

**AGENDA**  
**CITY OF CENTRALIA, MISSOURI**  
**Board of Aldermen**  
**Recessed Meeting**  
Monday, March 2, 2015  
7:00 P.M.  
City Hall Council Chambers

- I. ROLL CALL
- II. PLEDGE OF ALLEGIANCE
- III. COMMENTS FROM CITIZENS
- IV. ACTION AGENDA
  - a. Legal –
    - 1. Authorizing the Mayor of Centralia, Missouri to Enter into a Lease Agreement with Cellnet Technology, Inc., of Overland, Missouri for Permission to Attach Equipment to City of Centralia, Missouri Utility Poles – Ordinance  
Bill No. \_\_\_\_\_ Ordinance No. \_\_\_\_\_
    - 2. Authorizing the Mayor to Enter into an Agreement with NextEra Energy Power Marketing, LLC. of Juno Beach, FL to sell 1.4 Zonal Resource Credits for the period of June 1, 2015 to May 31, 2016 at the price of \$1.35/Kilowatt per Month – Ordinance  
Bill No. \_\_\_\_\_ Ordinance No. \_\_\_\_\_
    - 3. Authorizing the Mayor and City Clerk to Enter into a Supplemental Agreement with the Missouri Highways and Transportation Commission for Transportation Enhancement Program Funds. – Ordinance  
Bill No. \_\_\_\_\_ Ordinance No. \_\_\_\_\_
- V. AS MAY ARISE
- VI. ADJOURN

**AGENDA**  
**CITY OF CENTRALIA, MISSOURI**  
**Public Works and Public Utilities Committee**  
Monday, March 2, 2015  
Immediately Following Board of Aldermen Recessed Meeting  
City Hall Council Chambers

- I. COMMENTS FROM CITIZENS
- II. WATER AND SEWER DEPARTMENT
  - A. Activity Report
  - B. Water
    - 1. Budget discussion
  - C. Sewer
    - 1. Budget discussions
  - D. Other
- III. PUBLIC WORKS
  - A. Activity Report
  - B. Streets
  - C. Sanitation
    - 1. Budget Discussion
  - D. Storm sewer
    - 1. FY 2016 Projects
  - E. Other

- IV. ELECTRIC DEPARTMENT
  - A. Activity Report
  - B. Accepting bid for trailer.
  - C. Budget discussion
  - D. Boring for Electric Conduit under the Railroad Tracks Update
  - E. Other
- IV. OTHER
- V. AS MAY ARISE
- VI. ADJOURN

BILL NO. \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

A BILL TO CREATE AN ORDINANCE ENTITLED:

“AN ORDINANCE AUTHORIZING AND DIRECTING THE MAYOR AND CITY CLERK OF THE CITY OF CENTRALIA, MISSOURI, TO EXECUTE A LEASE AGREEMENT WITH CELLNET TECHNOLOGY, INC., OF OVERLAND, MISSOURI FOR PERMISSION TO ATTACH EQUIPMENT TO CITY OF CENTRALIA, MISSOURI UTILITY POLES.”

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF CENTRALIA, MISSOURI, as follows:

SECTION 1. The Mayor and City Clerk of the City of Centralia, Missouri are hereby authorized and directed to execute a lease agreement with Cellnet Technology, Inc., of Overland, Missouri for Permission to Attach Equipment to City of Centralia, Missouri Utility Poles, in exchange for an annual fees determined by the number of utility poles on which equipment is attached, multiplied by a per pole fee of One Hundred Six and Ninety-Two Cents (\$111.92) per year

SECTION 2. This ordinance shall take effect and be in full force and effect from and after the date of its passage and approval.

PASSED this 2<sup>nd</sup> day of March, 2015.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

This ordinance approved by the Mayor this 2<sup>nd</sup> day of March, 2015.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

**FACILITY OR POLE ATTACHMENT AGREEMENT**

THIS FACILITY OR POLE ATTACHMENT AGREEMENT LEASE (“LEASE”) is made and entered into as of \_\_\_\_/\_\_\_\_/\_\_\_\_, or the last signature date below if no date is inserted, between the following Lessor and Lessee:

**Lessor:** City of Centralia, Missouri a municipal Corporation,

**Lessee:** Cellnet Technology, Inc., 8610 Page Avenue, Overland, MO 63114;  
Attn: Ameren Program Manager (for notice purposes).

1. **Lease.** Lessor represents that Lessor is the owner of the pole(s) or other facility(ies) (“**Facility(ies)**” or “**Pole(s)**”, as applicable) described in Section 2 hereof, however, Lessee must obtain their own easement(s) for use of any Facility(ies) or Pole(s) of Lessor and must record such easement(s) in the proper county(ies). It is specifically understood that the Lessor is not assigning any portion of any of its easements under the terms of this lease or otherwise to Lessee.
  
2. **Site.** The Facilities and/or Poles which are subject to this Lease are located approximately as follows (**Site(s)**):

Sites:

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3. **Use/Equipment.** “**Equipment**” means communications equipment, including transmitters, receivers, antennas, cables, control devices and related enclosures used to transmit or receive any frequency for any purpose that does not interfere with the operation(s) of the Lessor, Lessor’s members, or the general public, together with all ancillary wiring, cabling, mounting hardware, utility connections, circuit breakers, and other necessary hardware. Only electrically qualified personnel of the Lessee and/or only electrically qualified personnel of its designee shall be permitted to conduct activity at any Site(s), Facility(ies) or Pole(s) necessary for the successful performance of Lessee’s Equipment, including installing, removing, and maintaining Equipment. Any Equipment of the Lessee installed is not a fixture and title to the Equipment shall remain with Lessee. Without exception, the Equipment must maintain all proper clearances according to the National Electrical Safety Code. Lessee must have written permission from the Lessor prior to the installation of any Equipment on Lessor’s Site(s), Facility(ies) or Pole(s). Lessor may deny permission for installation of any and/or all Equipment on any Lessor Site(s), Facility(ies) or Pole(s) at its sole discretion. All labor or material provided by the Lessor for the purpose of facilitating the attachment (make ready) will be paid in advance.
  
4. **Term.** The term of this Lease (“**Term**”) shall be one (1) year commencing with the date

the Lease is entered into, or the last signature date below, whichever is earlier **“Commencement Date”**). The Lease shall be deemed automatically extended for additional one (1) year term unless either party gives written notice to the other of its termination of this Lease at least ninety (90) days prior to the expiration of the then current one (1) year term, which includes the initial one (1) year. Any additional one (1) year term is as an **“Additional Term”**.

5. **Rent.** Upon the Commencement Date, Lessee shall pay Lessor in advance on a yearly basis the sum of One Hundred Eleven and Ninety-Two Cents (\$111.92) per year (“Rent”) per Pole, Facility or Site. Rent shall be prorated for the initial year per Pole, Facility or Site, and thereafter, Lessee shall pay a full year’s Rent on or before the 15<sup>th</sup> day of July each calendar year, except that payment shall be prorated if this Lease terminates before the expiration of the then current calendar year. Rent cost will be reviewed from time to time and reasonable adjustments to the annual fee will be made as cost change. The rent is based on the established monthly base meter charge of \$8.91 per month or \$106.92 per year for all customers in the City of Centralia plus \$5.00 annual pole attachment. As the base meter charge increases, the rate will automatically increase. No amount will be metered or charged for actual electric use unless the agreement is amended by mutual agreement.
  
6. **Termination.** Either party may terminate this Lease, but with respect to each affected Site(s), Facility(ies) or Pole(s) only: (a) in the event of a material breach of this Lease by the other party, meaning a substantial and significant violation of the Lease which would normally excuse the non-breaching party from further performance, which has not been cured within ten (10) days from the date of receipt of written notice of such breach from the non-breaching party, with the exception of Section 9 hereof; (b) in the event of any condemnation of the Site(s), Facility(ies) or Pole(s) by any governmental authority; or (c) in the event of any damage, destruction or other causality that renders the Site(s), Facility(ies) or Pole(s) temporarily or permanently unsuitable for Lessee’s intended use. Termination shall be effective (a) as of the end of the cure period in the case of any uncured material breach; (b) as of the date of possession in the case of any condemnation; or (c) as of the date of any occurrence described in clause (c) of the immediately preceding sentence. Lessee may terminate this Lease, but with respect to each affected Site(s), Facility(ies) or Pole(s) only, for any reason at any time prior to installing its Equipment. Thereafter, Lessee may terminate this Lease, but with respect to each affected Site(s), Facility(ies) or Pole(s) only, prior to the expiration of the initial Term and any Additional Term upon not less than thirty (30) days prior written notice to Lessor in the event that: (a) Lessee is unable to use a Site, Facility or Pole as desired by Lessee; (b) Lessee is unable to obtain any certificate, license, permit, recorded easement, authority or approval from any governmental authority or property owned that is necessary for Lessee’s intended use of a Site, Facility or Pole; or (c) any certificate, license, permit, recorded easement, authority or approval previously issued or given is cancelled, expires, lapses or is otherwise withdrawn or terminated.
  
7. **Access/Utilities.** Lessee shall install and maintain its own Equipment at its own expense. Only electrically qualified personnel of the Lessee and/or only electrically qualified personnel of the Lessee’s designee shall have access to the Site(s), Facility(ies) or Pole(s)

24 hours/day, 7 days/week or as stipulated in any certificate, license, permit, recorded easement, authority or approval in effect. Lessor agrees to provide power and to connect the electricity source to Lessee's Equipment to enable Lessee to use its Equipment as per Lessor's Bylaws and policies as they exist and as may be amended by the Lessor or its members. Upon termination of its operations at the Site(s), Facility(ies) and Pole(s), Lessee shall remove all of its Equipment and surrender the Site(s), Facility(ies) and Pole(s) to Lessor in good condition, ordinary wear and tear excepted.

**8. Interference.** Lessee shall not permit any use of the Site(s), Facility(ies) and/or Pole(s) in any way which interferes with the operations of the Lessor. Lessor shall have the authority to immediately, without prior notice, disconnect and/or remove any Equipment of the Lessee at any Site(s), Facility(ies) and/or Pole(s) that are believed to interfere with the operations of the Lessor, including, but not limited to, noise on the Lessor's electrical system that may affect or interfere with electrical current, data flow and/or other Lessor operations.

**9. Notices/Indemnification/Miscellaneous/Applicable Law.**

(a) *Notices.* Notices shall be in writing, and shall be delivered certified mail, postage prepaid, return receipt requested or by a nationally recognized overnight delivery service to the address given at the beginning of this Lease or to the address specified in the most recent notice of any change of address delivered in accordance with the notice provisions of this Lease, with the exceptions of: (a) annual billing for electrical service and rent; (b) changes in rates, Bylaws and/or policies; which exceptions may all be mailed and delivered by regular mail through the United States Post Office. If the party does not accept delivery, then the notice provisions of this Lease shall be deemed satisfied.

(b) *Indemnification.* Lessee agrees to defend, pay on behalf of and hold harmless Lessor and its directors, officers, agents, and employees for all claims of whatsoever nature or kind, including those brought by employees of Lessee or Lessor's designee(s), arising out of or as a result of any act or failure to act, whether or not negligent, in connection with the performance of work performed or to be performed pursuant to this Lease. Lessee agrees to defend and pay all costs in defending these claims, including attorney fees.

(c) *Insurance* Lessee agrees to maintain public liability and property damage insurance (including automobile public liability and property damage insurance) to cover the obligations set forth above. The minimum insurance limits shall be \$1 million bodily injury and property damage. Lessor shall receive a minimum thirty (30) day notice in the event of cancellation of insurance required by this Lease. Lessee shall furnish a certificate of insurance to Lessor showing the above obligations and requirements are provided for by a qualified insurance carrier, and showing the Lessor as an additional insured on such insurance. In the event of any default by Lessee under the terms of this Lease, including but not limited to failure to make timely rent payments to Lessor, Lessee agrees to reimburse Lessor for its

costs incurred in enforcing this Lease as a result of Lessee's default, including but not limited to Lessor's attorney fees and court costs.

(d) *Miscellaneous.* Each party represents that it has the authority to enter into this Lease. Neither party has been represented by any real estate broker in this transaction. Lessor warrants that the Lessee shall have enjoyment of the Site(s), Facility(ies) and/or Pole(s) upon attainment of any certificate, license, permit, recorded easement, authority or approval necessary under the terms of this Lease. This Lease represents the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, and negotiations, whether oral or written, with respect thereto. No amendment, change or waiver of any of the terms and conditions of this Lease shall be effective unless in writing and signed by both parties except as otherwise stated in this Lease. No waiver of any provision of this Lease shall constitute a waiver of any other provision of this Lease or of the same or any other provision in any other instance. If any term of this Lease is deemed invalid, the remainder of this Lease shall not be affected. This Lease shall inure to the benefit of and be binding upon the successors or assigns of each party and their successors or assigns. This Lease may be signed in counterparts, each of which shall be an original, with the same effect as if the signatures thereto were upon the same instrument. Facsimile signatures shall be deemed original signatures.

(e) *Applicable Law.* This Lease shall be governed by and construed in accordance with the laws of the State of Illinois. The parties agree that any dispute arising out of or related to this agreement shall be litigated, if at all, in the Circuit Court of Madison County, Illinois.

The parties' authorized representatives have duly executed this Lease as of the dates set forth below.

<b>LESSOR:</b>	<b>LESSEE:</b>
<b>By:</b>	<b>By:</b> _____
<b>Name:</b> _____	<b>Name:</b> _____
<b>Title:</b> _____	<b>Title:</b> _____
<b>Date:</b> _____	<b>Date:</b> _____

BILL NO. \_\_\_\_\_

ORIDINANCE NO. \_\_\_\_\_

A BILL TO CREATE AN ORDINANCE ENTITLED:

“AN ORDINANCE AUTHORIZING AND DIRECTING THE MAYOR OF THE CITY OF CENTRALIA. MISSOURI TO EXECUTE A MASTER POWER PURCHASE AND SALE AGREEMENT WITH NEXTERA ENERGY POWER MARKETING, LLC TO SELL 1.4 MEGAWATTS OF CAPACITY PER MONTH (1.4 ZONAL RESOURCE CREDITS) OWNED BY THE CITY OF CENTRALIA. MISSOURI.”

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF CENTRALIA. MISSOURI, as follows:

SECTION 1. The Mayor of the City of Centralia, Missouri is hereby authorized and directed to execute a Master Power Purchase and Sale Agreement and other necessary documents required to be signed by the contract terms on behalf of the City of Centralia. Missouri, with NextEra Energy Power Marketing, LLC of Juno Beach, Florida, for the sale by the City of Centralia, Missouri, 1.4 Zonal Resource Credits (Equal to 1.4 Megawatts of electric capacity) for a sale price of One Dollar and Thirty-five Cents (\$1.35) per kilowatt per month which is equal to Twenty-two Thousand, Six Hundred Eighty Dollars and No Cents (\$22,680.00) over the life of the contract.

SECTION 2. The term of this contract shall be from June 1, 2015 to May 31, 2016.

SECTION 3. This ordinance shall take effect and be in full force and effect from and after the date of its passage and approval.

PASSED this 2<sup>nd</sup> day of March, 2015.

Mayor

\_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

This ordinance approved by the Mayor this 2<sup>nd</sup> day of March, 2015.

Mayor

\_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk



**PHYSICAL PURCHASE AND SALE AGREEMENT  
CONFIRMATION LETTER**

This confirmation letter ("Confirmation Letter" or "Agreement") shall confirm and govern solely the transaction ("Transaction") agreed to on February 25, 2015 ("Effective Date") between NextEra Energy Power Marketing, LLC ("Buyer") and The City of Centralia, MO ("Seller") (collectively, the "Parties") regarding the sale and purchase of the Product as set forth below.

The general terms and conditions of the "Master Power Purchase and Sale Agreement" (version 2.1., modified 4/25/00), published by the Edison Electric Institute (the "EEI General Terms") are hereby incorporated by reference herein and made part of this Confirmation Letter; *provided that* any conflict between the terms of this Confirmation Letter (including Attachment A) and the EEI General Terms shall be resolved in favor of this Confirmation Letter; and *provided further*, that if the Parties, subsequent to the date hereof, enter into a Master Power Purchase and Sale Agreement as described above, with such additions, deletions and modifications thereto as the Parties may agree ("Negotiated Master Agreement"), then, upon execution and delivery by the Parties of such Negotiated Master Agreement, this Confirmation Letter shall supplement, form a part of, and be subject solely to the terms of such Negotiated Master Agreement, and any inconsistencies between this Confirmation Letter and such Negotiated Master Agreement shall be resolved in favor of the Negotiated Master Agreement.

The terms and conditions of the Transaction are as follows:

Commercial Terms:

Trade Date: February 25, 2015

Seller: The City of Centralia, MO

Buyer: NextEra Energy Power Marketing, LLC

Product: Zonal Resource Credits ("ZRCs"), as defined in the MISO Documents.

- ZRCs shall be sourced from a capacity resource located in Local Resource Zone 4, as defined in the MISO Documents.

For the avoidance of doubt, one ZRC shall represent one megawatt ("MW") of Unforced Capacity ("Capacity"), as defined in the MISO Documents.

"MISO Documents" means the MidContinent Independent System Operator, Inc.'s ("MISO") (i) Open Access Transmission, Energy and Operating Reserve Markets Tariff ("ASM Tariff") on file with the FERC, as may be amended from time to time; and (ii) the MISO Business Practice Manuals, as the same may be amended from time to time. In the event of any inconsistency in the MISO Documents, the ASM Tariff shall prevail.

Term: June 1, 2015 – May 31, 2016 (such annual period, the "Planning Year").

Contract Quantity  
(MW per Month): 1.4 MW

Annual Contract

Quantity (MW): The Contract Quantity multiplied by 12.

Contract

Price (\$/kW-Month): \$1.35

<b>Planning Year</b>	<b>Contract Price (\$/kW-Month)</b>	<b>Contract Quantity (MWs per Month)</b>	<b>Annual Contract Quantity (MW)</b>	<b>Total Notional Value</b>
June 1, 2015 through and including May 31, 2016	\$1.35	1.4	16.8	\$22,680

Special Conditions:

1. Delivery and Receipt.

The applicable terms and conditions regarding delivery and receipt of the Product shall be as specified below. If no option is selected below, then Option 1 shall apply exclusively.

**Option 1:** Seller shall accomplish delivery of the Contract Quantity monthly by submitting the appropriate transaction(s) in MISO's Module E capacity tracking system, or any successor system ("MECT") to electronically assign the Contract Quantity to Buyer. Buyer shall accomplish receipt of the Contract Quantity by confirming the appropriate transaction(s) submitted by Seller in the MECT. With respect to each Planning Year, Seller and Buyer shall accomplish delivery and receipt of the Contract Quantity by submitting and confirming the appropriate transaction(s) in the MECT at least ten (10) Business Days prior to the "Transfer Deadline," such Transfer Deadline being the date by which Fixed Resource Adequacy Plans (as defined in the MISO Documents) must be submitted to MISO for the applicable Planning Year. The submitting and confirming of the appropriate transaction(s) in the MECT shall be conducted by the Parties in accordance with the requirements of the MISO Rules and other applicable rules adopted by the MISO regarding the MECT.

**Option 2:** Seller shall electronically deliver or cause to be delivered the Annual Contract Quantity to Buyer by submitting the appropriate transaction(s) in MISO's Module E capacity tracking system, or any successor system ("MECT"). Buyer shall confirm the appropriate transaction(s) submitted by Seller in the MECT. Seller shall electronically deliver or cause to be delivered to Buyer the Annual Contract Quantity for all months in the Planning Year within five (5) Business Days after the Trade Date (such delivery date, the "Transfer Deadline").

2. Payment Terms.

The applicable terms and conditions regarding payment shall be as specified below. If no option is selected below, then Option 2 shall apply exclusively.

**Option 1:** Within five (5) Business Days after the electronic designation of the Contract Quantity in the MECT is completed, Seller shall provide Buyer with an invoice for the total amount due for

the Contract Quantity designated by Seller to Buyer. Such invoice shall be due and payable by Buyer on or before the tenth (10th) Business Day after Buyer's receipt of such invoice. The Parties acknowledge and agree that the payment terms described herein shall supersede and replace the payment terms of the Master Agreement with respect to this Transaction only.

**Option 2:** Seller shall invoice Buyer, and Buyer shall tender payment, on a monthly basis for the Contract Quantity, commencing upon delivery of Product. Payment timing shall be in accordance with Section 6.2 of the EEI General Terms.

**Option 3:** The Parties agree that the payment schedule for the Contract Quantity designated and confirmed hereunder shall be as follows:

**[Insert Payment Terms/Schedule]**

The Parties acknowledge and agree that the payment terms described herein shall supersede and replace the payment terms of the Master Agreement with respect to this Transaction only.

3. Failure to Deliver and/or Receive.

In the event that Seller fails to deliver all or a portion of the Product, or Buyer fails to receive all or portion of the Product, by the Transfer Deadline, the following payment applies for the undelivered Product ("Non-Performance Payment"):

[The Contract Price *minus* the Replacement Price] *times* 1000 *times* the sum of all undelivered/unreceived Product. With respect to both Parties:

"Replacement Price" means, for each applicable Planning Year, (i) the auction clearing price for Capacity ("ACP") , stated in \$/kW-Month, for Local Resource Zone 4 or, if Seller/Buyer is unable to sell/purchase Capacity to replace the Capacity not received/delivered by the other Party at the ACP for Local Resource Zone 4, (ii) the price, stated in \$/kW-Month, that Seller/Buyer, acting in a commercially reasonable manner, is able to ascertain from other *bona fide* third-party offers to buy/sell the Capacity not received/delivered by the other Party. Notwithstanding any other provision herein, neither Party shall be required to enter into a replacement transaction(s) in order to determine Replacement Price.

If the Non-Performance Payment is positive, Buyer shall pay Seller the Non-Performance Payment; *provided, however*, that if the Seller is the defaulting party, the Non-Performance Payment shall be zero. If the Non-Performance Payment is negative, Seller shall pay Buyer the absolute value of the Non-Performance Payment; *provided, however*, that if the Buyer is the defaulting party, the Non-Performance Payment shall be zero.

4. Change in MISO Documents.

If, during the Term, there occurs a change in the MISO Documents, and such change results in the elimination of, or otherwise has a material adverse effect on, a material right or obligation of a Party, then the Parties shall negotiate in good faith in an attempt to amend this Agreement to accommodate such change in the MISO Documents. Any such amendment shall reflect, as closely as possible, the intent and substance of the economic bargain reached by the Parties prior to such change.

5. Limitation of Remedies.

The Parties acknowledge and agree that the remedies set forth herein regarding failures to designate/confirm shall supersede and replace the remedies set forth in the EEI General Terms with respect to this Transaction only.

[ARTICLE SIX (of the EEI General Terms): 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,  
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Version 2.1 (modified 4/25/00)

©COPYRIGHT 2000 by the Edison Electric Institute and National Energy Marketers Association 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.]

[Signatures follow]

The Parties execute this Confirmation effective as of the Trade Date referenced above.

NEXTERA ENERGY POWER  
MARKETING, LLC

THE CITY OF CENTRALIA, MO

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTACHMENT A TO CONFIRMATION LETTER**

The Parties hereby agree that the EEI General Terms and Conditions as defined in this Confirmation Letter are incorporated herein, as supplemented and modified below:

**Contact Information:**

**Name:**

NextEra Energy Power Marketing, LLC  
("Party A")

**All Notices:**

Street: 700 Universe Blvd. CTR/JB

City: Juno Beach, FL Zip: 33408

Attn: Legal Department

Phone: n/a

Facsimile: (561) 625-7504

Duns: 05-448-1341

Federal Tax ID Number: 65-0851428

**Invoices: Attn: Manager, NEPM**

Accounting

Phone: 561-304-5820

Facsimile: 561-625-7651

**Scheduling:**

Attn: Scheduling Desk

Phone: (561) 625- 7100

Facsimile: (561) 625-7604

**Option Exercise:**

Phone: (561) 625- 7100

**Payments:**

Attn: Manager, NEPM Accounting

Phone: 561-304-5820

Facsimile: 561-625-7663

**Wire Transfer Only:**

BNK: Bank of America, N.A.

Account No.: 3751227650

Fed. ABA No.: 0260-0959-3

**Credit and Collections:**

Attn: Credit Manager

Phone: (561) 304-6178

Facsimile: (561) 625- 7552

**Name:**

The City of Centralia, MO ("Party B")

**All Notices:**

Street: 114 S. Rollins St.

City: Centralia, MO 65240

Attn: City Administrator

Phone: 573-682-2139

Facsimile: 573-682-5956

Duns: 04-358-7484

Federal Tax ID Number: 43-6000692

E-Mail: cityadmin@centraliamo.org

**Invoices: Attn: Assistant City Clerk**

Phone: 573-682-2139

Facsimile: 573-682-5956

**Scheduling:**

Attn: City Administrator

Phone: 573-682-2139

Facsimile: 573-682-5956

E-Mail: cityadmin@centraliamo.org

**Payments:**

Attn: City Clerk

Phone: 573-682-2139

Facsimile: 573-682-5956

**Wire Transfer:**

Account Name:

BNK:

ABA:

ACCT:

**Credit and Collections:**

Attn: City Clerk

Phone: 573-682-2139

Facsimile: 573-682-5956

**Confirmations:**

Attn: Confirmation Desk  
Phone: (561) 304-5930  
Facsimile: (561) 625- 7517

**Confirmations:**

Attn: MJMEUC  
Phone: 573-445-3279  
Facsimile: 573-445-0680

With additional Notices of an Event of Default or Potential Event of Default to:  
Attn: Legal Department  
Phone: n/a  
Facsimile: (561) 625-7504

With additional Notices of an Event of Default or Potential Event of Default to:  
Attn: City Administrator  
Phone: 573-682-2139  
Facsimile: 573-682-5956

Party A Tariff: Market-Based Sales; Dated: July 26, 2010; Docket Number: ER10- 1971

Party B Tariff:

**EEI General Terms and Conditions:**

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**Article Four**

Remedies for Failure to Deliver/Receive

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Article 4 as set forth in the EEI General Terms and Conditions is applicable, with the following election:

Accelerated Payment of Damages. Applicable.

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**Article Five**

Events of Default;  
Remedies

Cross Default for Party A:

Party A:n/a

Cross Default Amount:

Other Entity:

Cross Default Amount:

Cross Default for Party B:

Party B: n/a

Cross Default Amount:

Other Entity: \_\_\_\_\_

Cross Default Amount:

5.6 Closeout Setoff

Option B

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**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

The Collateral Attachment shall not apply and there shall be no margining solely for purposes of this Transaction; provided that Section 8.1(b) of the EEI General Terms shall continue to apply.

(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 BBB- from S&P or Baa3 from Moody's or if Party B is rated by neither S&P nor Moody's.

(e) Guarantor for Party B: Not Applicable

Guarantee Amount:

8.2 Party B Credit Protection:

(a) Financial Information:

- Option A
- Option B Specify: NextEra Energy, Inc.
- Option C Specify:

(b) Credit Assurances:

- Not Applicable
- Applicable

(c) Collateral Threshold:

- Not Applicable
- Applicable

The Collateral Attachment shall not apply and there shall be no margining solely for purposes of this Transaction; provided that Section 8.2(b) of the EEI General Terms shall continue to apply.

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:



- It shall be a Downgrade Event for Party A if the Credit Rating of NextEra Energy Capital Holdings, Inc. falls below BBB- from S&P or Baa3 from Moody's or if Party A's Guarantor is rated by neither S&P nor Moody's.

(e) Guarantor for Party A: Not Applicable

Guarantee Amount:

**Article 10**

Confidentiality  Confidentiality Applicable

**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**

The following modifications are made to the EEI General Terms and Conditions solely for purposes of this Transaction:

- (1) **Confidentiality.** Section 10.11 is deleted in its entirety and replaced with the following:

“10.11 **Confidentiality.** If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable, neither Party shall disclose the terms or conditions of this Transaction to a third party (other than the employees, lenders, counsel, accountants or advisors of a Party or its Affiliates to whom disclosure is reasonably required (with respect to a Party, its “Representatives”)) 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 or request by a regulatory authority; 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, the non-disclosure obligations set forth in this Section 10.11; provided, that a breach of this Section 10.11 shall not give rise to a right to suspend or terminate any ongoing Transaction under this Agreement. Notwithstanding the foregoing, it shall not be deemed a breach of this Section 10.11 if a Party disclosed the terms or conditions of a Transaction, provided that the name of and any other identifying information relating to the other Party is redacted and otherwise not disclosed. Each Party will cause its Representatives to comply with the non-disclosure obligations set forth in this Section 10.11.

- (2) **Venue.** Article 10 is amended by inserting the following as Section 10.12:

10.12 **Venue.** Parties each hereby irrevocably: (i) consents and submits to the exclusive jurisdiction of the United States District Court for the Southern District of New York, or if that court does not have subject matter jurisdiction, to the exclusive jurisdiction of the Supreme Court of the State of New York,

New York County (without prejudice to the right of any party to remove to the United States District Court for the Southern District of New York) for the purposes of any suit, action or other proceeding arising out of this Agreement or the subject matter hereof; and (ii) waives (to the fullest extent permitted by applicable law) and agrees not to assert any claim that it is not personally subject to the jurisdiction of the above-named courts, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Agreement or the subject matter hereof may not be enforced in or by such court.

- (3) Waiver of Jury Trial. Article 10 is amended by inserting the following as Section 10.13:

10.13 Waiver of Jury Trial. Each Party hereby irrevocably, intentionally, and voluntarily waives the right to trial by jury with respect to any legal proceeding based on, or arising out of, under or in connection with, this Transaction and Agreement or any course of conduct, course of dealing, statements (whether verbal or written) or actions of any person relating hereto or thereto. This provision is a material inducement to each Party's execution and delivery of this Confirmation Letter.

*[remainder of this page is left blank intentionally]*

Capacity Offers for PS Capacity 2/25/15  
 RKH 2/25/2015

Offer	Jonathan Meide			Joe Dwyer		Vince Findley		Vince Findley	
	MW	TEA MW	\$/MW mo	NextEra MW	\$/MW mo	AEP MW	\$/MW mo	AEP MW	\$/MW mo
Centralia	1.4	0.76	1450	1.4	1350	1.4	1300	1.4	1000
Hannibal	14.6	7.93	1450	14.6	1350	14.6	1300	14.6	1000
Kahoka	1.5	0.81	1450	1.5	1350	1.5	1300	1.5	1000

	\$/Yr	\$/Yr	\$/Yr	\$/Yr	\$/Yr
<b>Centralia</b>	<b>\$ 13,224.00</b>	<b>\$ 22,680.00</b>	<b>\$ 21,840.00</b>	<b>\$ 16,800.00</b>	<b>\$ 5,880.00</b>
Hannibal	\$ 137,907.43	\$ 236,520.00	\$ 227,760.00	\$ 175,200.00	\$ 61,320.00
Kahoka	\$ 14,168.57	\$ 24,300.00	\$ 23,400.00	\$ 18,000.00	\$ 6,300.00
Total	\$ 165,300.00	\$ 283,500.00	\$ 273,000.00	\$ 210,000.00	\$ 73,500.00

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# Master Power Purchase & Sale Agreement

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Version 2.1 (modified 4/25/00)  
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# 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”)  
All Notices:  
Street: \_\_\_\_\_  
City: \_\_\_\_\_ Zip: \_\_\_\_\_  
Attn: Contract Administration  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Duns: \_\_\_\_\_  
Federal Tax ID Number: \_\_\_\_\_

Name (“Counterparty” or “Party B”)  
All Notices:  
Street: \_\_\_\_\_  
City: \_\_\_\_\_ Zip: \_\_\_\_\_  
Attn: Contract Administration  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Duns: \_\_\_\_\_  
Federal Tax ID Number: \_\_\_\_\_

**Invoices:**  
Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**Invoices:**  
Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**Scheduling:**  
Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**Scheduling:**  
Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**Payments:**  
Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**Payments:**  
Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**Wire Transfer:**  
BNK: \_\_\_\_\_  
ABA: \_\_\_\_\_  
ACCT: \_\_\_\_\_

**Wire Transfer:**  
BNK: \_\_\_\_\_  
ABA: \_\_\_\_\_  
ACCT: \_\_\_\_\_

**Credit and Collections:**  
Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**Credit and Collections:**  
Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

With additional Notices of an Event of Default or Potential Event of Default to:  
Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

With additional Notices of an Event of Default or Potential Event of Default to:  
Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
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      Tariff \_\_\_\_\_      Dated \_\_\_\_\_      Docket Number \_\_\_\_\_

Party B Tariff      Tariff \_\_\_\_\_      Dated \_\_\_\_\_      Docket Number \_\_\_\_\_

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**Article Two**

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

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**Article Four**

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

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**Article Five**

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

5.6 Closeout Setoff

- Option A (Applicable if no other selection is made.)
  - Option B - Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows: \_\_\_\_\_  
\_\_\_\_\_
  - Option C (No Setoff)
- 

**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.

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**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: \_\_\_\_\_

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 that quantity of the Product that Seller agrees to make available or sell and deliver, or cause to be delivered, to Buyer, and that Buyer agrees to purchase and receive, or cause to be received, from Seller as specified in the Transaction.

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 \_\_\_\_\_.<sup>1</sup>

“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 duly elected or appointed incumbents in their positions and hold such

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

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 \_\_\_\_\_<sup>2</sup> SHALL APPLY.

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<sup>2</sup> 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 \_\_\_\_\_ (“Party B”)  
regarding the sale/purchase of the Product under the terms and conditions as follows:

Seller: \_\_\_\_\_

Buyer: \_\_\_\_\_

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: \_\_\_\_\_

Delivery Point: \_\_\_\_\_

Contract Price:

Energy Price: \_\_\_\_\_

Other Charges: \_\_\_\_\_

Confirmation Letter  
Page 2

Delivery Period: \_\_\_\_\_  
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]

[Party B]

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Phone No: \_\_\_\_\_  
Fax: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Phone No: \_\_\_\_\_  
Fax: \_\_\_\_\_

BILL NO.: \_\_\_\_\_

ORDINANCE NO.: \_\_\_\_\_

A BILL TO CREATE AN ORDINANCE ENTITLED:

“AN ORDINANCE AUTHORIZING AND DIRECTING THE MAYOR AND CITY CLERK OF THE CITY OF CENTRALIA, MISSOURI TO EXECUTE A SUPPLEMENTAL AGREEMENT WITH THE MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION ACCEPTING THE TERMS AND CONDITIONS OF SAID TRANSPORTATION ENHANCEMENT PROGRAM FUNDS.”

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF CENTRALIA, MISSOURI, as follows:

SECTION 1. The Mayor and City Clerk of the City of Centralia, Missouri are hereby authorized and directed to execute a Supplemental Agreement on behalf of the City of Centralia, Missouri, with the Missouri Highways and Transportation Commission for financial assistance for the installation of sidewalks along Jefferson Street and the west side of the Centralia High School property in the City of Centralia Missouri.

SECTION 2. This ordinance shall take effect and be in full force and effect from and after the date of its passage and approval.

PASSED this 2nd day of March, 2015.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

This ordinance approved by the Mayor this 2nd day of March, 2015.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

G:\City of Centralia\Council\working folder - 1st Public Works-Utilities\SupContrMoDOTJeffStSidewalks-ORD.docx

CCO Form: FS25 - SUP  
Approved: 02/25 (MWH)  
Revised:  
Modified:

CFDA Number: CFDA #20.205  
CFDA Title: Highway Planning and Construction  
Award name/number: TAP – 9900(599)  
Award Year: 2015  
Federal Agency: Federal Highway Administration, Department of Transportation

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION  
TRANSPORTATION ALTERNATIVES FUNDS  
SUPPLEMENTAL AGREEMENT**

**PROGRAM AGREEMENT**

THIS SUPPLEMENTAL AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission") and the City of Centralia (hereinafter, "City").

WITNESSETH:

WHEREAS, on \_\_\_\_\_, the Commission and the City previously entered into a Transportation Alternatives Funds Agreement as to public improvements designated as transportation alternatives for the construction of sidewalks along Jefferson Street and the west side of the Centralia High School property in the City of Centralia (hereinafter, "Original Agreement"); and

WHEREAS, the Commission and the City now desire to revise the Original Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations contained herein, the parties agree as follows:

(1) ADDITIONAL PARAGRAPH: Paragraph 26 is hereby added to the Original Agreement and states as follows:

(26) FEDERAL-AID PROVISIONS: Because responsibility for the performance of all functions or work contemplated as part of this project is assumed by the City, a copy of Section II and Section III, as contained in the United States Department of Transportation Form Federal Highway



Administration (FHWA) 1273 "Required Contract Provisions, Federal-Aid Construction Contracts," is attached and made a part of this Agreement as Exhibit C. Wherever the term "the contractor" or words of similar import appear in these sections, the term "the City" is to be substituted. The City agrees to abide by and carry out the condition and obligations of "the contractor" as stated in Section II, Equal Opportunity, and Section III, Nonsegregated Facilities, as set out in Form FHWA 1273.

(2) ORIGINAL AGREEMENT: Except as otherwise modified, amended, or supplemented by this Supplemental Agreement, the Original Agreement between the parties shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date last written below.

Executed by the City this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Executed by the Commission this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

MISSOURI HIGHWAYS AND  
TRANSPORTATION COMMISSION

CITY OF CENTRALIA

\_\_\_\_\_  
Title: \_\_\_\_\_

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

ATTEST:  
\_\_\_\_\_  
Secretary to the Commission

ATTEST:  
By \_\_\_\_\_  
Title: \_\_\_\_\_

Approved as to Form:  
\_\_\_\_\_  
Commission Counsel

Approved as to Form:  
\_\_\_\_\_  
Title: \_\_\_\_\_

Ordinance No.: \_\_\_\_\_

**ACTIVITY REPORT**  
**WATER DEPARTMENT**  
**February 2015**

- Repaired 8" fire main at Chance's off Howard Burton – Chance line
- Repaired leak at 317 Wilson on service ( key valve ) – replaced service totally
- Worked fire hydrant at Bruton / Adams to stop leak – not completely shutting down
- Burnt and mowed overland flow fields for season
- Put rock on roads at NE Lagoon
- Meeting with all three farmers on contract renewal and any issues going forward
- Inspected sewer repairs at 451/453 Bradford – broken bell on clay pipe
- Inspected two sewer taps at 610 Brick
- Assisted Flowmaster Plumbing find sewer at 814 Emerald Drive
- Two days entering hydrant data into GIS system
- Assisted street department with snow removal 4 days (2 people)
- Danny took water and wastewater certification test in Macon
- Mike one day class on irrigation testing, sampling requirements and regulations coming forward
- Received new meter reading handheld and training
- Bac T test grabbed and delivered to Mexico – twice
- Dug up meter at Kelli Ct. and reset after plumber hooked up
- Called to check for leak at 312 E. Switzler for leak – on them
- Checked for leak at 401 S. Jefferson - them
- Cleaned and worked on heater at #6 Well house
- Assisted 485 Pratt find two sewer service's at this house
- Checked for leak at 311 E. Lakeview – customer side
- Checked for pressure issue at Lot 31 Tidball's – meter turned off
- Met with 236 Denton on sewer repair responsibility – them
- Switched meters at 1218/ 1220 Remington to right billing issue for each apartment
- Called to 262 Wright Ct. to check for leak – customers, they requested to leave on
- Checked for high usage concern at 438 S. Allen – leak on them
- Called in to shut off water at 310 Railroad due to leak
- Called in to shut off water at 621 E. Southgate due to leak
- Went to 420 N. Allen to inspect sewer repair
- Called in to check for leak at 913 Kelli Ct. – meter bottom plate broke from freezing – lid left off
- Called In to check for leak at 616 S. Rollins – froze on their side
- Checked sewer at 220 S. Hickman – ok
- Had conference call with Midland GIS on issues with entry data
- Shut off water at 311 S. Rollins due to leak
- Called in to shut off water due to leak at 635 N. Allen
- Read all utility meters for billing
- Called in to 720 Pool to shut off water due to leak

***STREET and SANITATION DEPARTMENT***  
***Activity Report for February 2015***

1. Daily trash collection
2. Weekly cardboard and bi-weekly curbside recycling collection
3. Had 1 double trash route this month
4. Hauled several dumpsters from businesses to Herndon's Welding to be repaired and then hauled back
5. Did 17 locates this month
6. Met with Dave Pevlear on Brick st. extension and drainage
7. Repaired both cart tippers on trash truck
8. Took out loaner dumpsters several times this month
9. Hauled off 4 loads of plastic to Ryan Ent. in Millersburg
10. Hauled off 2 loads of recycling to Civic Recycling in Columbia
11. Hauled off brush from drop off site to the landfill several times
12. Replaced post and put city limit sign back up on west Gano
13. Replaced 2 faded railroad signs
14. Installed new stop sign and street name sign at Kelli ct and Countryland dr
15. Repaired stop sign bracket and installed new post and put stop sign back up at Howard Burton and Switzler
16. Dug out and set 60ft of 10in plastic pipe for new driveway on Brick st. for Dave Pevlear
17. Took Don Golian to Jefferson City to take his class B CDL test and he passed
18. Added rock and smoothed up shoulder
19. Cleaned up the shop
20. Greased trash truck #89
21. Put up street name sign at Rollins and Singleton that was knocked down with the light pole
22. Assembled and delivered 3 trash cart to city resident
23. Got 5 loads of sand and piled up at the landfill
24. Did some sign maintenance
25. Delivered a new dumpster to Boone County Bank and got rid of the old one
26. Used the pressure washer and washed all 3 dump trucks, 1 trash truck and 1 pickup
27. Checked out plow trucks after each snow and made any necessary repairs, greased spreaders, replaced broken plow light, replaced plow bolts and pins, repaired spinner on one spreader
28. Spent 12 days this month plowing, spreading material, and hauling off snow

## **ELECTRIC DEPT.**

### **FEBRUARY 2015 ACTIVITY REPORT**

1. Daily readings – 37
2. Daily locates – 17
3. Re-reads – 18
4. Disconnects – 21 (too cold, did not disconnect, placed notices & read meters)
5. Assisted SD Myers with oil sampling @ substations
6. Assisted Street Department with snow removal
7. Cleaned fiberglass extension arms
8. Prepared primary sector cabinet for new service @ 875 W Singleton
9. Repaired lights @ salt shed
10. Cleaned/straightened shop
11. Added new circuit with several outlets at Police Station
12. 611 S Clayton – disconnected power to allow electrician to repair meter base
13. 214 S Allen – replaced rotten pole struck by vehicle, splice lines, restored services
14. 217 W Clark – removed three trees
15. Repaired street lights – Singleton/green house, Jefferson/MFA, Rollins/Singleton, Columbia/Stanton's, Adams/Bruton, Senior Center, Switzler/Southgate, Lakeview/CIS, Jefferson/CHS, Rodney Griffin/Adams
16. 875 W Singleton – pulled 192' of primary wire and set transformer for new service
17. E Gano Chance Drive – pierced third conduit under street to feed Lockport Drive
18. Hauled away tree trunks around town, delivered to brush pit
19. Replaced street light pole @ Singleton/Rollins struck down during snow removal
20. Replaced breakaway base @ pole 39 along Hwy 22 damaged during snow removal
21. 610 Brick St – pulled wire & connected new service, disconnected temporary service
22. Assisted Water Department with leak near Hubbell
23. 310 W Railroad – removed service drop until homeowner can get service repaired
24. Replaced and adjusted blades on chipper
25. 312 S Walnut – pulled wire and connected new underground service
26. Investigated high bills with recorder – 420 W Barnes, 709 Emerald Dr, 700 W Doty

**Bids for Tralier to haul skid steer - ELECTRIC**

Budgeted in 313-04-502 at \$4,000

Opened February 26, 2015

16 foot tilt trailer (14' + 2')

<b>Vendor</b>	<b>Bid</b>	<b>Notes</b>
Maxwell Trailers	\$6,200	Black trailer
Maxwell Trailers	\$6,300	White trailer
Darren D. Adams	\$5,103	16' + 2' Doolittle trailer