

CITY OF INDUSTRY

CITY COUNCIL REGULAR MEETING AGENDA

FEBRUARY 22, 2018
9:00AM



Mayor Mark Mayor Radecki
Mayor Pro Tem Cory Moss
Council Member Abraham Cruz
Council Member Catherine Marcucci
Council Member Newell Ruggles

Location: City Council Chamber, 15651 East Stafford Street, City of Industry, California 91744

Addressing the City Council:

- ▶ **Agenda Items:** Members of the public may address the City Council on any matter listed on the Agenda. In order to conduct a timely meeting, there will be a three-minute time limit per person for any matter listed on the Agenda. Anyone wishing to speak to the City Council is asked to complete a Speaker's Card which can be found at the back of the room and at the podium. The completed card should be submitted to the City Clerk prior to the Agenda item being called and prior to the individual being heard by the City Council.
- ▶ **Public Comments (Non-Agenda Items):** Anyone wishing to address the City Council on an item not on the Agenda may do so during the "Public Comments" period. In order to conduct a timely meeting, there will be a three-minute time limit per person for the Public Comments portion of the Agenda. State law prohibits the City Council from taking action on a specific item unless it appears on the posted Agenda. Anyone wishing to speak to the City Council is asked to complete a Speaker's Card which can be found at the back of the room and at the podium. The completed card should be submitted to the City Clerk prior to the Agenda item being called by the City Clerk and prior to the individual being heard by the City Council.

Americans with Disabilities Act:

- ▶ In compliance with the ADA, if you need special assistance to participate in any City meeting (including assisted listening devices), please contact the City Clerk's Office (626) 333-2211. Notification of at least 48 hours prior to the meeting will assist staff in assuring that reasonable arrangements can be made to provide accessibility to the meeting.

Agendas and other writings:

- ▶ In compliance with SB 343, staff reports and other public records permissible for disclosure related to open session agenda items are available at City Hall, 15625 East Stafford Street, Suite 100, City of Industry, California, at the office of the City Clerk during regular business hours, Monday through Friday 9:00 a.m. to 5:00 p.m. Any person with a question concerning any agenda item may call the City Clerk's Office at (626) 333-2211.

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1. Call to Order
 2. Flag Salute
 3. Roll Call
 4. Public Comments

5. CONSENT CALENDAR

All matters listed under the Consent Calendar are considered to be routine and will be enacted by one vote. There will be no separate discussion of these items unless members of the City Council, the public, or staff request specific items be removed from the Consent Calendar for separate action.

5.1 Consideration of the Register of Demands for February 22, 2018

RECOMMENDED ACTION: Approve the Register of Demands and authorize the appropriate City Officials to pay the bills

5.2 Consideration of the minutes of the August 11, 2016 regular meeting, August 18, 2016 special meeting, September 8, 2016 regular meeting, and September 22, 2016 regular meeting

RECOMMENDED ACTION: Approve as submitted.

6. ACTION ITEMS

6.1 Consideration of Resolution No. CC 2018-05 – A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF INDUSTRY, CALIFORNIA, AMENDING SECTION 3.05, LEGAL COUNSEL OF ARTICLE III, OFFICERS AND EMPLOYEES, OF THE CITY OF INDUSTRY PROPERTY AND HOUSING MANAGEMENT AUTHORITY JOINT EXERCISE OF POWERS AGREEMENT

RECOMMENDED ACTION: Adopt Resolution No. CC 2018-05.

6.2 Consideration of Proposition A Assignment Agreement between the City of Cudahy and the City of Industry for exchange of Prop A Funds

RECOMMENDED ACTION: Approve the Agreement.

6.3 Consideration of a Professional Services Agreement with Sage Environmental Group for Biological Monitoring Support Services, in an amount not-to-exceed \$288,000.00, from August 1, 2017 to December 8, 2019

RECOMMENDED ACTION: Approve the Agreement.

6.4 Consideration of a Professional Services Agreement with Ninyo & Moore for Geotechnical and Environmental Sciences Consultants, for On-Call Geotechnical Engineering Services, in an amount not-to-exceed \$150,000.00, from February 22, 2018 to December 8, 2019

RECOMMENDED ACTION: Approve the Agreement.

- 6.5 Consideration of a Professional Services Agreement with Goss Engineering, Inc., No. DS-18-019-B, for EXPO Barn Facilities Lighting Upgrade Design and Specifications Services, in an amount not-to-exceed \$15,260.00, from February 22, 2018 to December 8, 2019

RECOMMENDED ACTION: Approve the Agreement.

- 6.6 Consideration of Third Amendment to the Confirmation for Scheduling and Settlement Services and Day Ahead Index Electricity with Calpine Energy Solutions, LLC, from February 28, 2018 to March 31, 2018

RECOMMENDED ACTION: Approve the Amendment.

7. **CLOSED SESSION**

- 7.1 CONFERENCE WITH LEGAL COUNSEL – Anticipated Litigation
Significant exposure to litigation pursuant to Government Code Section 54956.9(d)(2) 4 Cases

- 7.2 CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION
Pursuant to Government Code Section 54956.9(d)(1)
Case: City of Industry v. Burke Williams & Sorensen, LLP, et al.
Los Angeles Superior Court
Case No. KC068777

- 7.3 CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION
Pursuant to Government Code Section 54956.9(d)(1)
Case:
Los Angeles Superior Court
Case No.

- 7.4 CONFERENCE WITH LEGAL COUNSEL -- EXISTING LITIGATION
Pursuant to Government Code Section 54956.9(d)(1)
Case: City of Diamond Bar v. Oversight Board of the Successor Agency to the Industry Urban-Development Agency; Successor Agency to the Industry Urban-Development Agency; et al.
Superior Court of California, County of Sacramento
Case No. 34-2017-80002718-CU-WM-GDS

- 7.5 CONFERENCE WITH LEGAL COUNSEL -- EXISTING LITIGATION
Pursuant to Government Code Section 54956.9(d)(1)
Case: City of Chino Hills v. Oversight Board of the Successor Agency to the Industry Urban-Development Agency; Successor Agency to the Industry Urban-Development Agency; et al.
Superior Court of California, County of Sacramento
Case No. 34-2017-80002719-CU-WM-GDS

- 7.6 CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION
Pursuant to Government Code Section 54956.9(d)(1)
Case: City of Diamond Bar v. City of Industry, City of Industry City Council; Successor Agency to the Industry Urban-Development Agency; Board of Directors of the Successor Agency to the Industry Urban-Development Agency; Oversight Board of the Successor Agency to the Industry Urban-Development Agency; et al.
Superior Court of California, County of Los Angeles
Case No. BS171295
- 7.7 CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION
Pursuant to Government Code Section 54956.9(d)(1)
Case: City of Chino Hills v. City of Industry, City of Industry City Council; Successor Agency to the Industry Urban-Development Agency; Board of Directors of the Successor Agency to the Industry Urban-Development Agency; Oversight Board of the Successor Agency to the Industry Urban-Development Agency; et al.
Superior Court of California, County of Los Angeles
Case No. BS171398
- 7.8 Conference with real property negotiators pursuant to Government Code Section 54956.8:
Property: 22751 Golden Springs Drive, Diamond Bar, CA, also known as Assessor Parcel Numbers 8717-001-907, 8717-001-908, 8717-002-905,8717-002-906
Agency Negotiators: Paul J. Philips, Executive Director
James M. Casso, Agency Legal Counsel
Negotiating Parties: Los Angeles County Department of Parks
Parks and Recreation
Under Negotiation: Price and terms
- 7.9 Conference with real property negotiators pursuant to Government Code Section 54956.8:
Property: Various parcels west of Grand Avenue just north of the Pomona Freeway, City of Industry, CA, also known as Assessor Parcel Numbers 8719-007-921, 8719-009-904, 8719-007-930
Agency Negotiators: Paul J. Philips, Executive Director
James M. Casso, Agency Legal Counsel
Negotiating Parties: Paul J. Philips, City Manager
James M. Casso, City Attorney
Under Negotiation: Price and terms
- 7.10 Conference with real property negotiators pursuant to Government Code Section 54956.8:
Property: 17647 Gale Avenue, City of Industry, CA also known as Assessor Parcel Numbers 8264-012- 923, 8624-013- 913,8624-013-914
Agency Negotiators: Paul J. Philips, Executive Director

James M. Casso, Agency Legal Counsel
Negotiating Parties: Paul J. Philips, City Manager
James M. Casso, City Attorney
Under Negotiation: Price and terms

7.11 Conference with real property negotiators pursuant to Government Code Section 54956.8:

Property: Southeast corner of Workman Mill Road and Crossroads Parkway North, also known as Assessor Parcel Number 8120-027-270

Agency Negotiators: Paul J. Philips, Executive Director
James M. Casso, Agency Legal Counsel

Negotiating Parties: Paul J. Philips, City Manager
James M. Casso, City Attorney

Under Negotiation: Price and terms

8. **CITY COUNCIL COMMITTEE REPORTS**

9. **AB 1234 REPORTS**

10. **CITY COUNCIL COMMUNICATIONS**

11. Adjournment. The next regular City Council Meeting will be Thursday, March 8, 2018 at 9:00 a.m.

CITY COUNCIL

ITEM NO. 5.1

**CITY OF INDUSTRY
AUTHORIZATION FOR PAYMENT OF BILLS
CITY COUNCIL MEETING OF FEBRUARY 22, 2018**

FUND RECAP:

<u>FUND</u>	<u>DESCRIPTION</u>	<u>DISBURSEMENTS</u>
100	GENERAL FUND	11,611,544.60
103	PROP A FUND	27,518.10
120	CAPITAL IMPROVEMENT FUND	180,306.56
145	98 REASSESSMENT IMPROVEMENT FUND	4,345.00
161	IPUC - ELECTRIC	620,200.50
TOTAL ALL FUNDS		12,443,914.76

BANK RECAP:

<u>BANK</u>	<u>NAME</u>	<u>DISBURSEMENTS</u>
BOFA	BANK OF AMERICA - CKING ACCOUNTS	8,542,587.54
PROP A	PROP A - CKING ACCOUNT	27,518.10
REF	REFUSE - CKING ACCOUNT	1,376,243.20
WFBK	WELLS FARGO - CKING ACCOUNT	2,497,565.92
TOTAL ALL BANKS		12,443,914.76

APPROVED PER CITY MANAGER

**CITY OF INDUSTRY
BANK OF AMERICA
February 22, 2018**

Check	Date				Payee Name	Check Amount
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91-1REDMPT.CHK - 98 Reassessment Improv Chking

176	01/22/2018				U.S. BANK	\$4,345.00
	Invoice	Date	Description		Amount	
	4858939	01/22/2018	1998 REVENUE BOND-CATELLUS PAYMENT		\$4,345.00	

CITYELEC.CHK - City Electric

1435	01/22/2018				CITY OF INDUSTRY	\$124,638.79
	Invoice	Date	Description		Amount	
	01/22/18	01/22/2018	TRANSFER FUNDS-ELECTRIC		\$124,638.79	
1436	02/02/2018				CITY OF INDUSTRY	\$250,975.33
	Invoice	Date	Description		Amount	
	02/02/18-A	02/02/2018	TRANSFER FUNDS-ELECTRIC		\$250,975.33	

CITYGEN.CHK - City General

WT1055	01/11/2018				JOHN HANCOCK USA	\$10,486.69
	Invoice	Date	Description		Amount	
	DECEMBER 2017	01/11/2018	PARS CONTRIBUTIONS FOR DECEMBER 2017		\$10,486.69	
WT1056	01/22/2018				MIDAMERICA ADMINISTRATIVE &	\$22,579.06
	Invoice	Date	Description		Amount	

**CITY OF INDUSTRY
BANK OF AMERICA
February 22, 2018**

Check	Date		Payee Name	Check Amount
	FEB-MAR2018	01/22/2018	MEDICAL PREMIUM REIMBURSEMENTS	\$22,579.06
WT1057	01/23/2018		CAL-PERS	\$46,737.03
	Invoice	Date	Description	Amount
	FEB2018	01/16/2018	CALPERS MEDICAL PREMIUM FOR FEB 2018	\$46,737.03
24388	01/24/2018		CITY OF INDUSTRY	\$2,200,000.00
	Invoice	Date	Description	Amount
	01/24/18	01/24/2018	TRANSFER OF FUNDS REGISTER 1/25/18	\$2,200,000.00
24389	02/02/2018		CITY OF INDUSTRY	\$5,800,000.00
	Invoice	Date	Description	Amount
	02/02/18	02/02/2018	TRANSFER OF FUNDS REGISTER 2/8/18	\$5,800,000.00
24390	02/02/2018		INDUSTRY PROPERTY & HOUSING	\$10,000.00
	Invoice	Date	Description	Amount
	02/02/18	02/02/2018	TRANS OF FUNDS-IPHMA A/P	\$10,000.00
24391	02/02/2018		CIVIC RECREATIONAL INDUSTRIAL	\$65,000.00
	Invoice	Date	Description	Amount
	02/02/18	02/02/2018	TRANS OF FUNDS-CRIA A/P	\$65,000.00

PARKCIT.CHK - Parking Citation Checking

628	01/05/2018		CORPUZ ALFREDO , ALFREDO	\$305.00
	Invoice	Date	Description	Amount
	12/8/2017	12/08/2017	REFUND-CITATION #136846	\$305.00
629	01/05/2018		MACK BERNARD , BERNARD	\$305.00

**CITY OF INDUSTRY
BANK OF AMERICA
February 22, 2018**

Check	Date		Payee Name	Check Amount
	Invoice	Date	Description	Amount
	12/08/2017	12/08/2017	REFUND-CITATION #139001	\$305.00
630	01/30/2018		QING YI , ZHENG	\$10.00
	Invoice	Date	Description	Amount
	1/29/2018	01/29/2018	REFUND-CITATION #136733	\$10.00
631	01/30/2018		SUPERIOR COURT OF CALIFORNIA,	\$6,538.00
	Invoice	Date	Description	Amount
	DECEMBER 2017	01/10/2018	PARKING CITATIONS REPORT-DEC 2017	\$6,538.00
632	01/30/2018		TURBO DATA SYSTEMS, INC	\$667.64
	Invoice	Date	Description	Amount
	27263	12/31/2017	CITATION PROCESSING-NOV/DEC 2017	\$667.64

Checks	Status	Count	Transaction Amount
	Total	15	\$8,542,587.54

CITY OF INDUSTRY

PROP A

February 22, 2018

Check	Date		Payee Name	Check Amount
PROPA.CHK - Prop A Checking				
11748	01/16/2018		INDUSTRY SECURITY SERVICES	\$11,114.44
	Invoice	Date	Description	Amount
	14-21767	11/24/2017	SECURITY SVC-METROLINK	\$1,393.25
	14-21790	12/01/2017	SECURITY SVC-METROLINK	\$1,729.73
	14-21840	12/08/2017	SECURITY SVC-METROLINK	\$1,729.73
	14-21851	12/15/2017	SECURITY SVC-METROLINK	\$1,745.50
	14-21902	12/22/2017	SECURITY SVC-METROLINK	\$1,729.73
	14-21943	12/29/2017	SECURITY SVC-METROLINK	\$1,393.25
	14-21978	01/05/2018	SECURITY SVC-METROLINK	\$1,393.25
11749	01/16/2018		WALNUT VALLEY WATER DISTRICT	\$289.88
	Invoice	Date	Description	Amount
	2843514	12/14/2017	11/1-11/30/17 SVC-IRR METROLINK SPANISH LN	\$270.45
	2835859	12/12/2017	10/31-11/30/17 SVC-PLATFORM METROLINK	\$19.43
11750	01/16/2018		SO CALIFORNIA EDISON COMPANY	\$262.72
	Invoice	Date	Description	Amount
	2018-00000926	12/18/2017	10/20-11/20/17 SVC-600 S BREA CYN B	\$262.72
11751	01/30/2018		CITY OF INDUSTRY-REFUSE	\$78.80
	Invoice	Date	Description	Amount
	3060968	12/01/2017	DISP SVC-METROLINK	\$78.80
11752	01/30/2018		SO CAL INDUSTRIES	\$93.92
	Invoice	Date	Description	Amount
	303940	12/06/2017	RR RENTAL-METROLINK	\$93.92
11753	01/30/2018		CITY OF INDUSTRY	\$11,287.00
	Invoice	Date	Description	Amount
	1/18/2018	01/18/2018	REIMBURSE FOR MTA FINAL AUDIT-DEPOSITED	\$11,287.00

CITY OF INDUSTRY

PROP A

February 22, 2018

Check	Date		Payee Name	Check Amount
PROPA.CHK - Prop A Checking				
11754	01/30/2018		CITY OF INDUSTRY-REFUSE	\$78.80
	Invoice	Date	Description	Amount
	3121976	01/01/2018	DISP SVC-METROLINK	\$78.80
11755	01/30/2018		INDUSTRY SECURITY SERVICES	\$3,627.78
	Invoice	Date	Description	Amount
	14-22000	01/12/2018	SECURITY SVC-METROLINK	\$1,729.73
	14-22031	01/19/2018	SECURITY SVC-METROLINK	\$1,898.05
11756	01/30/2018		SO CALIFORNIA EDISON COMPANY	\$256.39
	Invoice	Date	Description	Amount
	2018-00000927	01/18/2018	11/20-12/20/17 SVC-600 S BREA CYN B	\$256.39
11757	01/30/2018		WALNUT VALLEY WATER DISTRICT	\$158.21
	Invoice	Date	Description	Amount
	2862867	01/09/2018	12/1-12/31/17 SVC-IRR METROLINK STN-SPANISH LN	\$138.78
	2863759	01/10/2018	12/1-1/2/18 SVC-PLATFORM METROLINK	\$19.43
11758	02/05/2018		SO CAL INDUSTRIES	\$94.92
	Invoice	Date	Description	Amount
	308091	01/05/2018	RR RENTAL-METROLINK	\$94.92
11759	02/05/2018		MYERS & SONS HI-WAY SAFETY,	\$175.24
	Invoice	Date	Description	Amount
	68106	12/14/2017	CUSTOM SIGNS-METROLINK	\$175.24

Checks	Status	Count	Transaction Amount
	Total	12	\$27,518.10

**CITY OF INDUSTRY
WELLS FARGO REFUSE
February 22, 2018**

Check	Date		Payee Name	Check Amount
REFUSE - Refuse Account				
WT238	01/31/2018		CITY OF INDUSTRY DISPOSAL CO.	\$597,884.36
	Invoice	Date	Description	Amount
	3123887	01/31/2018	REFUSE SVC 01/01-01/23/18	\$597,884.36
WT239	02/07/2018		CITY OF INDUSTRY DISPOSAL CO.	\$776,190.16
	Invoice	Date	Description	Amount
	3145712	02/07/2018	REFUSE SVC 01/23-01/31/18	\$776,190.16
80081	02/22/2018		ARROW REALTY, LLC	\$787.30
	Invoice	Date	Description	Amount
	1/30/2018	01/29/2018	REFUND-ACCOUNT #406803	\$787.30
80082	02/22/2018		CITY OF INDUSTRY DISPOSAL CO.	\$700.00
	Invoice	Date	Description	Amount
	1/29/2018	01/29/2018	REIMBURSEMENT-ACCT #402767, DEPOSIT ERROR	\$700.00
80083	02/22/2018		STOUT ROOFING COMPANY	\$681.38
	Invoice	Date	Description	Amount
	1/29/2018	01/29/2018	REFUND-ACCOUNT #406623	\$681.38

Checks	Status	Count	Transaction Amount
	Total	5	\$1,376,243.20

CITY OF INDUSTRY
WELLS FARGO BANK
February 22, 2018

Check	Date			Payee Name	Check Amount
CITY.WF.CHK - City General Wells Fargo					
68127	02/01/2018			FIDELITY SECURITY LIFE	\$1,379.79
	Invoice	Date	Description	Amount	
	163403671	02/01/2018	VISION PREMIUM FOR FEBRUARY 2018	\$1,379.79	
68128	02/02/2018			FRONTIER	\$314.86
	Invoice	Date	Description	Amount	
	2018-00000910	01/16/2018	01/16-02/15/18 SVC - GS-208 OLD RANCH RD	\$57.93	
	2018-00000911	01/16/2018	01/16-02/15/18 SVC - BREA CYN PUMP STN	\$78.08	
	2018-00000912	01/16/2018	01/16-02/15/18 SVC - PH AUTO PLAZA	\$178.85	
68129	02/02/2018			INDUSTRY PUBLIC UTILITY	\$3,437.54
	Invoice	Date	Description	Amount	
	2018-00000913	01/18/2018	12/10-01/10/18 SVC - 370 GRAND AVE SOUTH	\$62.03	
	2018-00000914	01/18/2018	12/10-01/10/18 SVC - 600 BREA CYN RD	\$3,375.51	
68130	02/02/2018			SAN GABRIEL VALLEY WATER CO.	\$653.96
	Invoice	Date	Description	Amount	
	2018-00000915	01/17/2018	12/14-01/16/18 SVC - 14329 VALLEY	\$381.15	
	2018-00000916	01/18/2018	12/15-01/17/18 SVC - 336 EL ENCANTO	\$116.12	
	841 7TH-JAN18	01/19/2018	12/18-01/18/18 SVC - 841 S SEVENTH	\$156.69	
68131	02/02/2018			SO CALIFORNIA EDISON COMPANY	\$58,084.86
	Invoice	Date	Description	Amount	
	2018-00000899	01/18/2018	12/15-01/17/18 SVC - PECK RD S/O PELLISSIER	\$46.08	
	841 7TH-JAN18	01/18/2018	12/15-01/17/18 SVC - 841 7TH AVE	\$588.78	
	2018-00000900	01/18/2018	12/15-01/17/18 SVC - 17635 GALE	\$1,194.79	
	2018-00000901	01/18/2018	12/15-01/17/18 SVC - VARIOUS SITES	\$98.50	
	2018-00000902	01/18/2018	12/15-01/17/18 SVC - 1341 FULLERTON RD	\$26.30	
	2018-00000903	01/18/2018	12/15-01/17/18 SVC - VARIOUS SITES	\$1,705.62	
	2018-00000904	01/18/2018	12/15-01/17/18 SVC - VARIOUS SITES	\$5,480.86	
	2018-00000905	01/18/2018	12/01-01/01/18 SVC - VARIOUS SITES	\$4,100.44	

**CITY OF INDUSTRY
WELLS FARGO BANK
February 22, 2018**

Check	Date		Payee Name	Check Amount
CITY.WF.CHK - City General Wells Fargo				
	2018-00000906	01/18/2018	09/14/17-01/01/18 SVC - VARIOUS SITES	\$38,085.58
	2018-00000907	01/18/2018	12/15-01/17/18 SVC - VARIOUS SITES	\$3,611.94
	2018-00000908	01/18/2018	11/28-01/17/18 SVC - VARIOUS SITES	\$3,145.97
68132	02/02/2018		SO CALIFORNIA EDISON COMPANY	\$242.36
	Invoice	Date	Description	Amount
	2018-00000909	01/19/2018	12/15-01/17/18 SVC - 19001 TONNER CYN RD	\$242.36
68133	02/02/2018		SO CALIFORNIA EDISON COMPANY	\$17,386.22
	Invoice	Date	Description	Amount
	7500877954	01/18/2018	12/01-12/31/17 SVC - 745 ANAHEIM-PUENTE RD	\$1,027.46
	7500877965	01/18/2018	12/01-12/31/17 SVC - 133 N. AZUSA AVE	\$1,860.71
	7500877966	01/18/2018	12/01-12/31/17 SVC - 208 S. WADDINGHWAM WAY	\$14,498.05
68134	02/02/2018		SOCALGAS	\$15.29
	Invoice	Date	Description	Amount
	2018-00000917	01/17/2018	12/13-01/13/18 SVC - 610 S BREA CYN RD	\$15.29
68135	02/02/2018		WALNUT VALLEY WATER DISTRICT	\$1,194.15
	Invoice	Date	Description	Amount
	2863017	01/09/2018	12/01-12/31/17 SVC - BAKER PKWY METER #1	\$186.97
	2863018	01/09/2018	12/01-12/31/17 SVC - BAKER PKWY METER #2	\$167.68
	2863024	01/09/2018	12/01-12/31/17 SVC - GRAND AVE CROSSING	\$462.04
	2863025	01/09/2018	12/01-12/31/17 SVC - GRAND AVE CROSSING	\$75.51
	2863027	01/09/2018	12/01-12/31/17 SVC - 22002 VALLEY BLVD	\$24.47
	2863089	01/09/2018	12/01-12/31/17 SVC - 21627 GRAND CROSSING PKWY	\$150.53
	2863090	01/09/2018	12/01-12/31/17 SVC - 21627 GRAND CROSSING PKWY	\$126.95
68136	02/12/2018		PAVEMENT COATINGS CO.	\$163,310.70
	Invoice	Date	Description	Amount
	#1CITY-1429	01/02/2018	2016-2017 SLURRY SEAL	\$171,906.00

**CITY OF INDUSTRY
WELLS FARGO BANK
February 22, 2018**

Check	Date			Payee Name	Check Amount
CITY.WF.CHK - City General Wells Fargo					
68137	02/13/2018			AT & T	\$322.36
	Invoice	Date	Description	Amount	
	2018-00000975	01/17/2018	01/17-02/16/18 SVC - TONNER-RADIO	\$148.78	
	2018-00000976	01/17/2018	01/17-02/16/18 SVC - TONNER-GUARD SHACK	\$173.58	
68138	02/13/2018			AT & T	\$176.00
	Invoice	Date	Description	Amount	
	6768089302	01/23/2018	12/19-01/18/18 SVC - 600 S BREA CYN-METROLINK	\$176.00	
68139	02/13/2018			CITY OF CHINO HILL UTILITY	\$245.15
	Invoice	Date	Description	Amount	
	2018-00000977	01/22/2018	12/12-01/18/18 SVC - 1550 RANCHO HILLS DR	\$245.15	
68140	02/13/2018			FRONTIER	\$645.15
	Invoice	Date	Description	Amount	
	2018-00000945	01/19/2018	01/19-02/18/18 SVC - EM-21415 BAKER PKWY	\$60.33	
	2018-00000946	01/19/2018	01/19-02/18/18 SVC - EM-21438 BAKER PKWY BLDG	\$60.33	
	2018-00000947	01/19/2018	01/19-02/18/18 SVC - FOLLOW'S CAMP GUARD	\$74.99	
	2018-00000948	01/19/2018	01/19-02/18/18 SVC - GS-21660 VALLEY BLVD	\$53.03	
	2018-00000949	01/22/2018	01/22-02/21/18 SVC - GS-21858 VALLEY BLVD	\$63.01	
	2018-00000950	01/22/2018	01/22-02/21/18 SVC - 21733 BAKER PKWY BLDG 21	\$60.33	
	2018-00000951	01/25/2018	01/25-02/24/18 SVC - EM-21760 GARCIA LN	\$66.37	
	2018-00000952	01/25/2018	01/25-02/24/18 SVC - EM-21535 BAKER PKWY BLDG	\$51.30	
	2018-00000953	01/28/2018	01/28-02/27/18 SVC - EM-21912 GARCIA LN-ALARM	\$66.37	
	2018-00000954	01/28/2018	01/28-02/27/18 SVC - EM-21700 BAKER PKWY BLDG	\$51.30	
	2018-00000955	01/28/2018	01/28-02/27/18 SVC - EM-179 S. GRAND AVE	\$37.79	
68141	02/13/2018			ROWLAND WATER DISTRICT	\$814.39
	Invoice	Date	Description	Amount	
	2018-00000968	02/01/2018	12/13-01/18/18 SVC - 17217 & 17229 CHESTNUT - IRR	\$120.92	

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Check	Date	Payee Name	Check Amount	
CITY.WF.CHK - City General Wells Fargo				
	2018-00000969	02/01/2018	12/13-01/18/18 SVC - 755 NOGALES (RC)	\$206.87
	2018-00000970	02/01/2018	12/13-01/18/18 SVC - 1123D HATCHER STREET	\$69.08
	2018-00000971	02/01/2018	12/13-01/18/18 SVC - AZUSA AVE (RC)	\$50.54
	2018-00000972	02/01/2018	12/13-01/18/18 SVC - 1135 HATCHER STREET	\$33.44
	2018-00000973	02/01/2018	12/13-01/18/18 SVC - 1123C HATCHER STREET	\$179.24
	2018-00000974	02/01/2018	12/14-01/22/18 SVC - 1100 AZUSA AVENUE	\$154.30
68142	02/13/2018	SAN GABRIEL VALLEY WATER CO.		\$8,301.03
	Invoice	Date	Description	Amount
	2018-00000956	01/29/2018	12/29-01/26/18 SVC - CROSSROADS PKWY NORTH	\$943.41
	2018-00000957	01/29/2018	12/29-01/26/18 SVC - PELLISSIER	\$332.40
	2018-00000958	01/29/2018	12/29-01/26/18 SVC - S/E COR OF PELLISSIER	\$646.66
	2018-00000959	01/29/2018	12/29-01/26/18 SVC - CROSSROADS PKWY STA 103-	\$152.79
	2018-00000960	01/29/2018	12/29-01/26/18 SVC - CROSSROADS PKWY SOUTH	\$713.04
	2018-00000961	01/29/2018	12/29-01/26/18 SVC - PECK/UNION PACIFIC BRIDGE	\$404.58
	2018-00000962	01/29/2018	12/29-01/26/18 SVC - PELLISSIER	\$252.30
	2018-00000963	01/29/2018	12/29-01/26/18 SVC - PELLISSIER	\$664.29
	2018-00000964	01/29/2018	12/29-01/26/18 SVC - IRRIG SALT LAKE/SEVENTH	\$193.73
	2018-00000965	01/29/2018	12/29-01/26/18 SVC - CROSSROADS PKWY SOUTH	\$2,805.91
	2018-00000966	01/29/2018	12/29-01/26/18 SVC - CROSSROADS PKWY STA 111-	\$258.21
	2018-00000967	01/29/2018	12/29-01/26/18 SVC - CROSSROADS PKWY STA 129-	\$933.71
68143	02/13/2018	SO CALIFORNIA EDISON COMPANY		\$7,321.81
	Invoice	Date	Description	Amount
	2018-00000928	01/22/2018	11/18/17-01/20/18 SVC - 14661 & 14911 CLARK AVE U	\$197.14
	2018-00000929	01/23/2018	12/20-01/22/18 SVC - 1007 LAWSON ST TC1	\$50.84
	2018-00000930	01/23/2018	12/20-01/22/18 SVC - 580 BREA CYN RD	\$27.00
	2018-00000931	01/23/2018	12/20-01/22/18 SVC - 575 BREA CYN RD	\$27.27
	2018-00000932	01/23/2018	12/20-01/22/18 SVC - 21380 VALLEY PED	\$26.44
	2018-00000934	01/25/2018	12/01-01/23/18 SVC - 600 S BREA CYN RD	\$97.99
	2018-00000935	01/25/2018	12/22-01/24/18 SVC - 17378 GALE AVE B	\$461.01

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Check	Date	Payee Name	Check Amount
CITY.WF.CHK - City General Wells Fargo			
	2018-00000936	01/25/2018 12/22-01/24/18 SVC - 745 ANAHEIM PUENTE RD CP	\$89.31
	2018-00000937	01/26/2018 12/22-01/24/18 SVC - BREA CYN RD-VARIOUS SITES	\$1,100.85
	2018-00000938	01/27/2018 12/27-01/26/18 SVC - 137 N HUDSON AVE	\$354.96
	2018-00000939	01/30/2018 12/27-01/26/18 SVC - VARIOUS SITES	\$435.29
	2018-00000940	02/01/2018 01/01-02/01/18 SVC - 1 VALLEY/AZUSA	\$16.00
	2018-00000941	02/02/2018 01/01-02/01/18 SVC - 600 BREA CYN RD	\$475.78
	2018-00000942	02/02/2018 01/01-02/01/18 SVC - VARIOUS SITES-	\$322.47
	2018-00000943	02/02/2018 01/03-02/01/18 SVC - 208 S WADDINGHAM WAY CP	\$129.36
	2018-00000944	02/03/2018 01/03-02/01/18 SVC - 15625 STAFFORD ST	\$1,865.81
	15660STAFF-FEB18	02/03/2018 12/27-01/26/18 SVC - 15660 STAFFORD ST	\$1,644.29
68144	02/13/2018	SO CALIFORNIA EDISON COMPANY	\$62.49
	Invoice	Date Description	Amount
	2018-00000933	01/24/2018 12/21-01/23/18 SVC - 5010 ENGLISH RD	\$62.49
68145	02/13/2018	SO CALIFORNIA EDISON COMPANY	\$338.56
	Invoice	Date Description	Amount
	7500878844	01/24/2018 10/01-10/31/17 SVC - RELIABILITY SVC	\$338.56
68146	02/13/2018	SOCALGAS	\$15.29
	Invoice	Date Description	Amount
	2018-00000978	01/31/2018 12/29-01/29/18 SVC - 710 NOGALES ST	\$15.29
68147	02/13/2018	SUBURBAN WATER SYSTEMS	\$461.45
	Invoice	Date Description	Amount
	180051008772	01/22/2018 12/22-01/22/18 SVC - 205 HUDSON AVE	\$45.58
	180031199855	01/23/2018 12/23-01/23/18 SVC - AZUSA & GEMINI	\$415.87
68148	02/14/2018	SHELL ENERGY NORTH AMERICA-	\$100,116.00
	Invoice	Date Description	Amount
	1954818	02/05/2018 CAPACITY FOR DEC 2017 AND JAN 2018	\$16,500.00

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Check	Date		Payee Name	Check Amount
CITY.WF.CHK - City General Wells Fargo				
	1954817	02/05/2018	WHOLESALE USE-JAN 2018	\$83,616.00
68149	02/22/2018		ALL AMERICAN CONTRACTING	\$5,900.00
	Invoice	Date	Description	Amount
	1533	01/30/2018	NEW FLOORING-FIRST FLOOR BREAK ROOM	\$5,900.00
68150	02/22/2018		ALL AMERICAN ELECTRIC	\$5,102.66
	Invoice	Date	Description	Amount
	5989	01/30/2018	SERVICE CALL-EL ENCANTO	\$930.00
	5993	02/07/2018	SERVICE CALL-CITY HALL	\$807.09
	5991	02/07/2018	SERVICE CALL-CITY HALL	\$714.12
	5992	02/07/2018	SERVICE CALL-CITY HALL	\$680.43
	5979	01/22/2018	SERVICE CALL-CITY HALL	\$310.00
	5985	01/25/2018	SERVICE CALL-CITY HALL	\$1,661.02
68151	02/22/2018		ANNEALTA GROUP	\$138,825.00
	Invoice	Date	Description	Amount
	1161	02/05/2018	333 HACIENDA BLVD	\$810.00
	1156	02/05/2018	GENERAL DEVELOPMENT SVC-JAN 2018	\$58,795.00
	1157	02/05/2018	GENERAL PLANNING SVC-JAN 2018	\$50,367.50
	1158	02/05/2018	17585 COLIMA RD #C	\$1,105.00
	1160	02/05/2018	221 S. HACIENDA BLVD	\$425.00
	1159	02/05/2018	17801 GALE AVE	\$340.00
	1155	02/05/2018	STORM WATER COMPLIANCE	\$26,982.50
68152	02/22/2018		APPLIED METERING	\$1,790.00
	Invoice	Date	Description	Amount
	5853	02/02/2018	UTILITY OPERATIONS AND MAINT-JAN 2018	\$1,790.00
68153	02/22/2018		B AND T CATTLE	\$14,580.00
	Invoice	Date	Description	Amount

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Check	Date		Payee Name	Check Amount
CITY.WF.CHK - City General Wells Fargo				
	80	02/01/2018	MAINT SVC-FEB 2018	\$14,580.00
68154	02/22/2018		BOUZA LAW FIRM	\$40,000.00
	Invoice	Date	Description	Amount
	799	01/31/2018	LEGAL SVC-JAN 2018	\$40,000.00
68155	02/22/2018		CDW GOVERNMENT LLC	\$17,942.60
	Invoice	Date	Description	Amount
	LNF6661	01/26/2018	COMPUTER EQUIPMENT	\$17,942.60
68156	02/22/2018		CHAD'S PROFESSIONAL CLEANING	\$6,600.00
	Invoice	Date	Description	Amount
	01/18/2018	01/18/2018	CARPET REPAIRS & RESTRETCH-IMC	\$6,600.00
68157	02/22/2018		CINTAS CORPORATION LOC 693	\$367.70
	Invoice	Date	Description	Amount
	053193649	01/29/2018	DOOR MATS	\$270.36
	693829028	01/26/2018	DOOR MATS	\$48.67
	693831043	02/02/2018	DOOR MATS	\$48.67
68158	02/22/2018		CITY OF INDUSTRY-REFUSE	\$15,236.78
	Invoice	Date	Description	Amount
	3145075	02/01/2018	DISP SVC-AMAR & BALDWIN PK BLVD	\$2,165.23
	3145333	01/31/2018	DISP SVC-1123 HATCHER	\$6,098.37
	3143895	02/01/2018	DISP SVC-TONNER CYN	\$698.00
	3143898	02/01/2018	DISP SVC-TRES HERMANOS	\$144.83
	3143897	02/01/2018	STORAGE BOX RENTAL-CAMP COURAGE	\$300.00
	3143896	02/01/2018	DISP SVC-CITY HALL	\$313.42
	3145380	01/31/2018	DISP SVC-HADDICK'S IMPOUND YD	\$754.96
	3144131	02/01/2018	DISP SVC-205 N HUDSON	\$192.82
	3144132	02/01/2018	DISP SVC-841 7TH VE	\$192.82

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Check	Date		Payee Name	Check Amount
CITY.WF.CHK - City General Wells Fargo				
	3144428	02/01/2018	DISP SVC-CITY BUS STOPS	\$4,376.33
68159	02/22/2018		CNC ENGINEERING	\$52,718.51
	Invoice	Date	Description	Amount
	032018	02/08/2018	MEALS/WHEELS RENT-MAR 2018	\$5,000.00
	456544	02/08/2018	VALLEY BLVD RECONSTRUCTION	\$15,705.69
	456537	02/08/2018	VARIOUS ASSIGNMENTS RELATED TO SUCCESSOR	\$26,046.97
	456535	02/08/2018	TRES HERMANOS GENERAL ENGINEERING	\$5,089.01
	456542	02/08/2018	NPDES STORM WATER	\$166.29
	456543	02/08/2018	AJAX AVE STORM DRAIN	\$451.84
	456545	02/08/2018	AJAX AVE STORM DRAIN	\$258.71
68160	02/22/2018		CORELOGIC INFORMATION	\$192.50
	Invoice	Date	Description	Amount
	81867954	01/31/2018	GEOGRAPHIC PKG-JAN 2018	\$192.50
68161	02/22/2018		DARWICK, KRISTI	\$300.00
	Invoice	Date	Description	Amount
	HMWC18-1	01/31/2018	CALLIGRAPHY WORKSHOP-HOMESTEAD	\$300.00
68162	02/22/2018		EGOSCUE LAW GROUP	\$5,800.00
	Invoice	Date	Description	Amount
	11861	02/06/2018	LEGAL SVC-FOLLOW'S CAMP	\$5,800.00
68163	02/22/2018		ELECTRA-MEDIA, INC	\$1,763.00
	Invoice	Date	Description	Amount
	6539	11/15/2017	PUENTE HILLS AUTO DISPLAY	\$1,763.00
68164	02/22/2018		ENCO UTILITY SERVICES	\$2,500.00
	Invoice	Date	Description	Amount
	20-3-03-37	01/12/2018	CUSTOMER ACCT SVC-DEC 2017	\$2,500.00

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CITY.WF.CHK - City General Wells Fargo					
68165	02/22/2018			FUEL PROS, INC.	\$877.00
	Invoice	Date	Description	Amount	
	33520	12/22/2017	IH FUEL STN MAINT	\$418.00	
	33844	01/18/2018	IH FUEL STN MAINT	\$309.00	
	34024	01/31/2018	IH FUEL STN MAINT	\$150.00	
68166	02/22/2018			GARCIA'S FENCE CORP	\$4,300.00
	Invoice	Date	Description	Amount	
	21803	02/05/2018	INSTALLED FENCE-1123 HATCHER	\$4,300.00	
68167	02/22/2018			GMS ELEVATOR SERVICES, INC	\$138.00
	Invoice	Date	Description	Amount	
	91322	02/01/2018	MONTHLY ELEVATOR SVC-CITY HALL	\$138.00	
68168	02/22/2018			HADDICK'S AUTO BODY	\$3,744.15
	Invoice	Date	Description	Amount	
	047923	01/24/2018	SMOG REPORTS	\$1,000.00	
	047916	01/24/2018	AUTO MAINT-LIC 1347776	\$14.02	
	047917	01/24/2018	AUTO MAINT-LIC 1279616	\$226.32	
	047915	01/24/2018	AUTO MAINT-LIC 1198606	\$395.34	
	047914	01/24/2018	AUTO MAINT-LIC 1370863	\$515.23	
	047913	01/24/2018	AUTO MAINT-LIC 8G22464	\$69.00	
	047912	01/24/2018	AUTO MAINT-LIC 1166174	\$69.00	
	047911	01/24/2018	AUTO MAINT-LIC 1356177	\$69.00	
	047910	01/24/2018	AUTO MAINT-LIC 1379549	\$69.00	
	047909	01/24/2018	AUTO MAINT-LIC 6UBX655	\$69.00	
	047908	01/24/2018	AUTO MAINT-LIC 7W20338	\$69.00	
	047907	01/24/2018	AUTO MAINT-LIC 6UQX922	\$126.17	
	047906	01/24/2018	AUTO MAINT-LIC 1320295	\$206.72	
	047905	01/24/2018	AUTO MAINT-LIC 1094930	\$71.40	

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CITY.WF.CHK - City General Wells Fargo				
	047902	01/24/2018	AUTO MAINT-LIC 1347776	\$654.95
	184059	01/24/2018	CONTAINER STORAGE	\$120.00
68169	02/22/2018		HDL COREN & CONE	\$2,400.00
	Invoice	Date	Description	Amount
	0024893-IN	01/24/2018	CONTRACT SVC PROP TAX-FIRST QTR 2018	\$2,400.00
68170	02/22/2018		INDUSTRY SECURITY SERVICES	\$33,911.09
	Invoice	Date	Description	Amount
	14-22055	01/26/2018	SECURITY SVC-TRES HERMANOS	\$2,187.12
	14-22084	02/01/2018	VEHICLE FUEL-TRES HERMANOS	\$721.00
	14-22081	02/01/2018	SECURITY SVC-TRES HERMANOS	\$2,187.12
	14-22047	01/26/2018	SECURITY SVC 1/19-1/25/18	\$14,423.68
	14-22073	02/01/2018	SECURITY SVC 1/26-2/1/18	\$14,392.17
68171	02/22/2018		JANE G. PISANO	\$7,500.00
	Invoice	Date	Description	Amount
	2018-1	01/31/2018	ANALYSIS OF OPERATION-HOMESTEAD	\$7,500.00
68172	02/22/2018		JAS PACIFIC	\$32,640.00
	Invoice	Date	Description	Amount
	BI 12760	12/05/2017	DEVELOPMENT SUPPORT-NOV 2017	\$32,640.00
68173	02/22/2018		JMDíaz, Inc.	\$274,800.70
	Invoice	Date	Description	Amount
	014 (18-002)	01/31/2018	STAFF AUGMENTATION-JAN 2018	\$274,800.70
68174	02/22/2018		KALICO OFFICE FURNITURE, LLC	\$6,241.50
	Invoice	Date	Description	Amount
	6435	02/09/2018	OFFICE FURNITURE	\$6,241.50

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CITY.WF.CHK - City General Wells Fargo					
68175	02/22/2018			KAREN WISE	\$20,000.00
	Invoice	Date	Description	Amount	
	2018-1	01/31/2018	ANALYSIS OF OPERATION-HOMESTEAD	\$20,000.00	
68176	02/22/2018			KC PULP & PAPER	\$200.00
	Invoice	Date	Description	Amount	
	01/19/18	01/19/2018	SALVAGE REFUND-OVERPAYMENT OF ANNUAL	\$200.00	
68177	02/22/2018			KIMLEY-HORN & ASSOCIATES, INC.	\$5,451.99
	Invoice	Date	Description	Amount	
	10639229	12/31/2017	ENGINEERING/TRAFFIC SURVEY	\$5,451.99	
68178	02/22/2018			KLINE'S PLUMBING, INC.	\$7,140.02
	Invoice	Date	Description	Amount	
	10542	12/07/2017	EMERGENCY REPAIR-205 HUDSON AVE	\$350.00	
	10610-02	01/29/2018	BALANCE FOR REPAIR ON PUMP #2-MAYO/GRAND	\$4,782.00	
	10616	02/01/2018	EMERGENCY REPAIR-HOMESTEAD	\$373.02	
	10546	02/04/2018	EMERGENCY REPAIR-HOMESTEAD	\$250.00	
	10547	12/04/2017	EMERGENCY REPAIR-205 HUDSON AVE	\$320.00	
	10625	02/08/2018	DEPOSIT-SECURE WATER HAMMERING AT EL	\$1,065.00	
68179	02/22/2018			L A COUNTY SHERIFF'S	\$795,143.39
	Invoice	Date	Description	Amount	
	182469CY	02/07/2018	SHERIFF CONTRACT-JAN 2018	\$795,143.39	
68180	02/22/2018			LA PUENTE VALLEY COUNTY	\$9,224.51
	Invoice	Date	Description	Amount	
	LRAS; 02	12/31/2017	EMERGENCY REPAIR-AZUSA AND SALAIS	\$6,052.82	
	LRDJ; 01	12/31/2017	EMERGENCY REPAIR-EL ENCANTO	\$3,171.69	
68181	02/22/2018			LANG, HANSEN, O'MALLEY &	\$25,000.00

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Check	Date		Payee Name	Check Amount
CITY.WF.CHK - City General Wells Fargo				
	Invoice	Date	Description	Amount
	6820	02/02/2018	LEGISLATIVE SVC-FEB 2018	\$25,000.00
68182	02/22/2018		LOCKS PLUS	\$726.00
	Invoice	Date	Description	Amount
	33598	01/11/2018	INSTALL LINE-150 N. HUDSON	\$238.33
	33605	01/25/2018	REPAIR STILE DOOR-HOMESTEAD	\$487.67
68183	02/22/2018		MAINTENANCE SHACK, INC.	\$93.59
	Invoice	Date	Description	Amount
	264212	02/01/2018	MISC SUPPLIES-TONNER CYN	\$93.59
68184	02/22/2018		METHOD TECHNOLOGIES	\$360.00
	Invoice	Date	Description	Amount
	HST41476	02/02/2018	ANNUAL BILLING-SHARED HOSTING	\$360.00
68185	02/22/2018		MICHAEL BAKER INTERNATIONAL,	\$5,962.91
	Invoice	Date	Description	Amount
	1003456	01/26/2018	PLANNING SUPPORT-14750 NELSON AVE	\$5,962.91
68186	02/22/2018		MX GRAPHICS, INC.	\$18.62
	Invoice	Date	Description	Amount
	14593	02/02/2018	LAMINATE POSTING FOR CITY-1444	\$3.29
	14592	02/02/2018	LAMINATE POSTING FOR CITY-1436	\$1.64
	14591	02/02/2018	LAMINATE POSTING FOR CITY-1435	\$1.10
	14595	02/02/2018	LAMINATE POSTING FOR CITY-1429	\$1.64
	14594	02/02/2018	LAMINATE POSTING FOR CITY-1425	\$2.19
	14572	01/31/2018	MAP WITH ALL MAINT JOBS	\$8.76
68187	02/22/2018		NEOFUNDS BY NEOPOST	\$500.00
	Invoice	Date	Description	Amount

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CITY.WF.CHK - City General Wells Fargo				
	IN0000011282450B	02/04/2018	POSTAGE-FINANCE DEPT	\$500.00
68188	02/22/2018		NOBEL SYSTEMS, INC.	\$53,694.80
	Invoice	Date	Description	Amount
	14241	01/25/2018	GEOGRAPHIC INFORMATION SYSTEM	\$53,694.80
68189	02/22/2018		PACIFIC OFFICE INTERIORS	\$1,390.57
	Invoice	Date	Description	Amount
	6423-1	01/19/2018	OFFICE FURNITURE	\$1,390.57
68190	02/22/2018		PACIFIC UTILITY INSTALLATION	\$70,496.56
	Invoice	Date	Description	Amount
	16262	11/30/2017	OPERATIONS AND MAINT SVC	\$49,825.80
	16439	01/19/2018	OPERATIONS AND MAINT SVC	\$1,216.92
	16431	01/18/2018	OPERATIONS AND MAINT SVC	\$3,271.84
	16441	01/19/2018	OPERATIONS AND MAINT SVC	\$882.00
	16452	01/31/2018	OPERATIONS/MAINT-SUBSTATION	\$15,300.00
68191	02/22/2018		PEGEX, INC.	\$195.00
	Invoice	Date	Description	Amount
	0054577-11012131	01/30/2018	NON-CONFORMING OIL FEE	\$195.00
68192	02/22/2018		PITNEY BOWES, INC.	\$111.83
	Invoice	Date	Description	Amount
	3101929025	01/30/2018	POSTAGE MACHINE-FIRST FLOOR	\$111.83
68193	02/22/2018		PUENTE HILLS CHEVROLET	\$387.72
	Invoice	Date	Description	Amount
	93623	12/15/2017	AUTO MAINT-LIC 7W20338	\$387.72
68194	02/22/2018		QUINN COMPANY	\$660.61

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Check	Date		Payee Name	Check Amount
CITY.WF.CHK - City General Wells Fargo				
	Invoice	Date	Description	Amount
	W0810193600	01/23/2018	REPAIR OF CATERPILLAR	\$660.61
68195	02/22/2018		RESOURCE BUILDING MATERIALS	\$120.31
	Invoice	Date	Description	Amount
	2325709	01/24/2018	SUPPLIES-CITY HALL	\$202.44
	246711	01/24/2018	CREDIT ON RETURNED ITEM	(\$82.13)
68196	02/22/2018		RICOH USA, INC.	\$135.76
	Invoice	Date	Description	Amount
	5052132062	01/24/2018	METER READING-FINANCE COPIER	\$135.76
68197	02/22/2018		RICOH USA, INC.	\$303.63
	Invoice	Date	Description	Amount
	57807038	01/20/2018	COPIER LEASE-IPUC	\$303.63
68198	02/22/2018		ROBERTSON-BRYAN, INC.	\$315.00
	Invoice	Date	Description	Amount
	12754	01/26/2018	ELECTRIC UTILITY OPERATIONS SUPPORT	\$315.00
68199	02/22/2018		SAGE ENVIRONMENTAL GROUP	\$9,903.42
	Invoice	Date	Description	Amount
	641	01/29/2018	BIOLOGICAL MONITORING FOR SGVCC MAINT SVC	\$9,903.42
68200	02/22/2018		SAN GABRIEL VALLEY	\$87,290.62
	Invoice	Date	Description	Amount
	CI02052018	02/05/2018	LANDSCAPE AND MAINT SVC	\$40,906.35
	CI02072018	02/07/2018	LANDSCAPE AND MAINT SVC	\$46,384.27
68201	02/22/2018		SAN GABRIEL VALLEY NEWSPAPER	\$2,172.80
	Invoice	Date	Description	Amount

**CITY OF INDUSTRY
WELLS FARGO BANK
February 22, 2018**

Check	Date		Payee Name	Check Amount
CITY.WF.CHK - City General Wells Fargo				
	11069954	01/25/2018	NOTICE OF PUBLIC HEARING	\$815.92
	11068882	01/29/2018	NOTICE INVITING BIDS	\$1,356.88
68202	02/22/2018		SATSUMA LANDSCAPE & MAINT.	\$102,622.41
	Invoice	Date	Description	Amount
	0118XROADS	01/31/2018	LANDSCAPE SVC-CROSSROADS NORTH & SOUTH	\$17,084.41
	0118CH	01/31/2018	LANDSCAPE SVC-CIVIC FINANCIAL CENTER	\$26,881.71
	0118CH-1	01/31/2018	LANDSCAPE SVC-VARIOUS AGENCY SITES	\$22,786.64
	0118TA	01/31/2018	LANDSCAPE SVC-TEMPLE & AZUSA AVE	\$35,869.65
68203	02/22/2018		SCS FIELD SERVICES	\$12,632.00
	Invoice	Date	Description	Amount
	0319484	01/31/2018	IH MAINT-LANDFILL GAS SYSTEM	\$12,632.00
68204	02/22/2018		SO CAL INDUSTRIES	\$90.34
	Invoice	Date	Description	Amount
	311361	01/26/2018	FENCE RENTAL-INDUSTRY HILLS	\$90.34
68205	02/22/2018		SQUARE ROOT GOLF &	\$177,622.02
	Invoice	Date	Description	Amount
	1330H	01/31/2018	LANDSCAPE SVC-VARIOUS CITY SITES	\$144,475.48
	1327ELHM	01/31/2018	LANDSCAPE SVC-VARIOUS CITY SITES	\$8,884.00
	1329ELHM	01/31/2018	LANDSCAPE SVC-HOMESTEAD	\$17,842.54
	1328ELHM	01/31/2018	LANDSCAPE SVC-EL ENCANTO	\$6,420.00
68206	02/22/2018		STAPLES BUSINESS ADVANTAGE	\$1,895.14
	Invoice	Date	Description	Amount
	8048468936	01/27/2018	OFFICE SUPPLIES	\$1,408.04
	8048370837	01/20/2018	OFFICE SUPPLIES	\$487.10
68207	02/22/2018		STATE COMPENSATION INS. FUND	\$5,700.42

**CITY OF INDUSTRY
WELLS FARGO BANK
February 22, 2018**

Check	Date		Payee Name	Check Amount
CITY.WF.CHK - City General Wells Fargo				
	Invoice	Date	Description	Amount
	FEBRUARY 2018	02/01/2018	PREMIUM FOR 2/1-3/1/18	\$5,700.42
68208	02/22/2018		STOTZ EQUIPMENT	\$858.17
	Invoice	Date	Description	Amount
	W16960	01/12/2018	REPAIR OF TRACTOR	\$858.17
68209	02/22/2018		THE MORROW LAW FIRM	\$19,166.00
	Invoice	Date	Description	Amount
	JAN-APR 2018	02/07/2018	CITY CLERK SVC-JAN THRU APR 2018	\$19,166.00
68210	02/22/2018		TPX COMMUNICATIONS	\$6,721.65
	Invoice	Date	Description	Amount
	99743543-0	01/31/2018	INTERNET SVC-CITY/METRO/IPUC	\$6,721.65
68211	02/22/2018		TPX COMMUNICATIONS	\$986.36
	Invoice	Date	Description	Amount
	99686232-0	01/31/2018	INTERNET SVC-HOMESTEAD	\$986.36
68212	02/22/2018		TRIBUNE DIRECT MARKETING, LLC	\$3,763.63
	Invoice	Date	Description	Amount
	66348	01/16/2018	CALENDAR BROCHURE-HOMESTEAD	\$3,458.26
	66312	01/15/2018	MAILING LIST-HOMESTEAD	\$305.37
68213	02/22/2018		TRIMARK ASSOCIATES, INC.	\$1,726.67
	Invoice	Date	Description	Amount
	10000089	02/01/2018	MAINT SVC-METRO SOLAR	\$1,726.67
68214	02/22/2018		UNDERGROUND SERVICE ALERT OF	\$62.80
	Invoice	Date	Description	Amount
	120180156	02/01/2018	DIG ALERTS	\$62.80

**CITY OF INDUSTRY
WELLS FARGO BANK
February 22, 2018**

Check	Date		Payee Name	Check Amount
CITY.WF.CHK - City General Wells Fargo				
68215	02/22/2018		UNION PACIFIC RAILROAD	\$1,678.09
	Invoice	Date	Description	Amount
	90075249	11/08/2017	PLAN REVIEW-AZUSA AVE BRIDGE PAINTING	\$420.02
	90074631	10/11/2017	PLAN REVIEW-AZUSA AVE BRIDGE PAINTING	\$440.01
	90073912	09/11/2017	PLAN REVIEW-AZUSA AVE BRIDGE PAINTING	\$398.04
	90075971	12/08/2017	PLAN REVIEW-AZUSA AVE BRIDGE PAINTING	\$420.02
68216	02/22/2018		UNUM LIFE INSURANCE COMPANY	\$1,026.00
	Invoice	Date	Description	Amount
	3/01-05/31/18	02/14/2018	LONG TERM CARE-SPOUSE	\$1,026.00
68217	02/22/2018		VANGUARD CLEANING SYSTEMS,	\$995.00
	Invoice	Date	Description	Amount
	51569	02/01/2018	JANITORIAL SVC-HOMESTEAD	\$995.00
68218	02/22/2018		VISION TECHNOLOGY SOLUTIONS,	\$16,400.00
	Invoice	Date	Description	Amount
	36214	02/02/2018	IT PROF SVC	\$16,400.00
68219	02/22/2018		WEATHERITE SERVICE	\$856.50
	Invoice	Date	Description	Amount
	L175546	01/26/2018	A/C MAINT-HOMESTEAD	\$692.50
	L175566	01/29/2018	A/C MAINT-IMC	\$164.00
68220	02/22/2018		WEGER, KRISTEN	\$2,544.46
	Invoice	Date	Description	Amount
	SPRING 2018	02/08/2018	REIMBURSEMENT FOR TUITION AND BOOKS	\$2,544.46
68221	02/22/2018		WILLDAN ENGINEERING	\$2,208.00
	Invoice	Date	Description	Amount

CITY OF INDUSTRY
WELLS FARGO BANK
February 22, 2018

Check	Date	Payee Name	Check Amount
CITY.WF.CHK - City General Wells Fargo			
00615940	01/19/2018	ENGINEERING SVC-VARIOUS SITES	\$2,208.00

Checks	Status	Count	Transaction Amount
	Total	95	\$2,497,565.92

CITY COUNCIL

ITEM NO. 5.2

HANDOUT ITEM

(To be Distributed Prior to Meeting)

CITY COUNCIL

ITEM NO. 6.1

RESOLUTION NO. CC 2018-05

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF INDUSTRY, CALIFORNIA, AMENDING SECTION 3.05, LEGAL COUNSEL OF ARTICLE III, OFFICERS AND EMPLOYEES, OF THE CITY OF INDUSTRY PROPERTY AND HOUSING MANAGEMENT AUTHORITY JOINT EXERCISE OF POWERS AGREEMENT

WHEREAS, the City Council of the City of Industry (“City”) and the Civic-Recreational-Industry Authority (“CRIA”) entered into a Joint Exercise of Powers Agreement (the “JPA”) effective on March 23, 2006, establishing the City of Industry Property and Housing Management Authority (the “Authority”); and

WHEREAS, City Council wishes to amend Section 3.05, Legal Counsel of Article III, Officers and Employees, of the JPA.

NOW, THEREFORE, CITY COUNCIL DOES HEREBY RESOLVE, DETERMINE, FIND, AND ORDER AS FOLLOWS:

SECTION 1: The City Council finds as follows that the above findings are true and correct and are incorporated herein by reference.

SECTION 2: The City Council hereby repeals Resolution 2017- 28, and determines it is no further effect or force.

SECTION 3: The City Council hereby amends Section 3.05, Legal Counsel of Article III, Officers and Employees, of the JPA to read in its entirety as follows:

“Legal Counsel. The City Attorney will be the legal counsel of the Authority and will perform such duties as may be prescribed by the Board and will be paid in accordance with the counsel’s written agreement with the Authority.”

SECTION 4: This Amendment shall become effective upon the adoption by the Civic-Recreational-Industry Authority (“CRIA”) of the City of Industry of a similar Resolution, amending Section 3.05, Legal Counsel of Article III, Officers and Employees, of the JPA.

SECTION 5: The provisions of this Resolution are severable and if any provision, clause, sentence, word or part thereof is held illegal, invalid, unconstitutional, or inapplicable to any person or circumstances, such illegality, invalidity, unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, sections, words or parts thereof of the Resolution or their applicability to other persons or circumstances.

SECTION 6: The City Clerk shall certify to the adoption of this Resolution and that the same shall be in full force and effect.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Industry at a regular meeting held on February 22, 2018 by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

Mark D. Radecki, Mayor

ATTEST:

Diane M. Schlichting, City Clerk

CITY COUNCIL


ITEM NO. 6.2




CITY OF INDUSTRY

MEMORANDUM

TO: Honorable Mayor Radecki and Members of the City Council

FROM: Paul J. Philips, City Manager 

STAFF: Susan Paragas, Director of Finance/Acting City Treasurer 

DATE: February 22, 2018

SUBJECT: Approval of Proposition A Assignment Agreement and Expenditure Budget from the General Fund and Revenue Budget from Prop A Funds with the City of Cudahy

BACKGROUND

Proposition A ("Prop A") requires that its funds be used exclusively to benefit public transit and transportation projects. Prop A guidelines allow for the exchange of unobligated Prop A transportation funds to be given, loaned, or traded to other jurisdiction in exchange for general or other funds.

DISCUSSION

The City is constructing transportation capital improvements which have been approved by the Los Angeles Metropolitan Transportation Authority ("Metro") for the use of Prop A Local Return monies. Given the limited amount of the City's Prop A Local Return allocation which is distributed on a per capita basis, the City desires to use a portion of the City of Cudahy's ("Cudahy") uncommitted Prop A allocation for the capital improvement projects in City of Industry and any other Metro approved projects.

Cudahy proposes to exchange \$312,500 of their Prop A funds with the \$225,000 of City of Industry's General fund at an exchange rate of \$0.72 per Prop A dollars.

FISCAL IMPACT:

The Prop A exchange will result in a reduction of \$225,000 in the City's General Fund. However, the City's Prop A funds will increase by \$312,500.

RECOMMENDED ACTION:

Staff recommends the City Council:

- a) Approve Prop A Funds exchange with the City of Cudahy; and
- b) Appropriate \$225,000 from the General Fund expenditure account number 100-985-9799 (General Fund-Prop A Exchange Expense) and increase budgeted revenues in Prop A Funds by \$312,500, account number 103-200-4411 (Prop A Exchange-Revenue).

ATTACHMENTS:

Proposition A Assignment Agreement

PROPOSITION A ASSIGNMENT AGREEMENT

This Proposition A Assignment Agreement ("Agreement") is made and entered into this TBD day of March/April 2018 ("Effective Date"), by and between the City of Cudahy, a California municipal corporation ("Cudahy"), and the City of Industry, a California municipal corporation ("Industry"). Cudahy and Industry are hereinafter collectively referred to as the "Parties" and individually as "Party".

RECITALS

WHEREAS, Proposition A Local Return monies ("Prop A Funds") require funds to be used exclusively to benefit public transit. The Los Angeles County Metropolitan Transportation Authority ("Metro") allows for the exchange of unobligated Prop A Funds for general or other funds; and

WHEREAS, Industry will be constructing capital improvements which have been approved by Metro for the use of Prop A Funds. On June 13, 2013, Metro approved the use of \$3,500,000.00 for the Fullerton Road Grade Separation at Gale Avenue ("Fullerton Grade Separation Project"). Given the limited amount of Industry's Local Return allocation, Industry desires to use a portion of Cudahy's uncommitted Prop A allocation for the above projects and any other Metro approved projects; and

WHEREAS, Metro has already approved the Fullerton Grade Separation Project; and

WHEREAS, Cudahy has uncommitted Proposition A Funds which may be made available to Industry to assist in providing funding for the Fullerton Grade Separation Project. In exchange for the assignment by Industry of the amount of its general funds indicated in Section 1 below, Cudahy is willing to assign uncommitted Proposition A Funds to Industry for the Fullerton Grade Separation Project.

Now, therefore, in consideration of the mutual benefits to be derived by the Parties and of the promises herein contained, the Parties mutually agree as follows:

1. Exchange. Cudahy agrees to assign \$312,500 of its Fiscal Year 2017-18 Proposition A Funds to Industry. In return, Industry agrees to assign \$225,000 in general funds to Cudahy for an average rate of \$0.72 in Industry General Funds for each \$1.00 of Cudahy's Fiscal Year 2017-18 Prop A Funds as hereby assigned to Industry by Cudahy.
2. Consideration. Cudahy shall assign the \$312,500 of Prop A Funds to the Industry in one lump sum payment. Industry shall pay to Cudahy the sum of \$225,000 in one lump sum payment. The lump sum payments shall be due and payable within thirty (30) days of the Effective Date of this Agreement.
3. Term. This Agreement shall commence on the Effective Date and shall remain and continue in effect until the payments set forth herein are completed, unless sooner terminated pursuant to the provisions of this Agreement.

4. Termination. Termination of this Agreement may be made by either Party, prior to the first payment being made by either Party. Said notice of termination shall be made in writing.

5. Notices. Notices shall be given pursuant to this Agreement by personal service on the Party to be notified, or by written notice upon such Party deposited in the custody of the United States Postal Service addressed as follows:
 - a. City Clerk
City of Cudahy
5220 Santa Ana Street
Cudahy, CA 90201

 - b. City Clerk
City of Industry
15625 East Stafford Street
City of Industry, CA 91744-0366

With a copy to:
James M. Casso, City Attorney
Casso & Sparks, LLP
13200 Crossroads Parkway North, Suite 345
City of Industry, CA 91746

6. Assurances.
 - a. Industry shall use the assigned Prop A Funds only for the purpose of providing the Fullerton Grade Separation Project or any other Metro approved project, and within the time limits and eligibility requirements specified in Metro's Proposition A Local Return Program Guidelines.

 - b. Cudahy is providing Prop A Funds only and does not assume any responsibility or obligation for the Fullerton Grade Separation Project or any other project undertaken by Industry.

7. Indemnification. Each Party shall indemnify, defend, and hold harmless each other PARTY, including its elected and appointed officers, employees, agents, attorneys, and designated volunteers from and against any and all liability, including, but not limited to demands, claims, actions, fees, costs, and expenses (including reasonable attorney's and expert witness fees), arising from or connected with the respective acts of each Party arising from or related to this Agreement; provided, however, that no Party shall indemnify another Party for that Party's own negligence or willful misconduct.

8. Assignment. The rights and obligations of the Parties under this Agreement may not be assigned or transferred without the prior written consent of the other party or Parties, which consent may be withheld in such Party's reasonable discretion due to the unique, personal rights and obligations under this Agreement.

9. Governing Law/Attorneys' Fees. The Parties understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the superior, or federal district court in Los Angeles County, California. If any action at law or suit in equity is brought to enforce or interpret the provisions of this Agreement, or arising out of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and all related costs, including costs of expert witnesses and consultants, as well as costs on appeal, in addition to any other relief to which it may be entitled.
10. Entire Agreement. This Agreement contains the entire understanding between the Parties relating to the obligations of the Parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written and pertaining to the subject of this Agreement or with respect to the terms and conditions of this Agreement, are merged into this Agreement and shall be of no further force or effect. Each Party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.
11. Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
12. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.
13. Captions. The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and shall have no significance in the interpretation of this Agreement.
14. Waiver. The waiver by Cudahy or Industry of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by Cudahy or Industry unless in writing.
15. Remedies. Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be

cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance of the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any of all of such other rights, powers or remedies.

16. Authority to Execute This Agreement. The person or persons executing this Agreement represent and warrant that he/she has the authority to execute this Agreement on behalf of his/her respective Party, and has the authority to bind his/her respective Party to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the Parties hereto have caused this Assignment Agreement to be executed by their respective officers, duly authorized, as of the Effective Date.

CITY OF INDUSTRY

CITY OF CUDAHY

By: _____
Mark D. Radecki, Mayor

By: _____
Chris Garcia, Mayor

Attest:

Attest:

Diane M. Schlichting, City Clerk

Richard Iglesias, Deputy City Clerk

Approved as to Form:

Approved as to Form:

James M. Casso, City Attorney

Rick Olivarez, City Attorney

CITY COUNCIL

ITEM NO. 6.3



CITY OF INDUSTRY

MEMORANDUM

TO: Honorable Mayor Radecki and Members of the City Council

FROM: Paul J. Philips, City Manager *Paul J. Philips*

STAFF: Alex Gonzalez, Director of Development Services and Administration *AG*
Roberto Ramirez, Contract City Engineer, Cordoba Corporation
Kristen Weger, Management Analyst III

DATE: February 22, 2018

SUBJECT: Consideration of a Professional Services Agreement with Sage Environmental Group LLC for On-Call Biological Monitoring Support Services, in an amount not to exceed \$288,000.00 from August 1, 2017 to December 8, 2019

Background:

Per the City's Municipal Code 3.04.55 – Professional Services, procurement of professional services can be approved by the City Council so long as the service performed does not constitute a public works project. City staff requested a proposal from Sage Environmental Group LLC ("SAGE") to provide on-call biological monitoring support services for the City.

Discussion:

Sage will provide on-call citywide biological monitoring support services to include, but not limited to, fuel load management and invasive plant removal within open space areas to support biological resources, including sensitive plant and animal species. Sage will also provide a biological monitoring report letter and photo documentation for each task area assigned which includes Tonner Canyon, Follows Camp, and City owned parcels.

Fiscal Impact:

Appropriate \$288,000.00 from the General Fund to General Fund – Habitat and Open Space – Professional Services (Account No. 100-625-5120.01) for the contract. The effective date of the Professional Services Agreement is August 1, 2017 to ensure all previously provided on-call biological monitoring services are included under contract.

Recommendation:

- 1) Staff recommends that the City Council approve the Professional Services Agreement with Sage Environmental Group for on-call biological monitoring support services; and
- 2) Appropriate \$288,000.00 from the General Fund to General Fund – Habitat and Open Space – Professional Services (Account No. 100-625-5120.01) for the contract.

Exhibit:

- A. Professional Services Agreement with Sage Environmental Group, dated August 1, 2017
-

PJP/AG/RR/KW:af

EXHIBIT A

Professional Services Agreement with Sage Environmental Group, dated
August 1, 2017

[Attached]

CITY OF INDUSTRY

PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT ("Agreement"), is made and effective as of August 1, 2017 ("Effective Date"), between the City of Industry, a municipal corporation ("City") and Sage Environmental Group LLC, a California limited liability company ("Consultant"). The City and Consultant are hereinafter collectively referred to as the "Parties".

RECITALS

WHEREAS, City desires to engage Consultant to perform the services described herein, and Consultant desires to perform such services in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, City and Consultant agree as follows:

1. TERM

This Agreement shall commence on the Effective Date, and shall remain and continue in effect until tasks described herein are completed, but in no event later than December 8, 2019, unless sooner terminated pursuant to the provisions of this Agreement.

2. SERVICES

(a) Consultant shall perform the tasks ("Services") described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. ("Scope of Services"). Tasks other than those specifically described in the Scope of Services shall not be performed without prior written approval of the City. The Services shall be performed by Consultant, unless prior written approval is first obtained from the City. In the event of conflict or inconsistency between the terms of this Agreement and Exhibit A, the terms of this Agreement shall prevail.

(b) City shall have the right to request, in writing, changes to the Services. Any such changes mutually agreed upon by the Parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement.

(c) Consultant shall perform all Services in a manner reasonably satisfactory to the City and in a first-class manner in conformance with the standards of quality normally observed by an entity providing on-call biological monitoring support services, serving a municipal agency.

(d) Consultant shall comply with all applicable federal, state, and local laws, regulations and ordinances in the performance of this Agreement, including but not limited to, the conflict of interest provisions of Government Code Section 1090 and the

Political Reform Act (Government Code Section 81000 *et seq.*). During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working on the Effective Date if both (i) such work would require Consultant to abstain from a decision under this Agreement pursuant to a conflict of interest statute or law; and (ii) City has not consented in writing to Consultant's performance of such work. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.* Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous twelve (12) months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for Services performed pursuant to this Agreement, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

(e) Consultant represents that it has, or will secure at its own expense, all licensed personnel required to perform the Services. All Services shall be performed by Consultant or under its supervision, and all personnel engaged in the Services shall be qualified and licensed to perform such services.

3. MANAGEMENT

City's City Manager shall represent the City in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by Consultant, but shall have no authority to modify the Services or the compensation due to Consultant.

4. PAYMENT

(a) The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B ("Rate Schedule"), attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed Two Hundred Eighty-Eight Thousand Dollars (\$288,000.00) for the total Term of the Agreement unless additional payment is approved as provided in this Agreement.

(b) Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City and Consultant at the time City's written authorization is given to Consultant for the performance of said services.

(c) Consultant shall submit invoices monthly for actual services performed. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of Consultant's fees it shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice. Any final payment under this Agreement shall be made within 45 days of receipt of an invoice therefore.

5. SUSPENSION OR TERMINATION OF AGREEMENT

(a) The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Consultant at least ten (10) days prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

(b) In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Consultant shall submit an invoice to the City pursuant to Section 5 of this Agreement.

6. OWNERSHIP OF DOCUMENTS

(a) Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of City or its designees at reasonable times to review such books and records; shall give City the right to examine and audit said books and records; shall permit City to make transcripts or copies therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

(b) Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused, or otherwise disposed of by the City without the permission of the Consultant. With respect to computer files, Consultant shall make available to the City, at the Consultant's office, and upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring, copying and/or printing computer files. Consultant hereby grants to City all right, title, and interest,

including any copyright, in and to the documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared by Consultant in the course of providing the services under this Agreement. All reports, documents, or other written material developed by Consultant in the performance of the Services pursuant to this Agreement, shall be and remain the property of the City.

7. INDEMNIFICATION

(a) Indemnity for professional liability

When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend and hold harmless the City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including legal counsel's fees and costs caused in whole or in part by any negligent or wrongful act, error or omission of Consultant, its officers, agents, employees or Subconsultants (or any agency or individual that Consultant shall bear the legal liability thereof) in the performance of professional services under this Agreement.

(b) Indemnity for other than professional liability

Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or agency for which Consultant is legally liable, including but not limited to officers, agents, employees or subcontractors of Consultant.

(c) DUTY TO DEFEND. In the event the City, its officers, employees, agents and/or volunteers are made a party to any action, claim, lawsuit, or other adversarial proceeding arising from the performance of the services encompassed by this Agreement, and upon demand by City, Consultant shall have an immediate duty to defend the City at Consultant's cost or at City's option, to reimburse the City for its costs of defense, including reasonable attorney's fees and costs incurred in the defense of such matters.

Payment by City is not a condition precedent to enforcement of this indemnity. In the event of any dispute between Consultant and City, as to whether liability arises from the sole negligence of the City or its officers, employees, or agents, Consultant will be obligated to pay for City's defense until such time as a final judgment has been entered adjudicating the City as solely negligent. Consultant will not be entitled in the absence of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees and costs of litigation.

8. INSURANCE

Consultant shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit C attached hereto and incorporated herein by reference.

9. INDEPENDENT CONSULTANT

(a) Consultant is and shall at all times remain as to the City a wholly independent consultant and/or independent contractor. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultants exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the City. Consultant shall not incur or have the power to incur any debt, obligation, or liability whatever against the City, or bind the City in any manner.

(b) No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

10. LEGAL RESPONSIBILITIES

The Consultant shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Consultant shall at all times observe and comply with all such laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this Section.

11. UNDUE INFLUENCE

Consultant declares and warrants that no undue influence or pressure was used against or in concert with any officer or employee of the City in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the City has or will receive compensation, directly or indirectly, from Consultant, or from any officer, employee or agent of Consultant, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling the City to any and all remedies at law or in equity.

12. NO BENEFIT TO ARISE TO LOCAL OFFICERS AND EMPLOYEES

No member, officer, or employee of City, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Project during

his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the Project performed under this Agreement.

13. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

(a) All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization. Consultant, its officers, employees, agents, or subconsultants, shall not without written authorization from the City, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the City, unless otherwise required by law or court order. (b) Consultant shall promptly notify City should Consultant, its officers, employees, agents, or subconsultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request ("Discovery"), court order, or subpoena from any person or party regarding this Agreement and the work performed there under or with respect to any project or property located within the City, unless Consultant is prohibited by law from informing the City of such Discovery, court order or subpoena. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding as allowed by law. Unless City is a party to the lawsuit, arbitration, or administrative proceeding and is adverse to Consultant in such proceeding, Consultant agrees to cooperate fully with the City and to provide the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

14. NOTICES

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To City: City of Industry
15625 E. Stafford, Suite 100
City of Industry, CA 91744

Attention: City Manager

With a Copy To: James M. Casso, City Attorney
Casso & Sparks, LLP
13200 Crossroads Parkway North, Suite 345
City of Industry, CA 91746

To Consultant: Alissa Cope, President
Sage Environmental Group LLC
24040 Camino Del Avion, Suite A77
Monarch Beach, CA 92629

15. ASSIGNMENT

The Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City.

Before retaining or contracting with any subconsultant for any services under this Agreement, Consultant shall provide City with the identity of the proposed subconsultant, a copy of the proposed written contract between Consultant and such subconsultant which shall include an indemnity provision similar to the one provided herein and identifying City as an indemnified party, or an incorporation of the indemnity provision provided herein, and proof that such proposed subconsultant carries insurance at least equal to that required by this Agreement or obtain a written waiver from the City for such insurance.

Notwithstanding Consultant's use of any subconsultant, Consultant shall be responsible to the City for the performance of its subconsultant as it would be if Consultant had performed the Services itself. Nothing in this Agreement shall be deemed or construed to create a contractual relationship between the City and any subconsultant employed by Consultant. Consultant shall be solely responsible for payments to any subconsultants. Consultant shall indemnify, defend and hold harmless the Indemnified Parties for any claims arising from, or related to, the services performed by a subconsultant under this Agreement.

16. GOVERNING LAW/ATTORNEYS' FEES

The City and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court in Los Angeles County, California. If any action at law or suit in equity is brought to enforce or interpret the provisions of this Agreement, or arising out of or relating to the Services provided by Consultant under this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and all related costs, including costs of expert witnesses and consultants, as well as costs on appeal, in addition to any other relief to which it may be entitled.

17. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the Parties relating to the obligations of the Parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written and pertaining to the subject of this Agreement or with respect to the terms and conditions of this Agreement, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein

and upon each party's own independent investigation of any and all facts such party deems material.

18. SEVERABILITY

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

19. COUNTERPARTS

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

20. CAPTIONS

The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and shall have no significance in the interpretation of this Agreement.

21. WAIVER

The waiver by City or Consultant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by City or Consultant unless in writing.

22. REMEDIES

Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance of the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any of all of such other rights, powers or remedies.

23. AUTHORITY TO EXECUTE THIS AGREEMENT

The person or persons executing this Agreement on behalf of Consultant represents and warrants that he/she has the authority to execute this Agreement on behalf of the

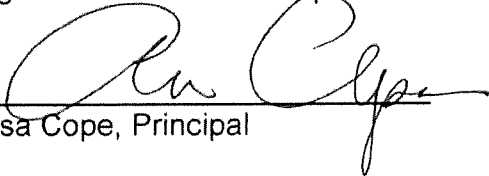
Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the Effective Date.

"CITY"
City of Industry

"CONSULTANT"
Sage Environmental Group LLC

By: _____
Paul J. Philips, City Manager

By:  _____
Alissa Cope, Principal

Attest:

By: _____
Diane M. Schlichting, Chief Deputy City Clerk

Approved as to form:

By: _____
James M. Casso, City Attorney

Attachments:	Exhibit A	Scope of Services
	Exhibit B	Rate Schedule
	Exhibit C	Insurance Requirements

EXHIBIT A

SCOPE OF SERVICES

Consultant shall provide citywide on-call biological monitoring support services to include, but not limited to:

- Fuel load management; and
- Invasive plant removal within open space areas to support biological resources, including sensitive plant and animal species.

Consultant shall provide a Biological Monitoring Letter Report and photo documentation for each task area assigned.

EXHIBIT B

RATE SCHEDULE

Principal in Charge \$ 180.00

Project Manager \$ 165.00

Senior Biologist/Botanist \$ 150.00

Senior Regulatory Specialist \$ 150.00

Associate Biologist/Botanist \$ 130.00

Licensed Herbicide Applicator \$ 95.00

Senior Cultural Resources Specialist \$ 145.00

Assoc. Cultural Resources Specialist \$ 120.00

Principal Environmental Planner \$ 165.00

Assoc. Environmental Planner \$ 130.00

CADD/GIS Technician \$ 110.00

Word Processor \$ 80.00

Field Crew Supervisor \$ 75.00

Field Crew Labor \$ 48.00

Expert witness testimony and participation in a judicial or administrative proceeding is available at two hundred percent (200%) of the rate set forth in this Rate Schedule. Preparation time shall be billed at the standard billing rate.

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting Consultant's indemnification of City, and prior to commencement of the Services, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to the City.

General liability insurance. Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000.00 per occurrence, \$2,000,000.00 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

Automobile liability insurance. Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000.00 combined single limit for each accident.

Professional liability (errors & omissions) insurance. Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement.

Workers' compensation insurance. Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000.00).

Consultant shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of the City, its officers, agents, employees and volunteers.

Proof of insurance. Consultant shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this contract. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

Duration of coverage. Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may

arise from or in connection with the performance of the Services hereunder by Consultant, his agents, representatives, employees or subconsultants.

Primary/noncontributing. Coverage provided by Consultant shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

City's rights of enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant, or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

Acceptable insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VI (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

Waiver of subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

Enforcement of contract provisions (non estoppel). Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

Requirements not limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Notice of cancellation. Consultant agrees to oblige its insurance agent or broker and insurers to provide to City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

Additional insured status. General liability policies shall provide or be endorsed to provide that City and its officers, officials, employees, and agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess liability policies.

Prohibition of undisclosed coverage limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

Separation of Insureds. A severability of interests provision must apply for all additional insureds ensuring that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

Pass Through Clause. Consultant agrees to ensure that its subconsultants, subcontractors, and any other party involved with the project who is brought onto or involved in the project by Consultant, provide the same minimum insurance coverage and endorsements required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the project will be submitted to City for review.

City's right to revise specifications. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the City and Consultant may renegotiate Consultant's compensation.

Self-insured retentions. Any self-insured retentions must be declared to and approved by the City. The City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by the City.

Timely notice of claims. Consultant shall give the City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

Additional insurance. Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.

CITY COUNCIL

ITEM NO. 6.4



CITY OF INDUSTRY

MEMORANDUM

TO: Honorable Mayor Radecki and Members of the City Council

FROM: Paul J. Philips, City Manager *Paul J. Philips*

STAFF: Alex Gonzalez, Director of Development Services and Administration *AG*
Roberto Ramirez, Contract City Engineer, Cordoba Corporation
Kristen Weger, Management Analyst III

DATE: February 22, 2018

SUBJECT: Consideration of a Professional Services Agreement with Ninyo & Moore Geotechnical and Environmental Services Consultants, for On-Call Geotechnical Engineering Services, in an amount not to exceed \$150,000.00 from February 22, 2018 to December 8, 2019

Background:

On September 8, 2016 the City of Industry released a Request for Qualifications ("RFQ") for an Engineering Service Bench. The Engineering Services bench would allow the City to pre-qualify a number of firms, for 15 different categories of services, which can later be contacted to submit proposals as projects arise. A minimum of three firms were selected for each category. The 15 categories included: Staff Augmentation; Civil Engineering; Structural Engineering; Project Management/Construction Management; Geotechnical Engineering; Survey and Right of Way Engineering; Traffic and Transportation Engineering; Contract and Funding Administration; Permit Inspections; Potable Water; Recycled Water and Stormwater Design; Electrical Engineering; Internet and Data Utility Design; Landfill Management Design; ADA and CASP Support; and Environmental Engineering.

The RFQ was posted in the City's PlanetBids™ vendor portal and an email notification were sent out to all registered vendors. The appropriate trade journals were notified and included Bid America, Southern California Builders Association, Construction Bidboard, and Dodge Data & Analytics on September 7, 2016. The RFQ was also advertised on Thursday, September 8, 2016 and Thursday, September 15, 2016 in the San Gabriel Valley Tribune.

Discussion:

The Statement of Qualifications ("SOQ") Qualifications were received up until October 12, 2016 at 1:00 p.m. The RFQ was viewed by 75 prospective bidders and the City received SOQ's from 38 engineering vendors wherein the contractors identified which bench category they would like to be considered. The SOQ's for the Geotechnical Engineering Bench were reviewed by a committee. The top ranked firms were then selected for the

Geotechnical Engineering Bench as pre-qualified contractors which consist of AESCO, Inc., ES Engineering Services, LLC, Geo-Advantec, Inc., Kleinfelder, Inc., and Ninyo & Moore Geotechnical & Environmental Sciences Consultants. As geotechnical projects become available, City staff will request proposals from the firms on the bench on a project by project basis.

The following table represents the Geotechnical Engineering Services Bench:

AESCO, Inc.
ES Engineering Services, LLC
Geo Advantec, Inc.
Kleinfelder, Inc.
Ninyo & Moore Geotechnical & Environmental Services Consultants

Fiscal Impact:

Appropriate \$150,000.00 from the General Fund to General Fund – Public Works – General Engineering for the contract (Account No. 100-622-5900).

Recommendation:

- 1) Staff recommends that the City Council approve the Professional Services Agreement with Ninyo & Moore Geotechnical and Environmental Services Consultants for on-call geotechnical engineering services; and
- 2) Appropriate \$150,000.00 from the General Fund to General Fund – Public Works – General Engineering for the contract (Account No. 100-622-5900).

Exhibits:

- A. Professional Services Agreement with Ninyo & Moore Geotechnical and Environmental Sciences Consultants, dated February 22, 2018
- B. Statement of Qualifications received from Ninyo & Moore Geotechnical and Environmental Sciences Consultants [On File in City of Industry City Clerk's Office]

PJP/AG/RR/KW:af

EXHIBIT A

Professional Services Agreement with Ninyo & Moore Geotechnical and Environmental Sciences Consultants, dated February 22, 2018

[Attached]

EXHIBIT B

Statement of Qualifications Received from Ninyo & Moore Geotechnical and
Environmental Sciences Consultants

[On File in City of Industry City Clerk's Office]

CITY OF INDUSTRY

PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT ("Agreement"), is made and effective as of February 22, 2018 ("Effective Date"), between the City of Industry, a municipal corporation ("City") and Ninyo & Moore Geotechnical & Environmental Sciences Consultants, a California Corporation ("Consultant"). The City and Consultant are hereinafter collectively referred to as the "Parties".

RECITALS

WHEREAS, City desires to engage Consultant to perform the services described herein, and Consultant desires to perform such services in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, City and Consultant agree as follows:

1. TERM

This Agreement shall commence on the Effective Date, and shall remain and continue in effect until tasks described herein are completed, but in no event later than December 8, 2019, unless sooner terminated pursuant to the provisions of this Agreement.

2. SERVICES

(a) Consultant shall perform the tasks ("Services") described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. ("Scope of Services"). Tasks other than those specifically described in the Scope of Services shall not be performed without prior written approval of the City. The Services shall be performed by Consultant, unless prior written approval is first obtained from the City. In the event of conflict or inconsistency between the terms of this Agreement and Exhibit A, the terms of this Agreement shall prevail.

(b) City shall have the right to request, in writing, changes to the Services. Any such changes mutually agreed upon by the Parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement.

(c) Consultant shall perform all Services in a manner reasonably satisfactory to the City and in a first-class manner in conformance with the standards of quality normally observed by an entity providing on-call geotechnical engineering services, serving a municipal agency.

(d) Consultant shall comply with all applicable federal, state, and local laws, regulations and ordinances in the performance of this Agreement, including but not limited to, the conflict of interest provisions of Government Code Section 1090 and the

Political Reform Act (Government Code Section 81000 *et seq.*)). During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working on the Effective Date if both (i) such work would require Consultant to abstain from a decision under this Agreement pursuant to a conflict of interest statute or law; and (ii) City has not consented in writing to Consultant's performance of such work. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.* Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous twelve (12) months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et. seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for Services performed pursuant to this Agreement, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

(e) Consultant represents that it has, or will secure at its own expense, all licensed personnel required to perform the Services. All Services shall be performed by Consultant or under its supervision, and all personnel engaged in the Services shall be qualified and licensed to perform such services.

3. MANAGEMENT

City's City Manager or his designee shall represent the City in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by Consultant, but shall have no authority to modify the Services or the compensation due to Consultant.

4. PAYMENT

(a) The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B ("Rate Schedule"), attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed One Hundred and Fifty Thousand Dollars (\$150,000.00) for the total Term of the Agreement unless additional payment is approved as provided in this Agreement.

(b) Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City and Consultant at the time City's written authorization is given to Consultant for the performance of said services.

(c) Consultant shall submit invoices monthly for actual services performed. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of Consultant's fees it shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice. Any final payment under this Agreement shall be made within 45 days of receipt of an invoice therefore.

5. LABOR CODE AND PREVAILING WAGES

(a) Consultant represents and warrants that it is aware of the requirements of California Labor Code Section 1720, *et seq.*, and 1770, *et seq.*, as well as California Code of Regulations, Title 8, Section 16000, *et seq.*, ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "Public Works" and "Maintenance" projects. If the Services are being performed as part of an applicable "Public Works" or "Maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$15,000.00 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and any location where the Services are performed. Consultant shall indemnify, defend and hold harmless, the City, its elected officials, officers, employees and agents, from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, Consultant's or by any individual or agency for which Consultant is legally liable, including but not limited to officers, agents, employees or subcontractors of Consultant, failure or alleged failure to comply with Prevailing Wage Laws.

(b) In accordance with the requirements of Labor Code Section 1776, Consultant shall keep accurate payroll records which are either on forms provided by the Division of Labor Standards Enforcement or which contain the same information required by such forms. Consultant shall make all such records available for inspection at all reasonable hours.

(c) To the extent applicable, Consultant shall comply with the provisions of Section 1777.5 of the Labor Code with respect to the employment of properly registered apprentices upon public works.

(d) Consultant shall comply with the legal days work and overtime requirements of Sections 1813 and 1815 of the Labor Code.

(e) If the Services are being performed as part of an applicable Public works or Maintenance project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such Services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Agreement and require the same of any subconsultants, as applicable. This Services set forth in this Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements.

6. SUSPENSION OR TERMINATION OF AGREEMENT

(a) The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Consultant at least ten (10) days prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

(b) In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Consultant shall submit an invoice to the City pursuant to Section 5 of this Agreement.

7. OWNERSHIP OF DOCUMENTS

(a) Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of City or its designees at reasonable times to review such books and records; shall give City the right to examine and audit said books and records; shall permit City to make transcripts or copies therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

(b) Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused, or otherwise disposed of by the City without the permission of the Consultant. With respect to computer files, Consultant shall make available to the City, at the Consultant's office, and upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring, copying

and/or printing computer files. Consultant hereby grants to City all right, title, and interest, including any copyright, in and to the documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared by Consultant in the course of providing the services under this Agreement. All reports, documents, or other written material developed by Consultant in the performance of the Services pursuant to this Agreement, shall be and remain the property of the City.

8. INDEMNIFICATION

(a) Indemnity for professional liability

When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend and hold harmless the City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including legal counsel's fees and costs caused in whole or in part by any negligent or wrongful act, error or omission of Consultant, its officers, agents, employees or Subconsultants (or any agency or individual that Consultant shall bear the legal liability thereof) in the performance of professional services under this Agreement.

(b) Indemnity for other than professional liability

Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or agency for which Consultant is legally liable, including but not limited to officers, agents, employees or subcontractors of Consultant.

(c) DUTY TO DEFEND. In the event the City, its officers, employees, agents and/or volunteers are made a party to any action, claim, lawsuit, or other adversarial proceeding arising from the performance of the services encompassed by this Agreement, and upon demand by City, Consultant shall have an immediate duty to defend the City at Consultant's cost or at City's option, to reimburse the City for its costs of defense, including reasonable attorney's fees and costs incurred in the defense of such matters.

Payment by City is not a condition precedent to enforcement of this indemnity. In the event of any dispute between Consultant and City, as to whether liability arises from the sole negligence of the City or its officers, employees, or agents, Consultant will be obligated to pay for City's defense until such time as a final judgment has been entered adjudicating the City as solely negligent. Consultant will not be entitled in the absence of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees and costs of litigation.

9. INSURANCE

Consultant shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit C attached hereto and incorporated herein by reference.

10. INDEPENDENT CONSULTANT

(a) Consultant is and shall at all times remain as to the City a wholly independent consultant and/or independent contractor. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultants exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the City. Consultant shall not incur or have the power to incur any debt, obligation, or liability whatever against the City, or bind the City in any manner.

(b) No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

11. LEGAL RESPONSIBILITIES

The Consultant shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Consultant shall at all times observe and comply with all such laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this Section.

12. UNDUE INFLUENCE

Consultant declares and warrants that no undue influence or pressure was used against or in concert with any officer or employee of the City in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the City has or will receive compensation, directly or indirectly, from Consultant, or from any officer, employee or agent of Consultant, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling the City to any and all remedies at law or in equity.

13. NO BENEFIT TO ARISE TO LOCAL OFFICERS AND EMPLOYEES

No member, officer, or employee of City, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Project during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the Project performed under this Agreement.

14. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

(a) All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization. Consultant, its officers, employees, agents, or subconsultants, shall not without written authorization from the City, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the City, unless otherwise required by law or court order. (b) Consultant shall promptly notify City should Consultant, its officers, employees, agents, or subconsultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request ("Discovery"), court order, or subpoena from any person or party regarding this Agreement and the work performed there under or with respect to any project or property located within the City, unless Consultant is prohibited by law from informing the City of such Discovery, court order or subpoena. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding as allowed by law. Unless City is a party to the lawsuit, arbitration, or administrative proceeding and is adverse to Consultant in such proceeding, Consultant agrees to cooperate fully with the City and to provide the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

15. NOTICES

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To City: City of Industry
15625 E. Stafford, Suite 100
City of Industry, CA 91744
Attention: City Manager

With a Copy To: Casso & Sparks, LLP
James M. Casso, City Attorney
13200 Crossroads Parkway North, Suite 345
City of Industry, CA 91746

To Consultant: Ninyo & Moore Geotechnical & Environmental
Sciences Consultants
475 Goddard, Suite 200
Irvine, CA 92618
Attention: Kurt Yoshii, Principal Engineer

16. ASSIGNMENT

The Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City.

Before retaining or contracting with any subconsultant for any services under this Agreement, Consultant shall provide City with the identity of the proposed subconsultant, a copy of the proposed written contract between Consultant and such subconsultant which shall include an indemnity provision similar to the one provided herein and identifying City as an indemnified party, or an incorporation of the indemnity provision provided herein, and proof that such proposed subconsultant carries insurance at least equal to that required by this Agreement or obtain a written waiver from the City for such insurance.

Notwithstanding Consultant's use of any subconsultant, Consultant shall be responsible to the City for the performance of its subconsultant as it would be if Consultant had performed the Services itself. Nothing in this Agreement shall be deemed or construed to create a contractual relationship between the City and any subconsultant employed by Consultant. Consultant shall be solely responsible for payments to any subconsultants. Consultant shall indemnify, defend and hold harmless the Indemnified Parties for any claims arising from, or related to, the services performed by a subconsultant under this Agreement.

17. GOVERNING LAW/ATTORNEYS' FEES

The City and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court in Los Angeles County, California. If any action at law or suit in equity is brought to enforce or interpret the provisions of this Agreement, or arising out of or relating to the Services provided by Consultant under this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and all related costs, including costs of expert witnesses and consultants, as well as costs on appeal, in addition to any other relief to which it may be entitled.

18. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the Parties relating to the obligations of the Parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written and pertaining to the subject of this Agreement or with respect to the terms and conditions of this Agreement, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

19. SEVERABILITY

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

20. COUNTERPARTS

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

21. CAPTIONS

The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and shall have no significance in the interpretation of this Agreement.

22. WAIVER

The waiver by City or Consultant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by City or Consultant unless in writing.

23. REMEDIES

Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the

exercise, or the forbearance of the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any of all of such other rights, powers or remedies.

24. AUTHORITY TO EXECUTE THIS AGREEMENT

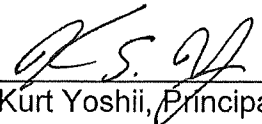
The person or persons executing this Agreement on behalf of Consultant represents and warrants that he/she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the Effective Date.

“CITY”
City of Industry

“CONSULTANT”
**Ninyo & Moore Geotechnical &
Environmental Sciences Consultants**

By: _____
Paul J. Philips, City Manager

By:  _____
Kurt Yoshii, Principal Engineer

Attest:

By: _____
Diane M. Schlichting, Chief Deputy City Clerk

Approved as to form:

By: _____
James M. Casso, City Attorney

Attachments:	Exhibit A	Scope of Services
	Exhibit B	Rate Schedule
	Exhibit C	Insurance Requirements

EXHIBIT A

SCOPE OF SERVICES

For any project requested by the City, the Consultant may provide all aspects of geotechnical engineering services, which includes, but is not limited to:

- Consultant will develop a detailed scope of work, including the number and type of subsurface explorations, laboratory test, as well as the type of analyses. For the materials testing and inspection services, Consultant will review the approved plans and specifications and will develop a detailed scope of services indicating anticipated man-hours by discipline for the required materials testing and inspection services.
- A site-specific comprehensive field sampling program will be developed for each geotechnical design assigned to Consultant. This plan will include exploratory excavations at the site, consisting of small- and/or large-diameter borings, test pits, and/or cone penetrometer tests (CPT) to evaluate the subsurface soil conditions. Samples will be collected at selected intervals and transported to our laboratory for testing. Consultant will utilize the information collected from its subsurface exploration program along with its laboratory test results in its geotechnical analyses to develop our recommendations for the geotechnical design parameters for the project.
- Provide project closeout documentation, as it relates to geotechnical, materials testing and inspection, to the City.

EXHIBIT B
RATE SCHEDULE

Schedule of Fees	
Hourly Charges for Personnel	
Principal Engineer/Geologist/Environmental Scientist	\$ 188
Certified Industrial Hygienist	\$ 188
Senior Engineer/Geologist/Environmental Scientist	\$ 178
Senior Project Engineer/Geologist/Environmental Scientist	\$ 173
Certified Asbestos Consultant, Lead Inspector/Assessor, Lead Project Monitor	\$ 173
Project Engineer/Geologist/Environmental Scientist	\$ 165
Senior Staff Engineer/Geologist/Environmental Scientist	\$ 150
Staff Engineer/Geologist/Environmental Scientist	\$ 134
Certified Site Surveillance Technician, Lead Sampling Technician*	\$ 134
GIS Analyst	\$ 123
Field Operations Manager	\$ 119
Supervisory Technician*	\$ 104
Nondestructive Examination Technician*, UT, MT, LP	\$ 104
ACI Concrete Technician*	\$ 104
Concrete/Asphalt Batch Plant Inspector*	\$ 104
Special Inspector (Concrete, Masonry, Steel, Welding, and Fireproofing)*	\$ 104
Senior Field/Laboratory Technician*	\$ 98
Field/Laboratory Technician*	\$ 98
Technical Illustrator/CAD Operator	\$ 98
Information Specialist	\$ 83
Geotechnical/Environmental/Laboratory Assistant	\$ 81
Data Processing, Technical Editing, or Reproduction	\$ 71
Other Charges	
Expert Witness Testimony	\$ 400/hr
X-Ray Fluorescence	\$ 300/day
PID/FID Usage	\$ 150/day
Concrete Coring Equipment (includes one technician)	\$ 180/hr
Anchor load test equipment (includes technician)	\$ 103/hr
Hand Auger Equipment	\$ 69/day
Inclinometer Usage	\$ 45/hr
Vapor Emission Kits	\$ 45/kit
Level D Personal Protective Equipment (per person per day)	\$ 35/p/d
Rebar Locator (Pachometer)	\$ 35/hr
Nuclear Density Gauge Usage	\$ 20/hr

Laboratory testing, geophysical equipment, and other special equipment provided upon request.

Schedule of Fees for Laboratory Testing

Laboratory Test, Test Designation, and Price Per Test

SOILS		CONCRETE	
Atterberg Limits, D 4318, CT 204	\$ 160	Compression Tests, 6x12 Cylinder, C 39	\$ 25
California Bearing Ratio (CBR), D 1883	\$ 485	Concrete Mix Design Review, Job Spec	\$ 155
Chloride and Sulfate Content, CT 417 & CT 422	\$ 175	Concrete Mix Design, per Trial Batch, 6 cylinder, ACI	\$ 825
Consolidation, D 2435, CT 219	\$ 300	Concrete Cores, Compression (excludes sampling), C 42	\$ 60
Consolidation - Time Rate, D 2435, CT 219	\$ 75	Drying Shrinkage, C 157	\$ 350
Direct Shear - Remolded, D 3080	\$ 325	Flexural Test, C 78	\$ 65
Direct Shear - Undisturbed, D 3080	\$ 275	Flexural Test, C 293	\$ 60
Durability Index, CT 229	\$ 165	Flexural Test, CT 523	\$ 80
Expansion Index, D 4829, IBC 18-3	\$ 180	Gunite/Shotcrete, Panels, 3 cut cores per panel and test, ACI	\$ 275
Expansion Potential (Method A), D 4546	\$ 160	Jobsite Testing Laboratory	Quote
Geofabric Tensile and Elongation Test, D 4632	\$ 180	Lightweight Concrete Fill, Compression, C 495	\$ 45
Hydraulic Conductivity, D 5084	\$ 330	Petrographic Analysis, C 856	\$ 1,900
Hydrometer Analysis, D 422, CT 203	\$ 220	Restrained Expansion of Shrinkage Compensation	\$ 270
Moisture, Ash, & Organic Matter of Peat/Organic Soils	\$ 120	Splitting Tensile Strength, C 498	\$ 90
Moisture Only, D 2216, CT 226	\$ 35	3x8 Grout, (CLSM), C 39	\$ 45
Moisture and Density, D 2937	\$ 45	2x2x2 Non-Shrink Grout, C 109	\$ 45
Permeability, CH, D 2434, CT 220	\$ 255		
pH and Resistivity, CT 643	\$ 175		
Proctor Density D 1557, D 698, CT 216, & AASHTO T-180 (Rock corrections add \$100)	\$ 200		
R-value, D 2844, CT 301	\$ 295	ASPHALT CONCRETE	
Sand Equivalent, D 2419, CT 217	\$ 110	Air Voids, T 269	\$ 50
Sieve Analysis, D 422, CT 202	\$ 130	Asphalt Mix Design, Caltrans (excl. Aggregate Quality)	\$ 2,800
Sieve Analysis, 200 Wash, D 1140, CT 202	\$ 100	Asphalt Mix Design Review, Job Spec	\$ 165
Specific Gravity, D 854	\$ 100	Dust Proportioning, CT LP-4	\$ 50
Thermal Resistivity (ASTM 5334, IEEE 442)	\$ 880	Extraction, % Asphalt, including Gradation, D 2172, CT 382	\$ 240
Triaxial Shear, C.U., D 4767, T 297	\$ 430	Film Stripping, CT 302	\$ 110
Triaxial Shear, C.U., w/pore pressure, D 4767, T 2297 per pt	\$ 365	Hveem Stability and Unit Weight D 1560, T 246, CT 386	\$ 215
Triaxial Shear, C.U., w/o pore pressure, D 4767, T 2297 per pt	\$ 210	Marshal Stability, Flow and Unit Weight, T 245	\$ 240
Triaxial Shear, U.U., D 2850	\$ 155	Maximum Theoretical Unit Weight, D 2041, CT 309	\$ 150
Unconfined Compression, D 2166, T 208	\$ 120	Moisture Content, CT 370	\$ 85
Wax Density, D 1188	\$ 100	Moisture Susceptibility and Tensile Stress Ratio, T 238, CT 371	\$ 1,000
		Slurry Wet Track Abrasion, D 3910	\$ 150
		SuperPave, Asphalt Mix Verification (incl. Aggregate Quality)	\$ 5,200
		SuperPave, Gyrotory Unit Wt., T 312	\$ 75
		SuperPave, Hamburg Wheel, 20,000 passes, T 324	\$ 1,000
		Unit Weight sample or core, D 2726, CT 308	\$ 100
		Voids in Mineral Aggregate, (VMA) CT LP-2	\$ 50
		Voids filled with Asphalt, (VFA) CT LP-3	\$ 50
MASONRY			
Brick Absorption, 24-hour submersion, C 67	\$ 50	AGGREGATES	
Brick Absorption, 5-hour boiling, C 67	\$ 60	Clay Lumps and Friable Particles, C 142	\$ 160
Brick Absorption, 7-day, C 67	\$ 65	Cleaness Value, CT 227	\$ 160
Brick Compression Test, C 67	\$ 50	Crushed Particles, CT 205	\$ 165
Brick Efflorescence, C 67	\$ 50	Durability, Coarse or Fine, CT 229	\$ 195
Brick Modulus of Rupture, C 67	\$ 45	Fine Aggregate Angularity, ASTM C 1252, T 304, CT 234	\$ 180
Brick Moisture as received, C 67	\$ 40	Flat and Elongated Particle, D 4781	\$ 220
Brick Saturation Coefficient, C 67	\$ 55	Lightweight Particles, C 123	\$ 180
Concrete Block Compression Test, 8x8x16, C 140	\$ 65	Los Angeles Abrasion, C 131 or C 535	\$ 200
Concrete Block Conformance Package, C 90	\$ 485	Material Finer than No. 200 Sieve by Washing, C 117	\$ 75
Concrete Block Linear Shrinkage, C 426	\$ 135	Organic Impurities, C 40	\$ 80
Concrete Block Unit Weight and Absorption, C 140	\$ 60	Potential Alkali Reactivity, Mortar Bar Method, Coarse, C 1260	\$ 950
Cores, Compression or Shear Bond, CA Code	\$ 80	Potential Alkali Reactivity, Mortar Bar Method, Fine, C 1280	\$ 1,250
Masonry Grout, 3x3x6 prism compression, C 39	\$ 35	Potential Reactivity of Aggregate (Chemical Method), C 289	\$ 450
Masonry Mortar, 2x4 cylinder compression, C 109	\$ 35	Sand Equivalent, T 176, CT 217	\$ 110
Masonry Prism, half size, compression, C 1019	\$ 120	Sieve Analysis, Coarse Aggregate, T 27, C 136	\$ 115
Masonry Prism, Full size, compression, C 1019	\$ 185	Sieve Analysis, Fine Aggregate (including wash), T 27, C 136	\$ 130
		Sodium Sulfate Soundness, C 88	\$ 450
		Specific Gravity and Absorption, Coarse, C 127, CT 206	\$ 100
		Specific Gravity and Absorption, Fine, C 128, CT 207	\$ 160
REINFORCING AND STRUCTURAL STEEL		ROOFING	
Chemical Analysis, A 36, A 615	\$ 135	Roofing Tile Absorption, (set of 5), C 87	\$ 210
Fireproofing Density Test, UBC 7-6	\$ 70	Roofing Tile Strength Test, (set of 5), C 67	\$ 210
Hardness Test, Rockwel, A 370	\$ 70		
High Strength Bolt, Nut & Washer Conformance, per assembly, A 325	\$ 130		
Mechanically Spliced Reinforcing Tensile Test, ACI	\$ 150		
Pre-Stress Strand (7 wire), A 416	\$ 170		
Reinforcing Tensile or Bend up to No. 11, A 615 & A 706	\$ 55		
Structural Steel Tensile Test: Up to 200,000 lbs. (machining extra), A 370	\$ 80		
Welded Reinforcing Tensile Test: Up to No. 11 bars, ACI	\$ 80		

Special preparation of standard test specimens will be charged at the technician's hourly rate.
Ninyo & Moore is accredited to perform the AASHTO equivalent of many ASTM test procedures.

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting Consultant's indemnification of City, and prior to commencement of the Services, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to the City.

General liability insurance. Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000.00 per occurrence, \$2,000,000.00 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

Automobile liability insurance. Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000.00 combined single limit for each accident.

Professional liability (errors & omissions) insurance. Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement.

Workers' compensation insurance. Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000.00).

Consultant shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of the City, its officers, agents, employees and volunteers.

Proof of insurance. Consultant shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this contract. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

Duration of coverage. Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may

arise from or in connection with the performance of the Services hereunder by Consultant, his agents, representatives, employees or subconsultants.

Primary/noncontributing. Coverage provided by Consultant shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

City's rights of enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant, or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

Acceptable insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VI (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

Waiver of subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

Enforcement of contract provisions (non estoppel). Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

Requirements not limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Notice of cancellation. Consultant agrees to oblige its insurance agent or broker and insurers to provide to City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

Additional insured status. General liability policies shall provide or be endorsed to provide that City and its officers, officials, employees, and agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess liability policies.

Prohibition of undisclosed coverage limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

Separation of Insureds. A severability of interests provision must apply for all additional insureds ensuring that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

Pass Through Clause. Consultant agrees to ensure that its subconsultants, subcontractors, and any other party involved with the project who is brought onto or involved in the project by Consultant, provide the same minimum insurance coverage and endorsements required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the project will be submitted to City for review.

City's right to revise specifications. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the City and Consultant may renegotiate Consultant's compensation.

Self-insured retentions. Any self-insured retentions must be declared to and approved by the City. The City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by the City.

Timely notice of claims. Consultant shall give the City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

Additional insurance. Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.

CITY COUNCIL

ITEM NO. 6.5



CITY OF INDUSTRY

MEMORANDUM

TO: Honorable Mayor Radecki and Members of the City Council

FROM: Paul J. Philips, City Manager 

STAFF: Henry Martinez, Senior Vice President, Cordoba Corporation
Mike Cruz, Senior Project Manager, Cordoba Corporation

DATE: February 22, 2018

SUBJECT: Consideration of a Professional Services Agreement with Goss Engineering, Inc., for Agreement. No. DS-18-019-B, EXPO Barn Facilities Lighting Upgrade Design and Specifications Services in an amount not to exceed \$15,260.00, from February 22, 2018 to February 22, 2019.

Background:

On November 30, 2017, the City published a Request for Proposals ("RFP") for EXPO Barn Facilities Lighting Upgrade Design and Specifications Services for an estimated cost of \$50,000.00. This project was bid to procure a contractor for the design and specifications for the exterior and interior lighting upgrade at the Expo Center's boarding in the West and East barns, improved yard lighting at the horse handling area, and new stall lighting at the 18 horse wash racks. All with emphasis on innovative and/or creative approaches that provide additional efficiencies, expedited timing or increased performance capabilities. The RFP requires the design contractor to include technical support during the installation of the upgraded lighting (by others), including the review of material/equipment submittals, requests for information, and the resolution of field issues during that installation.

The RFP was posted in the City's PlanetBids™ vendor portal on November 30, 2017. The appropriate trade journals were notified on December 1, 2017. The bid was advertised on December 5, 2017 and December 12, 2017 in the San Gabriel Valley Tribune. Thirty-four prospective bidders reviewed the RFP. Questions pertaining to the proposal were received up until January 8, 2018 at 1:00 p.m. in the City's Planetbids™ vendor portal.

Discussion:

The RFP process closed on January 8, 2018. The City received two (2) proposals from: Goss Engineering, and Jeff Polich, Inc. The proposals were reviewed by a panel of three participants that include Kristen Weger, City of Industry Management Analyst, Lary Atherton Cordoba Corporation Senior Project Manager, and Mike Cruz Cordoba Corporation Project Manager, for completeness, accuracy and qualifications. The review process was achieved using the criteria categories as indicated in the RFP including qualifications of key personnel, approach to providing the requested scope of services,

price proposal, innovation/creative approach, and references. Goss Engineering has extensive mechanical, and electrical engineering capabilities, demonstrating work for higher education, commercial, and industrial clients, some on complex building lighting, and co-generation projects.

The following table represents a summary of the proposals received and ranked:

Proposers	Proposal Price	Rankings
Jeff Polich Inc.	\$48,000.00	2
Goss Engineering	\$15,260.00	1
<i>Engineer's Estimate</i>	<i>\$50,000.00</i>	

Based on the rankings, the review committee is recommending that City Council award the contract to Goss Engineering Inc. ("Goss"). Goss is found to be qualified, was responsive to the bid requirements and staff inquiries, and submitted a complete proposal. References were checked by City staff resulting in excellent recommendations from previous Goss employers.

Fiscal Impact:

An appropriation is being requested at this time in the amount of \$15,260.00 for the EXPO Barn Facilities Lighting Upgrade Design and Specifications Services from the 2015 bond proceeds to City Capital Improvements - Equestrian C.I.P. – Planning, Survey and Design (Account No. 120.713.5130).

The engineer's estimate for the contract was \$50,000.00. Goss submitted a bid for \$15,260.00 for the project. The scope of work includes performing studies, engineering, and developing construction documents for upgrade an existing lighting system. As such, the engineer's estimate was based on a worst case, conceptual scenario with contingency in the assignment of man-hours and their unit cost for the intended scope. In a review with Goss of their bid and assumptions, Goss verified their understanding of the intended work, compliance with the RFP, and ability to complete the work at their proposed price.

Recommendation:

1. Approve the Professional Services Agreement between the City and Goss Engineering Inc., in an amount not to exceed \$15,260.00 for the EXPO Barn Facilities Lighting Upgrade Design and Specifications Services.

Exhibits:

- A. Professional Services Agreement with Goss Engineering Inc., dated February 22, 2018
 - B. Request for Proposal ("RFP") EXPO Barn Facilities Lighting Upgrade Design and Specifications Services for the City of Industry (On file in City Clerk's office)
-

EXHIBIT A

Professional Services Agreement with Goss Engineering Inc., dated February 22, 2018

[Attached]

CITY OF INDUSTRY

PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT ("Agreement"), is made and effective as of February 22, 2018 ("Effective Date"), between the City of Industry, a municipal corporation ("City") and Goss Engineering, Inc., a California corporation ("Consultant"). The City and Consultant are hereinafter collectively referred to as the "Parties".

RECITALS

WHEREAS, City desires to engage Consultant to perform the services described herein, and Consultant desires to perform such services in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, City and Consultant agree as follows:

1. **TERM**

This Agreement shall commence on the Effective Date, and shall remain and continue in effect until tasks described herein are completed, but in no event later than February 22, 2019, unless sooner terminated pursuant to the provisions of this Agreement.

2. **SERVICES**

(a) Consultant shall perform the tasks ("Services") described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. ("Scope of Services"). Tasks other than those specifically described in the Scope of Services shall not be performed without prior written approval of the City. The Services shall be performed by Consultant, unless prior written approval is first obtained from the City. In the event of conflict or inconsistency between the terms of this Agreement and Exhibit A, the terms of this Agreement shall prevail.

(b) City shall have the right to request, in writing, changes to the Services. Any such changes mutually agreed upon by the Parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement.

(c) Consultant shall perform all Services in a manner reasonably satisfactory to the City and in a first-class manner in conformance with the standards of quality normally observed by an entity providing barn lighting design and specification services, serving a municipal agency.

(d) Consultant shall comply with all applicable federal, state, and local laws, regulations and ordinances in the performance of this Agreement, including but not limited to, the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*). During the term of this

Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working on the Effective Date if both (i) such work would require Consultant to abstain from a decision under this Agreement pursuant to a conflict of interest statute or law; and (ii) City has not consented in writing to Consultant's performance of such work. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.* Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous twelve (12) months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et. seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for Services performed pursuant to this Agreement, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

(e) Consultant represents that it has, or will secure at its own expense, all licensed personnel required to perform the Services. All Services shall be performed by Consultant or under its supervision, and all personnel engaged in the Services shall be qualified and licensed to perform such services.

3. MANAGEMENT

City's City Manager shall represent the City in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by Consultant, but shall have no authority to modify the Services or the compensation due to Consultant.

4. PAYMENT

(a) The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B ("Rate Schedule"), attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed Fifteen Thousand Two Hundred Sixty Dollars (\$15,260.00) for the total Term of the Agreement unless additional payment is approved as provided in this Agreement.

(b) Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City and Consultant at the time City's written authorization is given to Consultant for the performance of said services.

(c) Consultant shall submit invoices monthly for actual services performed. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of Consultant's fees it shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice. Any final payment under this Agreement shall be made within 45 days of receipt of an invoice therefore.

5. SUSPENSION OR TERMINATION OF AGREEMENT

(a) The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Consultant at least ten (10) days prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

(b) In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Consultant shall submit an invoice to the City pursuant to Section 5 of this Agreement.

6. OWNERSHIP OF DOCUMENTS

(a) Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of City or its designees at reasonable times to review such books and records; shall give City the right to examine and audit said books and records; shall permit City to make transcripts or copies therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

(b) Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused, or otherwise disposed of by the City without the permission of the Consultant. With respect to computer files, Consultant shall make available to the City, at the Consultant's office, and upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring, copying and/or printing computer files. Consultant hereby grants to City all right, title, and interest,

including any copyright, in and to the documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared by Consultant in the course of providing the services under this Agreement. All reports, documents, or other written material developed by Consultant in the performance of the Services pursuant to this Agreement, shall be and remain the property of the City.

7. INDEMNIFICATION

(a) Indemnity for professional liability

When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend and hold harmless the City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including legal counsel's fees and costs caused in whole or in part by any negligent or wrongful act, error or omission of Consultant, its officers, agents, employees or Subconsultants (or any agency or individual that Consultant shall bear the legal liability thereof) in the performance of professional services under this Agreement.

(b) Indemnity for other than professional liability

Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or agency for which Consultant is legally liable, including but not limited to officers, agents, employees or subcontractors of Consultant.

(c) DUTY TO DEFEND. In the event the City, its officers, employees, agents and/or volunteers are made a party to any action, claim, lawsuit, or other adversarial proceeding arising from the performance of the services encompassed by this Agreement, and upon demand by City, Consultant shall have an immediate duty to defend the City at Consultant's cost or at City's option, to reimburse the City for its costs of defense, including reasonable attorney's fees and costs incurred in the defense of such matters.

Payment by City is not a condition precedent to enforcement of this indemnity. In the event of any dispute between Consultant and City, as to whether liability arises from the sole negligence of the City or its officers, employees, or agents, Consultant will be obligated to pay for City's defense until such time as a final judgment has been entered adjudicating the City as solely negligent. Consultant will not be entitled in the absence of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees and costs of litigation.

8. INSURANCE

Consultant shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit C attached hereto and incorporated herein by reference.

9. INDEPENDENT CONSULTANT

(a) Consultant is and shall at all times remain as to the City a wholly independent consultant and/or independent contractor. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultants exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the City. Consultant shall not incur or have the power to incur any debt, obligation, or liability whatever against the City, or bind the City in any manner.

(b) No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

10. LEGAL RESPONSIBILITIES

The Consultant shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Consultant shall at all times observe and comply with all such laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this Section.

11. UNDUE INFLUENCE

Consultant declares and warrants that no undue influence or pressure was used against or in concert with any officer or employee of the City in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the City has or will receive compensation, directly or indirectly, from Consultant, or from any officer, employee or agent of Consultant, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling the City to any and all remedies at law or in equity.

12. NO BENEFIT TO ARISE TO LOCAL OFFICERS AND EMPLOYEES

No member, officer, or employee of City, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Project during

his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the Project performed under this Agreement.

13. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

(a) All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization. Consultant, its officers, employees, agents, or subconsultants, shall not without written authorization from the City, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the City, unless otherwise required by law or court order. (b) Consultant shall promptly notify City should Consultant, its officers, employees, agents, or subconsultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request ("Discovery"), court order, or subpoena from any person or party regarding this Agreement and the work performed there under or with respect to any project or property located within the City, unless Consultant is prohibited by law from informing the City of such Discovery, court order or subpoena. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding as allowed by law. Unless City is a party to the lawsuit, arbitration, or administrative proceeding and is adverse to Consultant in such proceeding, Consultant agrees to cooperate fully with the City and to provide the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

14. NOTICES

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To City: City of Industry
15625 E. Stafford, Suite 100
City of Industry, CA 91744

Attention: City Manager

With a Copy To: James M. Casso, City Attorney
Casso & Sparks, LLP
13200 Crossroads Parkway North, Suite 345
City of Industry, CA 91746

To Consultant: Goss Engineering, Inc.
320 South Main Street, Suite 102
Corona, CA 92882
Attention: Shaw Gentry, PE, CEM, CWEP

15. ASSIGNMENT

The Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City.

Before retaining or contracting with any subconsultant for any services under this Agreement, Consultant shall provide City with the identity of the proposed subconsultant, a copy of the proposed written contract between Consultant and such subconsultant which shall include an indemnity provision similar to the one provided herein and identifying City as an indemnified party, or an incorporation of the indemnity provision provided herein, and proof that such proposed subconsultant carries insurance at least equal to that required by this Agreement or obtain a written waiver from the City for such insurance.

Notwithstanding Consultant's use of any subconsultant, Consultant shall be responsible to the City for the performance of its subconsultant as it would be if Consultant had performed the Services itself. Nothing in this Agreement shall be deemed or construed to create a contractual relationship between the City and any subconsultant employed by Consultant. Consultant shall be solely responsible for payments to any subconsultants. Consultant shall indemnify, defend and hold harmless the Indemnified Parties for any claims arising from, or related to, the services performed by a subconsultant under this Agreement.

16. GOVERNING LAW/ATTORNEYS' FEES

The City and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court in Los Angeles County, California. If any action at law or suit in equity is brought to enforce or interpret the provisions of this Agreement, or arising out of or relating to the Services provided by Consultant under this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and all related costs, including costs of expert witnesses and consultants, as well as costs on appeal, in addition to any other relief to which it may be entitled.

17. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the Parties relating to the obligations of the Parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written and pertaining to the subject of this Agreement or with respect to the terms and conditions of this Agreement, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein

and upon each party's own independent investigation of any and all facts such party deems material.

18. SEVERABILITY

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

19. COUNTERPARTS

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

20. CAPTIONS

The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and shall have no significance in the interpretation of this Agreement.

21. WAIVER

The waiver by City or Consultant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by City or Consultant unless in writing.

22. REMEDIES

Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance of the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any of all of such other rights, powers or remedies.

23. AUTHORITY TO EXECUTE THIS AGREEMENT

The person or persons executing this Agreement on behalf of Consultant represents and warrants that he/she has the authority to execute this Agreement on behalf of the

Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the Effective Date.

“CITY”
City of Industry

“CONSULTANT”
Goss Engineering, Inc.

By: _____
Paul J. Philips, City Manager

By: 
Shaw Gentry, President

Attest:

By: _____
Diane M. Schlichting, Chief Deputy City Clerk

Approved as to form:

By: _____
James M. Casso, City Attorney

Attachments:	Exhibit A	Scope of Services
	Exhibit B	Rate Schedule
	Exhibit C	Insurance Requirements

EXHIBIT A

SCOPE OF SERVICES

Consultant shall assess, design, and specify upgraded lighting appropriate for the unique requirements of temporary horse boarding in the West and East barns, yard lighting at the horse handling area, and stall lighting at the 18 horse wash racks located at the EXPO Barns, 16200 Temple Avenue, City of Industry, CA 91744.

The Consultant will perform at a minimum:

- Provide a design to upgrade EXPO Center lighting at the following facilities:
 1. West and East Barns
 2. Horse handling area (south of West Barn)
 3. Horse Wash Stalls (south of West Barn)
 4. Exterior Safety and Security Lighting
- Pre-engineering, including photometric study of the existing barn facilities lighting and the assessment of existing lighting/lighting schemes and switching systems from available drawings and “as-found” conditions.
- Develop preliminary lighting designs at the facilities identified that includes: updated and energy efficient lighting, preferably LED (unless it can be shown that others are more energy efficient); and improved barn lighting switching schemes, establishing options and costs for review and approval by City. All designs shall meet Title 24 and include the incorporation or modification of existing electrical switchgear, circuit breakers, transformers, etc. as needed for a fully functioning system.
- Conduct final engineering and provide construction documents based on an approved preliminary lighting and switching engineering option, incorporating 30% and 70% engineering reviews by the City. The Consultant shall compile the drawings in a format suitable to the City (full sized drawings, reduced sized drawings and/or electronic copies in .pdf format), and submit it to the City at 30% and 70% progress. It is expected that there may be some design elements which will require some review comments or changes by the City. A re-submittal of the detailed design may be required. If the review comments are not significant, the City may elect to not require a re-submittal.
- Provide specifications and bill of materials for all materials, fixtures, and equipment needed to install the upgraded lighting systems.
- Provide a comprehensive construction cost estimate for the designed barn lighting and switching system, horse handling area lighting, and wash rack stall lighting as

required for the complete planning and installation of materials and equipment (by others).

- Consultant shall provide construction support allowance which shall include the review of equipment and material submittals, resolution of Request for Information (RFI), review of Daily Reports, Test Data documentation, turnover materials, punch list items, and resolution of field issues.

Consultant will provide and be responsible for materials and personnel necessary to complete the assessment, design, and specification of an upgraded lighting system. All personnel performing the services set forth herein shall have the requisite training, skills and/or licenses required to perform the work.

EXHIBIT B

RATE SCHEDULE

Barn Facility Lighting System Design and Installation Services	Phase Cost
Phase 1 – Site Assessment	
a. Photometric Study, Site Assessment and Preliminary Design Options	\$4,840
Phase 2 – Design and Construction Documents	
a. Final Engineering/Design	\$3,700
b. Lighting System Drawings and Specifications	\$2,800
c. Equipment/Material Bill of Material/Cost Est	\$1,120
Phase 3 – Construction Support	
a. Review/resolution of submittals, RFI's, field issues	\$2,800
Grand Total	\$15,260

Position	Hourly Rates
Administration	\$65
Auto Cad Drafter	\$90
Engineering Intern	\$55
Engineering Aide	\$85
Assistant Engineer	\$100
Associate Engineer	\$120
Engineer	\$145
Senior Engineer	\$170
Principal Engineer	\$195
Executive Engineer	\$210

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting Consultant's indemnification of City, and prior to commencement of the Services, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to Agency.

General liability insurance. Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000.00 per occurrence, \$2,000,000.00 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

Automobile liability insurance. Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000.00 combined single limit for each accident.

Professional liability (errors & omissions) insurance. Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement.

Workers' compensation insurance. Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000.00).

Consultant shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of Agency, its officers, agents, employees and volunteers.

Proof of insurance. Consultant shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this contract. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

Duration of coverage. Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may

arise from or in connection with the performance of the Services hereunder by Consultant, his agents, representatives, employees or subconsultants.

Primary/noncontributing. Coverage provided by Consultant shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

City's rights of enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant, or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

Acceptable insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VI (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

Waiver of subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

Enforcement of contract provisions (non estoppel). Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant of non-compliance with any requirement imposes no additional obligations on the Agency nor does it waive any rights hereunder.

Requirements not limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Notice of cancellation. Consultant agrees to oblige its insurance agent or broker and insurers to provide to City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

Additional insured status. General liability policies shall provide or be endorsed to provide that City and its officers, officials, employees, and agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess liability policies.

Prohibition of undisclosed coverage limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

Separation of Insureds. A severability of interests provision must apply for all additional insureds ensuring that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

Pass Through Clause. Consultant agrees to ensure that its subconsultants, subcontractors, and any other party involved with the project who is brought onto or involved in the project by Consultant, provide the same minimum insurance coverage and endorsements required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the project will be submitted to City for review.

City's right to revise specifications. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the City and Consultant may renegotiate Consultant's compensation.

Self-insured retentions. Any self-insured retentions must be declared to and approved by the City. The City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by the City.

Timely notice of claims. Consultant shall give the City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

Additional insurance. Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.

EXHIBIT B

Request for Proposal ("RFP") EXPO Barn Facilities Lighting Upgrade Design and
Specifications Services for the City of Industry
(On file in City Clerk's office)

[Attached]

CITY COUNCIL


ITEM NO. 6.6




CITY OF INDUSTRY

MEMORANDUM

TO: Honorable Mayor Radecki and Members of the City Council

FROM: Paul J. Philips, City Manager 

STAFF: Henry Martinez, Senior Vice President, Cordoba Corporation
Lary Atherton, Sr. Project Manager, Cordoba Corporation 

DATE: February 22, 2018

SUBJECT: Consideration of Third Amendment to the Confirmation for Scheduling and Settlement Services and Day Ahead Index Electricity with Calpine Energy Solutions, LLC from February 28, 2018 through March 31, 2018

Background:

The IPUC owns and operates a 12kV Distribution Network that serves the City's residential and business customers. The network is backed-up by Southern California Edison's ("SCE") distribution and sub-transmission grids via multiple Wholesale Distribution Access Tariff ("WDAT") points as well as an IPUC owned 66kV/12kV Substation.

For consideration is an amendment to the Master Power Purchase and Sale Agreement / Confirmation for Scheduling & Settlement Services and Day Ahead Index Electricity Agreement ("Agreement") between Calpine Energy Solutions LLC (formerly Noble Americas Energy Solutions LLC and Sempra Energy Solutions LLC) and City of Industry ("City") for the purchase of electrical power for the Industry Public Utilities Commission ("IPUC") as required by the utility. This amendment will extend the term of the current agreement for an additional one (1) month until March 31, 2018, with the continuation of Calpine's services.

On May 23, 2006, City Council awarded a Master Power Purchase and Sale Agreement ("Agreement") ([Exhibit D](#)) to Sempra Energy Solutions LLC to purchase power for the City of Industry. The Master Power Purchase and Sale Agreement /Confirmation for Scheduling & Settlement Services and Day Ahead Index Electricity Agreement was amended on November 20, 2013 with Noble Americas Energy Solutions LLC, who was assigned the agreement from Sempra Energy Solutions LLC. In December of 2016, Noble Americas Energy Solutions LLC amended their Articles of Organization to change their

name to Calpine Energy Solutions LLC (“Calpine”).

Calpine has been acting as the authorized agent for the IPUC to submit and verify energy load with California Independent System Operator (“CAISO”) system. These services support strategic hedging plans, Resource Adequacy (“RA”) capacity, and day-ahead transactions for electric power. CAISO utilizes strict energy accounting protocols and hosts various markets for energy, reliability, and other power services. Any entity that uses the CAISO controlled grid must use a certified Scheduling Coordinator (“SC”) to act on its behalf. The City contracted with Calpine, a certified SC, to schedule its power purchases and reliability services from CAISO market.

The IPUC is requesting an amendment to extend the agreement from February 28, 2018 through March 31, 2018, to continue the scheduling and purchase of power for the IPUC.

The IPUC has received proposals through the issuance of a Request for Proposal (“RFP”) to continue the scheduling coordination and power purchase from December 2017 to December 2019. Calpine submitted a proposal and was selected as the successful bidder. Yet, due to the longer than anticipated agreement negotiations, the IPUC is requesting an additional month to put the new agreement in place. Thus, the request to extend the current agreement from its expiration date of February 28, 2018 through March 31, 2018 to provide additional time for the review of the agreement.

Fiscal Impact:

An appropriation of \$9,500.00 is being requested at this time to cover the additional month of services from Electric Utility Reserves to City Electric – Expenditures – Electric Purchased Power (Account No. 161-300-6414).

Recommendation:

- 1.) It is hereby recommended that the City Council approve the Third Amendment to the Confirmation for Scheduling and Settlement Services and Day Ahead Index Electricity with Calpine Energy Solutions, LLC; and
- 2.) Appropriate \$9,500.00 from Electric Utility Reserves to City Electric – Expenditures – Electric Purchased Power (Account No. 161-300-6414).

Exhibits:

- A. Third Amendment to the Confirmation for Scheduling and Settlement Services and Day Ahead Index Electricity with Calpine Energy Solutions, LLC, dated February 22, 2018
- B. Second Amendment to the Confirmation for Scheduling and Settlement Services and Day Ahead Index Electricity with Calpine Energy Solutions, LLC, dated December 14, 2017
- C. Amendment to the Confirmation for Scheduling & Settlement Services and Day

Ahead Index Electricity with Noble Americas Energy Solutions, LLC, dated December 10, 2015

D. Master Power Purchase and Sale Agreement with Sempra Energy Solutions, LLC, dated May 2013

PJP/KW/LA

EXHIBIT A

Third Amendment to the Confirmation for Scheduling and Settlement Services and Day
Ahead Index Electricity with Calpine Energy Solutions, LLC
from December 14, 2017 through March 31, 2018

[ATTACHED]

**THIRD AMENDMENT TO THE CONFIRMATION FOR SCHEDULING &
SETTLEMENT SERVICES AND DAY AHEAD INDEX ELECTRICITY**
Between Calpine Energy Solutions, LLC (fka Noble Americas Energy Solutions LLC) ("Seller")
And
City of Industry ("Buyer")
As of November 20, 2013 ("Confirmation Date")
Amendment Effective Date: February 22, 2018

This "Third Amendment" is made and entered into by and between Seller and Buyer in accordance with the terms of the Master Power Purchase and Sale Agreement between Buyer and Seller dated May 23, 2006 (the "Agreement"). Effective upon the Amendment Effective Date, Buyer and Seller hereby agree to amend that certain Confirmation for Scheduling & Settlement Services and Day Ahead Index Electricity between Buyer and Seller dated as of November 20, 2013, as amended on December 10, 2015, and December 14, 2017 (the "Original Confirmation").

For good and sufficient consideration, including the mutual covenants set forth in this Third Amendment, all of the following terms, conditions, covenants and representations set forth in this Third Amendment are hereby incorporated by reference as part of the Original Confirmation, which together shall hereafter constitute the "Confirmation."

- I. The Original Confirmation is hereby amended as follows:
 - A. Section 2 is amended by deleting the reference to "February 28, 2018" and replacing it with "March 31, 2018."
 - B. The Schedule of Hourly Contract Quantities attached to the Confirmation shall be amended to include the Schedule of Hourly Contract Quantities for March 2018 attached hereto.
- II. All capitalized terms used, but not defined, in this Third Amendment shall have the meanings set forth in the Agreement and Confirmation. As modified by this Third Amendment, the Confirmation shall remain in full force and effect.
- III. This Third Amendment may be executed in counterparts, each of which shall be an original and all of which taken together shall constitute one and the same agreement. The Parties agree that, if a copy of this Third Amendment is executed by a Party and transmitted to the other Party by facsimile, the copy received shall be deemed for all legal purposes to be an original executed by the transmitting Party.

IN WITNESS WHEREOF, the authorized representatives of the Parties have executed this Third Amendment as of the Amendment Effective Date.

"SELLER"

Calpine Energy Solutions, LLC

Sign 

Print: Doug Johnson

Title: VP Regional Pricing and Supply

"BUYER"

CITY OF INDUSTRY,
a public body

By: _____
Paul J. Philips, City Manager

Attest:

By: _____
Diane M. Schlichting, Chief Deputy City Clerk

Approved as to form:

By: _____
James M. Casso, City Attorney

SCHEDULE OF HOURLY CONTRACT QUANTITIES

Schedule Date: February 15, 2018

The Contract Price relates to the Contract Quantities (in MWs) at (choose one) the Delivery Point Buyer's Meter.

WEEKDAYS

Month	HE1	HE2	HE3	HE4	HE5	HE6	HE7	HE8	HE9	HE10	HE11	HE12	HE13	HE14	HE15	HE16	HE17	HE18	HE19	HE20	HE21	HE22	HE23	HE24
Mar-2018	4.19	3.97	3.63	3.92	4.22	4.84	5.11	5.34	5.46	5.42	5.54	5.65	5.91	5.97	6.06	6.14	6.05	5.83	5.57	5.50	5.31	5.14	4.78	4.39

SATURDAYS

Month	HE1	HE2	HE3	HE4	HE5	HE6	HE7	HE8	HE9	HE10	HE11	HE12	HE13	HE14	HE15	HE16	HE17	HE18	HE19	HE20	HE21	HE22	HE23	HE24
Mar-2018	3.62	3.51	3.29	3.55	3.67	4.06	4.14	4.12	3.97	3.71	3.73	3.84	3.87	3.83	3.70	3.58	3.62	3.82	3.95	4.03	3.81	3.67	3.45	3.25

SUNDAYS

Month	HE1	HE2	HE3	HE4	HE5	HE6	HE7	HE8	HE9	HE10	HE11	HE12	HE13	HE14	HE15	HE16	HE17	HE18	HE19	HE20	HE21	HE22	HE23	HE24
Mar-2018	3.13	3.15	3.08	2.93	3.00	3.11	3.14	2.96	2.89	2.96	3.10	3.19	3.28	3.40	3.46	3.51	3.54	3.71	3.87	4.10	4.04	3.93	3.88	3.76

EXHIBIT B

Second Amendment to the Confirmation for Scheduling and Settlement Services and
Day Ahead Index Electricity with Calpine Energy Solutions, LLC
from December 14, 2017 through February 28, 2017

[ATTACHED]

**SECOND AMENDMENT TO THE CONFIRMATION FOR SCHEDULING &
SETTLEMENT SERVICES AND DAY AHEAD INDEX ELECTRICITY**
Between Calpine Energy Solutions, LLC (fka Noble Americas Energy Solutions LLC) ("**Seller**")
And
City of Industry ("**Buyer**")
As of November 20, 2013 ("**Confirmation Date**")
Amendment Effective Date: December 14, 2017

This "**Second Amendment**" is made and entered into by and between Seller and Buyer in accordance with the terms of the Master Power Purchase and Sale Agreement between Buyer and Seller dated May 23, 2006 (the "**Agreement**"). Effective upon the Amendment Effective Date, Buyer and Seller hereby agree to amend that certain Confirmation for Scheduling & Settlement Services and Day Ahead Index Electricity between Buyer and Seller dated as of November 20, 2013, as amended on December 10, 2015 (collectively, the "**Original Confirmation**").

For good and sufficient consideration, including the mutual covenants set forth in this Second Amendment, all of the following terms, conditions, covenants and representations set forth in this Second Amendment are hereby incorporated by reference as part of the Original Confirmation, which together shall hereafter constitute the "**Confirmation**."

I. The Agreement is hereby amended as follows:

Effective December 1, 2016, Noble Americas Energy Solutions LLC ("NAES") is no longer a party to the Agreement. All obligations and rights of NAES are hereby assigned to Calpine Energy Solutions, LLC ("CES"). Any and all references in the Agreement to NAES shall now be understood to reference CES.

II. The Original Confirmation is hereby amended as follows:

A. Section 2 is amended by deleting the reference to "December 31, 2017" and replacing it with "February 28, 2018."

B. The Schedule of Hourly Contract Quantities attached to the Confirmation shall be amended to include the Schedule of Hourly Contract Quantities for January and February 2018 attached hereto.

II. All capitalized terms used, but not defined, in this Second Amendment shall have the meanings set forth in the Agreement and Confirmation. As modified by this Second Amendment, the Confirmation shall remain in full force and effect.

III. This Second Amendment may be executed in counterparts, each of which shall be an original and all of which taken together shall constitute one and the same agreement. The Parties agree that, if a copy of this Second Amendment is executed by a Party and transmitted to the other Party by facsimile, the copy received shall be deemed for all legal purposes to be an original executed by the transmitting Party.

IN WITNESS WHEREOF, the authorized representatives of the Parties have executed this Second Amendment as of the Amendment Effective Date.

"SELLER"

Calpine Energy Solutions, LLC

Sign



Print: Doug Johnson

Title: VP Regional Pricing and Supply

"BUYER"

CITY OF INDUSTRY,
a public body

By:

Paul J. Philips, City Manger

Attest:

By:

Diane M. Schlichting, Chief Deputy City Clerk

Approved as to form:

By:

James M. Casso, City Attorney

SCHEDULE OF HOURLY CONTRACT QUANTITIES

Schedule Date: December 14, 2017

The Contract Price relates to the Contract Quantities (in MWs) at (choose one) the Delivery Point Buyer's Meter.

WEEKDAYS

Month	HE1	HE2	HE3	HE4	HE5	HE6	HE7	HE8	HE9	HE10	HE11	HE12	HE13	HE14	HE15	HE16	HE17	HE18	HE19	HE20	HE21	HE22	HE23	HE24
Jan-2018	3.85	3.61	3.25	3.58	3.97	4.65	5.09	5.29	5.49	5.46	5.42	5.44	5.55	5.46	5.50	5.59	5.63	5.74	5.42	5.07	4.81	4.67	4.41	4.17
Feb-2018	3.96	3.69	3.37	3.65	3.95	4.69	5.12	5.35	5.51	5.47	5.49	5.53	5.60	5.62	5.71	5.82	5.82	5.76	5.49	5.12	4.86	4.70	4.43	4.15

SATURDAYS

Month	HE1	HE2	HE3	HE4	HE5	HE6	HE7	HE8	HE9	HE10	HE11	HE12	HE13	HE14	HE15	HE16	HE17	HE18	HE19	HE20	HE21	HE22	HE23	HE24
Jan-2018	3.54	3.50	3.24	3.48	3.54	3.86	4.35	4.10	3.90	3.62	3.63	3.65	3.60	3.52	3.47	3.33	3.44	3.88	3.84	3.73	3.43	3.32	3.04	2.90
Feb-2018	3.54	3.42	3.16	3.45	3.61	3.84	4.01	3.76	3.56	3.36	3.37	3.31	3.31	3.25	3.12	3.06	3.27	3.68	3.84	3.71	3.44	3.22	3.05	2.91

SUNDAYS

Month	HE1	HE2	HE3	HE4	HE5	HE6	HE7	HE8	HE9	HE10	HE11	HE12	HE13	HE14	HE15	HE16	HE17	HE18	HE19	HE20	HE21	HE22	HE23	HE24
Jan-2018	2.79	2.93	2.77	2.85	3.03	3.14	3.21	2.96	2.84	2.78	2.86	2.94	2.95	3.08	3.18	3.20	3.26	3.69	3.72	3.67	3.51	3.42	3.36	3.28
Feb-2018	2.77	2.93	2.77	2.89	3.13	3.23	3.22	2.94	2.90	2.82	2.91	2.97	3.00	3.13	3.09	3.09	3.14	3.61	3.83	3.71	3.53	3.46	3.35	3.23

EXHIBIT C

Amendment to the Confirmation for Scheduling & Settlement Services and
Day Ahead Index Electricity with Noble Americas Energy Solutions, LLC,
dated December 10, 2015

[ATTACHED]

AMENDMENT to the
CONFIRMATION FOR SCHEDULING & SETTLEMENT SERVICES AND DAY AHEAD INDEX
ELECTRICITY

Between Noble Americas Energy Solutions LLC ("Seller")

And

City of Industry ("Buyer")

As of November 20, 2013 ("Confirmation Date")

Amendment Effective Date: December 10, 2015

This Amendment is made and entered into by and between Seller and Buyer in accordance with the terms of the Master Power Purchase and Sale Agreement between Buyer and Seller dated May 23, 2006 (the "Agreement"), and as amended by the Confirmations for Scheduling & Settlement Services and Day Ahead Index Electricity, dated as of November 13, 2015. Effective December 10, 2015, Buyer and Seller hereby agree to amend that certain Confirmation for Scheduling & Settlement Services and Day Ahead Index Electricity between Buyer and Seller dated as of November 20, 2013 (the "Original Confirmation"), and agree to amend the identity of Seller under the Agreement.

For good and sufficient consideration, including the mutual covenants set forth in this Amendment, it is agreed that the aforesaid Agreement and Original Confirmation, shall remain in full force and effect except as otherwise hereinafter provided:

I. The Agreement is hereby amended as follows:

Effective November 1, 2010, Sempra Energy Solutions LLC ("SES") is no longer a party to the Agreement. All obligations and rights of SES under the Agreement are hereby assigned to Noble Americas Energy Solutions LLC ("NAES"). Any and all references in the Agreement to Sempra Energy Solutions, LLC, SES, Seller, or other similar naming conventions shall now be understood to reference NAES.

II. The Original Confirmation is hereby amended as follows:

Section 2 Delivery Period, is amended by deleting the reference to "December 31, 2015" and replacing it with "December 31, 2017."

III. All capitalized terms used, but not defined, in this Amendment shall have the meanings set forth in the Agreement and Confirmation.

IV. This Amendment may be executed in counterparts, each of which shall be an original and all of which taken together shall constitute one and the same agreement. The Parties agree that, if a copy of this Amendment is executed by a Party and transmitted to the other Party by facsimile, the copy received shall be deemed for all legal purposes to be an original executed by the transmitting Party.

IN WITNESS WHEREOF, the authorized representatives of the Parties have executed this Amendment as of the Amendment Effective Date:

For SELLER:

Noble Americas Energy Solutions LLC

Sign: 

Print: Doug Johnson

Title: VP Regional Pricing and Supply

For BUYER:

CITY OF INDUSTRY

By: 

Title: Mark D. Radecki, Mayor

Attest:

By: 

Diane M. Schlichting, Acting Deputy City Clerk

Approved as to form:

By: 

James M. Casso, City Attorney

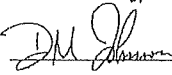
SP16


City of Industry - SCHEDULE OF HOURLY CONTRACT QUANTITIES - WEEKDAYS

Start Date 1/1/2016 End Date 12/31/2017

The Contract Price relates to the Contract Quantities (In MWs) at (choose one) the Delivery Point Buyer's Meter

Month	HB1	HB2	HB3	HB4	HB5	HB6	HB7	HB8	HB9	HB10	HB11	HB12	HB13	HB14	HB15	HB16	HB17	HB18	HB19	HB20	HB21	HB22	HB23	HB24		
Jan-16	4.0	3.7	3.7	3.9	4.1	4.6	5.2	5.3	5.4	5.1	5.1	5.1	5.2	5.3	5.5	5.6	5.7	5.8	5.9	6.1	5.6	5.5	5.3	5.4	5.1	4.5
Feb-16	4.1	3.8	3.8	4.1	4.4	4.7	5.2	5.3	5.4	5.2	5.2	5.3	5.4	5.5	5.6	5.7	5.8	5.9	6.1	5.9	5.7	5.6	5.7	5.3	4.8	
Mar-16	4.3	4.1	4.2	4.4	4.7	5.1	5.6	5.8	5.6	5.3	5.3	5.4	5.6	5.8	5.9	6.0	6.0	6.0	5.9	5.8	5.9	5.8	5.4	4.9		
Apr-16	4.5	4.2	4.1	4.4	4.5	4.9	5.3	5.5	5.6	5.8	5.3	5.5	5.6	5.7	5.7	5.9	5.8	5.8	5.5	5.6	5.8	6.0	5.7	5.2		
May-16	4.3	4.0	4.0	4.3	4.5	4.8	5.1	5.5	5.7	5.6	5.6	5.6	5.6	5.8	5.9	5.8	5.9	5.8	5.7	5.3	5.4	5.7	5.3	4.8		
Jun-16	5.2	5.0	4.8	4.9	5.1	5.3	5.7	6.2	6.4	6.3	6.3	6.4	6.5	6.6	6.7	6.8	6.6	6.5	6.2	6.2	6.3	6.4	6.1	5.7		
Jul-16	5.0	4.8	4.7	4.9	5.0	5.4	5.6	6.1	6.3	6.0	5.9	5.9	5.9	6.0	6.1	6.2	6.1	6.2	5.8	5.8	6.0	6.1	5.8	5.3		
Aug-16	5.5	5.3	5.1	5.1	5.0	5.4	5.7	6.4	6.7	6.5	6.6	6.6	6.7	6.8	6.9	7.0	7.0	7.1	6.7	6.6	6.6	6.5	6.2	5.9		
Sep-16	5.3	5.0	4.8	4.8	4.9	5.6	5.9	6.2	6.5	6.3	6.4	6.5	6.6	6.7	6.8	6.8	6.9	6.9	6.6	6.7	6.5	6.5	6.0	5.6		
Oct-16	4.8	4.4	4.3	4.5	4.7	5.0	5.9	5.9	6.0	5.8	5.9	6.0	6.2	6.3	6.5	6.5	6.5	6.7	6.6	6.4	6.2	6.2	5.8	5.3		
Nov-16	4.6	4.2	4.1	4.3	4.5	5.0	5.3	6.4	5.5	5.3	5.4	5.4	5.5	5.6	5.8	5.9	6.2	6.5	6.1	5.8	5.6	5.6	5.4	5.1		
Dec-16	4.0	3.7	3.7	3.9	4.3	4.7	5.2	5.2	5.4	5.1	5.1	5.1	5.2	5.3	5.5	5.5	5.8	6.1	5.5	5.4	5.2	5.3	5.0	4.5		
Jan-17	4.0	3.7	3.7	3.9	4.2	4.6	5.2	5.3	5.4	5.1	5.1	5.1	5.2	5.3	5.4	5.6	5.9	6.1	5.6	5.5	5.3	5.5	5.1	4.6		
Feb-17	4.1	3.8	3.8	4.1	4.4	4.7	5.3	5.3	5.4	5.2	5.2	5.3	5.5	5.6	5.7	5.8	5.9	6.1	5.9	5.7	5.6	5.7	5.3	4.8		
Mar-17	4.3	4.1	4.2	4.4	4.7	5.1	5.6	5.8	5.6	5.3	5.3	5.4	5.6	5.8	5.9	6.0	6.0	6.0	5.9	5.8	6.0	5.8	5.4	5.0		
Apr-17	4.5	4.2	4.1	4.3	4.5	4.9	5.3	5.5	5.6	5.3	5.3	5.5	5.6	5.7	5.7	5.8	5.8	5.8	5.5	5.6	5.8	6.0	5.7	5.2		
May-17	4.4	4.1	4.0	4.3	4.6	4.8	5.2	5.6	5.8	5.6	5.6	5.6	5.7	5.8	5.8	5.9	5.8	5.7	5.4	5.4	5.7	5.7	5.3	4.9		
Jun-17	5.2	5.0	4.8	4.9	5.0	5.3	5.7	6.1	6.4	6.3	6.3	6.3	6.5	6.6	6.6	6.7	6.6	6.5	6.2	6.1	6.3	6.4	6.1	5.6		
Jul-17	5.0	4.8	4.7	4.9	5.0	5.3	5.6	6.1	6.4	6.0	6.0	6.0	6.1	6.2	6.2	6.3	6.2	6.2	5.9	5.8	6.1	6.2	5.8	5.4		
Aug-17	5.6	5.4	5.1	5.1	5.0	5.4	5.8	6.4	6.8	6.5	6.6	6.6	6.7	6.8	6.9	7.0	7.0	7.0	6.7	6.6	6.6	6.5	6.2	5.8		
Sep-17	5.3	5.0	4.8	4.8	4.9	5.6	5.9	6.2	6.5	6.3	6.4	6.5	6.6	6.7	6.8	6.8	6.9	7.0	6.6	6.7	6.5	6.5	6.0	5.6		
Oct-17	4.8	4.5	4.3	4.5	4.7	5.3	5.8	5.8	5.9	5.8	5.9	6.0	6.2	6.3	6.4	6.5	6.5	6.7	6.6	6.4	6.2	6.2	5.8	5.3		
Nov-17	4.6	4.2	4.2	4.4	4.6	5.1	5.4	5.4	5.6	5.3	5.4	5.5	5.6	5.7	5.9	6.0	6.4	6.6	6.2	5.9	5.6	5.6	5.5	5.1		
Dec-17	4.1	3.7	3.7	4.0	4.3	4.8	5.2	5.2	5.4	5.2	5.2	5.2	5.3	5.4	5.5	5.6	5.9	6.2	5.6	5.5	5.3	5.4	5.1	4.6		

Noble Americas Energy Solutions LLC
 Sign: 
 Print: Doug Johnson
 Title: VP Regional Pricing and Supply

CITY OF INDUSTRY
 Sign: 
 Print: Paul J. Phillips
 Title: City Manager

SP16

City of Industry - SCHEDULE OF HOURLY CONTRACT QUANTITIES - SATURDAYS

Start Date 1/1/2016 End Date 12/31/2017

The Contract Price relates to the Contract Quantities (in MWs) at (choose one) the Delivery Point Buyer's Meter

Month	HB1	HB2	HB3	HB4	HB5	HB6	HB7	HB8	HB9	HB10	HB11	HB12	HB13	HB14	HB15	HB16	HB17	HB18	HB19	HB20	HB21	HB22	HB23	HB24
Jan-16	3.8	3.5	3.4	3.6	3.8	3.9	4.2	4.0	3.9	3.7	3.6	3.6	3.6	3.4	3.2	3.2	3.5	3.6	3.5	3.5	3.7	3.5	3.8	
Feb-16	4.3	4.0	3.8	3.8	4.0	4.1	4.3	4.1	3.8	3.7	3.7	3.7	3.7	3.6	3.4	3.2	3.2	3.5	3.7	3.7	3.7	3.9	3.7	3.5
Mar-16	4.6	4.2	4.0	4.2	4.3	4.5	4.7	4.4	4.2	4.0	4.1	4.1	3.9	3.8	3.8	3.7	3.7	3.6	3.8	4.0	4.1	4.1	3.9	3.9
Apr-16	4.8	4.3	4.0	4.3	4.2	4.4	4.4	4.1	4.0	3.9	4.0	3.9	3.9	3.9	3.9	3.8	3.8	3.6	3.6	3.7	4.0	4.3	4.2	3.9
May-16	4.4	3.9	3.8	4.1	4.1	4.4	4.4	4.5	4.4	4.3	4.3	4.2	4.2	4.1	4.0	3.9	3.8	3.6	3.6	3.7	4.0	4.2	4.0	3.7
Jun-16	5.0	4.8	4.6	4.7	4.7	4.7	4.7	4.8	4.8	4.7	4.7	4.8	4.8	4.6	4.5	4.4	4.2	4.1	4.0	4.0	4.8	4.6	4.4	4.0
Jul-16	5.2	5.0	4.6	4.7	4.8	5.2	5.0	5.1	4.8	4.8	4.7	4.7	4.7	4.5	4.5	4.4	4.2	4.1	4.0	4.1	4.8	4.6	4.2	3.9
Aug-16	5.5	5.0	4.7	4.6	4.6	5.1	5.2	5.2	5.1	4.9	4.9	4.9	4.9	4.9	4.9	4.9	5.0	5.1	4.9	4.8	4.6	4.7	4.6	4.3
Sep-16	5.2	4.7	4.4	4.6	4.5	5.0	5.1	5.0	5.0	4.6	4.7	4.9	4.9	4.9	4.9	4.7	4.8	4.9	4.9	5.0	4.8	4.8	4.6	4.3
Oct-16	4.6	4.2	3.9	4.2	4.6	5.0	5.2	4.9	4.8	4.7	4.6	4.5	4.5	4.4	4.2	4.2	4.2	4.1	4.3	4.5	4.4	4.5	4.2	4.0
Nov-16	4.3	3.9	3.7	4.1	4.3	4.6	4.6	4.6	4.4	4.4	4.3	4.2	4.1	4.0	4.0	3.9	4.0	4.8	4.3	4.3	4.2	4.5	4.3	3.9
Dec-16	3.9	3.6	3.4	3.8	4.0	4.2	4.3	4.1	4.0	3.8	3.9	3.8	3.8	3.8	3.8	3.7	3.7	4.1	4.1	4.0	4.1	4.2	3.9	3.7
Jan-17	3.1	2.9	2.7	2.9	3.0	3.1	3.3	3.2	3.1	2.9	2.9	2.9	2.9	2.8	2.7	2.5	2.5	2.8	2.9	2.8	2.8	2.9	2.8	2.6
Feb-17	4.3	4.0	3.8	3.8	4.0	4.1	4.3	4.1	3.8	3.7	3.7	3.7	3.7	3.6	3.4	3.2	3.2	3.5	3.7	3.7	3.7	3.9	3.7	3.5
Mar-17	4.6	4.2	4.0	4.2	4.3	4.6	4.7	4.4	4.2	4.0	4.1	4.1	3.9	3.8	3.8	3.7	3.7	3.6	3.8	4.0	4.1	4.1	3.9	3.9
Apr-17	4.8	4.3	4.0	4.3	4.2	4.4	4.4	4.1	4.0	3.9	4.0	3.9	3.9	3.9	3.9	3.8	3.8	3.6	3.6	3.7	4.0	4.3	4.2	3.9
May-17	4.4	3.9	3.8	4.1	4.1	4.4	4.4	4.5	4.5	4.4	4.3	4.3	4.2	4.2	4.1	4.0	3.9	3.8	3.6	3.6	4.0	4.2	4.0	3.7
Jun-17	5.0	4.8	4.6	4.7	4.7	4.7	4.7	4.8	4.8	4.7	4.7	4.8	4.8	4.6	4.5	4.4	4.2	4.1	4.0	4.0	4.8	4.6	4.4	4.0
Jul-17	5.2	5.0	4.6	4.7	4.8	5.2	5.0	5.1	4.8	4.8	4.7	4.7	4.7	4.5	4.5	4.4	4.2	4.1	4.0	4.1	4.8	4.6	4.2	3.9
Aug-17	5.5	5.0	4.7	4.6	4.6	5.1	5.2	5.2	5.1	4.9	4.9	4.9	4.9	4.9	4.9	4.9	5.0	5.1	4.9	4.8	4.6	4.7	4.6	4.3
Sep-17	5.2	4.7	4.4	4.6	4.5	5.0	5.1	4.9	5.0	4.7	4.8	4.9	4.9	4.9	4.8	4.7	4.8	4.9	4.9	4.9	4.8	4.8	4.6	4.2
Oct-17	4.6	4.1	3.9	4.2	4.5	4.9	5.2	4.9	4.8	4.6	4.5	4.4	4.4	4.3	4.1	4.1	4.1	4.1	4.3	4.4	4.3	4.5	4.2	4.0
Nov-17	4.4	3.9	3.9	4.1	4.4	4.7	4.8	4.7	4.6	4.4	4.4	4.3	4.2	4.1	4.0	3.9	3.9	4.2	4.3	4.8	4.3	4.4	4.1	3.9
Dec-17	3.9	3.6	3.5	3.8	4.0	4.2	4.4	4.1	4.0	3.9	4.0	3.9	3.9	3.8	3.8	3.6	3.8	4.3	4.3	4.2	4.2	4.3	4.1	3.8

Noble Americas Energy Solutions LLC

CITY OF INDUSTRY

Sign: *Doug Johnson*
 Print: Doug Johnson

Sign: *Paul J. Phillips*
 Print: Paul J. Phillips

Title: VP Regional Pricing and Supply

Title: City Manager

SP16

City of Industry - SCHEDULE OF HOURLY CONTRACT QUANTITIES -- SUNDAYS


Start Date 1/1/2016 End Date 12/31/2017

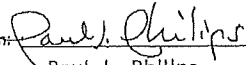
The Contract Price relates to the Contract Quantities (in MWs) at (choose one) the Delivery Point Buyer's Meter

Month	HR1	HR2	HR3	HR4	HR5	HR6	HR7	HR8	HR9	HR10	HR11	HR12	HR13	HR14	HR15	HR16	HR17	HR18	HR19	HR20	HR21	HR22	HR23	HR24
Jan-16	3.1	2.9	2.8	3.2	3.5	3.6	3.6	3.4	3.3	3.4	3.6	3.6	3.5	3.6	3.6	3.6	3.6	4.1	4.1	4.0	4.0	4.2	4.0	3.7
Feb-16	3.3	3.1	2.9	2.9	3.1	3.3	3.3	3.0	3.0	3.1	3.3	3.3	3.4	3.4	3.5	3.5	3.8	4.0	4.3	4.2	4.2	4.4	4.3	4.1
Mar-16	3.7	3.4	2.6	3.5	3.6	3.6	3.6	3.3	3.1	3.2	3.4	3.5	3.6	3.7	3.8	3.8	3.9	4.2	4.3	4.5	4.6	4.4	4.1	3.9
Apr-16	3.8	3.6	3.4	3.2	3.3	3.6	3.5	3.1	3.0	3.1	3.2	3.3	3.3	3.4	3.5	3.5	3.5	3.7	3.7	4.0	4.3	4.5	4.3	3.9
May-16	3.7	3.5	3.2	3.1	3.3	3.5	3.5	3.3	3.3	3.4	3.6	3.5	3.5	3.6	3.7	3.7	3.7	3.8	3.8	3.9	4.3	4.4	4.3	4.0
Jun-16	3.9	3.9	3.8	4.0	3.9	4.0	3.8	3.8	4.0	4.1	4.2	4.4	4.5	4.6	4.7	4.7	4.8	4.7	4.6	4.7	5.0	5.2	5.0	4.7
Jul-16	4.0	4.1	4.0	3.9	4.1	4.2	4.0	3.9	4.2	4.3	4.3	4.4	4.4	4.5	4.5	4.6	4.8	4.7	4.5	4.6	4.8	5.0	4.8	4.6
Aug-16	4.0	3.9	3.8	3.9	4.0	4.0	3.9	3.8	4.0	4.0	4.3	4.4	4.4	4.5	4.6	4.6	4.6	4.9	4.8	4.9	5.0	5.2	5.1	4.9
Sep-16	4.1	3.8	3.5	3.7	3.9	4.2	4.1	4.0	4.2	4.1	4.4	4.6	4.7	4.8	4.9	5.0	4.9	5.0	4.8	5.0	5.0	5.0	4.9	4.8
Oct-16	4.0	3.9	3.8	3.8	3.8	3.9	4.0	3.9	3.8	4.0	4.1	4.3	4.3	4.3	4.5	4.5	4.5	4.5	4.7	4.8	4.8	4.9	4.8	4.6
Nov-16	3.5	3.4	3.3	3.6	3.7	3.8	3.8	3.6	3.7	3.7	3.8	4.0	4.0	4.1	4.2	4.2	4.3	4.6	4.7	4.6	4.5	4.7	4.5	4.2
Dec-16	3.5	3.3	3.4	3.6	3.6	3.8	3.8	3.6	3.6	3.7	3.8	3.8	3.7	3.8	3.9	3.9	4.0	4.4	4.5	4.5	4.5	4.7	4.5	4.1
Jan-17	3.1	2.9	2.8	3.2	3.5	3.6	3.6	3.4	3.3	3.4	3.6	3.6	3.5	3.6	3.6	3.6	3.6	4.1	4.1	4.0	4.0	4.2	4.0	3.7
Feb-17	3.3	3.1	2.9	2.9	3.1	3.3	3.3	3.0	3.0	3.1	3.3	3.3	3.4	3.4	3.5	3.5	3.8	4.0	4.3	4.2	4.2	4.4	4.3	4.1
Mar-17	3.7	3.4	2.6	3.5	3.6	3.6	3.6	3.3	3.1	3.2	3.4	3.5	3.6	3.7	3.8	3.8	3.9	4.2	4.3	4.5	4.6	4.4	4.1	3.9
Apr-17	3.8	3.6	3.4	3.2	3.3	3.6	3.5	3.1	3.0	3.1	3.2	3.3	3.3	3.4	3.5	3.5	3.5	3.7	3.7	4.0	4.3	4.5	4.3	4.0
May-17	3.6	3.4	3.1	3.0	3.2	3.4	3.4	3.3	3.3	3.4	3.6	3.5	3.5	3.6	3.7	3.7	3.8	3.9	3.9	4.3	4.3	4.5	4.3	4.0
Jun-17	3.9	3.9	3.8	4.0	3.9	4.0	3.8	3.8	4.0	4.1	4.2	4.4	4.5	4.6	4.7	4.7	4.8	4.7	4.6	4.7	5.0	5.2	5.0	4.7
Jul-17	4.0	4.1	4.0	3.9	4.1	4.2	4.0	3.9	4.2	4.3	4.3	4.4	4.4	4.5	4.5	4.6	4.5	4.7	4.5	4.6	4.8	5.0	4.8	4.6
Aug-17	4.0	3.9	3.8	3.9	4.0	4.0	3.9	3.8	4.0	4.0	4.3	4.4	4.4	4.5	4.6	4.6	4.6	4.9	4.8	4.9	5.0	5.2	5.1	4.9
Sep-17	4.1	3.8	3.5	3.7	3.9	4.2	4.1	4.0	4.2	4.1	4.4	4.6	4.7	4.8	4.9	5.0	4.9	5.0	4.8	5.0	5.0	5.0	4.9	4.8
Oct-17	4.0	3.9	3.8	3.8	3.8	3.9	4.0	3.9	3.8	4.0	4.1	4.3	4.3	4.3	4.5	4.5	4.5	4.5	4.7	4.8	4.8	4.9	4.8	4.6
Nov-17	3.5	3.5	3.5	3.7	3.7	3.7	3.7	3.5	3.6	3.7	3.9	4.0	4.0	4.0	4.1	4.1	4.2	4.4	4.6	4.5	4.5	4.6	4.4	4.1
Dec-17	3.5	3.3	3.3	3.6	3.6	3.8	3.8	3.6	3.6	3.7	3.8	3.8	3.8	3.8	4.0	4.0	4.1	4.5	4.6	4.5	4.5	4.7	4.5	4.1

Noble Americas Energy Solutions LLC

CITY OF INDUSTRY

Sign: 

Sign: 

Print: Doug Johnson

Print: Paul J. Phillips

Title: VP Regional Pricing and Supply

Title: City Manager

EXHIBIT D

Master Power Purchase and Sale Agreement with Sempra Energy Solutions,
LLC, dated May 2013

[ATTACHED]

Master Power Purchase & Sale Agreement



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")

Name ("Counterparty" or "Party B")

All Notices:

All Notices:

Street: _____

Street: _____

City: _____ Zip: _____

City: _____ Zip: _____

Attn: Contract Administration

Attn: Contract Administration

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

Duns: _____

Duns: _____

Federal Tax ID Number: _____

Federal Tax ID Number: _____

Invoices:

Invoices:

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

Scheduling:

Scheduling:

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

Payments:

Payments:

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

Wire Transfer:

Wire Transfer:

BNK: _____

BNK: _____

ABA: _____

ABA: _____

ACCT: _____

ACCT: _____

Credit and Collections:

Credit and Collections:

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

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

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

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

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

Party A Tariff Tariff _____ Dated _____ Docket Number _____

Party B Tariff Tariff _____ Dated _____ Docket Number _____

Article Two

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

Article Four

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

Article Five

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

5.6 Closeout Setoff

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

Article 8

Credit and Collateral Requirements

8.1 Party A Credit Protection:

(a) Financial Information:

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

(b) Credit Assurances:

- Not Applicable
- Applicable

(c) Collateral Threshold:

- Not Applicable
- Applicable

If applicable, complete the following:

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

Party B Independent Amount: \$ _____

Party B Rounding Amount: \$ _____

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

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

Other:
Specify: _____

(e) Guarantor for Party B: _____

Guarantee Amount: _____

8.2 Party B Credit Protection:

(a) Financial Information:

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

(b) Credit Assurances:

- Not Applicable
- Applicable

(c) Collateral Threshold:

- Not Applicable
- Applicable

If applicable, complete the following:

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

Party A Independent Amount: \$ _____

Party A Rounding Amount: \$ _____

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

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

(e) Guarantor for Party A: _____

Guarantee Amount: _____

Article 10

Confidentiality

Confidentiality Applicable

If not checked, inapplicable.

Schedule M

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

Other Changes

Specify, if any: _____

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

Party A Semptra Energy Solutions

Party B City of Industry

By:  _____

By: City of Industry  _____

Name: James M. Wood _____

Name: David Perez _____

Title: President _____

Title: Mayor _____

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 _____.¹

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

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

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

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

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

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

¹ 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 _____² SHALL APPLY.

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

SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS

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

“Capacity” has the meaning specified in the Transaction.

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

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

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

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

“Firm (No Force Majeure)” means, with respect to a Transaction, that if either Party fails to perform its obligation to sell and deliver or purchase and receive the Product, the Party to which performance is owed shall be entitled to receive from the Party which failed to perform an

amount determined pursuant to Article Four. Force Majeure shall not excuse performance of a Firm (No Force Majeure) Transaction.

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

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

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

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

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

A. Timely Request for Firm Transmission made by Buyer, Accepted by the Receiving Transmission Provider and Purchased by Buyer. If a Timely Request for Firm Transmission is made by Buyer and is accepted by the Receiving Transmission Provider

and Buyer purchases such Firm Transmission, then Seller shall deliver and Buyer shall receive the Product at the Designated Interface.

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

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

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

iv. In each instance in which Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI pursuant to Sections 3A(i) or (ii), and Firm Transmission had been purchased by both Seller and Buyer into and within the Receiving Transmission Provider's transmission system as to the scheduled delivery which could not be completed as a result of the interruption or curtailment of such Firm Transmission, Buyer and Seller shall bear their respective transmission expenses and/or associated congestion charges incurred in connection with efforts to complete delivery by such alternative scheduling and delivery arrangements. In any instance except as set forth in the immediately preceding sentence, Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI under Sections 3A(i) or (ii), Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with such alternative scheduling arrangements.

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

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

D. No Timely Request for Firm Transmission Made by Buyer, or Buyer Fails to Timely Send Buyer's Rejection Notice. If Buyer fails to make a Timely Request for Firm Transmission or Buyer fails to timely deliver Buyer's Rejection Notice, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

4. Transmission.

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

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

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

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

A. If Seller is not the Source Seller, then Seller shall notify Buyer of the Designated Interface promptly after Seller is notified thereof by the Other Seller with whom Seller has a contractual relationship, but in no event may such designation of the Designated Interface be later than the prescheduling deadline pertaining to the Transaction between Buyer and Seller pursuant to Section 1.

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

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

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

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

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

"System Firm" means that the Product will be supplied from the owned or controlled generation or pre-existing purchased power assets of the system specified in the Transaction (the "System") with non-firm transmission to and from the Delivery Point, unless a different Transmission Contingency is specified in a Transaction. Seller's failure to deliver shall be excused: (i) by an event or circumstance which prevents Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Seller; (ii) by Buyer's failure to perform; (iii) to the extent necessary to preserve the integrity of, or prevent or limit any instability on, the System; (iv) to the extent the System or the control area or reliability council within which the System operates declares an emergency condition, as determined in the system's, or the control area's, or reliability council's reasonable judgment; or (v) by the interruption or curtailment of transmission to the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Seller's performance. Buyer's failure to receive shall be excused (i) by Force Majeure; (ii) by Seller's failure to perform, or (iii) by the interruption or curtailment of transmission from the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Buyer's performance. In any of such events, neither party shall be liable to the other for any damages, including any amounts determined pursuant to Article Four.

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

or Buyer has secured from source to sink is interrupted or curtailed for any reason, this contingency excuses performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of "Force Majeure" in Article 1.23 to the contrary.

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

**MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER**

This confirmation letter shall confirm the Transaction agreed to on _____, _____
between _____ ("Party A") and _____ ("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

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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: _____

Name: _____

Title: _____

Title: _____

Phone No: _____

Phone No: _____

Fax: _____

Fax: _____