



Request for Proposals
for
Supplemental Power Supply

P018-25

Proposal Due Date: March 12, 2025, 5:00 PM

Proposal Acknowledgement Date: March 13, 2025, 10:00 AM

LEGAL NOTICE AND REQUEST FOR PROPOSAL

P018-25

The Public Utilities Board of the City of Brownsville, Texas (Brownsville PUB or BPUB) will accept sealed proposals for Supplemental Power Supply until **March 12, 2025, at 5:00 PM** in the Brownsville PUB Purchasing Office, 1155 FM 511, Olmito, Texas. **RFPs received after this time will not be considered.**

Proposals will be publicly opened and read aloud on **March 13, 2025**. Firms can call at 10:00 AM on this date at (956) 214-6020 to listen to the proposal acknowledgment.

Detailed specifications may be obtained at the following website: https://www.brownsville-pub.com/rfp_status/open/

Please mark on the **outside of the envelope and on any carrier's envelope**: "RFP FOR SUPPLEMENTAL POWER SUPPLY, P018-25, MARCH 12, 2025, 5:00 PM", and send to the attention of Diane Solitaire, Purchasing Department, 1155 FM 511, Olmito, Texas 78575.

The Brownsville PUB will not be responsible if the U.S. Postal Service or any other courier system fails to deliver the RFP to the Brownsville PUB, Purchasing Office by the deadline above. **RFPs via electronic transmission and facsimile will not be accepted.**

The Brownsville PUB reserves the right to reject any or all RFPs and to waive irregularities contained therein, and to accept any proposal(s) deemed most advantageous to the Brownsville PUB.

BY:

Diane Solitaire

Purchasing

Brownsville PUB

(956) 983-6366 - Phone

Please submit this page upon receipt

ACKNOWLEDGEMENT FORM

P018-25 Supplemental Power Supply

For any clarifications, please contact Diane Solitaire at Brownsville PUB Purchasing Department at (956) 983-6366 or e-mail: dsolitaire@brownsville-pub.com

Please email this page upon receipt of the RFP package or legal notice. If you only received the legal notice and want the RFP package mailed, please provide a method of shipment with the account number in the space designated below.

Check one:

Yes, I will be able to send a proposal; obtained RFP package from website.

Yes, I will be able to send a proposal; please email the RFP package.

Email: _____

Yes, I will be able to send a proposal; please mail the RFP package using the carrier & account number listed below:

Carrier: _____

Account: _____

No, I will not be able to send a proposal for the following reason:

If you are unable to respond to this RFP, kindly indicate your reason above and return this form **via email to:** dsolitaire@brownsville-pub.com. This will ensure you remain active on our vendors list.

Date _____

Firm: _____

Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Phone: _____ Fax: _____

Email: _____

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REQUEST FOR PROPOSAL – SUPPLEMENTAL POWER SUPPLY

Objective

The Public Utilities Board of the City of Brownsville, Texas, is seeking proposals for a market-based power purchase agreement with a performance period of up to thirty years to supplement BPUB's existing power supply resources. BPUB is seeking proposals for 80 to 100 MWs of firm power, 24 X 7, commencing January 1, 2027. Additional details on resource requirements and preferences are provided below.

General Background

The City of Brownsville ("City"), located in Cameron County, along the Rio Grande River, approximately 23 miles from the Gulf of Mexico, is a home rule city organized and existing under the laws of the state of Texas, including the City's Charter, as amended (the "Charter"). The City owns a combined electric, water, and wastewater utilities system (collectively, the "system") serving the City and certain areas outside the City. The City's authority regarding public utility ownership and services is generally exercised through the Public Utilities Board of the City of Brownsville, Texas ("Brownsville PUB or BPUB") Board of Directors (the "Board"). The Brownsville PUB, created and established by Article VI of the Charter as a separate and distinct agency of the City, has the authority to control, manage, and operate the system and to expand and apply System revenues, subject to certain limitations. The Brownsville PUB employs approximately 642 employees. The Brownsville PUB fiscal year is the 12 months ending September 30th of each year and is referred to herein as the "fiscal year."

As a result of recent integrated resource planning activities, Brownsville PUB has identified potential gaps in its existing power supply portfolio caused by anticipated customer additions, upcoming purchase power contract expiration dates, and/or potential retirements of existing physical generation resources. For this reason, Brownsville PUB desires to receive and consider long-term resource addition proposals under this RFP.

Contract specifications for which Brownsville PUB is seeking proposals are stated below:

- Quantity: 80-100 MW, firm power, all-hours (24x7)
- Pricing: Fixed price or fixed-price with economic price adjustment
- Period: A term of at least five (5) years up to a maximum of thirty (30) years, commencing on January 1, 2027.
- Delivery Point: ERCOT South Load Zone
- Delivery Date: January 1, 2027
- Contract Form: EEI Master Power Purchase & Sale Agreement

Alternative Proposals

Brownsville PUB encourages creative thinking and welcomes alternative proposals that bring unique benefits to Brownsville PUB and the communities it serves. Firms are encouraged to provide alternative proposals that address Brownsville PUB's power supply needs. However, Brownsville PUB will only consider alternative proposals if a proposal for the required Power Supply Contract Requirements is also provided.

General Requirements

All proposal envelopes shall contain three (3) signed identical originals and one (1) electronic version (PDF format on either USB stick or CD/DVD) of the submittal, including any supplemental printed material referenced with the RFP shall be included. The original proposals will be opened, and only the Firm's name will be read aloud at the Brownsville PUB Purchasing Office at 1155 FM 511, Olmito, TX. Brownsville PUB will manage all proposals to avoid disclosing the contents to competing Firms and keep the proposals confidential during negotiations. All proposals will be open for public inspection, as stated in the Texas Public Information Act after the contract is awarded; however, trade secrets and confidential commercial or financial information in the proposals identified explicitly by the Firms will not be open for public inspection. Accordingly, all pages in the proposal that the Firm considers proprietary and confidential should be appropriately marked.

Direct any questions to Diane Solitaire, Purchasing; email: dsolitaire@brownsville-pub.com phone: (956) 983-6366.

Firms must guarantee their Original Proposal or subsequently clarified proposal for at least ninety (90) days from the Original Proposal opening date. The Brownsville PUB may require written clarifications and explanations of Firm proposals after Original Proposal submissions when specific candidates have been selected for interviews (if applicable) to obtain the best and final offer. The Brownsville PUB will not be liable for any of the Firm's costs or expenses incurred in preparing or presenting the Proposal(s). The Brownsville PUB also reserves the right to conduct a pre-award survey or to require other evidence of managerial, financial, or other abilities before the award of the contract.

The Brownsville PUB will follow all procurement procedures as contained in State law and BPUB policies and procedures.

Discussions may be conducted with the top-rated Firm(s) at Brownsville PUB's discretion to ensure that the award is made to the Firm whose proposal best meets the needs of the Brownsville PUB. After the meeting(s), five (5) working days will allow the Firm(s) to submit all requested additional information and explanations in writing, which shall be deemed a part of their final offer. The Firm(s) shall submit any revised projected schedule with clarifications and explanations. The Firm(s) shall be treated fairly and equally to any and all opportunities for discussion, clarification, and explanation of proposals.

Contract with Firm Indebted to BPUB

Brownsville PUB policy is to refuse to enter into a contract or other transaction with an individual, sole proprietorship, joint venture, Limited Liability Company, or other entity indebted to Brownsville PUB.

Firm Representative

The successful Firm agrees to send a personal representative with binding authority for the Firm to the Brownsville PUB upon request to adjust and/or assist with coordinating all transactions as needed.

Firm Automated Clearing House (ACH) Direct Deposit Services

The Brownsville PUB has implemented a payment service by depositing the payment directly into a Firm's bank account. Successful Firm(s) will be required to receive payments directly through Automated

Clearing House (ACH) in lieu of a paper check. The awarded Firm must agree to accept payments via ACH (direct deposit).

Tax Identification Number (TIN)

Under IRS Publication 1220, a W9 form, or a W8 form in cases of a foreign firm, will be required of all Firms doing business with the Brownsville PUB. If a W9 or W8 form is not made available to Brownsville PUB, the first payment will be subject to income tax withholding as required by applicable law, depending on the U.S. status and the source of income as per IRS Publication 1220. The W9 or W8 form must be included with the proposal response. Attached are sample forms.

Taxes

The Brownsville PUB is exempt from Federal Excise, State Sales, and Local taxes. Do not include tax in the proposal. If it is determined that tax was included in the proposal, it will not be included in the tabulation or any awards. Tax exemption certificates will be furnished upon request.

Signing of Proposal

Failure to sign the proposal will disqualify it. The person signing the proposal should show title or authority to bind their Firm to a contract.

Equal Employment Opportunity Commission Guidelines

During the performance of this contract, the Firm agrees not to discriminate against any employee or applicant for employment because of race, national origin, age, religion, gender, marital or veteran status, or physically challenging condition.

Contract

A power contract will be implemented utilizing a contract issued by Brownsville PUB after evaluation and final approval by the Brownsville PUB Board of Directors. The following items will direct the negotiations associated with the ultimate Master Power Purchase & Sale Agreement (“EEI”). The sample form is attached.

1. Structure. Brownsville PUB will purchase the energy, capacity, and applicable environmental attributes from the associated generation, if any. The EEI will contain terms and provisions governing the purchase and sale of such energy and applicable environmental attributes delivered from selected resources. The EEI will also include terms for performance, including those associated with completing project milestones to achieve timely commercial operation, and terms for minimum performance standards after commercial operation, if applicable.
2. Term. Brownsville PUB will consider a term of at least five (5) years up to a maximum of thirty (30) years.
3. Energy. Brownsville PUB expects to acquire between 80 and 100 MW of power under this RFP, which can be generated from one or multiple resources, including energy purchased under a firm purchase offering.

4. Commercial Operation Date (COD). Brownsville PUB will consider any commercial operation date that returns the best value to Brownsville PUB and its customers, as determined by Brownsville PUB based on its overall project evaluation, with a preferred delivery date of January 1, 2027.
5. Performance Security/Insurance. To the extent applicable, upon contract execution, the Firm will provide and maintain performance security over the contract term; the amount, form, and substance of the performance security must be pre-approved by Brownsville PUB after evaluating the Firm's financial capability. (To the extent proposed pricing may be sensitive to security requirements, please clearly describe the effect of that in your pricing offer.) The Firm must also maintain adequate insurance coverage for the contracted term per Brownsville PUB requirements.
6. Point of Delivery (POD). Under the terms of the EEI contract, Brownsville PUB will purchase energy at a POD located at the ERCOT South Load Zone.
7. QSE Services/Settlement. All energy trades will be settled at the ERCOT South Load Zone, with either the Firm or Brownsville PUB providing QSE services via its QSE.
8. Operations, Metering & Communications. The Firm will provide all real-time communication, SCADA, and telemetry equipment at its expense. It will be designed to meet both ERCOT's and Brownsville PUB's equipment and data communication requirements, which include, but are not limited to, a backup revenue quality meter, an adequate data historian system, two private communication channels with related technology on both ends to deliver data from the resource to Brownsville PUB's control center, and redundant ICCP servers, routers and network equipment designed to communicate real-time information to Brownsville PUB.
9. EEI Contract Execution. After successfully negotiating an EEI contract that is mutually agreeable, the Firm will execute it and any related ancillary documents and return them to Brownsville PUB.

Brownsville PUB Rights

1. Brownsville PUB has the right to reject, re-submit, accept, and/or extend the proposal by up to an additional two (2) weeks from the original submission date if only one or no proposal is received by the "submission date."
2. Brownsville PUB has the right to reject any/all proposals and award those that appear advantageous to it.
3. Brownsville PUB has the right to hold proposals ninety (90) days from the submission date without action and waive all proposal formalities.
4. Brownsville PUB has the right to extend the total proposal beyond the original 90-day period before an award if agreed upon in writing by all parties (Brownsville PUB and Firm) and if the Firm holds the original proposal firm.
5. Brownsville PUB has the right to terminate for cause or convenience all or any part of the unfinished portion of the Project resulting from this solicitation within Thirty (30) calendar days written notice; for cause: upon default by the Firm, for delay or non-performance by the Firm; or if it is deemed in the best interest of the Brownsville PUB for Brownsville PUB's convenience.

6. Brownsville PUB has the right to increase or decrease quantities. In response, stipulate whether increasing or decreasing services will affect price.
7. Brownsville PUB has the right to refuse to enter into a contract or other transaction with any individual or entity indebted to the municipality as per Texas Local Government Code Sec. 252.0436.

Final Approvals

With the final recommendation of staff and the final consent of executive management, Brownsville PUB will present a summary overview of the partially executed EEI and other relevant information to the Brownsville PUB Board of Directors for final determination for execution approval and spending authorization.

Corrections

Any interpretation, correction, or change to the RFP will be made by ADDENDUM. The Brownsville PUB Purchasing Department will issue changes or corrections. The addenda will be e-mailed to all who have returned the Proposal Acknowledgement form. The addenda will be issued as expeditiously as possible. It is the responsibility of the Firms to determine whether all addenda have been received. All Firms will be responsible for contacting the Brownsville PUB before submitting a response to the RFP to ascertain if any addenda have been issued. To obtain any or all addenda, execute them, and return the addenda with the response to the RFP. The addenda may also be posted on Brownsville PUB's webpage.

Unauthorized Communications

No officer, employee, agent, or representative of the Firm shall have any contact or discussion, verbal or written, with any members of the Brownsville PUB Board of Directors, members of the RFP evaluation, interview or selection panels, Brownsville PUB staff, or directly or indirectly through others, seek to influence any Brownsville PUB Board member or Brownsville PUB staff member regarding any matters pertaining to this solicitation, except as herein provided. If a representative of any Firm violates the foregoing prohibition by contacting any of the above-listed parties with whom contact is not authorized, such contact may result in the Firm being disqualified from the procurement process. Any oral communications are considered unofficial and non-binding concerning this RFP.

Rights to Submitted Materials

All proposals and material submitted to the Brownsville PUB by a Firm in response to this RFP shall become the property of the Brownsville PUB after the proposal submission deadline. The Brownsville PUB's return of the proposal/material will be subject to the requirements of the laws of the State of Texas.

The Firm acknowledges and agrees that all records, documents, drawings, plans, specifications, and other materials it provides in response to this RFP are subject to the provisions of the Public Information Act, Texas Government Code, Chapter 552. If the Firm believes information or materials submitted to Brownsville PUB constitute trade secrets, proprietary information, or other information that is excepted from disclosure under the Public Information Act, the Firm shall be solely responsible for specifically and conspicuously designating that information by placing "CONFIDENTIAL" in the center header of each such page affected, as it determines to be appropriate. Should a request for information be made, Brownsville PUB shall provide notice of such request to affected Firms, who will then have an opportunity

to file an objection to disclosure. Brownsville PUB may or may not also assert a claim for confidentiality of the information as permitted under Chapter 552.

Confidentiality and Non-Disclosure Agreement (NDA)

If and when a Firm becomes a Shortlisted Proposal, the Firm must execute the version of a Confidentiality and Non-Disclosure Agreement (“NDA”) before discussions with Brownsville PUB. A draft form of the NDA is attached to this RFP on page 18 for review. Brownsville PUB expects to execute an NDA substantially similar to the draft form NDA provided. Failure by the Firm to negotiate requested changes to the NDA (if any) with Brownsville PUB and gain execution of the NDA by both parties may disqualify the Firm from further participation in the Solicitation. Depending upon the NDA submitted, Brownsville PUB may require additional confidentiality obligations with collaborating entities.

RFP is Not a Basis for Obligations

This request for competitive proposals does not constitute an offer to contract and does not commit the Brownsville PUB to award a contract to anyone or to pay any costs incurred in preparing and submitting proposals. The Brownsville PUB reserves the right to reject any or all proposals that do not conform to the requirements stated in this document. The Brownsville PUB also reserves the right to cancel all or part of this request for proposals for any reason determined by the Brownsville PUB to be in the best interest of its customers.

Instructions for Submission

Brownsville PUB is requesting three (3) signed identical originals and one (1) electronic version (PDF format on either USB stick or CD/DVD) of the Proposal to be enclosed in a sealed envelope and plainly marked on the outside of the envelope or any carrier's envelope: "RFP FOR SUPPLEMENTAL POWER SUPPLY AND GENERATION, P018-25, March 12, 2025, 5:00 PM", mailed, sent by overnight courier, or hand delivered to the attention of:

Brownsville Public Utilities Board
Attention: Diane Solitaire
Purchasing Department
1155 FM 511
Olmito, TX 78575

No proposal will be accepted after 5:00 PM on the date the proposal is due.

Proposal Timeline

PROPOSAL SUBMISSION TIMELINE	
TARGET DATE	DESCRIPTION OF EVENTS
February 10, 2025	RFP package distributed to prospective firms
February 25, 2025	Last day to submit questions and clarifications by 5:00 PM
March 12, 2025	Responses are due by 5:00 PM at the Brownsville PUB Purchasing Office
March 13, 2025	Proposal acknowledgement at 10:00 AM
March 14, 2025	Send to Department for Evaluation and Recommendation
May 12, 2025	Brownsville PUB Board Consideration of Award (tentative date)

Proposal Submission Requirements

The proposing Firm is responsible for providing all required information, including attachments. No information beyond that specifically requested is needed, and proposing Firms are asked to keep their submissions to the shortest length and consistent with the requirements. Unless otherwise indicated, a proposal that does not provide all the information requested below may be rejected.

All proposals must be:

1. Clearly legible;
2. Sequentially page-numbered and include the proposing Firm's name at the top of each page;

3. Organized in the sequence outlined following the Table of Contents as listed in the RFP proposal format;
4. Correctly identified with the RFP number and submittal deadline; responsive to all RFP requirements;
5. Printable on 8½ by 11 paper;
6. In Arial or Times New Roman font, size 12 for normal text, no less than size 10 for tables, graphs, and appendices;
7. Bound; and
8. Proposals may not include materials or pamphlets not specifically requested in this RFP.
9. (3) signed identical originals and one (1) electronic version. (PDF format on either USB stick or CD/DVD) of the Proposal to be enclosed in a sealed envelope and plainly marked on the outside of the envelope or any carrier's envelope

The proposals must follow all formats and address all portions of the RFP, providing all requested information.

Proposal Format

1. Cover Letter: A brief introduction of your Firm and the proposal signed by a person authorized to bind the Firm.
2. Executive Summary: A proposal overview highlighting key points and benefits.
3. Technical Proposal:
 - a. Provide the approach your Firm will use to meet the requirements of the "Seller" as defined within the EEI.
4. Financial Proposal:
 - a. Pricing Structure: The Firm shall provide a fixed pricing schedule identifying a price per megawatt hour delivered for each year the Firm proposes, but shall not be less than five years. The pricing schedule shall include ALL costs related to the products and services provided. Please state all assumptions and limitations that apply to the proposed pricing, including the proposed energy rates and escalation clauses, if any.
 - b. Financial Statements: Income statement, balance sheet, and statement of cash flows for the previous three (3) years. Indicate whether audited, reviewed, compiled, or unaudited. If financial statements are unavailable for one (1) or more years, explain their omission. Present the parent's financial statements if relying on a parent entity for financing.
 - c. Debt rating: A current debt rating from a Nationally Recognized Statistical Rating Organization for the Firm or the parent if relying on a parent entity for financing. A parental guarantee must be presented.
 - d. Dunn & Bradstreet: The Data Universal Numbering System (D-U-N-S Number) of the Firm and/or the Firm's guarantor.

- e. Creditworthiness: Other evidence of creditworthiness of the Firm and/or Firm's guarantor, including its ability to obtain and secure financing for new projects and provide ongoing collateral support, its sources of equity and long-term debt, and bank/financial institution references.
- f. Funding Sources: If the power will be provided from a resource not yet constructed, provide information on how the project will be financed and confirm financing from the financier if using debt, venture capital, angel investment, or mezzanine financing.

5. Experience and Qualifications:

- a. Firm Background: Provide an overview of your Firm, including history, mission, and organizational structure. Required information includes:
 - i. Organizational type
 - ii. Parent organizations
 - iii. Tax ID number
 - iv. Firm address
 - v. Annual gross revenues for the previous fiscal year
 - vi. Number of employees by employee type
 - vii. Target market
 - viii. Product & services

6. Compliance and Certifications:

- a. Regulatory Compliance: Evidence of compliance with relevant regulations and standards.
- b. Certifications: Any relevant certifications or accreditations.
- c. Identification of Exceptions to Terms and Conditions:
 - i. Firms must list each exception, referencing the specific section and clause of the EEI contract attached to this RFP on page 34. Firms shall provide a detailed explanation, including the rationale for the exception and any proposed alternative language. All exceptions must be submitted as a separate document titled "Exceptions to Terms and Conditions" and included with the proposal submission.
- d. Identification of Exceptions to the Confidentiality and Non-Disclosure Agreement (NDA)
 - i. Firms must list each exception, referencing the specific section and clause of the NDA attached to this RFP on page 19. Firms shall provide a detailed explanation, including the rationale for the exception and any proposed alternative language. All

exceptions must be submitted as a separate document titled “Exceptions to the NDA” and included with the proposal submission

e. Required Forms.

- i. Acknowledgement Form (Page 3 of the RFP)
- ii. Debarment Form (Page 22 of the RFP)
- iii. Ethics Statement (Page 23 of the RFP)
- iv. Conflict of Interest Questionnaire (Page 25 of the RFP)
- v. W9 or W8 Form (Pages 31 and 32 of the RFP)
- vi. House Bill 89 Form (Page 27 of the RFP)
- vii. Senate Bill 252 Form, State Law Verifications (Page 28 of the RFP)

7. Risk Management:

- a. Risk Assessment: Identification of potential risks and mitigation strategies.

8. References: Information for three (3) references who can attest to your Firm’s capabilities and performance on similar projects utilizing the Previous Customer Reference Worksheet on page 30 of the RFP.

Reference Checks

The Brownsville PUB will contact prospective Firm’s references by email or telephone.

Evaluation Criteria

All responses must be completed, and all of the information requested must be conveyed to be considered responsive. If a Firm’s proposal fails to conform to the submission requirements of the RFP, Brownsville PUB will solely decide if the variance is insignificant enough to make the response potentially acceptable and thus eligible for further consideration. The response will not be considered for an award if the variance is deemed significant. The evaluation process and award determination will be based solely on the information provided in the proposal, subsequent discussions, and written clarifications. Proposals will be evaluated by a review panel based on the criteria listed below, using a weighted score. The relative weights of each criterion are listed. Only these criteria will be considered in the award determination—weight x rate = total weighted score. The total possible points are equal to 100, and the total possible weighted score is 460. Selected Firms may be required to present to the BPUB’s Board of Directors without compensation for those efforts.

The BPUB reserves the right to request additional information or to meet with representatives from Firms to discuss points in the RFP before and after submission, any and all of which may be used in forming a recommendation.

1. Price and Cost Structure (Weight: 5) (Rate: 30 points maximum)

BPUB will evaluate and compare the net present value pricing and reasonableness with existing BPUB resources, market rates, and other proposals.

2. Creditworthiness: (Weight: 5) (Rate: 20 points maximum)

BPUB will evaluate the Firm's financial stability and credit rating to ensure it can meet its obligations.

3. Technical Approach: (Weight: 5) (Rate: 20 points maximum)

BPUB will evaluate the technical approach proposed by the Firm to meet the Seller's requirements as required in the EEI.

4. Contract Terms: (Weight: 4) (Rate: 20 points maximum)

BPUB will assess the risk of the proposed exceptions to the terms and conditions made to the attached EEI contract.

5. Past Performance: (Weight: 3) (Rate: 10 points maximum)

BPUB will evaluate the Firm's past performance in similar contracts.

REQUIRED FORMS CHECKLIST

The following documents are to be submitted as a part of the RFP response process.

NAME	FORM DESCRIPTION	SUBMITTED	
		YES	NO
Required Forms (if applicable)	Acknowledgment Form	<input type="checkbox"/>	<input type="checkbox"/>
	Debarment Certificate	<input type="checkbox"/>	<input type="checkbox"/>
	Ethics Statement	<input type="checkbox"/>	<input type="checkbox"/>
	Conflict of Interest Questionnaire	<input type="checkbox"/>	<input type="checkbox"/>
	W9 or W8 Form	<input type="checkbox"/>	<input type="checkbox"/>
	Direct Deposit Form (Will be provided to the awarded Firm)	<input type="checkbox"/>	<input type="checkbox"/>
	Residence Certification Form	<input type="checkbox"/>	<input type="checkbox"/>
	House Bill 89 Form	<input type="checkbox"/>	<input type="checkbox"/>
	Senate Bill 252 Form	<input type="checkbox"/>	<input type="checkbox"/>
References	Complete the Previous Customer Reference Worksheet for each reference provided	<input type="checkbox"/>	<input type="checkbox"/>
Addenda		<input type="checkbox"/>	<input type="checkbox"/>

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This Confidentiality and Nondisclosure Agreement (this "Agreement"), dated _____ (month) _____ (day) 20____ (the "Effective Date"), is entered into between Public Utilities Board of the City of Brownsville, Texas ("Brownsville PUB"), a municipal corporation with offices at 1425 Robinhood Drive, Brownsville, Texas 78521, and [FIRM Name] ("Firm"), with offices at [Address], (collectively the "Parties").

Background Statement

The Parties wish to exchange information, to hold confidential discussions, and possibly to engage in negotiations in connection with a potential business transaction at the [FIRM Name], facility in [City, State], (the "Potential Transaction"). The Parties anticipate that they will be disclosing, receiving, reviewing, and analyzing oral and written information with respect to the Potential Transaction that is confidential, proprietary, or otherwise not publicly available. The Party disclosing information is referred to herein as the "Disclosing Party." The Party receiving information is referred to herein as the "Receiving Party." In consideration of the business discussions, disclosure of Confidential Information, and any future business relationship between the parties, the Parties have entered into this Agreement to establish terms and conditions applicable to the exchange of Confidential Information in connection with the Potential Transaction.

Agreement

1. Non-disclosure of Confidential Information. Receiving Party shall not disclose the Confidential Information to any person other than as expressly permitted by this Agreement, and shall take all reasonable measures to preserve the confidentiality and avoid the unauthorized disclosure of the Disclosing Party's Confidential Information, including but not limited to those steps taken with respect to the Receiving Party's own Confidential Information of like importance. Confidential Information may, however, be disclosed by Receiving Party to its directors, officers, employees, attorneys and consultants (collectively, "Representatives"), but only if such Representatives (i) need to know the Confidential Information in connection with evaluating the Potential Transaction, and (ii) such Representatives are informed by Receiving Party of the confidential nature of the Confidential Information and agree to be bound in writing to Receiving Party by confidentiality obligations at a minimum as restrictive as the terms of this Agreement. Receiving Party shall use the Confidential Information solely for the purpose of its internal evaluation of the Potential Transaction. For purposes of this Agreement, "person" shall be broadly interpreted to include the media, any corporation, company, partnership, group, individual and any governmental representative or authority. Notwithstanding the disclosure of the Confidential Information to the Representatives, Receiving Party shall remain liable for any breach of this Agreement by such Representatives. Receiving Party shall not remove any proprietary, copyright, trade secret, or other proprietary rights legends from any form of received Confidential Information.

2. Notice Preceding Required Disclosure. If Receiving Party or its Representatives are requested or required (by oral question, interrogatories, requests for information or documents, subpoena, civil investigative demand, regulatory proceedings, stock exchange rules, audit requirements, or other applicable rules or regulations or similar process) to disclose any Confidential Information, Receiving Party, to the extent permitted by law, shall promptly notify Disclosing Party of such request or requirement and use commercially reasonable efforts to assist Disclosing Party so that it either may seek, at Disclosing Party's expense, an appropriate protective order or waive compliance with this

Agreement. If, in the absence of a protective order or the receipt of a waiver under this Agreement, Receiving Party or its Representatives are, in the opinion of outside legal counsel, required to disclose the Confidential Information or else stand liable for contempt or suffer other censure or penalty, Receiving Party and its Representatives may disclose, without liability thereunder, only such of the Confidential Information to the party requiring disclosure as, in the opinion of its outside legal counsel, is required by applicable law, rule or regulation and, in connection with such disclosure, Receiving Party and its Representatives shall use reasonable efforts to obtain from the third party to whom disclosure is made written assurance that confidential treatment will be accorded to such portion of the Confidential Information as is disclosed.

3. Definition of “Confidential Information.” As used in this Agreement, “Confidential Information” means (1) all oral and written information that is furnished to Receiving Party or its Representatives by Disclosing Party, (2) the name of the Disclosing Party and its partners or co-venturers, affiliates, and subsidiaries, (3) the fact that Confidential Information has been made available to the Receiving Party, and (4) the fact that information is being exchanged and discussions and negotiations concerning the Potential Transaction are taking place. Proprietary and intellectual property disclosed by the Disclosing Party shall remain the sole and absolute property of the Disclosing Party. No right in, or license under, any present or future proprietary or intellectual information, trade secret, invention, patent, copyright, mask work, trade name, or trademark is either offered or granted by execution of this Agreement. Any information furnished to Receiving Party or its Representatives by a director, officer, employee, stockholder, partner, co-venturer, consultant, agent, or representative of Disclosing Party will be deemed furnished by Disclosing Party for the purpose of this Agreement. Notwithstanding the foregoing, the following does not constitute Confidential Information for purposes of this Agreement: (i) information that is or becomes publicly available other than as a result of a disclosure by Receiving Party or its Representatives; (ii) information that was already known to Receiving Party on a non-confidential basis prior to being furnished to Receiving Party by Disclosing Party; (iii) information that becomes available to Receiving Party on a non-confidential basis from a source other than Disclosing Party or a representative of Disclosing Party if such source, to Receiving Party's knowledge, is neither subject to any prohibition against transmitting the information to Receiving Party nor bound by a confidentiality agreement with Disclosing Party; and (iv) information that is independently developed by Receiving Party or its Representatives without use of or reference to Confidential Information.

4. Return of Information. At any time during or after the term of this Agreement, at the Disclosing Party's request, the Receiving Party and its Representatives shall promptly return to the Disclosing Party all copies, whether in written, electronic, or other form or media, of the Disclosing Party's Confidential Information, or destroy all such copies and certify in writing to the Disclosing Party that such Confidential Information has been destroyed. In addition, the Receiving Party and its Representatives shall also destroy all copies of any drafts, notes, compilations, studies, synopses, or summaries of Confidential Information, or any other document prepared by or for Disclosing Party and certify in writing to the Disclosing Party that such copies have been destroyed. Notwithstanding the foregoing, the Receiving Party shall not be obligated to destroy electronically stored Confidential Information to the extent that it is contained in an archived computer system backup in accordance with its security and/or disaster recovery procedures so long as such data or records, to the extent not permanently deleted or overwritten in the ordinary course of business, are not accessible in the ordinary course of business or used except as required for backup or data recovery purposes.

5. No Waiver. No failure or delay in exercising any right, power, or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power, or privilege hereunder.

6. Remedies. Because money damages may not be a sufficient remedy for a breach of this Agreement by Receiving Party or its Representatives, Disclosing Party shall be entitled to specific performance and temporary and permanent injunctive relief as remedies for any such breach or threatened breach without the necessity of proving actual damages. Such remedies will not be deemed to be the exclusive remedies for a breach of this Agreement by Receiving Party or any of its Representatives but will be in addition to all other remedies available to Disclosing Party at law or in equity. A Receiving Party, however, shall not be liable for any special or consequential damages, as defined by the laws of the State of Texas, which result from breach of this Agreement by the Receiving Party, or its representatives.

7. Term. Following execution of this Agreement by the Parties, the term of this Agreement shall commence with the date first above written and shall terminate on the date that is two (2) years thereafter, unless terminated earlier by mutual agreement of the Parties, provided that with respect to Confidential Information that constitutes a trade secret under the Texas Uniform Trade Secrets Act, including any amendments thereto or successor thereof, the rights and obligations contained herein shall survive such expiration or termination until, if ever, such Confidential Information loses its trade secret protection other than due to an act or omission of the Receiving Party or its Representatives. This Agreement shall survive termination of any discussions between the Parties, the return or destruction of Confidential Information, or any termination of any other agreement, whether in effect prior to or after the date of this Agreement.

8. No Obligation or Joint Venture. The Parties hereto understand and agree that unless and until a binding definitive agreement for the Potential Transaction (following exchange of Confidential Information) has been executed and delivered by the Parties, no contract or agreement providing for the Potential Transaction among the Parties shall be deemed to exist among the Parties, and no Party will be under any legal obligation of any kind whatsoever with respect to such transaction by virtue of this or any written or oral expression thereof, except, in the case of this Agreement, for the matters specifically agreed to herein. This Agreement neither obligates a Party to deal exclusively with another Party nor prevents a Party or any of its affiliates from competing with another Party or any of its affiliates. Disclosing Party is not making any representation or warranty as to the accuracy, validity, or completeness of Confidential Information, and Disclosing Party shall not be liable to another party as a result of another party's use of Confidential Information, and such Confidential Information is provided "as is."

9. No Assignment; Successors. Receiving Party may not assign all or any part of this Agreement without Disclosing Party's prior written consent. Any assignment in violation of this Agreement shall be null and void *ab initio*. This Agreement inures to the benefit of the Parties hereto and their successors and permitted assigns and is binding on each other and each other's successors and permitted assigns.

10. Governing Law. THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT GIVING EFFECT TO THE PRINCIPLES OF CONFLICT OF LAWS THEREOF THAT WOULD OTHERWISE DIRECT THE APPLICATION OF THE LAWS OF A DIFFERENT JURISDICTION.

11. Jurisdiction and Venue. The Parties agree that venue for any litigation arising from any dispute or claims under the Agreement shall lie in a court of competent jurisdiction situated in Cameron County, Texas.

12. Entire Agreement; Headings. This Agreement constitutes the entire agreement among the Parties with respect to the subject matter hereof. The headings of the Sections of this Agreement are inserted for convenience only and do not constitute a part hereof or affect in any way the meaning or interpretation of this Agreement.

13. Savings Clause. If any provision of this Agreement or the application thereof to any person, place, or circumstance shall be held by a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of the Agreement and such provisions as applied to other persons, places, and circumstances shall remain in full force and effect.

14. Attorney's Fees. In the event any action, including arbitration, is brought to enforce any provision of this Agreement, or to declare a breach of this Agreement, the prevailing party shall be entitled to recover, in addition to any other amounts awarded, reasonable legal and other related costs and expenses, including attorney's fees incurred thereby.

15. No Implied Licenses. Nothing in this Agreement will be construed as granting any rights to Receiving Party, by license or otherwise, to any of Disclosing Party's Confidential Information, except as specifically stated in this Agreement.

16. Public Information Requests. Disclosing Party recognizes that Recipient is a political subdivision of the State of Texas, and as such is subject to the Texas Public Information Act ("TPIA"). Recipient agrees that it will treat any Confidential Information received from Disclosing Party as commercial or financial information exempt from disclosure pursuant to § 552.110 of the TPIA. Should Recipient receive a request for public information that seeks to acquire Confidential Information, Recipient shall (a) decline to release the information for the purpose of requesting an attorney general decision, (b) within ten (10) days of the request inform the Disclosing Party's, Officer for Public Information, in writing of such request, and (c) follow the procedures set out in § 552.305 of the TPIA. Recipient shall have no obligation to appeal any opinion from the Texas Attorney General determining that Confidential Information or Proprietary Materials constitute public information and directing Recipient to produce the same.

To evidence their acceptance of this Agreement, the Parties' authorized representatives have signed below effective as of the date first specified above.

**PUBLIC UTILITIES BOARD
OF THE CITY OF BROWNSVILLE, TEXAS**

[FIRM NAME]

Name: Marilyn D. Gilbert, MBA
Title: General Manager and CEO

Name:
Title:

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

(Complete and return with bid)

Name of Entity: _____

The prospective participant certifies to the best of their knowledge and belief that they and their principals:

- a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- b) Have not within a three year period preceding this bid been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, Local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and
- d) Have not within a three year period preceding this application/bid had one or more public transactions (Federal, State, Local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this bid or termination of the award. In addition, under 18 USC Section 1001, a false statement may result in a fine up to a \$10,000.00 or imprisonment for up to five (5) years, or both.

Name and Title of Authorized Representative (Typed)

Signature of Authorized Representative

Date

I am unable to certify to the above statements. My explanation is attached.

ETHICS STATEMENT
(Complete and return with bid)

The undersigned Firm, by signing and executing this proposal, certifies and represents to the Brownsville Public Utilities Board that Firm has not offered, conferred or agreed to confer any pecuniary benefit, as defined by (1.07 (a) (6) of the Texas Penal Code, or any other thing of value as consideration for the receipt of information or any special treatment of advantage relating to this proposal; the Firm also certifies and represents that the Firm has not offered, conferred or agreed to confer any pecuniary benefit or other thing of value as consideration for the recipient's decision, opinion, recommendation, vote or other exercise of discretion concerning this proposal, the Firm certifies and represents that Firm has neither coerced nor attempted to influence the exercise of discretion by any officer, trustee, agent or employee of the Brownsville Public Utilities Board concerning this proposal on the basis of any consideration not authorized by law; the Firm also certifies and represents that Firm has not received any information not available to other Firm so as to give the undersigned a preferential advantage with respect to this proposal; the Firm further certifies and represents that Firm has not violated any state, federal, or local law, regulation or ordinance relating to bribery, improper influence, collusion or the like and that Firm will not in the future offer, confer, or agree to confer any pecuniary benefit or other thing of value of any officer, trustee, agent or employee of the Brownsville Public Utilities Board in return for the person having exercised their person's official discretion, power or duty with respect to this proposal; the Firm certifies and represents that it has not now and will not in the future offer, confer, or agree to confer a pecuniary benefit or other thing of value to any officer, trustee, agent, or employee of the Brownsville Public Utilities Board in connection with information regarding this proposal, the submission of this proposal, the award of this proposal or the performance, delivery or sale pursuant to this proposal.

THE FIRM SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE BROWNSVILLE PUBLIC UTILITIES BOARD, ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDING, COSTS, DAMAGES, AND LIABILITIES, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONTRACTOR OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR CONSULTANT OF CONTRACTOR IN THE EXECUTION OR PERFORMANCE OF THIS RFP.

I have read all of the specifications and general proposal requirements and do hereby certify that all items submitted meet specifications.

FIRM: _____

AGENT NAME: _____

AGENT SIGNATURE: _____

ADDRESS: _____

CITY: _____

STATE: _____ ZIP CODE: _____

TELEPHONE: _____ TELEFAX: _____

FEDERAL ID#: _____ AND/OR SOCIAL SECURITY #: _____

DEVIATIONS FROM SPECIFICATIONS IF ANY:

NOTE: QUESTIONS AND CONCERNS FROM PROSPECTIVE CONTRACTORS SHOULD BE RAISED WITH OWNER AND ITS CONSULTANT (IF APPLICABLE) AND RESOLVED IF POSSIBLE, PRIOR TO THE PROPOSAL SUBMITTAL DATE. ANY LISTED DEVIATIONS IN A FINALLY SUBMITTED PROPOSAL MAY ALLOW THE OWNER TO REJECT A PROPOSAL AS NON-RESPONSIVE.

**THIS FORM MUST BE COMPLETED IN ITS ENTIRETY & SUBMITTED WITH
BID RESPONSE**

CONFLICT OF INTEREST QUESTIONNAIRE

CONFLICT OF INTEREST QUESTIONNAIRE For vendor doing business with local governmental entity		FORM CIQ
<p>This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.</p> <p>This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).</p> <p>By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.</p> <p>A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.</p>	OFFICE USE ONLY	
<p>1 Name of vendor who has a business relationship with local governmental entity.</p>	<p>Date Received</p>	
<p>2 <input type="checkbox"/> Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)</p>		
<p>3 Name of local government officer about whom the information is being disclosed.</p> <p align="center">_____</p> <p align="center">Name of Officer</p>		
<p>4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.</p> <p style="margin-left: 40px;">A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?</p> <p align="center" style="margin-left: 40px;"> <input type="checkbox"/> Yes <input type="checkbox"/> No </p> <p style="margin-left: 40px;">B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?</p> <p align="center" style="margin-left: 40px;"> <input type="checkbox"/> Yes <input type="checkbox"/> No </p>		
<p>5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.</p>		
<p>6 <input type="checkbox"/> Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).</p>		
<p>7</p> <p align="center"> _____ Signature of vendor doing business with the governmental entity </p> <p align="right"> _____ Date </p>		

CONFLICT OF INTEREST QUESTIONNAIRE
For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

- (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
- (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
- (3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

- (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
- (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

- (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
- (B) that the vendor has given one or more gifts described by Subsection (a); or
- (C) of a family relationship with a local government officer.

STATE LAW VERIFICATIONS

I, _____ (Person's name), the undersigned representative of (Company or Business name) _____ (hereafter referred to as the "Company") being an adult over the age of eighteen (18) years of age, after being duly sworn by the undersigned notary, do hereby depose and verify under oath as follows:

- **IRAN, SUDAN AND FOREIGN TERRORIST ORGANIZATIONS:** By submission of a response to City of Brownsville Public Utilities Board ("BPUB") Request for Proposal P018-25 (the "RFP"), the responding Company represents that, to the extent this proposal submission or any contracts executed in response to this proposal constitutes a governmental contract within the meaning of Section 2252.151 of the Texas Government Code, as amended, solely for purposes of compliance with Section 2252.152 of the Texas Government Code, and except to the extent otherwise required by applicable federal law, neither the responding Company, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the Company is a company listed by the Texas Comptroller of Public Accounts under Sections 806.051, 807.051, or 2252.153 of the Texas Government Code.
- **ANTI-BOYCOTT ISRAEL VERIFICATION:** By submission of a response to the BPUB RFP, the responding Company represents that, to the extent this proposal submission, or any contracts executed in response to this proposal, constitutes a contract for goods or services within the meaning of Section 2271.002 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2271 of the Texas Government Code, and subject to applicable federal law, including without limitation, 50 U.S.C. Section 4607, the responding Company, as well as any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the Company, (1) does not boycott Israel and (2) will not boycott Israel through the term of any such contract. The term "boycott Israel" as used in this paragraph has the meaning assigned to such term in Section 808.001 of the Texas Government Code, as amended.
- **VERIFICATION REGARDING NO DISCRIMINATION AGAINST FIREARMS:** By submission of a response to the BPUB RFP, the responding Company represents that, to the extent this proposal submission, or any contracts executed in response to this proposal, constitutes a contract for goods or services for which a written verification is required under Section 2274.002, Texas Government Code (as added by Senate Bill 19, 87th Texas Legislature, Regular Session), as amended, the responding Company hereby verifies that it, as well as any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the Firm, (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of any such contract against a firearm entity or firearm trade association. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code (as added by Senate Bill 19, 87th Texas Legislature, Regular

Session), as amended, to the extent such section does not contravene applicable Texas or federal law. As used in the foregoing verification, “discriminate against a firearm entity or firearm trade association” shall have the meaning assigned to such term in Section 2274.001, Texas Government Code (as added by Senate Bill 19, 87th Texas Legislature, Regular Session).

- **VERIFICATION REGARDING NO ENERGY COMPANY BOYCOTTS:** By submission of a response to the BPUB RFQ, the responding Company represents that, to the extent this proposal submission, or any contracts executed in response to this proposal, constitutes a contract for goods or services for which a written verification is required under Section 2274.002, Texas Government Code (as added by Senate Bill 13, 87th Texas Legislature, Regular Session), as amended, the responding Company hereby verifies that the responding Company, as well as any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the Firm, (1) does not boycott energy companies and (2) will not boycott energy companies during the term of any such contract. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code (as added by Senate Bill 13, 87th Texas Legislature, Regular Session), as amended, to the extent such section does not contravene applicable Texas or federal law. As used in the foregoing verification, “boycott energy companies” shall have the meaning assigned to such term in Section 809.001(1), Texas Government Code.

DATE

SIGNATURE OF COMPANY REPRESENTATIVE

On this the ____ day of _____, 20____, personally appeared

_____, the above-named person, who after by me being duly sworn, did swear and confirm that the above is true and correct.

NOTARY SEAL _____

NOTARY SIGNATURE _____

Date

W-9 REQUEST FOR TAXPAYER INFORMATION

<p>Form W-9 (Rev. March 2024) Department of the Treasury Internal Revenue Service</p>	<p>Request for Taxpayer Identification Number and Certification</p> <p>Go to www.irs.gov/FormW9 for instructions and the latest information.</p>	<p>Give form to the requester. Do not send to the IRS.</p>
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Before you begin. For guidance related to the purpose of Form W-9, see *Purpose of Form*, below.

Print or type. See Specific Instructions on page 5.	<p>1 Name of entity/individual. An entry is required. (For a sole proprietor or disregarded entity, enter the owner's name on line 1, and enter the business/disregarded entity's name on line 2.)</p>	
	<p>2 Business name/disregarded entity name, if different from above.</p>	
	<p>3a Check the appropriate box for federal tax classification of the entity/individual whose name is entered on line 1. Check only one of the following seven boxes.</p> <p><input type="checkbox"/> Individual/sole proprietor <input type="checkbox"/> C corporation <input type="checkbox"/> S corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate</p> <p><input type="checkbox"/> LLC. Enter the tax classification (C = C corporation, S = S corporation, P = Partnership)</p> <p>Note: Check the "LLC" box above and, in the entry space, enter the appropriate code (C, S, or P) for the tax classification of the LLC, unless it is a disregarded entity. A disregarded entity should instead check the appropriate box for the tax classification of its owner.</p> <p><input type="checkbox"/> Other (see instructions) _____</p>	<p>4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):</p> <p>Exempt payee code (if any) _____</p> <p>Exemption from Foreign Account Tax Compliance Act (FATCA) reporting code (if any) _____</p> <p>(Applies to accounts maintained outside the United States.)</p>
	<p>3b If on line 3a you checked "Partnership" or "Trust/estate," or checked "LLC" and entered "P" as its tax classification, and you are providing this form to a partnership, trust, or estate in which you have an ownership interest, check this box if you have any foreign partners, owners, or beneficiaries. See instructions <input type="checkbox"/></p>	
	<p>5 Address (number, street, and apt. or suite no.). See instructions.</p>	Requestor's name and address (optional)
	<p>6 City, state, and ZIP code</p>	
	<p>7 List account number(s) here (optional)</p>	

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

	Social security number				
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; height: 20px;"></td> <td style="width: 25%;"></td> <td style="width: 25%;"></td> <td style="width: 25%;"></td> </tr> </table>				
	Or				
	Employer identification number				
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; height: 20px;"></td> <td style="width: 25%;"></td> <td style="width: 25%;"></td> <td style="width: 25%;"></td> </tr> </table>				

Note: If the account is in more than one name, see the instructions for line 1. See also *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and, generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here	Signature of U.S. person	Date
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General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

What's New

Line 3a has been modified to clarify how a disregarded entity completes this line. An LLC that is a disregarded entity should check the appropriate box for the tax classification of its owner. Otherwise, it should check the "LLC" box and enter its appropriate tax classification.

New line 3b has been added to this form. A flow-through entity is required to complete this line to indicate that it has direct or indirect foreign partners, owners, or beneficiaries when it provides the Form W-9 to another flow-through entity in which it has an ownership interest. This change is intended to provide a flow-through entity with information regarding the status of its indirect foreign partners, owners, or beneficiaries, so that it can satisfy any applicable reporting requirements. For example, a partnership that has any indirect foreign partners may be required to complete Schedules K-2 and K-3. See the Partnership instructions for Schedules K-2 and K-3 (Form 1065).

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS is giving you this form because they

W-8BEN-E CERTIFICATE OF STATUS OF BENEFICIAL OWNER

Form W-8BEN-E (Rev. October 2021) Department of the Treasury Internal Revenue Service	Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities) ▶ For use by entities. Individuals must use Form W-8BEN. ▶ Section references are to the Internal Revenue Code. ▶ Go to www.irs.gov/FormW8BENE for instructions and the latest information. ▶ Give this form to the withholding agent or payer. Do not send to the IRS.	OMB No. 1545-1621
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- Do NOT use this form for:**
- U.S. entity or U.S. citizen or resident W-9
 - A foreign individual W-8BEN (Individual) or Form 8233
 - A foreign individual or entity claiming that income is effectively connected with the conduct of trade or business within the United States (unless claiming treaty benefits) W-8ECI
 - A foreign partnership, a foreign simple trust, or a foreign grantor trust (unless claiming treaty benefits) (see instructions for exceptions) . . . W-8IMY
 - A foreign government, international organization, foreign central bank of issue, foreign tax-exempt organization, foreign private foundation, or government of a U.S. possession claiming that income is effectively connected U.S. income or that is claiming the applicability of section(s) 115(2), 501(c), 892, 895, or 1443(b) (unless claiming treaty benefits) (see instructions for other exceptions) W-8ECI or W-8EXP
 - Any person acting as an intermediary (including a qualified intermediary acting as a qualified derivatives dealer) W-8IMY

Part I Identification of Beneficial Owner

1 Name of organization that is the beneficial owner	2 Country of incorporation or organization														
3 Name of disregarded entity receiving the payment (if applicable, see instructions)															
4 Chapter 3 Status (entity type) (Must check one box only): <table style="width: 100%; border: none;"> <tr> <td><input type="checkbox"/> Corporation</td> <td><input type="checkbox"/> Partnership</td> </tr> <tr> <td><input type="checkbox"/> Simple trust</td> <td><input type="checkbox"/> Tax-exempt organization</td> </tr> <tr> <td><input type="checkbox"/> Central Bank of Issue</td> <td><input type="checkbox"/> Private foundation</td> </tr> <tr> <td><input type="checkbox"/> Grantor trust</td> <td><input type="checkbox"/> Disregarded entity</td> </tr> <tr> <td><input type="checkbox"/> Complex trust</td> <td><input type="checkbox"/> Estate</td> </tr> <tr> <td><input type="checkbox"/> International organization</td> <td><input type="checkbox"/> Foreign Government - Controlled Entity</td> </tr> <tr> <td></td> <td><input type="checkbox"/> Foreign Government - Integral Part</td> </tr> </table> If you entered disregarded entity, partnership, simple trust, or grantor trust above, is the entity a hybrid making a treaty claim? If "Yes," complete Part III. <input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Corporation	<input type="checkbox"/> Partnership	<input type="checkbox"/> Simple trust	<input type="checkbox"/> Tax-exempt organization	<input type="checkbox"/> Central Bank of Issue	<input type="checkbox"/> Private foundation	<input type="checkbox"/> Grantor trust	<input type="checkbox"/> Disregarded entity	<input type="checkbox"/> Complex trust	<input type="checkbox"/> Estate	<input type="checkbox"/> International organization	<input type="checkbox"/> Foreign Government - Controlled Entity		<input type="checkbox"/> Foreign Government - Integral Part
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<input type="checkbox"/> Complex trust	<input type="checkbox"/> Estate														
<input type="checkbox"/> International organization	<input type="checkbox"/> Foreign Government - Controlled Entity														
	<input type="checkbox"/> Foreign Government - Integral Part														
5 Chapter 4 Status (FATCA status) (See instructions for details and complete the certification below for the entity's applicable status.) <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top;"> <input type="checkbox"/> Nonparticipating FFI (including an FFI related to a Reporting IGA FFI other than a deemed-compliant FFI, participating FFI, or exempt beneficial owner). <input type="checkbox"/> Participating FFI. <input type="checkbox"/> Reporting Model 1 FFI. <input type="checkbox"/> Reporting Model 2 FFI. <input type="checkbox"/> Registered deemed-compliant FFI (other than a reporting Model 1 FFI, sponsored FFI, or nonreporting IGA FFI covered in Part XII). See instructions. <input type="checkbox"/> Sponsored FFI. Complete Part IV. <input type="checkbox"/> Certified deemed-compliant nonregistering local bank. Complete Part V. <input type="checkbox"/> Certified deemed-compliant FFI with only low-value accounts. Complete Part VI. <input type="checkbox"/> Certified deemed-compliant sponsored, closely held investment vehicle. Complete Part VII. <input type="checkbox"/> Certified deemed-compliant limited life debt investment entity. Complete Part VIII. <input type="checkbox"/> Certain investment entities that do not maintain financial accounts. Complete Part IX. <input type="checkbox"/> Owner-documented FFI. Complete Part X. <input type="checkbox"/> Restricted distributor. Complete Part XI. </td> <td style="width: 50%; vertical-align: top;"> <input type="checkbox"/> Nonreporting IGA FFI. Complete Part XII. <input type="checkbox"/> Foreign government, government of a U.S. possession, or foreign central bank of issue. Complete Part XIII. <input type="checkbox"/> International organization. Complete Part XIV. <input type="checkbox"/> Exempt retirement plans. Complete Part XV. <input type="checkbox"/> Entity wholly owned by exempt beneficial owners. Complete Part XVI. <input type="checkbox"/> Territory financial institution. Complete Part XVII. <input type="checkbox"/> Excepted nonfinancial group entity. Complete Part XVIII. <input type="checkbox"/> Excepted nonfinancial start-up company. Complete Part XIX. <input type="checkbox"/> Excepted nonfinancial entity in liquidation or bankruptcy. Complete Part XX. <input type="checkbox"/> 501(c) organization. Complete Part XXI. <input type="checkbox"/> Nonprofit organization. Complete Part XXII. <input type="checkbox"/> Publicly traded NFFE or NFFE affiliate of a publicly traded corporation. Complete Part XXIII. <input type="checkbox"/> Excepted territory NFFE. Complete Part XXIV. <input type="checkbox"/> Active NFFE. Complete Part XXV. <input type="checkbox"/> Passive NFFE. Complete Part XXVI. <input type="checkbox"/> Excepted inter-affiliate FFI. Complete Part XXVII. <input type="checkbox"/> Direct reporting NFFE. <input type="checkbox"/> Sponsored direct reporting NFFE. Complete Part XXVIII. <input type="checkbox"/> Account that is not a financial account. </td> </tr> </table>		<input type="checkbox"/> Nonparticipating FFI (including an FFI related to a Reporting IGA FFI other than a deemed-compliant FFI, participating FFI, or exempt beneficial owner). <input type="checkbox"/> Participating FFI. <input type="checkbox"/> Reporting Model 1 FFI. <input type="checkbox"/> Reporting Model 2 FFI. <input type="checkbox"/> Registered deemed-compliant FFI (other than a reporting Model 1 FFI, sponsored FFI, or nonreporting IGA FFI covered in Part XII). See instructions. <input type="checkbox"/> Sponsored FFI. Complete Part IV. <input type="checkbox"/> Certified deemed-compliant nonregistering local bank. Complete Part V. <input type="checkbox"/> Certified deemed-compliant FFI with only low-value accounts. Complete Part VI. <input type="checkbox"/> Certified deemed-compliant sponsored, closely held investment vehicle. 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6 Permanent residence address (street, apt. or suite no., or rural route). Do not use a P.O. box or in-care-of address (other than a registered address).															
City or town, state or province. Include postal code where appropriate.	Country														
7 Mailing address (if different from above)															
City or town, state or province. Include postal code where appropriate.	Country														

DRAFT EEI POWER PURCHASE & SALE AGREEMENT AND ANNEXES

Master Power Purchase & Sale Agreement



MASTER POWER PURCHASE AND SALES AGREEMENT

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MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

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

Name (“ _____ ” or “Party A”)

Name Public Utilities Board of the City of
Brownsville, Texas (“Counterparty” or “Party B”)

All Notices:

All Notices:

Street: _____

Street: _____

City: _____ Zip: _____

City: _____ Zip: _____

Attn: Contract Administration

Attn: Contract Administration

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

Duns: _____

Duns: _____

Federal Tax ID Number: _____

Federal Tax ID Number: _____

Invoices:

Invoices:

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

Scheduling:

Scheduling:

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

Payments:

Payments:

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

Wire Transfer:

Wire Transfer:

BNK: _____

BNK: _____

ABA: _____

ABA: _____

ACCT: _____

ACCT: _____

Credit and Collections:

Credit and Collections:

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

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

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

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

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 Firm Price - \$XXX MWh Dated _____ Docket Number _____

Party B 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 \$500,000

Other Entity: _____ Cross Default Amount \$ _____

Cross Default for Party B:

Party B: _____ Cross Default Amount \$500,000

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)

Article 8

Credit and Collateral Requirements

8.1 Party A Credit Protection:

(a) Financial Information:

Option A

Option B Specify: _____

Option C Specify: _____

(b) Credit Assurances:

Not Applicable

Applicable

(c) Collateral Threshold:

Not Applicable

Applicable

If applicable, complete the following:

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

Party B Independent Amount: \$ _____

Party B Rounding Amount: \$ _____

(d) Downgrade Event:

- Not Applicable
 Applicable

If applicable, complete the following:

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

- Other:
Specify: _____

(e) Guarantor for Party B: _____

Guarantee Amount: _____

8.2 Party B Credit Protection:

(a) Financial Information:

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

(b) Credit Assurances:

- Not Applicable
 Applicable

(c) Collateral Threshold:

- Not Applicable
 Applicable

If applicable, complete the following:

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

Party A Independent Amount: \$ _____

Party A Rounding Amount: \$ _____

(d) Downgrade Event:

- Not Applicable
 Applicable

If applicable, complete the following:

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

(e) Guarantor for Party A: _____
Guarantee Amount: _____

Article 10

Confidentiality Confidentiality Applicable If not checked, inapplicable.

Schedule M

- Party A is a Governmental Entity or Public Power System
 Party B is a Governmental Entity or Public Power System
 Add Section 3.6. If not checked, inapplicable
 Add Section 8.6. If not checked, inapplicable

Other Changes

Specify, if any: _____

The following changes shall be applicable.

Cover Sheet – Schedule M

Delete the reference to “Section 8.6” and replace it with “Section 8.4.”

Article One: General Definitions.

Section 1.3 is amended by inserting the words “(unless such entity contests such petition in good faith and the petition is dismissed, discharged, stayed, or restrained within 15 days of the filing or commencement of such petition)” in the fourth line after the words “against it” and before the comma.

Section 1.10 is amended by inserting the words “fixed” prior to “price in \$U.S.”

Section 1.12 is amended by replacing the word “issues” in the fourth line with the word “issuer”.

Section 1.27, “Letter(s) of Credit” shall be amended by deleting the word “transferable” and replacing it with the word “nontransferable” and by deleting the phrase “or a foreign bank with a U.S. branch” and replacing it with the phrase “or a U.S. branch of a foreign bank.”

Section 1.50 is amended by replacing the term “Section 2.4” with the term “Section 2.5.”

The following new definition shall be added to Article One:

“Penalties” shall mean any fees, liabilities, assessments or similar charges assessed by a Transmission Provider as a result of a Party’s failure to comply with its obligations hereunder.

Section 1.51 shall be amended by (i) adding the phrase “for delivery” after the word “purchases” and immediately before the phrase “at the Delivery Point” in the second line and (ii) deleting the phrase “at Buyer’s option” from the fifth line and replacing it with the following: “absent a purchase”.

Section 1.53 shall be replaced with \$ XXX/MWh

Article Two: Transaction Terms and Conditions.

Section 2.3 is amended by (i) adding the phrase “or by email” immediately after the word “facsimile” in the second line; and (ii) adding the following sentence at the end thereof: “Where a Transaction is confirmed by means of exchange of electronic message on an electronic messaging system or other document or other confirming evidence exchanged between the parties confirming such Transaction, such messages, documents or other evidence will constitute a Confirmation for the purposes of this Agreement even where not so specified therein.

Section 2.5 is amended (i) by capitalizing the word “each” in the first sentence; (ii) replacing the words “Parties to this Master Agreement” with “Parties’ trading and marketing personnel”; and (iii) adding a sentence at the end of the fourth line after “Agreement.” as follows: “Each Party agrees to supply the other Party a copy of all such relevant Recordings upon reasonable request within 5 Business Days.”

A new Section 2.6 is added to read as follows:

2.6 Imaged Agreement. Any original executed Master Agreement, Confirmation or other related document may be photocopied and stored on computer tapes and disks (the ‘Imaged Agreement’). The Imaged Agreement, if introduced as evidence on paper, the Confirmation, if introduced as evidence in automated facsimile form, the Recording, if introduced as evidence in its original form and as transcribed onto paper or into other written format, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the Parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the admissibility of the Recording, the Confirmation, or the Imaged Agreement (or photocopies of the transcription of the Recording, the Confirmation, or the Imaged Agreement) on the basis that such were not originated or maintained in documentary or written form under either the hearsay rule or the best evidence rule. However, nothing in this Section 2.6 shall preclude a Party from challenging the admissibility of such evidence on some other grounds, including, without limitation, the basis that such evidence has been materially or substantially altered from the original.

ARTICLE THREE: OBLIGATIONS AND DELIVERIES.

Section 3.2, “Transmission and Scheduling” shall be amended by renaming it “Transmission, Scheduling and Imbalance Charges” and inserting the following sentences at the end thereof:

Product deliveries shall be Scheduled in accordance with the then-current applicable tariffs, protocols, operating procedures and Scheduling practices for the relevant region and system operator. Buyer shall assume all liability for and reimburse Seller within thirty (30) calendar days of presentation of an invoice for any Penalties incurred as a result of Buyer’s failure to (i) notify Seller of a failure to Schedule or a change in a Schedule or (ii) abide by a transmitting utility’s tariff and scheduling policies. Seller shall assume all liability for and reimburse Buyer within thirty (30) calendar days of presentation of an invoice for any Penalties incurred as a result of Seller’s failure to (i) notify Buyer of a failure to Schedule or a change in a Schedule or (ii) abide by a transmitting utility’s tariff and scheduling policies. The Parties shall promptly notify each other as soon as possible of any imbalance that is occurring or has occurred and shall cooperate to eliminate imbalances and minimize Penalties to the extent possible.”

A new Section 3.4 is added to read as follows:

3.4 Index Transactions. If the Contract Price for a Transaction is determined by reference to a Price Source, then:

(a) Market Disruption. If a Market Disruption Event occurs on one or more days during a Determination Period (each day, a “Disrupted Day”), then the fallback Floating Price, if any, specified by the Parties in the relevant Confirmation shall be the Floating Price for each Disrupted Day. If the Parties have not specified a fallback Floating Price, then the Parties will endeavor, in good faith and using commercially reasonable efforts, to agree on a substitute Floating Price taking into consideration, without limitation, guidance, protocols or other recommendations or conventions issued or employed by trade

organizations or industry groups in response to the Market Disruption Event and other prices published by the Price Source or alternative price sources with respect to the Delivery Point or comparable Delivery Points that may permit the Parties to derive the Floating Price based on historical differentials. If the Price Source retrospectively issues a Floating Price in respect of a Disrupted Day (a “Delayed Floating Price”) before the Parties agree on a substitute Floating Price for such day, then the Delayed Floating Price shall be the Floating Price for such Disrupted Day. If a Delayed Price is issued by the Price Source in respect of a Disrupted Day after the Parties agree on a substitute Floating Price for such day, the substitute Floating Price agreed upon by the Parties will remain the Floating Price without adjustment unless the Parties expressly agree otherwise. If the Parties cannot agree on a substitute Floating Price and the Price Source does not retrospectively publish or announce a Floating Price, in each case, on or before the fifth Business Day following the first Trading Day on which the Market Disruption Event first occurred or existed, then the Floating Price for each Disrupted Day shall be determined by taking the arithmetic mean of quotations requested from four leading dealers in the relevant market that are unaffiliated with either Party and mutually agreed upon by the Parties (“Specified Dealers”) without regard to the quotations with the highest and lowest values, subject to the following qualifications: (1) If exactly three quotations are obtained, the Floating Price for each such Disrupted Day will be the quotation that remains after disregarding the quotations having the highest and lowest values. (2) If fewer than three quotations are obtained, the Floating Price for each such Disrupted Day will be the average of the quotations obtained. (3) If the Parties cannot agree upon four Specified Dealers, then each of the Parties will, acting in good faith and in a commercially reasonable manner, select up to two Specified Dealers separately, and those selected dealers shall be the Specified Dealers. Unless otherwise agreed, if at any time the Parties agree on a substitute Floating Price for any Disrupted Day, then such substitute Floating Price shall be the Floating Price for such Disrupted Day, notwithstanding the subsequent publication or announcement of a Delayed Floating Price by the relevant Price Source or any quotations obtained from Specified Dealers.

(b) For purposes of this Section 3.4, the following definitions shall apply:

(i) Determination Period means each calendar month a part or all of which is within the Delivery Period of a Transaction.

(ii) Exchange means, in respect of a Transaction, the exchange or principal trading market specified as applicable to the relevant Transaction.

(iii) Floating Price means a Contract Price specified in a Transaction that is based upon a Price Source.

(iv) Market Disruption Event means, with respect to any Price Source, any of the following events: (a) the failure of the Price Source to announce, publish or make available the specified Floating Price or information necessary for determining the Floating Price for a particular day; (b) the failure of trading to commence on a particular day or the permanent discontinuation or material suspension of trading in the relevant options contract or commodity on the Exchange, RTO or in the market specified for determining a Floating Price; (c) the temporary or permanent discontinuance or unavailability of the Price Source; (d) the temporary or permanent closing of any Exchange or RTO specified for determining a Floating Price; or (e) a material change in the formula for or the method of determining the Floating Price by the Price Source or a material change in the composition of the Product.

(v) Price Source means, in respect of a Transaction, a publication or such other origin of reference, including an Exchange or RTO, containing or reporting or making generally available to market participants (including by electronic means) a price, or prices or information from which a price is determined, as specified in the relevant Transaction.

(vi) RTO means any regional transmission operator or independent system operator.

(vii) RTO Transaction means a Transaction in which the Price Source is an RTO.

(viii) Trading Day means a day in respect of which the relevant Price Source ordinarily would announce, publish or make available the Floating Price.

(c) Corrections to Published Prices. If the Floating Price published, announced or made available on a given day and used or to be used to determine a relevant price is subsequently corrected by the relevant Price Source (i) within 30 days of the original publication, announcement or availability, or (ii) in the case of RTO Transactions only, within such longer time period as is consistent with the RTO’s procedures and guidelines, then either Party may notify the other Party of that correction and the amount (if any) that is payable as a result of that correction. If, not later than thirty (30) days after publication or announcement of that correction, a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount will, not later than three (3) Business Days after such notice is effective, pay, subject to any applicable conditions precedent, to the other Party that amount, together with interest at the Interest Rate for the period from and including the day on which payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that correction. Notwithstanding the foregoing, corrections shall not be made to any Floating Prices agreed upon by the Parties or determined based on quotations from Specified Dealers pursuant to paragraph (a) above unless the Parties expressly agree otherwise.

(d) Rounding: When calculating a Floating Price, all numbers shall be rounded to four (4) decimal places. If the fifth (5th)

decimal number is five (5) or greater, then the fourth (4th) decimal number shall be increased by one (1), and if the fifth (5th) decimal number is less than five (5), then the fourth (4th) decimal number shall remain unchanged.

ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES.

Section 5.1(e) is amended by adding after the word “hereof” the phrase “or any other credit arrangement, including, but not limited to, the Collateral Annex (or any similar agreement) related to this Agreement” (“Credit Support Document”).

Section 5.1(f) is deleted and replaced with the following:

(f) (I) the Party or any Guarantor of such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, or reorganizes, reincorporates or reconstitutes into or as , another entity and, at the time of such consolidation, amalgamation, merger, transfer, reorganization, reincorporation or reconstitution (A) the resulting surviving or transferee entity fails to assume all the obligations of such Party or Guarantor under this Agreement or any Credit Support Document to which it or its predecessor was a party; or (B) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving or transferee entity of its obligations under this Agreement (in each case a “Merger Without Assumption”); or

(II) a Merger Event (as defined below) occurs with respect to such party or Guarantor of such party (in each case, “X”) which does not constitute a Merger Without Assumption, and the creditworthiness of X or, if applicable, the successor, surviving or transferee entity of X, after taking into account any applicable Credit Support Document, is materially weaker immediately after the occurrence of such Merger Event than that of X immediately prior to the occurrence of such Merger Event (and, in any such event, such party or its successor , surviving or transferee entity, as appropriate, will be the Affected Party). A “Merger Event” with respect to X means that:

X consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets (or any substantial part of the assets comprising the business conducted by X as of the date of this Agreement) to, or reorganizes, reincorporates or reconstitutes into or as, another entity.

Section 5.1(g) is amended by deleting the phrase “or becoming capable at such time of being declared” and the following language shall be added at the end thereof: “Notwithstanding the foregoing, a default under subsection (ii) hereof shall not constitute an Event of Default if (i) the default was caused solely by error or omission of an administrative or operational nature; (ii) funds were available to enable the party to make the payment when due; and (iii) the payment is made within three (3) Business Days of such party’s receipt of written notice of its failure to pay.”

Section 5.2 – Declaration of an Early Termination Date and Calculation of Settlement Amounts.

Reverse the placement of “(i)” and “to.”

Section 5.3 is amended by inserting the phrase “plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Defaulting Party pursuant to Article Eight,” between the words “that are due to the Non-Defaulting Party,” and “plus any and all other amounts” in the sixth line thereof.

Section 5.4 shall be amended by adding the following clause at the end of Section.5.4:

“Notwithstanding any provision to the contrary contained in this Agreement, the Non-Defaulting Party shall not be required to pay to the Defaulting Party any amount under Article 5 until the Non-Defaulting Party receives confirmation satisfactory to it in its reasonable discretion (which may include an opinion of its counsel) that all other obligations of any kind whatsoever of the Defaulting Party to make any payments to the Non-Defaulting Party under this Agreement or otherwise which are due and payable as of the Early Termination Date (including for these purposes amounts payable pursuant to Excluded Transactions) have been fully and finally performed.”

Section 5.6 Option A is deleted and replaced with the following:

Option A: Upon and following the calculation of a Termination Payment in accordance with Section 5.3, if any Termination Payment is payable to one party (the “Payee”) by the other party (the “Payer”) in circumstances where there is a Defaulting

Party, the Non-Defaulting Party may, at its option (and without prior notice to the Defaulting Party), set-off against such Termination Payment any other amounts (“Other Amounts”) payable by the Payee to the Payer (whether or not arising under this Agreement or matured). To the extent that any Other Amounts are so set off, those Other Amounts will be discharged promptly and in all respects. The Non-Defaulting Party will give notice to the other party of any set-off effected under this Section 5.6.

Nothing in this Section 5.6 will be effective to create a charge or other security interest. This Section 5.6 will be without prejudice and in addition to any right of set-off, offset, combination of accounts, lien, right of retention or withholding or similar right or requirement to which any party is at any time otherwise entitled or subject (whether by operation of law, contract or otherwise).

A new Section 5.8 is added as follows:

“It is expressly agreed that neither Party shall be required to enter into a replacement transaction in order to determine the market price.”

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS.

Section 8.3, “Grant of Security Interest/Remedies” shall be amended by deleting the phrase “or deemed occurrence” from the beginning of the second sentence.

ARTICLE TEN: MISCELLANEOUS.

Section 10.1 is amended by replacing “30 days with 30 years.”

Section 10.2, Representations and Warranties, is amended by replacing clauses (x), (xi) and (xii) in their entirety with the following:

(x) it is an “eligible commercial entity” within the meaning of Section 1a (17) of the Commodity Exchange Act, as amended by the Commodity Futures Modernization Act of 2000 (the “Commodity Exchange Act”);

(xi) it is an “eligible contract participant” within the meaning of Section 1a (18) of the Commodity Exchange Act; and

(xii) each Transaction that is not executed or traded on a “trading facility”, as defined in Section 1(a)(51) of the Commodity Exchange Act, is subject to individual negotiation by the Parties.

Section 10.2(xiii) is added to the Agreement as follows:

(xiii) it is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms conditions and risks of that Transaction. It is also capable of assuming, and assumes, the risks of that Transaction.

Section 10.2(xiv) is added to the Agreement as follows:

(xiv) the other Party is not acting as a fiduciary for or an adviser to it in respect of that Transaction.

Section 10.5, Assignment, shall be amended by deleting the words “may be withheld in the exercise of its sole discretion” in the second line and replacing them with the words “which consent will not be arbitrarily withheld, conditioned or delayed,”

Section 10.6, “Governing Law”, is hereby replaced with the following:

(a) Governing Law. THIS AGREEMENT AND EACH TRANSACTION ENTERED INTO HEREUNDER WILL BE GOVERNED BY, AND CONSTRUED, AND ENFORCED IN ACCORDANCE WITH THE LAW OF THE STATE TEXAS WITHOUT REFERENCE TO ITS CHOICE OF LAW DOCTRINE.

(b) Jurisdiction. WITH RESPECT TO ANY SUIT, ACTION OR PROCEEDING RELATING TO ANY DISPUTE ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE FEDERAL AND STATE COURTS IN CAMERON COUNTY, TEXAS. .

(c) Waiver of Trial by Jury. EACH PARTY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY CREDIT SUPPORT DOCUMENT. EACH PARTY ACKNOWLEDGES THAT IT AND THE OTHER PARTY HAVE BEEN INDUCED INTO THIS AGREEMENT AND PROVIDE FOR ANY

CREDIT SUPPORT DOCUMENT AS APPLICABLE BY AMONG OTHER THINGS THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS PARAGRAPH.

Section 10.7 is amended by deleting from the sixth line the phrase “at the close of business”.

Section 10.10, “Forward Contract”, is deleted and replaced with the following:

Section 10.10, Bankruptcy Issues. Without limiting the applicability of any of the provision of the United States Bankruptcy Code, as amended (the “Bankruptcy Code”)(including, without limitation, Sections 362, 546, 553, 556, 560 561 and 562 thereof and the applicable definitions in Section 101 thereof), the Parties intend that (i) all Transactions under this Agreement constitute “forward contracts” or “swap agreements” within the meaning of the Bankruptcy Code ; (ii) all payments made or to be made by one party to the other party pursuant to this Agreement constitute “settlement payments” within the meaning of the Bankruptcy Code; (iii) all margin or collateral provided by one Party to the other Party under any margin, collateral, security or similar arrangement related to this Agreement, including but not limited to the Collateral Annex and any transfers of Performance Assurance from one Party to the other Party under this Agreement , constitute “margin payments “ within the meaning of the Bankruptcy Code; (iv) this Agreement constitutes a “master netting agreement” within the meaning of the Bankruptcy Code; (v) each Party is a “forward contract merchant “ or “swap participant” each within the meaning of the Bankruptcy Code with respect to any Transactions that constitute “forward contracts” or “swap agreements”, respectively; and (vi) each party’s rights under Section 5 “Early Termination” of this Agreement constitutes a “contractual right to terminate, liquidate or accelerate” the Transactions within the meaning of the Bankruptcy Code.

Each party further agrees that, for purposes of this Agreement, the other party is not a “utility” as such term is used in 11 U.S.C. Section 366 and each party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. Section 366 in any bankruptcy proceeding wherein such party is a debtor. In any such proceeding, each party further waives the right to assert that the other party is a provider of last resort.

Nothing herein shall be deemed to limit, exclude or otherwise impair any party’s rights under the Bankruptcy Code as relating to forward contracts, forward agreements, and master netting agreements or swap agreements.

Section 10.11, Confidentiality, is deleted and replaced with the following:

Section 10.11, Confidentiality: The existence of this Agreement, its contents, and the existence and contents of all other instruments and documents relating to this Agreement or any Transaction hereto (including but not limited to any Credit Support Documents and any Confirmations), and any information made available by one party or its Guarantor to the other party or its Guarantor (if any) with respect to the Agreement or any Transaction hereunder is confidential and shall not be discussed with or disclosed to any third party (nor shall any public announcement or press release regarding the subject matter hereof be made by either party except with the prior written consent of the other party hereto). Notwithstanding the foregoing, either party may disclose confidential information hereunder (i) to any of that party’s Affiliates, or its auditors, attorneys ,advisors or financial institutions with which the Party has a written agreement or which are otherwise required to keep the information that is disclosed in confidence, (ii) as may be required or appropriate in response to any summons, subpoena or otherwise in connection with any litigation or to comply with any applicable law, order including court orders, regulation, public information act request, or ruling, or accounting disclosure rule or standard (provided that in such case the party that is proposing to make such disclosure will notify if legally permissible and practicable the other party prior to such disclosure and cooperate with the other party, if requested in attempting to obtain a protective order against such disclosure, or (iii) subject to a confidentiality provision no less stringent than this provision, a party may disclose any one or more of the commercial terms of a Transaction (other than the name of the other party unless otherwise agreed to in writing by the parties) to any industry price source for the purpose of aggregating and repotting such information in the form of a published energy price index. With respect to information provided with respect to a Transaction, this obligation shall survive for a period of twelve (12) months following the expiration or termination of such Transaction. With respect to information provided with respect to this Agreement, this obligation shall survive for a period of twelve (12) months following the expiration or termination of this Agreement. Any disclosure of confidential information pursuant to the immediately preceding two sentences will not affect or change the confidential nature of such information and such information will continue to be subject to the restrictions set forth in this paragraph. Information that either party receives or obtains hereunder shall not be considered confidential information to the extent such information (a) is or becomes generally available to the public or is generally known within the parties’ industries, or (b) is obtained from a third party who, to such party’s knowledge, did not violate its obligations to the other party or its Guarantor (if any) in making such disclosure, or (c) is independent developed by such Party without reference to the other

party's confidential information. In no event shall either party make a public announcement without the other party's prior written consent. Notwithstanding the foregoing, nothing herein shall prevent either party from using any information received in connection with a Transaction, including confidential information, in purchasing or selling commodities or any derivatives thereof.

Section 10.12 , "No Agency" shall be added to the Agreement as follows:

Section 10.12 No Agency. It is entering into this Agreement, including each Transaction, as principal and not as agent or any person or entity.

Section 10.13, "FERC Standard of Review; Mobile-Sierra Waiver" shall be added to the Agreement as follows:

Section 10.13 FERC Standard of Review; Mobile-Sierra Waiver

(a) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver in subsection (b) below is unenforceable or ineffective as to such Party), a non-party or FERC acting *sua sponte*, shall be the 'public interest' application of the 'just and reasonable' standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008)(the 'Mobile Sierra' doctrine).

(b) In addition, and notwithstanding the foregoing subsection (a), to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under Sections 205 and/or , 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation, or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable law or market conditions that may occur. In the event it were to be determined that applicable law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection (b) shall not apply, provided that, consistent with the foregoing subsection (a), neither Party shall seek any such changes except solely under the "public interest" application of the "just and reasonable " standard of review and otherwise as set forth in the foregoing section.

Section 10.14, "Standard of Review for ERCOT Transactions" shall be added to the Agreement as follows:

Section 10.14 Standard of Review for ERCOT Transactions. Absent the agreement of all parties to the proposed change, the standard of review for changes to any portions of this Agreement with respect to any Transaction entered into hereunder in the Electric Reliability Council of Texas, whether proposed by a Party, a non-party, or the Public Utility Commission of Texas acting *sua sponte*, shall be the "public interest" standard of review set forth in *High Plains Natural Gas Co. v. Railroad Commission*, Tex. Civ. App. -Austin 1971, writ refd n.r.e.)."

SCHEDULE P: PRODUCTS AND DEFINITIONS.

The following definitions are added:

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

The following provision is added:

If the Parties agree to a service level or product defined by a different agreement, set of rules, tariff, or protocol for a particular Transaction, then, unless the Parties expressly state and agree that all the terms and conditions of such other agreement will apply, such reference to a service level or product shall be as defined by such other agreement, including if applicable, the regional reliability requirements and guidelines as well as the specific excuses for performance, Force Majeure, Uncontrollable Forces, or other such excuses applicable to performance under such other agreement, to the extent inconsistent with the terms of this Agreement, but all other terms and conditions of this Agreement remain applicable.

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

Party A Name

Party B Name

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

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

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

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

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

1.6 “Call Option” means an Option entitling, but not obligating, the Option Buyer to purchase and receive the Product from the Option Seller at a price equal to the Strike Price for the Delivery Period for which the Option may be exercised, all as specified in the Transaction. Upon proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to sell and deliver the Product for the Delivery Period for which the Option has been exercised.

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

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

1.9 “Confirmation” has the meaning set forth in Section 2.3.

1.10 “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.

1.11 “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.

1.12 “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.

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

1.14 “Defaulting Party” has the meaning set forth in Section 5.1.

1.15 “Delivery Period” means the period of delivery for a Transaction, as specified in the Transaction.

1.16 “Delivery Point” means the point at which the Product will be delivered and received, as specified in the Transaction.

1.17 “Downgrade Event” has the meaning set forth on the Cover Sheet.

1.18 “Early Termination Date” has the meaning set forth in Section 5.2.

1.19 “Effective Date” has the meaning set forth on the Cover Sheet.

1.20 “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.

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

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

1.23 “Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under one or more Transactions, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force

Majeure shall not be based on (i) the loss of Buyer's markets; (ii) Buyer's inability economically to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller's supply; or (iv) Seller's ability to sell the Product at a price greater than the Contract Price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (i) such Party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the Delivery Point and (ii) such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the Transmission Provider's tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred. The applicability of Force Majeure to the Transaction is governed by the terms of the Products and Related Definitions contained in Schedule P.

1.24 "Gains" means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of a Terminated Transaction, determined in a commercially reasonable manner.

1.25 "Guarantor" means, with respect to a Party, the guarantor, if any, specified for such Party on the Cover Sheet.

1.26 "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.

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

1.28 "Losses" means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of a Terminated Transaction, determined in a commercially reasonable manner.

1.29 "Master Agreement" has the meaning set forth on the Cover Sheet.

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

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

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

1.33 “Offsetting Transactions” mean any two or more outstanding Transactions, having the same or overlapping Delivery Period(s), Delivery Point and payment date, where under one or more of such Transactions, one Party is the Seller, and under the other such Transaction(s), the same Party is the Buyer.

1.34 “Option” means the right but not the obligation to purchase or sell a Product as specified in a Transaction.

1.35 “Option Buyer” means the Party specified in a Transaction as the purchaser of an option, as defined in Schedule P.

1.36 “Option Seller” means the Party specified in a Transaction as the seller of an option, as defined in Schedule P.

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

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

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

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

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

1.42 “Party B Rounding Amount” means the amount, if any, set forth in the Cover Sheet for Party B.

1.43 “Party A Tariff” means the tariff, if any, specified in the Cover Sheet for Party A.

1.44 “Party B Tariff” means the tariff, if any, specified in the Cover Sheet for Party B.

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

1.46 “Potential Event of Default” means an event which, with notice or passage of time or both, would constitute an Event of Default.

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

1.48 “Put Option” means an Option entitling, but not obligating, the Option Buyer to sell and deliver the Product to the Option Seller at a price equal to the Strike Price for the Delivery Period for which the option may be exercised, all as specified in a Transaction. Upon proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to purchase and receive the Product.

1.49 “Quantity” means 80 MW, around the clock (24/7) from the ERCOT South Load Zone

1.50 “Recording” has the meaning set forth in Section 2.4.

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

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

1.53 “Sales Price” means the price at which Seller, acting in a commercially reasonable manner, resells at the Delivery Point any Product not received by Buyer, deducting from such proceeds any (i) costs reasonably incurred by Seller in reselling such Product and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Product to the third party purchasers, or at Seller’s option, the market price at the Delivery Point for such Product not received as determined by Seller in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer’s liability. For purposes of this definition, Seller shall be considered to have resold such Product to the extent Seller shall have entered into one or more arrangements in a commercially reasonable manner whereby Seller repurchases its obligation to purchase and receive the Product from another party at the Delivery Point.

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

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

1.56 “Settlement Amount” means, with respect to a Transaction and the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such party incurs as a result of the liquidation of a Terminated Transaction pursuant to Section 5.2.

1.57 “Strike Price” means the price to be paid for the purchase of the Product pursuant to an Option.

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

1.59 “Termination Payment” has the meaning set forth in Section 5.3.

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

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

ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS

2.1 Transactions. A Transaction shall be entered into upon agreement of the Parties orally or, if expressly required by either Party with respect to a particular Transaction, in writing, including an electronic means of communication. Each Party agrees not to contest, or assert any defense to, the validity or enforceability of the Transaction entered into in accordance with this Master Agreement (i) based on any law requiring agreements to be in writing or to be signed by the parties, or (ii) based on any lack of authority of the Party or any lack of authority of any employee of the Party to enter into a Transaction.

2.2 Governing Terms. Unless otherwise specifically agreed, each Transaction between the Parties shall be governed by this Master Agreement. This Master Agreement (including all exhibits, schedules and any written supplements hereto), , the Party A Tariff, if any, and the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmations accepted in accordance with Section 2.3) shall form a single integrated agreement between the Parties. Any inconsistency between any terms of this Master Agreement and any terms of the Transaction shall be resolved in favor of the terms of such Transaction.

2.3 Confirmation Seller may confirm a Transaction by forwarding to Buyer by facsimile within three (3) Business Days after the Transaction is entered into a confirmation (“Confirmation”) substantially in the form of Exhibit A. If Buyer objects to any term(s) of such Confirmation, Buyer shall notify Seller in writing of such objections within two (2) Business Days of Buyer’s receipt thereof, failing which Buyer shall be deemed to have accepted the terms as sent. If Seller fails to send a Confirmation within three (3) Business Days after the Transaction is entered into, a Confirmation substantially in the form of Exhibit A, may be forwarded by Buyer to Seller. If Seller objects to any term(s) of such Confirmation, Seller shall

notify Buyer of such objections within two (2) Business Days of Seller's receipt thereof, failing which Seller shall be deemed to have accepted the terms as sent. If Seller and Buyer each send a Confirmation and neither Party objects to the other Party's Confirmation within two (2) Business Days of receipt, Seller's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation, unless (i) Seller's Confirmation was sent more than three (3) Business Days after the Transaction was entered into and (ii) Buyer's Confirmation was sent prior to Seller's Confirmation, in which case Buyer's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation. Failure by either Party to send or either Party to return an executed Confirmation or any objection by either Party shall not invalidate the Transaction agreed to by the Parties.

2.4 Additional Confirmation Terms. If the Parties have elected on the Cover Sheet to make this Section 2.4 applicable to this Master Agreement, when a Confirmation contains provisions, other than those provisions relating to the commercial terms of the Transaction (e.g., price or special transmission conditions), which modify or supplement the general terms and conditions of this Master Agreement (e.g., arbitration provisions or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 2.3 unless agreed to either orally or in writing by the Parties; provided that the foregoing shall not invalidate any Transaction agreed to by the Parties.

2.5 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. Upon full execution (or deemed acceptance) of a Confirmation, such Confirmation shall control in the event of any conflict with the terms of a Recording, or in the event of any conflict with the terms of this Master Agreement.

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

3.1 Seller's and Buyer's Obligations. With respect to each Transaction, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Quantity of the Product at the Delivery Point, and Buyer shall pay Seller the Contract Price; provided, however, with respect to Options, the obligations set forth in the preceding sentence shall only arise if the Option Buyer exercises its Option in accordance with its terms. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its receipt at and from the Delivery Point.

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

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

ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE

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

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

ARTICLE 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 three (3) Business Days after written notice;

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

- (iii) a Guarantor becomes Bankrupt;
- (iv) the failure of a Guarantor's guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under each Transaction to which such guaranty shall relate without the written consent of the other Party; or
- (v) a Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any guaranty.

5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate all, but not less than all, Transactions (each referred to as a "Terminated Transaction") between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable).

5.3 Net Out of Settlement Amounts. The Non-Defaulting Party shall aggregate all Settlement Amounts into a single amount by: netting out (a) all Settlement Amounts that are due to the Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party pursuant to Article Eight, plus any or all other amounts due to the Defaulting Party under this Agreement against (b) all Settlement Amounts that are due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount (the "Termination Payment") payable by one Party to the other. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate.

5.4 Notice of Payment of Termination Payment. As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within two (2) Business Days after such notice is effective.

5.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within two (2) Business Days of receipt of Non-Defaulting Party's

calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Termination Payment.

5.6 Closeout Setoffs.

Option A: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option B: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party or any of its Affiliates to the Non-Defaulting Party or any of its Affiliates under any other agreements, instruments or undertakings between the Defaulting Party or any of its Affiliates and the Non-Defaulting Party or any of its Affiliates and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option C: Neither Option A nor B shall apply.

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

ARTICLE SIX: PAYMENT AND NETTING

6.1 Billing Period. Unless otherwise specifically agreed upon by the Parties in a Transaction, the calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments and, if “Accelerated Payment of Damages” is specified by the Parties in the Cover Sheet, payments pursuant to Section 4.1 or 4.2 and Option

premium payments pursuant to Section 6.7). As soon as practicable after the end of each month, each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

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

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

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

6.5 Payment Obligation Absent Netting. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period,

including, but not limited to, any related damage amounts calculated pursuant to Article Four, interest, and payments or credits, that Party shall pay such sum in full when due.

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

6.7 Payment for Options. The premium amount for the purchase of an Option shall be paid within two (2) Business Days of receipt of an invoice from the Option Seller. Upon exercise of an Option, payment for the Product underlying such Option shall be due in accordance with Section 6.1.

6.8 Transaction Netting. If the Parties enter into one or more Transactions, which in conjunction with one or more other outstanding Transactions, constitute Offsetting Transactions, then all such Offsetting Transactions may by agreement of the Parties, be netted into a single Transaction under which:

- (a) the Party obligated to deliver the greater amount of Energy will deliver the difference between the total amount it is obligated to deliver and the total amount to be delivered to it under the Offsetting Transactions, and
- (b) the Party owing the greater aggregate payment will pay the net difference owed between the Parties.

Each single Transaction resulting under this Section shall be deemed part of the single, indivisible contractual arrangement between the parties, and once such resulting Transaction occurs, outstanding obligations under the Offsetting Transactions which are satisfied by such offset shall terminate.

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: CREDIT AND COLLATERAL REQUIREMENTS

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

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

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

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

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

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

For purposes of this Section 8.1(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party A as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party B to Party A, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

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

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

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

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

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

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

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

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

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

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

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

8.3 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent either or both Parties deliver Performance Assurance hereunder, each Party (a "Pledgor") hereby grants to the other Party (the "Secured Party") a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, such Secured Party, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Secured Party's first-priority security interest in, and lien on (and right of

setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, the Non-Defaulting Party may do any one or more of the following: (i) exercise any of the rights and remedies of a Secured Party with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the Defaulting Party in the possession of the Non-Defaulting Party or its agent; (iii) draw on any outstanding Letter of Credit issued for its benefit; and (iv) liquidate all Performance Assurance then held by or for the benefit of the Secured Party free from any claim or right of any nature whatsoever of the Defaulting Party, including any equity or right of purchase or redemption by the Defaulting Party. The Secured Party shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Pledgor's obligations under the Agreement (the Pledgor remaining liable for any amounts owing to the Secured Party after such application), subject to the Secured Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

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

ARTICLE 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 such termination shall not affect or excuse the performance of either Party under any provision of this Master Agreement that by its terms survives any such termination and, provided further, that this Master Agreement and any other documents executed and delivered hereunder shall remain in effect with respect to the Transaction(s) entered into prior to the effective date of such termination until both Parties have fulfilled all of their obligations with respect to such Transaction(s), or such Transaction(s) that have been terminated under Section 5.2 of this Agreement.

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

- (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (iii) the execution, delivery and performance of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
- (iv) this Master Agreement, each Transaction (including any Confirmation accepted in accordance with Section 2.3), and each other document executed and delivered in accordance with this Master Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses.
- (v) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
- (vi) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (vii) no Event of Default or Potential Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (viii) it is acting for its own account, has made its own independent decision to enter into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) and as to whether this Master Agreement and each such Transaction (including any Confirmation accepted in accordance with Section 2.3) is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts,

the terms, conditions and risks of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);

- (ix) it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code;
- (x) it has entered into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Products referred to in the Transaction to which it is a Party;
- (xi) with respect to each Transaction (including any Confirmation accepted in accordance with Section 2.3) involving the purchase or sale of a Product or an Option, it is a producer, processor, commercial user or merchant handling the Product, and it is entering into such Transaction for purposes related to its business as such; and
- (xii) the material economic terms of each Transaction are subject to individual negotiation by the Parties.

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

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

10.5 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate’s creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

10.6 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 NEW YORK, 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.

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

10.8 General. This Master Agreement (including the exhibits, schedules and any written supplements hereto), the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmation accepted in accordance with Section 2.3) constitute the entire agreement between the Parties relating to the subject matter. Notwithstanding the foregoing, any collateral, credit support or margin agreement or similar arrangement between the Parties shall, upon designation by the Parties, be deemed part of this Agreement and shall be incorporated herein by reference. This Agreement shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except to the extent herein provided for, no amendment or modification to this Master Agreement shall be enforceable unless reduced to writing and executed by both Parties. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect outstanding Transactions under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as "Regulatory Event") will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use their best efforts to reform this Agreement in order to give effect to the original intention of the Parties. The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights shall survive the termination of this Agreement for twelve (12) months. This Agreement shall be binding on each Party's successors and permitted assigns.

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

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

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

SCHEDULE M

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

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

“Act” means _____.¹

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

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

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

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

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

Further and with respect to a Party that is a Governmental Entity or Public Power System, such Governmental Entity or Public Power System represents and warrants to the other Party continuing throughout the term of this Master Agreement, with respect to this Master Agreement and each Transaction, as follows: (i) all acts necessary to the valid execution, delivery and performance of this Master Agreement, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the Act and the Public Power System’s ordinances, bylaws or other regulations, (ii) all persons making up the governing body of Governmental Entity or Public Power System are the

¹ Cite the state enabling and other relevant statutes applicable to Governmental Entity or Public Power System.

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

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

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

regarding the validity, binding effect and enforceability of this Master Agreement against Governmental Entity or Public Power System in respect of the Act and all other relevant constitutional organic or other governing documents and applicable law.

Section 3.5 No Immunity Claim. Governmental Entity or Public Power System warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (a) suit, (b) jurisdiction of court (including a court located outside the jurisdiction of its organization), (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment.

E. If the appropriate box is checked on the Cover Sheet, as an alternative to selecting one of the options under Section 8.3, the Parties agree to add the following section to Article Three:

Section 3.6 Governmental Entity or Public Power System Security. With respect to each Transaction, Governmental Entity or Public Power System shall either (i) have created and set aside a Special Fund or (ii) upon execution of this Master Agreement and prior to the commencement of each subsequent fiscal year of Governmental Entity or Public Power System during any Delivery Period, have obtained all necessary budgetary approvals and certifications for payment of all of its obligations under this Master Agreement for such fiscal year; any breach of this provision shall be deemed to have arisen during a fiscal period of Governmental Entity or Public Power System for which budgetary approval or certification of its obligations under this Master Agreement is in effect and, notwithstanding anything to the contrary in Article Four, an Early Termination Date shall automatically and without further notice occur hereunder as of such date wherein Governmental Entity or Public Power System shall be treated as the Defaulting Party. Governmental Entity or Public Power System shall have allocated to the Special Fund or its general funds a revenue base that is adequate to cover Public Power System's payment obligations hereunder throughout the entire Delivery Period.

F. If the appropriate box is checked on the Cover Sheet, the Parties agree to add the following section to Article Eight:

Section 8.4 Governmental Security. As security for payment and performance of Public Power System's obligations hereunder, Public Power System hereby pledges, sets over, assigns and grants to the other Party a security interest in all of Public Power System's right, title and interest in and to [specify collateral].

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

NOTWITHSTANDING THE FOREGOING, IN RESPECT OF THE APPLICABILITY OF THE ACT AS HEREIN PROVIDED, THE LAWS OF THE STATE OF _____² SHALL APPLY.

² Insert relevant state for Governmental Entity or Public Power System.

SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS

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

“Capacity” has the meaning specified in the Transaction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Transmission.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER

This confirmation letter shall confirm the Transaction agreed to on _____, ____
between _____ (“Party A”) and _the Public Utilities Board of the City
of Brownsville, Texas (“Party B”) regarding the sale/purchase of the Product under the terms and
conditions as follows:

Seller: _____

Buyer: The Public Utilities Board of the City of Brownsville, Texas

Product:

Into _____, Seller’s Daily Choice

Firm (LD)

Firm (No Force Majeure)

System Firm
(Specify System: _____)

Unit Firm
(Specify Unit(s): _____)

Other _____

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: 80 MW

Delivery Point: ERCOT South Load Zone

Contract Price:

Energy Price: \$[insert] MWh _____

Other Charges: _____

Delivery Period: Start Date: [TBD], HE 0100, CPT End Date: 30 Years through and including HE 2400 CPT. From Start Date to End Date Monday – Sunday including NERC holidays_____

Special Conditions: _____

Scheduling: _____

Option Buyer: _____

Option Seller: _____

Type of Option: _____

Strike Price: _____

Premium: _____

Exercise Period: _____

This confirmation letter is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated _____ (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]

The Public Utilities Board of Brownsville, Texas

Name: _____

Name: _____

Title: _____

Title: _____

Phone No: _____

Phone No: _____

Fax: _____

Fax: _____

Paragraph 10 to the Collateral Annex

Version 1.0
2/21/02

PARAGRAPH 10
to the
COLLATERAL ANNEX
to the
EEl MASTER POWER PURCHASE AND SALE AGREEMENT

CREDIT ELECTIONS COVER SHEET

Paragraph 10. Elections and Variables

I. Collateral Threshold

A. Party A Collateral Threshold.

- \$ _____ (the “Threshold Amount”); provided, however, that the Collateral Threshold for Party A shall be zero upon the occurrence and during the continuance of an Event of Default or a Potential Event of Default with respect to Party A; and provided further that, in the event that, and on the date that, Party A cures the Potential Event of Default on or prior to the date that Party A is required to post Performance Assurance to Party B pursuant to a demand made by Party B pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party A shall automatically increase from zero to the Threshold Amount and (ii) Party A shall be relieved of its obligation to post Performance Assurance pursuant to such demand.

- (a) The amount (the “Threshold Amount”) set forth below under the heading “Party A Collateral Threshold” opposite the Credit Rating for [Party A][Party A’s Guarantor] on the relevant date of determination, or (b) zero if on the relevant date of determination [Party A][its Guarantor] does not have a Credit Rating from the rating agency specified below or an Event of Default or a Potential Event of Default with respect to Party A has occurred and is continuing; provided, however, in the event that, and on the date that, Party A cures the Potential Event of Default on or prior to the date that Party A is required to post Performance Assurance to Party B pursuant to a demand made by Party B pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party A shall automatically increase from zero to the Threshold for Party A shall automatically increase from zero to the Threshold Amount and (ii) Party A shall be relieved of its obligation to post Performance Assurance pursuant to such demand.

Party A	
<u>Collateral Threshold</u>	<u>Credit Rating</u>
\$ _____	_____ (or above)
\$ _____	_____
\$ _____	_____
\$ _____	_____
\$ _____	Below _____
	—

- (a) The amount (the “Threshold Amount”) set forth below under the heading “Party A Collateral Threshold” opposite the Credit Rating for [Party A][Party A’s Guarantor] on the relevant date of determination, and if [Party A’s][Party A’s Guarantor’s] Credit Ratings shall not be equivalent, the lower Credit Rating shall govern or (b) zero if on the relevant date of determination [Party A][its Guarantor] does not have a Credit Rating from the rating agency(ies) specified below or an Event of Default or a Potential Event of Default with respect to Party A has occurred and is continuing; provided, however, in the event that, and on the date that, Party A cures the Potential Event of Default on or prior to the date that Party A is required to post Performance Assurance to Party B pursuant to a demand made by Party B pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party A shall automatically increase from zero to the Threshold Amount and (ii) Party A shall be relieved of its obligation to post Performance Assurance pursuant to such demand.

Party A		
<u>Collateral Threshold</u>	<u>Credit Rating</u>	<u>Credit Rating</u>
\$ _____	_____ (or above)	_____ (or above)
\$ _____	_____	_____
\$ _____	_____	_____
\$ _____	_____	_____
\$ _____	Below _____	Below _____

- The amount of the Guaranty Agreement date _____ from _____, as amended from time to time but in no event shall Party A's Collateral Threshold be greater than \$_____.

X Other – see attached threshold terms

[X] Other. With respect to Party A, as of any valuation date shall mean the lowest of:

- (i) zero if an Event of Default or Downgrade Event with respect to Party A has occurred and is continuing,
- (ii) the amount of any dollar limit contained in a guaranty provided by Party A's Guarantor, or
- (iii) "Threshold Amount" shall mean \$40,000,000.

Party A Guarantee Amount: Not applicable.

Party A Guarantor: Not applicable.

B. Party B Collateral Threshold.

- \$ _____ (the "Threshold Amount"); provided, however, that the Collateral Threshold for Party B shall be zero upon the occurrence and during the continuance of an Event of Default or a Potential Event of Default with respect to Party B; and provided further that, in the event that, and on the date that, Party B cures the Potential Event of Default on or prior to the date that Party B is required to post Performance Assurance to Party A pursuant to a demand made by Party A pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party B shall automatically increase from zero to the Threshold Amount and (ii) Party B shall be relieved of its obligation to post Performance Assurance pursuant to such demand.
- (a) The amount (the "Threshold Amount") set forth below under the heading "Party B Collateral Threshold" opposite the Credit Rating for [Party B][Party B's Guarantor] on the relevant date of determination, or (b) zero if on the relevant date of determination [Party B][its Guarantor] does not have a Credit Rating from the rating agency specified below or an Event of Default or a Potential Event of Default with respect to Party B has occurred and is continuing; provided, however, in the event that, and on the date that, Party B cures the Potential Event of Default on or prior to the date that Party B is required to post Performance Assurance to Party A pursuant to a demand made by Party A pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party B shall automatically

increase from zero to the Threshold Amount and (ii) Party B shall be relieved of its obligation to post Performance Assurance pursuant to such demand.

Party B

Collateral Threshold

Credit Rating

\$ _____	_____ (or above)
\$ _____	_____
\$ _____	_____
\$ _____	_____
\$ _____	Below _____

- (a) The amount (the “Threshold Amount”) set forth below under the heading "Party B Collateral Threshold" opposite the Credit Rating for [Party B][Party B’s Guarantor] on the relevant date of determination, and if [Party B’s][Party B’s Guarantor’s] Credit Ratings shall not be equivalent, the lower Credit Rating shall govern, or (b) zero if on the relevant date of determination [Party B][its Guarantor] does not have a Credit Rating from the relevant rating agency(ies) specified below or an Event of Default or a Potential Event of Default with respect to Party B has occurred and is continuing; provided, however, in the event that, and on the date that, Party B cures the Potential Event of Default on or prior to the date that Party B is required to post Performance Assurance to Party A pursuant to a demand made by Party A pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party B shall automatically increase from zero to the Threshold Amount and (ii) Party B shall be relieved of its obligation to post Performance Assurance pursuant to such demand.

<u>Party B Collateral Threshold</u>	<u>Credit Rating</u>	<u>Credit Rating</u>
	_____ (or above)	_____ (or above)
\$ _____	_____	_____
\$ _____	_____	_____
\$ _____	_____	_____
\$ _____	Below _____	Below _____

- The amount of the Guaranty Agreement dated _____ from _____, as amended from time to time but in no event shall Party B’s Collateral Threshold be greater than \$_____.

X Other: With respect to Party B, as of any valuation date, shall mean the lowest of (i) the amount set forth below under the caption “Threshold Amount” with respect to Party B (based on the lower of the S & P or Moody’s rating), or (ii) zero if an Event of Default with respect to Party B has occurred and is continuing.

S&P Credit Rating	Moody’s Credit Rating	Threshold Amount
BBB+ or above	Baa1 or above	\$40,000,000
BBB	Baa2	\$25,000,000
BBB-	Baa3	\$10,000,000
Below BBB-	Below Baa3	\$0

II. Eligible Collateral and Valuation Percentage.

The following items will qualify as "Eligible Collateral" for the Party specified:

	<u>Eligible Collateral</u>	<u>Party A</u>	<u>Party B</u>	<u>Valuation Percentage</u>
(A)	Cash	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	100%
(B)	Letters of Credit	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	100% unless either (i) a Letter of Credit Default shall have occurred and be continuing with respect to such Letter of Credit, or (ii) fifteen (15) or fewer Business Days remain prior to the expiration of such Letter of Credit, in which cases the Valuation Percentage shall be zero (0).
(C)	Other	<input type="checkbox"/>	<input type="checkbox"/>	Not Applicable.

III. Independent Amount.

A. Party A Independent Amount. Not applicable.

B. Party B Independent Amount. Not applicable

IV. Minimum Transfer Amount.

- A. **Party A Minimum Transfer Amount:** \$ 1.00
- B. **Party B Minimum Transfer Amount:** \$ 1.00

V. Rounding Amount.

- A. **Party A Rounding Amount:** \$ 10,000
- B. **Party B Rounding Amount:** \$ 10,000

VI. Administration of Cash Collateral.**A. Party A Eligibility to Hold Cash.****A. Party A Eligibility to Hold Cash.**

[X] Party A shall be entitled to hold Performance Assurance in the form of Cash provided that the following conditions are satisfied:

- (1) it is not a Defaulting Party, and
- (2) Party A has a Credit Rating from S&P or Moody's and the lowest Credit Rating for Party A is **BBB** or **Baa2** or higher from S&P or Moody's.

To the extent Party A is entitled to hold Cash, the Interest Rate payable to Party B on Cash shall be as selected below:

Party A Interest Rate.

[X] Federal Funds Effective Rate - the rate for that day opposite the caption "Federal Funds (Effective)" as set forth in the weekly statistical release designated as H.15(519), or any successor publication, published by the Board of Governors of the Federal Reserve System.

B. Party B Eligibility to Hold Cash.

[X] Party B shall be entitled to hold Performance Assurance in the form of Cash provided that the following conditions are satisfied:

- (1) it is not a Defaulting Party, and
- (2) Party B has a Credit Rating from S&P or Moody's and the lowest Credit Rating for Party B is **BBB** or **Baa2** or higher from S&P or Moody's.

To the extent Party B is entitled to hold Cash, the Interest Rate payable to Party A on Cash shall be as selected below:

Party B Interest Rate.

[X] Federal Funds Effective Rate - the rate for that day opposite the caption “Federal Funds (Effective)” as set forth in the weekly statistical release designated as H.15(519), or any successor publication, published by the Board of Governors of the Federal Reserve System.

VII. Notification Time.

- Other – 1:00P.M. Central Prevailing Time

VIII. General.

With respect to the Collateral Threshold, Independent Amount, Minimum Transfer Amount and Rounding Amount, if no selection is made in this Cover Sheet with respect to a Party, then the applicable amount in each case for such Party shall be zero (0). In addition, with respect to the "Administration of Cash Collateral" section of Paragraph 10, if no selection is made with respect to a Party, then such Party shall not be entitled to hold Performance Assurance in the form of Cash and such Cash, if any, shall be held in a Qualified Institution pursuant to Paragraph 6(a)(ii)(B) of the Collateral Annex. If a Party is eligible to hold Cash pursuant to a selection in this Paragraph 1- but no Interest Rate is selected, then the Interest Rate for such Party shall be the Federal Funds Effective Rate as defined in Section VI of this Paragraph 10.

IX: Other Changes

PARAGRAPH 1.—DEFINITIONS.

Delete “Paragraph 6(a)(iii)” in the definition of “Credit Rating Event” and replace it with “Paragraph 6(a)(ii)”.

Delete “Paragraph 6(a)(iv)” in the definition of “Performance Assurance” and replace it with “Paragraph 6(a)(iii)”.

Delete “capital and surplus” in the definition of “Qualified Institution” and replace it with “capital surplus”.

Delete “Paragraph 3(b)” in the definition of “Secured Party” and replace it with “Paragraph 3(a)”.

PARAGRAPH 5.—REDUCTION AND SUBSTITUTION OF PERFORMANCE ASSURANCE.

Delete “before the Notification Time on a Business Day” in Paragraph 5(a) and replace it with “before the Notification Time on a Local Business Day”.

PARAGRAPH 6.—ADMINISTRATION OF PERFORMANCE ASSURANCE.

Delete “to perfect the security interest of the Non-Downgraded Party” in Paragraph 6(a)(ii)(B) and replace it with “to perfect the security interest of the Downgraded Party”.

By: _____
Name: _____
Title: _____

Brownsville Public Utilities Board
By: _____
Name: _____
Title: _____