In the event that any of the terms, covenants or conditions of this Agreement, or the application of any such term, covenant or condition, shall be held invalid as to any person or circumstance by any court, regulatory agency, or other regulatory body having jurisdiction, all other terms, covenants or conditions of this Agreement and their application shall not be affected thereby, but shall remain in force and effect unless a court, regulatory agency, or other regulatory body holds that the provisions are not separable from all other provisions of this Agreement.

Section 10.10. Relationship of the Parties. (a) Nothing contained herein shall be construed to create an association, joint venture, trust, or partnership, or impose a trust or partnership covenant, obligation, or liability on or with regard to any one or more of the parties. Each party shall be individually responsible for its own covenants, obligations, and liabilities under this Agreement. (b) All rights of the parties are several, not joint. No party shall be under the control of or shall be deemed to control another party. Except as expressly provided in this Agreement, no party shall have a right or power to bind another party without its express written consent.

Section 10.11. No Dedication of Facilities. The Seller's undertaking hereunder shall not constitute the dedication of the electric system or any portion thereof of the Seller to the public or to the other party and it is understood and agreed that any undertaking under this Agreement by the Seller shall cease upon the termination of the Seller's obligations under this Agreement.

Section 10.12. No Retail Services; No Agency. (a) Nothing contained in this Agreement shall grant any rights to or obligate the Seller to provide any services hereunder directly to or for retail customers of any person. (b) In performing their respective obligations hereunder, neither party is acting, or is authorized to act, as agent of the other party.

Section 10.13. Third Party Beneficiaries. This Agreement shall not be construed to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty, obligation or undertaking established herein except as provided for in Section 10.08.

Section 10.14. Liability and Damages. No party or its directors, members of its governing bodies, officers or employees shall be liable to any other party or parties for any loss or damage to property, loss of earnings or revenues, personal injury, or any other direct, indirect, or consequential damages or injury, or punitive damages, which may occur or result from the performance or non-performance of this Agreement, including any negligence arising hereunder. Any liability or damages faced by an officer or employee of a Federal agency or by that agency that would result from the operation of this provision shall not be inconsistent with Federal law.

Section 10.15. Waivers. Any waiver at any time by any Party of its rights with respect to a default under this Agreement, or any other matter under this Agreement, shall not be deemed a waiver with respect to any subsequent default of the same or any other matter.

Section 10.16. Notices. Any formal notice, demand or request provided for in this Agreement shall be in writing and shall be deemed properly served, given or made if delivered in

person, or sent by either registered or certified mail, postage prepaid, or prepaid telegram or fax or other means agreed to by the parties to the addresses set forth in Appendix B.

Section 10.15. Waiver of Consequential Damages. In no event, whether based on contract, indemnity, warranty, tort (including, as the case may be, a party's own negligence) or otherwise, shall either party be liable to the other party or to any other person or party for or with respect to any claims for consequential, indirect, punitive, exemplary, special or incidental damages or otherwise; provided, however, that this provision shall not limit in any way a party's right to payment of the Termination Payment pursuant to Section 6.02 hereof.

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representative as of the \_\_\_th day of \_\_\_\_\_, 2001.

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

By: *R. D. Hart*  
Name: *Raymond D. Hart*  
Title: *Deputy Director*

By: \_\_\_\_\_  
Name:  
Title:

SOLEDAD ENERGY, LLC

By: Yanke Energy, Inc.  
A Managing Member

By: *Sheldon Schultz* 4-28-2001  
Sheldon Schultz, General Manager

## Appendix A

### Supplemental Definitions and Terms of Agreement

Description of Generating Plant	Seller is reconditioning a 13 MW waste to energy generation plant located at 959 Los Coches Drive, Soledad, CA 93960. Seller has already obtained the necessary permits from the Monterey Bay Pollution Control District, and the project will include the necessary SNCR emission controls.														
Contract Capacity	13 MW														
Expected Commercial Operations Date	June 30, 2001														
Term	June 30, 2001 through June 29, 2006														
Delivery Point	NP15, At the Soledad Energy LLC substation, 60 KV on the CAISO grid														
Purchase Price	For each MWh of energy delivered to Department and produced by Seller, Department will pay Seller: <table><thead><tr><th><u>Year</u></th><th><u>Price (\$/MWh)</u></th></tr></thead><tbody><tr><td>2001</td><td>80</td></tr><tr><td>2002</td><td>82</td></tr><tr><td>2003</td><td>84</td></tr><tr><td>2004</td><td>84</td></tr><tr><td>2005</td><td>84</td></tr><tr><td>2006</td><td>84</td></tr></tbody></table>	<u>Year</u>	<u>Price (\$/MWh)</u>	2001	80	2002	82	2003	84	2004	84	2005	84	2006	84
<u>Year</u>	<u>Price (\$/MWh)</u>														
2001	80														
2002	82														
2003	84														
2004	84														
2005	84														
2006	84														
Monthly Availability Guarantee Percentage	75% in June - October 70% in January-May and November-December In no event may delivery be curtailed for economic reasons. Seller shall not provide replacement energy to avoid a reduction in availability.														
Emissions	Seller has already obtained plant permits and any emission offsets needed to operate the Generating Plant for up to 8760 hours per year at Contract Capacity, shall operate the Generating Plant pursuant to the permits, and shall maintain the validity of the permits.														

Early Termination Department shall have the option to terminate the Power Purchase Agreement if:

1. Seller has not been granted regulatory authority from all applicable permitting authorities by August 1, 2001;
2. Seller has not provided notice of achievement of Commercial Operations by August 1, 2001; or
3. The output from the Generating Plant yields an Availability that is less than the Monthly Availability Guarantee Percentage for three consecutive months.

Major Milestone Activity	Expected Milestone Completion Date
Acquisition of Land Use Permit	April 3, 2001
Acquisition of Air Permit	April 3, 2001
Approval of the Gas Interconnection	April 30, 2001
Approval of the Electrical Interconnection	April 3, 2001
Delivery of all Required Equipment	May 15, 2001
Start of Construction	January 1, 2001
Completion of Gas interconnection	May 25, 2001
Completion of Electric Interconnection	May 25, 2001
Facility ready for test	May 29, 2001
Commercial Operation Date	June 30, 2001

Reports Upon execution of the Agreement, Seller shall supply bi-weekly progress reports to Department describing progress towards completion of Major Milestones.

Option No later than the date which is 6 months prior to the expiration of this Agreement, Department shall have the right to exercise an option to extend this Agreement for an additional four (4) months at the Purchase Price then in effect, or for an additional 60 months at a price to be negotiated by the parties based on then market conditions. Department may also exercise the 60 month extension to take effect after the four month extension, should Department have exercised the four month extension; the exercise date for the 60 month extension in this event will be 6 months prior to the expiration of the four month extension.

Prudent Utility Practices Seller will utilize Prudent Utility Practices with respect to the

Generating Plant. 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.

## Appendix B

### Addresses

#### SELLER

Billing Address:  
Soledad Energy, LLC  
P.O. Box 5405  
4414 South Gekeler Lane  
Boise, Idaho 83705

Notice Address:  
Soledad Energy, LLC  
P.O. Box 5405  
4414 South Gekeler Lane  
Boise, Idaho 83705  
Attn: Richard Heaton

Authorized Representative:  
  
Sheldon Schultz P.E.

#### DEPARTMENT

Billing Address:  
California Department of Water Resources  
1416 Ninth Street  
Sacramento, CA 95814  
Attn: Executive Manager Power Systems

Notice Address:  
California Department of Water Resources  
1416 Ninth Street  
Sacramento, CA 95814  
Attn: Executive Manager Power Systems

Authorized Representative:  
  
Raymond D. Hart, Deputy Director

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**Addendum to Standard Non-Firm Energy Purchase Agreement**

The following provision is hereby added to the Standard Non-Firm Energy Purchase Agreement between California Department of Water Resources and Soledad Energy, LLC, which Agreement was executed by Soledad Energy, LLC on April 28, 2001:

Section 10.18. Standard Contract Provisions. The Standard Contract provisions executed and attached as Exhibit A shall apply to this Agreement.

In addition, the heading for "Waiver of Consequential Damages" is hereby changed from "Section 10.15" to "Section 10.17" to correct for a typographical error.

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

By: *Rogman D. Hart*  
Name: *Rogman D. Hart*  
Title: *Deputy Director*

By: \_\_\_\_\_  
Name:  
Title:

SOLEDAD ENERGY, LLC

By: Yanke Energy, Inc.  
A Managing Member

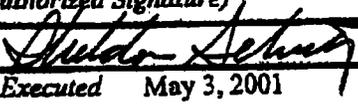
By: *Sheldon Schultz*  
Sheldon Schultz, General Manager

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**Exhibit "A"**

**CCC800 CERTIFICATION**

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

SOLEDAD ENERGY LLC	Federal ID Number - PENDING
By (Authorized Signature)	
 Sheldon Schultz, General Manager	
Date Executed May 3, 2001	Executed in the County of Monterey

**CONTRACTOR CERTIFICATION CLAUSES**

1. STATEMENT OF COMPLIANCE: Contractor has, unless exempted, complied with the nondiscrimination program requirements. (GC 12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)

2. DRUG-FREE WORKPLACE REQUIREMENTS: Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.

b. Establish a Drug-Free Awareness Program to inform employees about:

- 1) the dangers of drug abuse in the workplace;
- 2) the person's or organization's policy of maintaining a drug-free workplace;
- 3) any available counseling, rehabilitation and employee assistance programs; and,
- 4) penalties that may be imposed upon employees for drug abuse violations.

c. Every employee who works on the proposed Agreement will:

- 1) receive a copy of the company's drug-free workplace policy statement; and,
- 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

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Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: (1) the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (GC 8350 et seq.)

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION: Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court which orders Contractor to comply with an order of the National Labor Relations Board. (PCC 10296) (Not applicable to public entities.)

## DOING BUSINESS WITH THE STATE OF CALIFORNIA

Contractor agrees to comply with all applicable laws and all applicable orders and regulations of regulatory authorities having jurisdiction over matters covered by this Agreement. Without limiting the foregoing, Contractor shall comply with the following:

1. CONFLICT OF INTEREST: Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

### Current State Employees (PCC 10410):

- 1). No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- 2). No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

### Former State Employees (PCC 10411):

- 1). For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
- 2). For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

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If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (PCC 10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (PCC 10430 (e))

**2. LABOR CODE/WORKERS' COMPENSATION:** Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)

**3. AMERICANS WITH DISABILITIES ACT:** Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

**4. CONTRACTOR NAME CHANGE:** An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

## **5. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:**

a. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.

b. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.

c. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

**6. RESOLUTION:** A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.

**7. AIR OR WATER POLLUTION VIOLATION:** Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste

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discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

8. **PAYEE DATA RECORD FORM STD. 204:** This form must be completed by all contractors that are not another state agency or other government entity.

9. **APPROVAL:** This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.

10. **AMENDMENT:** No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.

11. **ASSIGNMENT:** This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment, except as set forth in Section 10.8 of the Agreement.

12. **AUDIT:** Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (GC 8546.7, PCC 10115 et seq., CCR Title 2, Section 1896).

13. **RECYCLING CERTIFICATION:** The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of recycled content, both post consumer waste and secondary waste as defined in the Public Contract Code, Sections 12161 and 12200, in materials, goods, or supplies offered or products used in the performance of this Agreement, regardless of whether the product meets the required recycled product percentage as defined in the Public Contract Code, Sections 12161 and 12200. Contractor may certify that the product contains zero recycled content. (PCC 10233, 10308.5, 10354)

14. **NON-DISCRIMINATION CLAUSE:** During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations

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promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

15. **CERTIFICATION CLAUSES:** The **CONTRACTOR CERTIFICATION CLAUSES** contained in California Department of General Services Standard Form CCC800 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

16. **ANTITRUST CLAIMS:** The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

a. The Government Code Chapter on Antitrust claims contains the following definitions:

1). "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.

2). "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

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d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

17. CHILD SUPPORT COMPLIANCE ACT: "For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with, that:

a). the contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

b) the contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department."

18. IMPERMISSIBLE CONTRACTOR ACTIVITIES WITH REGARD TO UNION ACTIVITIES: The Contractor, by signing this Agreement, certifies that it is aware of its requirements under Government Code Sections 16645 - 16649 which, among other things, precludes certain activities and provides civil penalties with regard to assisting, promoting or deterring union organizing.

19. APPROVAL: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until any such approval has been obtained.