

INDUSTRY PUBLIC UTILITIES COMMISSION CITY OF INDUSTRY

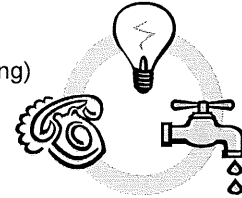
SPECIAL MEETING AGENDA

MARCH 22, 2018 8:30 A.M.

(Immediately following the conclusion of the Successor
Agency to the Industry Urban-Development Agency Meeting)



President Mark D. Radecki
Commissioner Abraham N. Cruz
Commissioner Catherine Marcucci
Commissioner Cory C. Moss
Commissioner Newell W. Ruggles



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

Addressing the Commission:

- ▶ **Agenda Items:** Members of the public may address the Commission on any matter listed on the Agenda. Anyone wishing to speak to the Commission is asked to complete a Speaker's Card which can be found at the back of the room and at the podium. The completed form should be submitted to the City Clerk prior to the Agenda item being called and prior to the individual being heard by the Commission.
- ▶ **Public Comments (Agenda Items Only):** During public comments, if you wish to address the Commission during this Special Meeting, under Government Code Section 54954.3(a), you may only address the Commission concerning any item that has been described in the notice for the Special Meeting.

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. **BOARD MATTERS**

5.1 Consideration of the Register of Demands for February 15, 2018

RECOMMENDED ACTION: Ratify the Register of Demands for February 15, 2018.

5.2 Consideration of the Register of Demands for March 15, 2018

RECOMMENDED ACTION: Ratify the Register of Demands for March 15, 2018.

5.3 Consideration of Resolution No. IPUC 2018-01 – A RESOLUTION OF THE INDUSTRY PUBLIC UTILITIES COMMISSION RESCINDING RESOLUTION NO. IPUC 2016-01, TO ESTABLISH THE DATE, TIME AND PLACE OF REGULAR MEETINGS OF THE COMMISSION

RECOMMENDED ACTION: Adopt Resolution No. IPUC 2018-01.

5.4 Consideration of a Professional Services Agreement by and between the City of Industry, the Successor Agency to the Industry Urban-Development Agency, and the Industry Public Utilities Commission, and C & C Engineering, Inc., for engineering services, from March 22, 2018 to March 21, 2021, with two one-year extensions to the Agreement

RECOMMENDED ACTION: Approve the Agreement.

5.5 Consideration of a Master Power Purchase and Sale Agreement with Calpine Energy Solutions, LLC, for Contract No. 2017-1035, Energy Scheduling, Trading, Settlement, and Risk Management Services, in an amount not-to-exceed \$72,000.00 from March 22, 2018 to March 22, 2020

RECOMMENDED ACTION: Approve the Agreement.

5.6 Presentation by the General Manager of the La Puente Valley County Water District regarding the Industry Public Utilities Water Operations Quarterly Report from October 2017 to December 2017

RECOMMENDED ACTION: Receive and file the report.

6. Adjournment. Next regular meeting: Thursday, April 12, 2018 at 8:30 a.m.

INDUSTRY PUBLIC UTILITIES COMMISSION

ITEM NO. 5.1

Industry Public Utilities Commission
Authorization For Payment of Bills
Meeting of February 15, 2018

<u>FUND</u>	<u>DESCRIPTION</u>	DISBURSEMENTS
560	Industry Public Utilities	16,217.46
	TOTAL ALL FUNDS	16,217.46

<u>BANK</u>	<u>NAME</u>	DISBURSEMENTS
BOFA	Bank of America	16,217.46
	TOTAL ALL BANKS	16,217.46

APPROVED PER CITY MANAGER

**Industry Public Utilities Commission
Board Meeting
February 15, 2018**

Check	Date		Payee Name	Check Amount
IPUC.CHK - IPUC Water BofA Checking				
40365	01/19/2018		SO CALIFORNIA EDISON COMPANY	\$10,114.07
	Invoice	Date	Description	Amount
	2018-00000868	12/30/2017	11/30-12/29/17 SVC - 1991 WORKMAN MILL U	\$10,114.07
40366	02/15/2018		INDUSTRY PUBLIC UTILITIES	\$1,500.00
	Invoice	Date	Description	Amount
	JAN-18	01/29/2018	REIMBURSE PAYROLL - JANUARY 2018	\$1,500.00
40367	02/15/2018		ROWLAND WATER DISTRICT	\$4,603.39
	Invoice	Date	Description	Amount
	I-12312017-A	01/09/2018	CONTRACT SVC - DECEMBER 2017	\$2,796.46
	I-12312017-B	01/09/2018	CONTRACT SVC - DECEMBER 2017	\$1,806.93

Checks	Status	Count	Transaction Amount
	Total	3	\$16,217.46

INDUSTRY PUBLIC UTILITIES COMMISSION

ITEM NO. 5.2

Industry Public Utilities Commission
Authorization For Payment of Bills
Meeting of March 15, 2018

<u>FUND</u>	<u>DESCRIPTION</u>	<u>DISBURSEMENTS</u>
560	Industry Public Utilities	18,995.38
	TOTAL ALL FUNDS	18,995.38

<u>BANK</u>	<u>NAME</u>	<u>DISBURSEMENTS</u>
BOFA	Bank of America	18,995.38
	TOTAL ALL BANKS	18,995.38

APPROVED PER DIRECTOR OF FINANCE

**Industry Public Utilities Commission
Board Meeting
March 15, 2018**

Check	Date		Payee Name	Check Amount
IPUC.CHK - IPUC Water BofA Checking				
40368	02/13/2018		SO CALIFORNIA EDISON COMPANY	\$9,612.12
	Invoice	Date	Description	Amount
	2018-00000979	02/01/2018	12/29-01/30/18 SVC - 1991 WORKMAN MILL U	\$9,612.12
40369	03/15/2018		CITY OF INDUSTRY	\$2,467.56
	Invoice	Date	Description	Amount
	2/15/18-IPUC	02/15/2018	INSURANCE PREMIUM ALLOCATION FY 17-18	\$2,467.56
40370	03/15/2018		INDUSTRY PUBLIC UTILITIES	\$2,000.00
	Invoice	Date	Description	Amount
	FEB-18	03/01/2018	REIMBURSE PAYROLL - FEBRUARY 2018	\$2,000.00
40371	03/15/2018		ROWLAND WATER DISTRICT	\$4,915.70
	Invoice	Date	Description	Amount
	I-1312018-A	02/07/2018	CONTRACT SVC - JANUARY 2018	\$2,317.54
	I-1312018-B	02/07/2018	CONTRACT SVC - JANUARY 2018	\$2,598.16

Checks	Status	Count	Transaction Amount
	Total	4	\$18,995.38

INDUSTRY PUBLIC UTILITIES COMMISSION

ITEM NO. 5.3

RESOLUTION NO. IPUC 2018-01

**A RESOLUTION OF THE INDUSTRY PUBLIC UTILITIES COMMISSION
RESCINDING RESOLUTION NO. IPUC 2016-01, TO ESTABLISH THE
DATE, TIME AND PLACE OF REGULAR MEETINGS OF THE
COMMISSION**

RECITALS

WHEREAS, on February 11, 2016, the Board of Directors of the Industry Public Utilities Commission adopted Resolution No. IPUC 2016-01, establishing the date, time and place of regular meetings of the Commission; and

WHEREAS, the Commission now desires to change the date and time of the regular meetings of the Commission.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE INDUSTRY PUBLIC UTILITIES COMMISSION DOES HEREBY RESOLVE, DETERMINE, FIND, AND ORDER AS FOLLOWS:

SECTION 1: The Commission finds that all of the facts set forth in the Recitals are true and correct, and are incorporated herein by reference.

SECTION 2: Resolution No. IPUC 2016-01 is hereby rescinded in its entirety.

SECTION 3: The regular meetings of the Commission shall be held at the date, time and place as set forth below:

Time and Date: 8:30 a.m., on the second Thursday of each month

Place: City of Industry Council Chambers, 15651 E. Stafford Street, Industry, CA 91744

SECTION 4: 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 5: That the Commission Secretary 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 Industry Public Utilities Commission at a special meeting held on March 22, 2018, by the following vote:

AYES: BOARD MEMBERS:

NOES: BOARD MEMBERS:

ABSTAIN:

BOARD MEMBERS:

ABSENT:

BOARD MEMBERS:

Mark D. Radecki, President

ATTEST:

Diane M. Schlichting, Secretary

INDUSTRY PUBLIC UTILITIES COMMISSION


ITEM NO. 5.4



INDUSTRY PUBLIC UTILITIES COMMISSION

MEMORANDUM

TO: Honorable President Radecki and Commission Board Members

FROM: James M. Casso, General Counsel 

DATE: March 22, 2018

SUBJECT: Consideration of a Professional Services Agreement with C & C Engineering, Inc., for Engineering Services from March 22, 2018 to March 21, 2021

BACKGROUND: On March 14, 2018, Cordoba Corporation informed Mayor Radecki that it had decided to terminate its working relationship with the City and other City agencies, including the IPUC. With Cordoba's resignation, it has become necessary for the IPUC Board to enter into an agreement with an engineering firm to serve as the IPUC's Engineer. Since the early 1980s, C&C Engineering, Inc., ("C&C") has served the City in various capacities, assisting with engineering projects for the City's agencies, commissions and boards. Starting in 2016, with the departure of certain staff members, C&C served as City Engineer for about one year.

DISCUSSION: Before the Commission is a three-year agreement with two one-year extensions, engaging C&C Engineering for engineering services and specifically designating Joshua Nelson as the contract City and IPUC Engineer. Attached to the Agreement, as Exhibits A and B, is the scope of services and C&C's rate schedule, which is consistent with the charges C&C currently charges the City for certain engineering services.

RECOMMENDATION: Approve the Agreement.

CITY OF INDUSTRY

PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT (“Agreement”), is made and effective as of March 22, 2018 (“Effective Date”), by and between the City of Industry, a municipal corporation, (“City”), the Successor Agency to the Industry Urban-Development Agency, a public body, corporate and politic (“Agency”), and the Industry Public Utilities Commission, a public body, corporate and politic (“IPUC”) (collectively, the “City”) and C & C Engineering, Inc., a California corporation (“Consultant”). The City and Consultant are hereinafter collectively referred to as the “Parties”.

RECITALS

WHEREAS, the 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; and

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 March 21, 2021, unless sooner terminated pursuant to the provisions of this Agreement. Notwithstanding the foregoing, the City at its sole and exclusive option, may grant two one (1) year extensions to 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 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.*). 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/Agency and IPUC Executive Director 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. For Consultant, Joshua L. Nelson shall serve as the contract City, Agency and IPUC Engineer.

4. PAYMENT

(a) The City agree to pay Consultant bi-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.

(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 bi-monthly for actual services performed. Invoices shall be submitted on or about the first and fifteenth business days 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 and 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 thirty (30) 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.

(c) In the event this Agreement is terminated pursuant to this section, the Consultant shall provide the City with all sketches, pencil tracings of working drawings, plans, computations in reproducible form, specifications and all contract documents shall be the property of the City without restriction or limitation upon use, duplication or dissemination. With the written permission of the City, Consultant shall be entitled to retain copies of such documents as it may require. It is contemplated that during the Term of this Agreement, all of aforementioned original plans, sketches, drawings, contracts and the like shall be maintained in the possession of the City, but the Consultant may retain copies of all such documents. The City may require Consultant to surrender possession thereof of all existing original documents and work product in Consultant possession upon thirty (30) day notice.

(d) Consultant agrees that approval of this Agreement shall automatically cause the termination of any underlying agreements for engineering services between the City and Consultant, including, but not limited to, the agreement with the City dated September 22, 2016, and any subsequent amendments thereto. Consultant further waives and releases the City, their officials, employees and agents from any and all claims for damages pertaining to the termination of any prior agreements for engineering services between the City and Consultant.

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 that arise out of, pertain to, or relate to 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, 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. If it is finally adjudicated that liability was caused by the comparative active negligence or willful misconduct of an indemnified party, Consultant may submit a claim to the City for reimbursement of reasonable attorneys' fees and defense costs in proportion to the established comparative liability of the indemnified party.

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 Services 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 any party may desire to give to any 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/Executive Director
With a Copy To:	James M. Casso, City Attorney/Agency General Counsel Casso & Sparks, LLP 13200 Crossroads Parkway North, Suite 345 City of Industry, CA 91746
To Consultant:	Clement N. Calvillo, President C & C Engineering, Inc. 255 North Hacienda Boulevard, Suite 222 City of Industry, CA 91744

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 indemnified parties, 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.

(SIGNATURES ON FOLLOWING PAGE)

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

“CITY”
City of Industry

“CONSULTANT”
C & C Engineering, Inc.

By: _____
Mark D. Radecki, Mayor

By: _____
Clement N. Calvillo, President

By: _____
Mary R. Calvillo, Secretary

Attest:

By: _____
Diane M. Schlichting, City Clerk

Approved as to form:

By: _____
James M. Casso, City Attorney

“AGENCY”
Successor Agency to the Industry Urban-
Development Agency

By: _____
Mark D. Radecki, Chairman

Attest:

By: _____
Diane M. Schlichting, Secretary

Approved as to form:

By: _____
James M. Casso, Agency General Counsel

IPUC
Industry Public Utilities Commission

By: _____
Mark D. Radecki, Chairman

Attest:

By: _____
Diane M. Schlichting, Secretary

Approved as to form:

By: _____
James M. Casso, Commission General Counsel

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

EXHIBIT A

SCOPE OF SERVICES

Consultant shall provide engineering staff augmentation services as needed and if requested including but not limited to:

1. General Engineering and Project Management

- A. Serve as City Engineer; designated City Engineer/Agency Engineer and Deputy City Engineer/ Agency Engineer must be a registered civil engineer in the State of California;
- B. Manage and provide all aspects of civil engineering, traffic engineering, front counter permit services, plan checking, development conditioning, capital project management, construction inspection, and assistance in obtaining federal, state and other funding for transportation and other infrastructure projects;
- C. Review all matters pertaining to engineering to ensure that initiatives proposed and implemented by the City/Agency and others are done in a manner that protects the City's/Agency's interests, and are consistent with local, state and federal laws;
- D. Assist in planning, coordinating, supervising and evaluating infrastructure, programs, plans, and services;
- E. Evaluate the City's/Agency's needs and formulate short- and long-term plans to meet needs in all areas of public works improvements, including streets, sewers, storm drains, water distribution system, street lights, traffic signals, bridges, median islands, municipal facilities and all other improvements within the public right-of-way;
- F. Provide engineering, design services, land surveying and manage construction of public works projects, including construction inspection and construction staking;
- G. Be available to public and private developers to handle matters dealing with the engineering functions of city government;
- H. Maintain, at City Hall, municipal engineering records and maps required to ensure accurate information is available to the public and City/Agency staff;
- I. Prepare reports, investigations, studies and evaluations as may be requested by the City;
- J. Advise the City/Agency as to engineering and construction funding available from other government agencies, and when so directed, prepare and initiate applications for funding;
- K. Serve as Resident Engineer when required pursuant to Caltrans/federal requirements;

- L. Design of capital improvement projects, improvement plans, specifications, bid documents, and public improvement project management and inspection;
- M. Solicit proposals for capital improvement project design work, construction management, and inspection, as needed;
- N. Review and evaluate bid submittals;
- O. Provide construction observation, management, inspection, and staking during the construction of City/ Agency projects; act as Resident Engineer; assist with cost estimating, approval of payments, and change orders, filing of notices, and other tasks;
- P. Coordinate activities with other departments and outside agencies to obtain various approvals and agreements such as environmental clearances, permits, land acquisition, and rights-of-way for engineering projects;
- Q. Negotiate land acquisitions, dispositions, easements, agreements, leases, and other associated property rights as it relates to engineering projects and/or the dissolution of the Agency;
- R. Assist with the development and implementation of a multi-year Capital Improvement Program for the City and Agency;
- S. Attend City Council, Successor Agency to the Industry Urban-Development Agency, Oversight Board of the Successor Agency to the Industry-Urban Development Agency, Industry Public Utilities Commission, Planning Commission, Civic-Recreational-Industrial Authority and other meetings as requested;
- T. Provide such other related engineering services as requested by the City Manager/Executive Director or other City/Agency Management Personnel or their designee;
- U. Provide peer review for City/Agency contractors and accept peer review from City/Agency Contractors, as directed;
- V. Conform to systems of procurement, administrative and financial controls, as directed;
- W. Provide NPDES services that are necessary and related functions as are the normal practice of City Engineering Departments including any stormwater projects required of the City;
- X. Maintain the City's/Agency's digital and plotted atlases of all infrastructure and assets
- Y. Provide utility coordination services as requested; and
- Z. Assist the City with any needs or requests affiliated with city owned property both within City limits and outside City limits.

2. Development Review

- A. Review proposed improvements and land developments and provide recommendation as to engineering matters to ensure conformance with City ordinances and state law;
- B. Perform statutory functions of City/ Agency Engineer pertaining to the review and checking of lot line adjustments, parcel and tract maps, including tentative, final and vesting maps. Ensure map conformance with State Subdivision Map Act and City ordinances;
- C. Provide a "turn around" checking time for maps and improvement plans within a reasonable number of days for the first plan check once the application has been deemed complete and all subsequent plan checks necessary until plan is approved. The Engineer shall notify the applicant in writing of any final plan or final map deficiencies within the timeframe required by State law, specifying those items needed to complete the application;
- D. Establish performance, labor and material bond amounts when required and ensure the posting of such bonds within the proper time sequence of such development control;
- E. Provide necessary and related functions as are the normal practice of City/Agency Engineering in control of private development; and
- F. Provide front counter in-take and public information services.

3. Traffic Engineering

- A. Provide support and expertise in the application of Traffic Engineering principles and practices to provide and enhance the safety and efficient movement of pedestrians, cyclists and vehicular traffic of people and goods within the City;
- B. Ensure compliance with requirements of Section 627 of the California Vehicle Code and all other applicable federal, state, and local laws;
- C. Provide comprehensive analyses of existing and projected traffic conditions; intersection design, rail line or at-grade crossing impacts, speed humps, City parking lot design, and traffic/transportation data collection services;
- D. Provide electronic traffic control device studies and designs (signs, signals, pavement markings, school zone flashers and curve warning flashers);
- E. Review subdivision or new development projects involving traffic impact analyses, transportation modeling, area-wide transportation studies and road impact fee analyses;
- F. Investigate citizen requests for traffic calming measures and respond to citizens, as directed by the City Manager/Executive Director or other City/Agency management personnel;

- G. Provide technical assistance for traffic signal design and day-to-day traffic operations including traffic signals;
- H. Provide technical input to City/ Agency staff with signing and striping changes, issuing workorders to address citizen requests, signal equipment upgrades and parts, collision analysis, speed limits, traffic volume data and other work performed by City/Agency staff;
- I. Review traffic plans for capital improvement projects and advise City/Agency on potential issues;
- J. Assist City with preparation of Annual Traffic Safety Report;
- K. Review development plans, including environmental impact reports and impact studies for potential traffic issues and advise on possible solutions;
- L. Review precise grading and public improvement plans for potential traffic issues and advise on possible solutions;
- M. Review traffic control plans for construction projects and advise on potential issues;
- N. Maintain traffic collision database and advise on traffic issues involved. And
- O. Serve as the Traffic Engineer if requested.

4. Construction Inspection

- A. Coordinate and attend pre-construction meetings;
- B. Process shop drawings, submittals and requests for information (RFIs) from contractors;
- C. Provide field inspections of work in progress to ensure compliance with plans and specifications;
- D. Follow federal requirements and procedures and filing system for federally funded projects;
- E. Take digital photos of each construction phase throughout duration of project;
- F. Serve as inspector of record (create red lines on as-built drawings) for work inspected;
- G. Prepare and file written daily inspection reports;
- H. Coordinate inspections with utility companies as necessary;
- I. Coordinate special testing and inspection work as required;
- J. Report instances of apparent non-compliance with contract plans, specifications to Director of Development Services and Administration or other City/Agency management personnel or their designee for resolution;
- K. Verify prevailing wages and payroll information; and
- L. Process progress payment applications.

5. Testing

Consultant shall oversee the testing and review construction method and material compliance testing reports. Testing will include, but not be limited to:

- A. Soil compaction testing;
- B. Asphalt concrete testing; and
- C. Concrete slump and strength testing.

6. Federally Funded Projects

- A. Secure all necessary permits, including CEQA and NEPA compliance, surveying, testing, preparation of plans and specifications, description of construction phasing plan, estimate of probable construction costs, preparation of bid documents, review of construction contract bids, recommendation for award, construction inspection, and construction administration;
- B. Provide all services in accordance with Caltrans standards, FHWA standards, and City/ Agency standards;
- C. Comply with California Government Code Section 8355 in matters relating to the provision of a drug-free workplace;
- D. Comply with the Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et. Seq., that govern allowable elements of cost;
- E. Comply with the administrative requirements set forth in 49 CFR Part 18, Uniform Administrative Requirement for Grants and Cooperative Agreements to State and Local Governments; and
- F. Comply with CFR Title 49, Part 29, Debarment and Suspension of Certificate, refer to Exhibit 12-E "Debarment and Suspension Certificate" in Chapter 12 of the Caltrans Local Assistance Manual.

7. Provision of Services

- A. Place the highest emphasis on customer service;
- B. Be reachable and available to respond to City/Agency emergencies at all times. Consultant must provide City/ Agency with emergency contact numbers for key personnel to facilitate the immediate response by Consultant to emergencies and provide an updated contact list when needed;
- C. Communicate effectively with citizens before, during, and after construction projects;

- D. Consultant shall provide written comments for initial and subsequent review within a reasonable number of days from date of receipt of the plans. Consultant shall provide comments for expedited plan reviews on a case by case basis;
- E. Consultant will meet approximately twice per month with the Director of Development Services and Administration or other designated staff to provide comprehensive updates on all pending assignments; and
- F. Consultant will make initial contact in response to staff and developer inquiries and citizen concerns within a reasonable amount of time after receipt by the City and update the reporting party and City/Agency staff regularly throughout the investigation and resolution period.

8. City's Industry Public Utility Commission (IPUC) Services

Support of the City's Industry Public Utility Commission (IPUC). Consultant will provide the following services either with Consultant employees or through the use of sub-consultants necessary to develop, conduct, oversee, operate, and grow the IPUC including, at a minimum, all program and project management services needed to ensure adherence to local, state and federal regulations, and operational updates needed to develop and secure the IPUC's financial viability under the following major categories:

A. IPUC Administration

Administrative services for the IPUC needed to ensure proper operation, reporting, and compliance of the IPUC's electric systems and function.

B. Asset Management

Asset management services for IPUC facilities, systems and equipment.

C. File Management

Develop and maintain the IPUC files and databases including, at a minimum the approval, routing, organization, upload and access to appropriate and required personnel.

D. Power Procurement

Oversee the contractors and regulations required in purchasing and supplying the energy needs of the IPUC customers and system, including, at a minimum, contractor(s) contractual obligation and performance, energy pricing review, communications, and obligations and reporting.

E. Environmental Oversight

Oversee, select and work with contractor, local, state and federal officials in providing guidance on the environmental requirements needed to operate and maintain the IPUC facilities, equipment, property, and infrastructure.

F. Legacy Issues

Work with the City and its contractors with legacy concerns that have not been resolved, including, at a minimum, consultation, strategy development, action plan implementation, and corrective actions needed to inform or correct past information or actions.

G. Staff Augmentation

Provide and make available the necessary staff and personnel required to administer the IPUC, including at a minimum, management, program, project, engineering, administrative and support personnel.

H. Process Development and Implementation

Develop and implement IPUC processes and standards needed to operate and maintain the IPUC department, including, at a minimum, customer connections, contract approval, fees and deposits and operation and maintenance procedures.

I. After Hours Response

Provide after-hours response, communication, oversight, and availability for the IPUC facilities, equipment and infrastructure. Personnel responsible for after-hours work will be assigned as needed depending on schedules and availability.

J. Engineering

Provide technical engineering support and services for IPUC facility and infrastructure design and construction.

K. Field Visits

Acting as IPUC staff, will attend, set-up, facilitate, and coordinate visits to IPUC facilities, equipment, infrastructure and property as needed or required by mandates, regulation or requested by the designated City officials.

L. Strategic Planning

Assist with City strategic planning services to further the IPUC growth and financial expansion.

M. Project Management

Provide project management services, including, at a minimum, initiating, planning, implementing, execution, and close out of the scope, schedule and budget of existing and future IPUC projects, in addition to City projects requiring IPUC involvement.

N. Community Choice Aggregation (CCA)

Work with City to determine how they would like to proceed with this program.

O. Other duties as requested.

EXHIBIT B

RATE SCHEDULE

Civil Engineering Services		Municipal Engineering Services	
Principal	\$235.00	City Engineer/Agency Engineer	\$235.00
Sr. Project Manager/Civil Engineer	\$185.00	Deputy City/Agency Engineer	\$195.00
Project Manager/Civil Engineer	\$165.00	Plan Checker Engineer	\$145.00
Sr. Construction Manager	\$185.00	Plan Checker	\$125.00
Construction Manager	\$165.00	Sr. Construction Manager	\$185.00
Sr. Project Engineer	\$155.00	Construction Manager	\$165.00
Project Engineer	\$145.00	Sr. Construction Inspector	\$165.00
Sr. Design Engineer	\$135.00	Construction Inspector	\$135.00
Design Engineer	\$125.00	Permit Coordinator	\$130.00
CADD Operator	\$110.00	Administrative Supervisor	\$95.00
Administrative Supervisor	\$95.00	Administrative Assistant	\$80.00
Administrative Assistant	\$80.00	Senior Energy Advisor	\$235.00
Clerical	\$70.00	Field Operations	\$140.00
Intern	\$70.00		

Field Survey and Inspection Services	
Director of Survey	\$185.00
Survey Manager	\$165.00
Land Surveyor	\$145.00
One Person Crew	\$160.00
Two Person Crew	\$250.00
Three Person Crew	\$325.00
Sr. Construction Inspector	\$165.00
Construction Inspector	\$135.00

The above-mentioned rates shall be adjusted at the beginning of each fiscal year, commencing July 1, 2020, pursuant to the Consumer Price Index published by the U.S. Department of Labor, Bureau of Labor Statistics as of December of the prior calendar year for the Los Angeles-Long Beach-Anaheim Metropolitan Statistical Area average, all items, not seasonally adjusted, rounded up to the nearest five dollars (\$5.00) per hour, however, such adjustment shall be no less than 2.5% per year.

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting Consultant's indemnification of City and/or Agency, 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 \$2,000,000.00 per occurrence, \$5,000,000.00 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 City and Agency, their 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 reserve 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 and/or Agency 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 and Agency before the City's and/or Agency'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 and/or Agency 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 and Agency, their 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/or Agency, 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 and/or 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 and/or Agency.

Notice of cancellation. Consultant agrees to oblige its insurance agent or broker and insurers to provide to City and Agency 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 Agency and their 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 and Agency reserve 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, Agency 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 reserve 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 and Agency 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.

INDUSTRY PUBLIC UTILITIES COMMISSION

ITEM NO. 5.5



INDUSTRY PUBLIC UTILITIES COMMISSION

MEMORANDUM

To: Honorable President Radecki and Commission Board Members

Staff: Henry Martinez Senior Vice President Cordoba Corporation

Date: March 22, 2018

Subject: Consideration of a Master Power Purchase and Sale Agreement with Calpine Energy Solutions, LLC, for Contract No. 2017-1035, Energy Scheduling, Trading, Settlement and Risk Management Services, in an amount not to exceed \$72,000.00 from March 22, 2018 through March 22, 2020.

Background:

On September 26, 2017, the Industry Public Utilities Commission (“IPUC”) published a Request for Proposal (“RFP”), via the City of Industry’s PlanetBids™ portal, seeking Energy Scheduling, Trading, Settlements, and Risk Management Services. This is for services related to the electrical energy portfolio management, scheduling, and settlements. The IPUC requires the services of a CAISO certified scheduling coordinator to act as the duly authorized agent of the IPUC. The scheduling coordinator shall prepare, submit, and verify energy load, resource schedules and trades in accordance with the applicable CAISO Tariff, operating requirements and criteria, scheduling procedures and other applicable standards.

The RFP was posted on the City’s PlanetBids™ vendor portal on September 26, 2017. Questions pertaining to the proposal were received up until October 12, 2017 at 1:00 pm in the City’s PlanetBids™ vendor portal.

The RFP process closed on October 27, 2017 at 5:00 P.M. with the receipt of three (3) proposals from Shell Energy North America (US), L.P., Calpine Energy Solutions, LLC, and ZGLOBAL Power Engineering & Energy Solutions. All three (3) proposals have been reviewed for completeness, accuracy and qualifications and the IPUC staff has determined that Calpine Energy Solutions, LLC is a qualified vendor and submitted a complete proposal. Calpine Energy Solutions, LLC references and qualifications have been checked by IPUC and City staff resulting in excellent recommendations from previous Calpine Energy Solutions, LLC employers.

The following table represents a summary of the proposals received:

Proposers	Bid Price
Shell Energy North America (US), L.P.	* \$242,500.00
Calpine Energy Solutions, LLC	* \$72,000.00
ZGLOBAL Power Engineering & Energy Solutions	* \$142,895.00
<i>Engineer's Estimate</i>	<i>\$125,000.00</i>

*Based on the monthly rate for a 2-year term

FISCAL IMPACT:

The Engineer's estimate for the energy scheduling, trading, settlements, and risk management services was \$125,000 over a two (2) year term, based on the existing contract. Calpine Energy Solutions, LLC has proposed an estimate of \$72,000 for a two (2) year term in the amount of \$3,000 per month. An appropriation of \$72,000 from Electric Utility Reserves to City Electric -Expenditures – Electric Purchased Power (Account no. 161-300-6414) for the energy scheduling, trading, settlements, and risk management services will be required upon approval of award.

RECOMMENDATIONS:

1. Approve and authorize the Agreement between the IPUC and Calpine Energy Solutions, LLC for the Scheduling & Settlement Services and Day Ahead Index Electricity and Master Power Purchase and Sale Agreement; and
2. Appropriate \$72,000 Electric Utility Reserves to City Electric -Expenditures – Electric Purchased Power (Account no. 161-300-6414) for the energy scheduling, trading, settlements, and risk management services.

Exhibits:

- A. Master Power Purchase and Sale Agreement Cover Sheet, dated March 22, 2018
- B. Confirmation for Scheduling & Settlement Services and Day Ahead Index Electricity, dated March 22, 2018
- C. Master Power Purchase and Sales Agreement

HM:yp

EXHIBIT A

Master Power Purchase and Sale Agreement Cover Sheet, dated March 22, 2018

[Attached]

**MASTER POWER PURCHASE AND SALE AGREEMENT
COVER SHEET**

This *Master Power Purchase and Sale Agreement* (“*Master Agreement*”) is made as of the following date: March 22, 2018 (“*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:

Calpine Energy Solutions, LLC (“*Calpine*” or “*Party A*”) Industry Public Utilities Commission (“*IPUC*” or “*Party B*”)

All Notices:

Street: 401 West A Street, Suite 500

City: San Diego, CA Zip: 92101

Attn: Contract Administration

Facsimile: (619) 684-8251

CSContracts@calpinesolutions.com

Duns: 96-825-4276

Federal Tax ID Number: 77-0212977

All Notices:

Street: _____

City: _____ Zip: _____

Attn: Contract Administration

Phone: _____

Facsimile: _____

Duns: _____

Federal Tax ID Number: _____

Invoices:

Attn: Wholesale Settlements

Phone: (619) 684-8268

Facsimile: (619) 684-8380

Email: wholesalesettlements@calpinesolutions.com

Invoices:

Attn: _____

Phone: _____

Facsimile: _____

Confirmations:

Attn: Confirmations

Phone: (619) 684-8205

Facsimile: (866) 565-8450

Email: CSConfirmations@calpinesolutions.com

Confirmations:

Attn: _____

Phone: _____

Facsimile: _____

Scheduling:

Attn: Energy Commodity Operations

Phone: (619) 684-8184

Facsimile: (619) 684-8365

Email: CSPowerScheduling@calpinesolutions.com

Scheduling:

Attn: _____

Phone: _____

Facsimile: _____

Payments:

Attn: Wholesale Settlements

Phone: (619) 684-8268

Facsimile: (619) 684-8380

Email: wholesalesettlements@calpinesolutions.com

Payments:

Attn: _____

Phone: _____

Facsimile: _____

Wire Transfer:

BNK: JPMorgan Chase Bank, N.A.

ABA: 021000021

ACCT: 496581302

Wire Transfer:

BNK: _____

ABA: _____

ACCT: _____

Credit and Collections:

Attn: Credit Risk
Phone: (619) 684-8284
Email (Notice): CSCreditRisk@calpinesolutions.com

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

Attn: Legal Department
Facsimile: (619) 684-8350
Email: CSLegal@calpinesolutions.com

Credit and Collections:

Attn: _____
Phone: _____
Facsimile: _____

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

Attn: _____
Phone: _____
Facsimile: _____

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

Party A Tariff Tariff: FERC Dated: Feb. 15, 2017 Docket Number: ER17-696-000

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: Calpine Corporation Cross Default Amount: \$100,000,000.00

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 Eight

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, the provisions of Section 8.1 (c) of the Agreement shall be replaced by the provisions of the Collateral Annex attached hereto.

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

- It shall be a Downgrade Event for Party B if Party B's Guarantor's Credit Rating falls below _____ from S&P and _____ from Moody's or if Party B's Guarantor 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: Calpine Corporation
- Option C Specify: as available

(b) Credit Assurances:

- Not Applicable
- Applicable

(c) Collateral Threshold:

- Not Applicable
- Applicable

If applicable, the provisions of Section 8.2 (c) of the Agreement shall be replaced by the provisions of the Collateral Annex attached hereto.

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

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

Specify:

(e) Guarantor for Party A: Not Applicable.

Guarantee Amount: _____

Article Ten

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: See "Other Changes" Attached Hereto

**“OTHER CHANGES” TO EEI STANDARDIZED
MASTER POWER PURCHASE AND SALE AGREEMENT**

ARTICLE ONE: GENERAL DEFINITIONS

Section 1.27 is amended by deleting the word “transferable” in the first line and inserting the following after the last sentence:

“The value of the Letter of Credit shall be its principal amount (the “Value”), provided that if the Letter of Credit expires within thirty days after the date its Value is being determined, its Value shall be zero. Notwithstanding Article 8, the Secured Party need not return a Letter of Credit unless the entire principal amount is required to be returned. If a Party has delivered more than one form of Performance Assurance to the Secured Party, when a return of Performance Assurance is to be made, the Secured Party may elect which form to transfer.”

Section 1.50 is amended by deleting the words “Section 2.4” and replacing them with the words “Section 2.5”.

Section 1.51 is amended by deleting the phrase “at Buyer's option” from the fifth line and replacing it with the phrase “absent a purchase”.

Section 1.53 is amended by deleting the phrase “at Seller's option” from the fifth line and replacing it with the phrase “absent a sale”.

ARTICLE TWO: TRANSACTIONS TERMS AND CONDITIONS

Section 2.1 is amended by deleting the words “orally or, if expressly required by either Party with respect to a particular Transaction,” in the second line.

Section 2.4 is amended by deleting the words “either orally or” in the seventh line.

Section 2.5 is deleted in its entirety.

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

Section 8.3 is amended by inserting the following at the end:

“All cash collateral shall bear interest calculated on a daily basis at overnight LIBID as from time to time in effect (as reported on Telerate), with the net amount of interest accrued monthly being payable on the third Business Day of the following month. Each Party shall have the free and unrestricted right to use and dispose of all cash collateral which it holds, subject only to its obligations to return such collateral if and when so required under this Agreement.”

ARTICLE TEN: MISCELLANEOUS

Section 10.2(viii) is amended by inserting the following after “doing,” in the seventh line:

“nor is it relying on any unique or special expertise of the other Party and it is not in any special relationship of trust or confidence with respect to the other Party,”

Section 10.6 is amended by inserting the following at the end:

“EACH PARTY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN CALIFORNIA FOR ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY TRANSACTION, AND EXPRESSLY WAIVES ANY OBJECTION IT MAY HAVE TO SUCH JURISDICTION OR THE CONVENIENCE OF SUCH FORUM.”

Section 10.9 is amended by (i) deleting the words “and during normal working hours” in the first and second lines, (ii) inserting the words “copies of” after the word “examine” in the second line, and (iii) deleting the words “twelve (12) months” in the ninth line and replacing them with the words “twenty-four (24) months”.

The following is added as Section 10.12:

“10.12 Standard of Review/Modifications.

(a) Absent the prior mutual written agreement of all parties to the contrary, the standard of review for any proposed changes to the rates, terms, and/or conditions of service of this Agreement or any Transaction entered into thereunder, whether proposed by a Party, a non-party or FERC acting *sua sponte*, shall be the "public interest" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956).

(b) Without limiting the generality of subsection (a), the rates, terms, and/or conditions of service specified in this Agreement or any Transaction entered into thereunder shall remain in effect for the entire term of the Agreement and shall not be subject to either prospective or retroactive revision through application or complaint to FERC pursuant to sections 205, 206, or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent the prior written agreement of all Parties hereto.”

The following is added as Section 10.13:

“10.13 Insurance. Without limiting Party A’s indemnification obligations to Party B under the Agreement, Party A shall obtain, provide and maintain, at its own expense, policies of insurance as described below.”

(a) **General liability insurance.** Party A 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.

(b) **Automobile liability insurance.** Party A 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 Party A arising out of or in connection with services 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.

(c) **Professional liability (errors & omissions) insurance.** Party A 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. Party A agrees to maintain continuous coverage through a period no less than three years after the termination of this Agreement.

(d) **Workers’ compensation insurance.** Party A shall maintain Workers’ Compensation Insurance (Statutory Limits) and Employer’s Liability Insurance (with limits of at least \$1,000,000.00). Party A shall submit to Party B, along with the certificate of insurance, a Waiver of

Subrogation blanket endorsement in favor of Party B and its elected or appointed officers, agents, officials, employees, volunteers, and attorneys (collectively, the "Indemnified Parties").

(e) **Proof of insurance.** Party A shall provide certificates of insurance to Party B 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 Party B's Risk Manager prior to providing any services. Current certification of insurance shall be kept on file with Party B.

(f) **Duration of coverage.** Party A shall procure and maintain 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 Party A or its agents, representatives, employees, vendors, subcontractors, and/or subconsultants.

(g) **Primary/noncontributing.** Coverage provided by Party A shall be primary, and any insurance or self-insurance procured or maintained by Party B 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 Party B and the Indemnified Parties before Party B's or any Indemnified Parties' own insurance or self-insurance shall be called upon to protect it as a named insured.

(h) **Party B'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 immediately replaced, Party B has the right but not the duty to obtain the insurance it deems necessary, and any premium paid by Party B will be promptly reimbursed by Party A, or Party B will withhold amounts sufficient to pay premium from Party A payments. In the alternative, Party B may cancel this Agreement.

(i) **Acceptable insurers.** All insurance policies shall be issued by an insurance company currently authorized by the California 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 Party B's Risk Manager.

(j) **Waiver of subrogation.** All insurance coverage maintained or procured pursuant to this agreement shall be endorsed (by blanket endorsement or otherwise) to waive subrogation against Party B and the Indemnified Parties or shall specifically allow Party A or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Party A hereby waives its own right of recovery against Party B and the Indemnified Parties and shall require similar written express waivers and insurance clauses from each of its subconsultants.

(k) **Enforcement of contract provisions (non estoppel).** Party A acknowledges and agrees that any actual or alleged failure on the part of Party B to inform Party A of non-compliance with any requirement imposes no additional obligations on Party B, nor does it waive any rights hereunder or excuse any of Party A's obligations.

(l) **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.

(m) **Notice of cancellation.** Party A agrees to cause its insurance agent or broker and insurers to provide to Party B with a thirty (30) day prior notice of cancellation (except for nonpayment of premium) or nonrenewal of coverage for each required coverage.

(n) **Additional insured status.** General liability policies shall provide or be endorsed to provide that Party B and the Indemnified Parties shall be additional insureds under such policies. This provision shall also apply to any excess liability policies.

(o) **Separation of Insureds.** A severability of interests provision must apply for all additional insureds ensuring that Party A'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.

(p) **Pass Through Clause.** Party A agrees to ensure that its subconsultants, subcontractors, and any other party involved with the project who is brought onto or involved in discharging Party A's obligations under this Agreement and/or providing the services provide insurance coverage that is reasonable and customary for the scope of services. Party A 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. Party A agrees that, upon request, all agreements with consultants, subcontractors, and others engaged in the project will be submitted to Party B for review.

(q) **Party B's right to revise specifications.** Party B reserves the right at any time prior to termination of the Agreement to make reasonable requests to change the amounts and types of insurance required by giving Party A ninety (90) days' advance written notice of such change. If such change results in substantial additional cost to Party A, Party B and Party A may renegotiate the allocation of the marginal cost of such changed insurance.

(r) **Self-insured retentions.** Any self-insured retentions must be declared to and approved by Party B in writing. Party B 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 Party B in writing.

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

(t) **Additional insurance.** Party A 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, provision of the services, and compliance with its obligations under this Agreement."

The following is added as Section 10.14:

"10.14 Independent Consultant.

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

(b) No employee benefits shall be available to Party A in connection with the performance of this Agreement. Party B shall only pay Party A pursuant to the terms and conditions set forth in each Confirmation and shall not, under any circumstances, pay any salaries, wages, or other

Version 2.1 (modified 4/25/00)

compensation to Party A or any of its officers, employees, vendors, agents, and/or subcontractors. Party B shall not be liable for compensation or indemnification to Party A for death, injury, or sickness of its officers, employees, vendors, agents, and/or subcontractors arising out of performing services under the Agreement.”

The following is added as Section 10.15:

“10.15 Legal Responsibilities. Party A 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 services under the Agreement. Party A shall at all times observe and comply with all such laws and regulations. Neither Party B nor any of its officers and employees shall be liable at law or in equity occasioned by failure of Party A to comply with this Section 10.15.”

The following is added as Section 10.16:

“10.16 Undue Influence. Party A represents and warrants that no undue influence or pressure was used against or in concert with any officer or employee of Party B 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 Party B has or will receive compensation, directly or indirectly, from Party A, or from any officer, employee or agent of Party A, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section 10.16 shall be a material breach of this Agreement entitling Party B to any and all remedies available at law or in equity.”

The following is added as Section 10.17:

“10.17 No Benefit to Arise to Local Officers and Employees. No member, officer, or employee of Party B, or its designees or agents, and no public official who exercises authority over or responsibilities with respect to the services and/or this Agreement 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 the services performed under this Agreement.”

SCHEDULE M

Section D is amended as follows:

The first paragraph shall be deleted and replaced with the following:

“Section 3.4 Public Power System’s Deliveries. Upon Party A’s request 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.”

[SIGNATURE PAGE FOLLOWS]

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

Calpine Energy Solutions, LLC

Industry Public Utilities Commission

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date : _____

Date: _____

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.

EXHIBIT B

Confirmation for Scheduling & Settlement Services and Day Ahead Index Electricity,
dated March 22, 2018

[Attached]

Confirmation for Scheduling & Settlement Services and Day Ahead Index Electricity

<i>For Seller's Use Only</i>	
Trade Date	
Seller's ID	

Reference:
MASTER POWER PURCHASE AND SALE AGREEMENT
 Between Calpine Energy Solutions, LLC ("Seller")
 And Industry Public Utilities Commission ("Buyer")
 As of May 23, 2006 ("Effective Date")
 Confirmation Date: March 22, 2018

This Confirmation ("Confirmation") supplements the Master Power Purchase and Sale Agreement referred to above (the "Agreement"). The Parties hereby agree to the price arrangement, terms and conditions identified below. Capitalized terms not otherwise defined in this Confirmation shall have their meanings set forth elsewhere in the Agreement, including its exhibits, schedules and any written supplements thereto, the Party B Tariff, any designated collateral, credit support or margin agreement or similar arrangement between the Parties, and all Transactions.

1. **PRODUCT.** The Contract Price(s) for Electricity set forth in this Confirmation include each component in the table set forth below that is indicated by an [X], which are referred to herein collectively as "Electricity."

ELECTRICITY:	
(Generation Components)	
<input checked="" type="checkbox"/>	Electric Energy
<input checked="" type="checkbox"/>	Scheduling Coordinator Services
<input checked="" type="checkbox"/>	Settlement Services

Scheduling Coordinator Services includes:

Physical bidding and scheduling of interval usage with the applicable scheduling authority
 Physical scheduling of term and spot supply contracts with scheduling authority
 Ancillary services bidding and scheduling

Settlement Services includes:

Settlement reconciliation with bilateral suppliers
 Reconciliation with the applicable Transmission Provider for energy
 Settlement reconciliation detail (Shadow Settlement) to Buyer

2. **DELIVERY PERIOD.** This Confirmation shall be in full force and effect as of the Confirmation Date. The terms set forth herein shall apply from the Start Date through the End Date:

Start Date:	End Date:
March 22, 2018	March 22, 2020

3. **LOCATION AND DELIVERY POINT.**

Market Area	Supply Point	Delivery Point	Buyer's Local Utility
CAISO	EZ Gen Hub SP-15	SCE LAP	SCE

4. **PRICING.**

- 4.1 Contract Price: Buyer shall pay Seller the Index Price for the Contract Quantity, set forth in Section 7. Buyer shall pay Seller the Monthly Service Fee as set forth below. The Contract Price reflects the value of any Congestion Revenue Rights or Marginal Losses associated with serving Buyer's load.

Index Price (in \$/MWh)	Monthly Service Fee
CAISO Day Ahead Locational Marginal Price for the Delivery Point as published at www.caiso.com	\$3,000

- 4.2 Pass-Through Charges: The Contract Price set forth above includes only the components set forth in Section One of this Confirmation. Seller shall pass through to Buyer all other RTO or Buyer's Local Utility charges associated with Electricity delivery to the Delivery Point, including, without limitation, Ancillary Services, ISO Fees, Scheduling Coordinator fees, Distribution & Transmission Losses, Unaccounted for Energy (UFE), Bid Cost Recovery and Real-Time Congestion Offset.

- 4.3 Changes in Circumstances:

- 4.3.1 Accuracy of Supplied Information: The Contract Price for Electricity, including those set forth in any Hedge Transactions, is established in reliance on the accuracy of information provided to Seller concerning Buyer's

load requirements. Seller may pass through to Buyer any incremental costs incurred by Seller as a result of inaccuracies in any such information provided to Seller.

4.3.2 If a change in Law occurs that a) re-defines or alters the congestion zone(s) where Buyers' Facilities are located or b) alters the RTO market structure or protocol design, causing additional costs to Seller due to Buyer's service, Seller may pass through such additional costs to Buyer.

4.3.3 The Contract Price, including those set forth in any Hedge Transaction, may include ancillary services, wholesale or network transmission, RTO market charges, or other services administered or provided by Buyer's RTO. Buyer acknowledges that such charges are based on the established rates, operations and/or protocols applicable to Buyer's service that are in effect as of the Confirmation Date. In the event of changes in such rates, protocols, and/or operations that cause additional costs to Seller, Seller may pass through such additional costs to Buyer.

5. **HEDGE TRANSACTIONS:** Buyer shall have the option to purchase blocks of electricity from either Seller or a third party (each a "Hedge Transaction") at any time during the Delivery Period of this Confirmation. Buyer shall communicate all third party Hedge Transactions in accordance with the attached Operating Procedures Schedule. All Hedge Transactions between Buyer and Seller shall be set forth in a separate Confirmation that is mutually agreed to by the Parties. All Hedge Transactions shall be limited to hourly fixed quantity blocks of electricity.
6. **LIMITATION OF LIABILITY:** Buyer shall be responsible for all third party Hedge Transactions. Buyer shall reimburse Seller for any costs that Seller incurs as a result of the third party Hedge Transactions and shall indemnify, defend and hold harmless Seller from and against any Claims (as defined below) arising from or out of the third party Hedge Transaction or the actions or inactions of the third party from whom Buyer purchases energy. "Claims" means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, 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.
7. **CONTRACT QUANTITY.** Seller shall service 100% of Buyer's Electricity requirements. For the purposes of calculating a Settlement Amount pursuant to the Agreement, the Buyer's Estimated Monthly Usage set forth below shall be considered the Contract Quantity. Electricity prices pursuant to this Confirmation will relate to the quantities set forth in the table below:

The Contract Price relates to the Contract Quantities at (choose one)			
<input checked="" type="checkbox"/> the Delivery Point <input type="checkbox"/> Buyer's Meter			
Month / Year	Hourly On Peak Contract Quantity (MW)	Hourly Off Peak Contract Quantity (MW)	Buyer's Estimated Monthly Usage (MWh)
January through December	See Attached Schedule of Hourly Contract Quantities	See Attached Schedule of Hourly Contract Quantities	See Attached Schedule of Hourly Contract Quantities

8. **MONTHLY SETTLEMENT AND INVOICE.** Seller shall adjust Buyer's monthly invoice as follows:
 - 8.1 **Hedge Transaction Settlement:** For Third Party Hedge Transactions, Seller shall credit Buyer's account in an amount equal to the IST credit received by the CAISO associated with the Third Party Hedge Transaction. For Hedge Transactions with Seller, Seller shall credit Buyer's account in an amount equal to the Index Price multiplied by the Hedge Transaction Quantity associated with the Hedge Transaction with Seller.
 - 8.2 **Usage Above the Contract Quantity:** If Buyer's usage at the Delivery Point exceeds the Contract Quantity during any hour, Buyer shall pay Seller at the CAISO Real Time Locational Marginal Price for the Delivery Point as published at www.caiso.com, plus related delivery costs, for such hour.
 - 8.3 **Usage Below the Contract Quantity:** If Buyer's usage at the Delivery Point is less than the Contract Quantity during any hour, Seller shall credit Buyer's account at the CAISO Real Time Locational Marginal Price for the Delivery Point as published at www.caiso.com less any applicable RTO charges for each MWh below the Contract Quantity.
9. **DEMAND RESPONSE.** If Buyer participates in any demand response programs, Buyer shall notify Seller and reimburse Seller for any costs incurred by Seller as a result of Buyer's participation.
10. **CONGESTION REVENUE RIGHTS.** Seller shall be entitled to all CRRs associated with Buyer's load.
11. **MARGINAL LOSSES.** Seller shall be entitled to all Marginal Losses associated with Buyer's load.

As amended herein, all other Terms and Conditions contained in the Agreement remain in full force and effect.

<p>This Confirmation is subject to the Schedule(s) identified below and that are attached hereto: Schedule of Hourly Contract Quantities and Operating Procedures Schedule</p>

CALPINE ENERGY SOLUTIONS, LLC

Sign: _____

Print: _____

Title: _____

INDUSTRY PUBLIC UTILITIES COMMISSION

Sign: _____

Print: _____

Title: _____

EXHIBIT C

Master Power Purchase and Sales Agreement

(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 Name

Party B Name

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

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

GENERAL TERMS AND CONDITIONS

ARTICLE ONE: GENERAL DEFINITIONS

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

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

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

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

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

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

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

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

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

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

1.11 “Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace a Terminated Transaction; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the termination of a Transaction.

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

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

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

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

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

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

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

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

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

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

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

1.23 “Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under one or more Transactions, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer’s markets; (ii) Buyer’s inability economically

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

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

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

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

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

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

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

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

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

- 1.32 “Non-Defaulting Party” has the meaning set forth in Section 5.2.
- 1.33 “Offsetting Transactions” mean any two or more outstanding Transactions, having the same or overlapping Delivery Period(s), Delivery Point and payment date, where under one or more of such Transactions, one Party is the Seller, and under the other such Transaction(s), the same Party is the Buyer.
- 1.34 “Option” means the right but not the obligation to purchase or sell a Product as specified in a Transaction.
- 1.35 “Option Buyer” means the Party specified in a Transaction as the purchaser of an option, as defined in Schedule P.
- 1.36 “Option Seller” means the Party specified in a Transaction as the seller of an option , as defined in Schedule P.
- 1.37 “Party A Collateral Threshold” means the collateral threshold, if any, set forth in the Cover Sheet for Party A.
- 1.38 “Party B Collateral Threshold” means the collateral threshold, if any, set forth in the Cover Sheet for Party B.
- 1.39 “Party A Independent Amount” means the amount , if any, set forth in the Cover Sheet for Party A.
- 1.40 “Party B Independent Amount” means the amount , if any, set forth in the Cover Sheet for Party B.
- 1.41 “Party A Rounding Amount” means the amount, if any, set forth in the Cover Sheet for Party A.
- 1.42 “Party B Rounding Amount” means the amount, if any, set forth in the Cover Sheet for Party B.
- 1.43 “Party A Tariff” means the tariff, if any, specified in the Cover Sheet for Party A.
- 1.44 “Party B Tariff” means the tariff, if any, specified in the Cover Sheet for Party B.
- 1.45 “Performance Assurance” means collateral in the form of either cash, Letter(s) of Credit, or other security acceptable to the Requesting Party.
- 1.46 “Potential Event of Default” means an event which, with notice or passage of time or both, would constitute an Event of Default.
- 1.47 “Product” means electric capacity, energy or other product(s) related thereto as specified in a Transaction by reference to a Product listed in Schedule P hereto or as otherwise specified by the Parties in the Transaction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS

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

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

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

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

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

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

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

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

3.2 Transmission and Scheduling. Seller shall arrange and be responsible for transmission service to the Delivery Point and shall Schedule or arrange for Scheduling services

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

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

ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE

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

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

ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES

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

- (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;

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

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

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

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

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

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

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

5.6 Closeout Setoffs.

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

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

Option C: Neither Option A nor B shall apply.

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

ARTICLE SIX: PAYMENT AND NETTING

6.1 Billing Period. Unless otherwise specifically agreed upon by the Parties in a Transaction, the calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments and, if “Accelerated Payment of Damages” is specified by the Parties in the Cover Sheet, payments pursuant to Section 4.1 or 4.2 and Option premium payments pursuant to Section 6.7). As soon as practicable after the end of each month,

each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

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

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

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

6.5 Payment Obligation Absent Netting. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any related damage amounts calculated pursuant to Article Four, interest, and payments or credits, that Party shall pay such sum in full when due.

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

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

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

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

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

ARTICLE SEVEN: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR

OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party B plus Party A's Independent Amount, if any, exceeds the Party A Collateral Threshold, then Party B, on any Business Day, may request that Party A provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party A's Independent Amount, if any, exceeds the Party A Collateral

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

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

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

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

8.3 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent either or both Parties deliver Performance Assurance hereunder, each Party (a “Pledgor”) hereby grants to the other Party (the “Secured Party”) a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, such Secured Party, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Secured Party’s first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, the Non-Defaulting Party may do any one or more of the following: (i) exercise any of the rights and remedies of a Secured Party with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the Defaulting Party in the possession of the Non-Defaulting Party or its agent; (iii) draw on any outstanding

Letter of Credit issued for its benefit; and (iv) liquidate all Performance Assurance then held by or for the benefit of the Secured Party free from any claim or right of any nature whatsoever of the Defaulting Party, including any equity or right of purchase or redemption by the Defaulting Party. The Secured Party shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Pledgor's obligations under the Agreement (the Pledgor remaining liable for any amounts owing to the Secured Party after such application), subject to the Secured Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

ARTICLE NINE: GOVERNMENTAL CHARGES

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

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

ARTICLE TEN: MISCELLANEOUS

10.1 Term of Master Agreement. The term of this Master Agreement shall commence on the Effective Date and shall remain in effect until terminated by either Party upon (thirty) 30 days' prior written notice; provided, however, that such termination shall not affect or excuse the performance of either Party under any provision of this Master Agreement that by its terms survives any such termination and, provided further, that this Master Agreement and any other documents executed and delivered hereunder shall remain in effect with respect to the Transaction(s) entered into prior to the effective date of such termination until both Parties have fulfilled all of their obligations with respect to such Transaction(s), or such Transaction(s) that have been terminated under Section 5.2 of this Agreement.

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

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

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

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

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

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

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

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

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

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

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

made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

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

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

SCHEDULE M

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

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

“Act” means _____.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: _____

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: _____

INDUSTRY PUBLIC UTILITIES COMMISSION

ITEM NO. 5.6

Memo



To: Industry Public Utilities Commission
Cc: La Puente Valley County Water District Board of Directors
From: Greg B. Galindo, General Manager
Date: March 22, 2018
Re: Industry Public Utilities Water Operations Quarterly Report (Oct. 2017 – Dec. 2017)

In accordance with the City of Industry Waterworks System (the “CIWS”) Operation and Management Agreement between the City of Industry (the “City”) and the La Puente Valley County Water District (the “District”), the District is providing the CIWS Quarterly Report for the 2nd Quarter of the 2017-18 fiscal year. The report represents fiscal year-to-date information along with the current status of various items listed under the appropriate heading.

Administrative/Financial

- BPOU & Well No. 5 – District staff is still working with the Cooperating Respondents to update their agreement with the City related to the operation and treatment of the City’s Well No. 5.
- 2017-18 Fiscal Year Budget – A draft report of Revenue and Expenses as of December 31, 2017 is enclosed for your review as *Attachment 1*.
- Fund Disbursements – For your reference, a list of disbursements from the IPU Water Operations Fund for the past quarter (by month) has been provided as *Attachment 2*.

Distribution, Supply and Production

- Summary of Activities – A summary report of CIWS field activities for the 2nd Quarter of fiscal year 2017-18 is provided as *Attachment 3*.
- City of Industry Well No. 5 Operations – The latest recorded static level, pumping level and pumping rate for Well No. 5 is shown in the table below.

Well	Pump Setting (below surface)	Static Water Level	Pumping Water Level	Drawdown	Current GPM Pumping Rate
COI 5	162’	123’	142’	-19	1,110

- Production Summary – The production for the 2nd Quarter of fiscal year 2017-18, to meet the needs of the CIWS, was 331 AF. The 2017-18 fiscal year production report and related graph are provided as *Attachment 4*.
- 2017 Water Conservation – A summary of water system usage for calendar year 2017 as compared to calendar year 2013 is shown below. The overall reduction in use for this time period is 12.6%.

Month	2013	2017	Difference 2017-2013 (%)	Accumulative Difference (%)
January	90.55	73.89	-18.4%	-18.4%
February	81.62	68.48	-16.1%	-17.3%
March	99.4	89.05	-10.4%	-14.8%
April	115.82	107.33	-7.3%	-12.6%
May	147.93	109.35	-26.1%	-16.3%
June	152.60	123.37	-19.2%	-16.9%
July	141.36	136.28	-3.6%	-14.7%
August	153.97	129.61	-15.8%	-14.8%
September	151.67	127.11	-16.2%	-15.0%
October	137.26	126.02	-8.2%	-14.3%
November	110.83	99.81	-9.9%	-13.9%
December	99.84	105.14	5.3%	-12.6%
Totals	1482.85	1295.44	-187.41	-12.6%

Production data shown in acre feet (AF)

- CIWS and LPVCWD Water Exchange – In accordance with the Water Exchange and Supply Agreement between LPVCWD and the City of Industry, the District is providing the water exchange summary as of December 31, 2017, as *Attachment 5*.
- MSGB Groundwater Levels – On January 26, 2018 the Baldwin Park key well level was 182.3 feet asl. Watermaster’s latest report on hydrologic conditions is enclosed as *Attachment 6*.

Water Quality / Compliance

- Distribution System Monitoring – District Staff has collected all required water quality samples from the distribution system for the 2nd Quarter of fiscal year 2017-18; approximately 90 samples were collected. All results met State and Federal drinking water quality regulations.
- Source Monitoring – All water quality samples were collected from Well No. 5, as required by the SGVWC’s B-5 Treatment Plant Permit.
- Lead Sampling for Schools – Currently, no request has been made by any of the three K-12 public schools within the CIWS boundary in regards to lead testing as part of the permit amendment issued by the DDW in 2017. However, California Assembly Bill 746 (AB 746) that added Section 116277 to the Health and Safety Code (HSC 116277), was approved by the California Legislature and then signed into law by the Governor on October 13, 2017. Effective January 1, 2018, AB 746 requires community water systems to test the lead levels of drinking water at all California public K-12 schools (constructed before January 1, 2010) and preschools and child day care facilities located on public school property by July 1, 2019. In contrast to the permit amendment issue by the DDW, AB 746 requires the lead testing of all schools within a community water systems boundary vs. requiring

lead testing only when a request is received by the community water system. All cost of initial sampling under AB 746 is the responsibility of the community water system.

- DDW Sanitary Survey - On January 11, 2018, the assigned engineer from DDW visited and inspected the CIWS facilities as part of their tri-annual sanitary survey inspection. During the inspection, no noticeable deficiencies were noted. Concluding the inspection, a few request were made and are summarized as follows:
 - Provide latest inspection reports for reservoirs
 - Permit amendment request and engineering report on current operations
 - Add inventory of valves to written valve exercise program
 - Latest copy of cross connection survey report

All items requested will be provided and/or drafted to be submitted by May 2018.

Capital / Special Projects

- Industry Hills Meter Installations – All meters are installed except for the service to the guard station at the Temple Avenue entrance. District staff is conducting a final survey to ensure that no other unmetered service connections exist. Meter reading has been conducted monthly for the last six months and a staff report will be prepared, and submitted to City Staff, recommending how to initiate billing for each metered service.
- Starhill Lane and 3rd Avenue Waterline Improvement Project – The 2017 CIWS Water Master Plan recommended improvements to waterlines in Starhill Lane and 3rd Avenue south of Lomitas Avenue. District staff provided the City of Industry a CIP Project Request Form to include the Project as part of the City of Industry’s 2017/2018 proposed budget. The Project’s total budget is estimated at \$538,000, of which \$58,000 is allocated for the 17/18 FY Budget and \$480,500 for the 18/19 FY budget. In January 2018, District staff provided to City staff a draft RFP for the preparation of plans, specifications and an estimate for the Project.

Personnel

- LPVCWD Staff Restructuring Plan - In November 2017, the District completed an assessment of its staff which resulted in a Staff Restructuring Plan. In December 2017, the District’s Board of Directors adopted the Plan which consists of modifying certain job descriptions, deleting some positions, creating new positions and revising the District’s salary schedule. The updated organizational chart, reflecting these changes, is provided as *Attachment 7*.
- As of January 1, 2018, the District has 8 full time field employees, 5 full time office/administrative employees and 1 part-time office employees. A summary of the current hourly rates for each District employee has been provided as *Attachment 8*. The hourly rates provided in the summary include January 1, 2018 changes in health insurance costs, 2% cost of living adjustment and adjustments in some salaries as a result of the Staff Restructuring Plan.
- Weekly tailgate safety meetings continue to be conducted for all field employees.

Attachments

1. Statement of Revenue and Expenses for the 2nd Quarter of 2017-18.
2. Fund Disbursement List for 2nd Quarter of 2017-18.

3. Summary of IPU Water Operations Field Activities for 2nd Quarter of 2017-18.
4. Production Summary for 2nd Quarter of 2017-18.
5. IPU – LPVCWD Water Exchange and Delivery Summary for 2nd Quarter of 2017-18.
6. Main San Gabriel Basin Hydrologic Report for December 2017.
7. LPVCWD Organizational Chart.
8. Summary of Hourly Rates for District Staff as of January 1, 2018.

Attachment 1

INDUSTRY PUBLIC UTILITIES - WATER OPERATIONS
Statement of Revenue and Expenses Summary
For the Period Ending December 31, 2017
(Unaudited)

DESCRIPTION	DECEMBER 2017	FISCAL YTD 2017-2018	BUDGET FY 2017-2018	50% OF BUDGET	FY END 2015-2016
Total Operational Revenues	\$ 110,142	\$ 1,027,596	\$ 1,959,100	52.45%	\$ 1,919,277
Total Non-Operational Revenues	18,039	18,039	27,500	65.60%	57,344
TOTAL REVENUES	128,182	1,045,636	1,986,600	52.63%	1,976,621
Total Salaries & Benefits	42,294	298,828	629,700	47.46%	614,212
Total Supply & Treatment	9,694	87,845	804,060	10.93%	716,709
Total Other Operating Expenses	8,338	68,364	157,500	43.41%	166,293
Total General & Administrative	43,881	116,596	317,890	36.68%	245,348
Total Other & System Improvements	20,638	28,796	93,000	30.96%	132,828
TOTAL EXPENSES	124,846	600,429	2,002,150	29.99%	1,875,389
OPERATING INCOME	3,336	445,206	(15,550)	-2863.06%	101,232
NET INCOME (LOSS)	\$ 3,336	\$ 445,206	\$ (15,550)	-2863.06%	\$ 101,232

INDUSTRY PUBLIC UTILITIES - WATER OPERATIONS

Statement of Revenue and Expenses

For the Period Ending December 31, 2017

(Unaudited)

DESCRIPTION	DECEMBER 2017	FISCAL YTD 2017-2018	BUDGET FY 2017-2018	50% OF BUDGET	FY END 2016-2017
Operational Revenues					
Water Sales	\$ 62,048	\$ 675,279	\$ 1,250,000	54.02%	\$ 1,201,582
Service Charges	43,863	295,536	600,000	49.26%	604,883
Customer Charges	1,495	9,635	21,000	45.88%	20,115
Fire Service	2,736	47,146	88,100	53.51%	92,696
Miscellaneous Income	-	-	-	N/A	-
Total Operational Revenues	110,142	1,027,596	1,959,100	52.45%	1,919,277
Non-Operational Revenues					
Contamination Reimbursement	18,000	18,000	27,500	65.45%	38,462
Developer Fees	-	-	-	N/A	14,568
Miscellaneous Income	39	39	-	N/A	4,314
Total Non-Operational Revenues	18,039	18,039	27,500	65.60%	57,344
TOTAL REVENUES	128,182	1,045,636	1,986,600	52.63%	1,976,621
Salaries & Benefits					
Administrative Salaries	14,882	86,174	179,100	48.12%	165,274
Field Salaries	11,107	104,167	224,000	46.50%	225,518
Employee Benefits	9,228	66,830	139,000	48.08%	139,630
Pension Plan	3,675	25,095	51,600	48.63%	49,805
Payroll Taxes	1,849	13,594	29,000	46.88%	27,928
Workman's Compensation	1,552	2,968	7,000	42.39%	6,058
Total Salaries & Benefits	42,294	298,828	629,700	47.46%	614,212
Supply & Treatment					
Purchased Water - Leased	-	-	367,890	0.00%	496,961
Purchased Water - Other	1,311	8,552	14,400	59.39%	14,069
Power	8,383	66,652	125,000	53.32%	107,347
Assessments	-	11,030	132,770	8.31%	91,367
Treatment	-	-	7,000	0.00%	4,589
Well & Pump Maintenance	-	1,611	157,000	1.03%	2,376
Total Supply & Treatment	9,694	87,845	804,060	10.93%	716,709
Other Operating Expenses					
General Plant	122	2,810	10,500	26.76%	5,313
Transmission & Distribution	(6,222)	27,488	60,000	45.81%	67,558
Vehicles & Equipment	-	-	30,000	0.00%	31,515
Field Support & Other Expenses	4,091	21,563	27,000	79.86%	26,761
Regulatory Compliance	10,347	16,503	30,000	55.01%	35,146
Total Other Operating Expenses	8,338	68,364	157,500	43.41%	166,293

INDUSTRY PUBLIC UTILITIES - WATER OPERATIONS

Statement of Revenue and Expenses

For the Period Ending December 31, 2017

(Unaudited)

DESCRIPTION	DECEMBER 2017	FISCAL YTD 2017-2018	BUDGET FY 2017-2018	50% OF BUDGET	FY END 2016-2017
General & Administrative					
Management Fee	45,518	91,035	183,890	49.51%	180,285
Office Expenses	637	4,983	20,500	24.31%	22,806
Insurance	(4,038)	5,548	25,500	21.76%	12,323
Professional Services	45	2,611	45,000	5.80%	4,739
Customer Accounts	1,506	8,449	16,000	52.80%	15,748
Public Outreach & Conservation	14	2,422	25,000	9.69%	4,688
Other Administrative Expenses	200	1,549	2,000	77.43%	4,758
Total General & Administrative	43,881	116,596	317,890	36.68%	245,348
Other Expenses & System Improvements (Water Operations Fund)					
Transfer to Capital or Expense	-	-	-	N/A	-
Developer Capital Contributions	-	-	-	N/A	(135,303)
Developer Project - Andrews School #2	-	-	-	N/A	72,134
Developer Project - Don Julian Unit D	-	-	-	N/A	893
Developer Project - 13936-38 Valley Blvd	-	-	-	N/A	62,277
Net Developer Project Activity	-	-	-	-	-
Master Plan Update / Hydraulic Model	-	-	-	N/A	11,359
Other System Improvements (Materials)	-	-	-	N/A	223
FH Laterals	581	790	9,000	8.78%	83
Service Line Replacements	17,892	18,982	30,000	63.27%	71,893
Valve Replacements	1,620	1,633	25,000	6.53%	660
Plant Electrical System Improvements	-	-	20,000	0.00%	-
Meter Installations - Industry Hills	546	7,391	-	0.00%	24,818
Meter Read Collection System	-	-	-	0.00%	23,792
SCADA System Assessment & Upgrades	-	-	9,000	0.00%	-
Total Other & System Improvements	20,638	28,796	93,000	30.96%	132,828
TOTAL EXPENSES	124,846	600,429	2,002,150	29.99%	1,875,389
OPERATING INCOME	3,336	445,206	(15,550)	N/A	101,232

Attachment 2

Industry Public Utilities October 2017 Disbursements

Check #	Payee	Amount	Description
2773	ACWA/JPIA	\$ 12,781.80	Auto & General Liability Insurance
2774	Answering Service Care	\$ 120.32	Answering Service
2775	CCSInteractive	\$ 13.60	Monthly Website Hosting
2776	Collicutt Energy Services Inc	\$ 390.00	Generator Maintenance
2777	Consolidated Electrical Distributors	\$ 90.67	Meter Read Collector Expense
2778	County of LA Dept of Public Works	\$ 515.00	Permit Fee's
2779	Ferguson Enterprises Inc #1350	\$ 166.57	Field Supplies
2780	Hach Company	\$ 169.70	Field Supplies
2781	Highroad IT	\$ 268.00	Technical Support
2782	Hose-Man Inc	\$ 563.82	Field Supplies
2783	La Puente Valley County Water District	\$ 49,529.63	Labor Costs September 2017
2784	Merritt's Hardware	\$ 131.53	Field Supplies
2785	MJM Communications & Fire	\$ 150.00	Security Monitoring
2786	Resource Building Materials	\$ 22.95	Field Supplies
2787	S & J Supply Co Inc	\$ 1,349.15	Service Line Replacements
2788	SoCal Gas	\$ 18.48	Gas Expense
2789	Sunbelt Rentals	\$ 219.16	Equipment Rental
2790	Time Warner Cable	\$ 273.55	Telephone Service
2791	Underground Service Alert	\$ 71.82	Line Notifications
2792	Weck Laboratories Inc	\$ 267.00	Water Sampling
2793	ACWA/JPIA	\$ 1,415.22	Workman's Compensation Insurance
2794	Bank of America-Visa	\$ 304.00	Administrative Expense
2795	Hunter Electric	\$ 623.40	Meter Read Collector & Booster Station Maintenance
2796	Jack Henry & Associates	\$ 39.75	Web E-Check Fee's
2797	La Puente Valley County Water District	\$ 741.60	Web CC & Bank Fee's Reimbursement
2798	Los Angeles County Fire Dept	\$ 831.00	Hazmat Program
2799	Platinum Consulting Group	\$ 67.50	Administrative Support
2800	Sunbelt Rentals	\$ 219.66	Equipment Rental
2801	Vulcan Materials Company	\$ 90.25	Field Supplies - Asphalt
2802	Cell Business Equipment	\$ 98.16	Office Expense
2803	Citi Cards	\$ 875.30	Computer & Software Expense
2804	Ferguson Enterprises Inc #1350	\$ 35.37	Industry Hills Meter Installations
2805	Industry Public Utility Commission	\$ 1,410.80	Industry Hills Power Expense
2806	Locus Technology	\$ 168.00	Technical Support
2807	San Gabriel Valley Water Company	\$ 1,816.57	Purchased Water - Salt Lake
2808	SC Edison	\$ 11,766.43	Power Expense
2809	SoCal Gas	\$ 15.29	Gas Expense
2810	Sunbelt Rentals	\$ 203.24	Equipment Rental
2811	Verizon Wireless	\$ 76.02	Billing Expense
2812	S & J Supply Co Inc	\$ 324.75	Industry Hills Meter Installations
2813	Verizon Wireless	\$ 360.33	Cell Phone Service
2814	Weck Laboratories Inc	\$ 215.00	Water Sampling
Online	Home Depot	\$ 201.86	Field Supplies
Autodeduct	Wells Fargo Merchant Fee's	\$ 110.24	Merchant Fee's
Autodeduct	First Data Global Leasing	\$ 43.80	Credit Card Machine Lease
Total October 2017 Disbursements		\$ 89,166.29	

Industry Public Utilities November 2017 Disbursements

Check #	Payee	Amount	Description
2815	RIF 5 - Golden Valley LLC	\$ 20.00	Customer Overpayment Refund
2816	Luis Magallon	\$ 18.46	Customer Overpayment Refund
2817	CCSInteractive	\$ 13.60	Monthly Website Hosting
2818	Dragon Fire Protection	\$ 270.19	Fire Extinguisher Maintenance
2819	Highroad IT	\$ 268.00	Technical Support
2820	La Puente Valley County Water District	\$ 47,470.20	Labor Costs October 2017
2821	Merritt's Hardware	\$ 131.76	Field Supplies
2822	SoCal Gas	\$ 19.40	Gas Expense
2823	Time Warner Cable	\$ 325.23	Telephone Service
2824	Underground Service Alert	\$ 67.70	Line Notifications
2825	Weck Laboratories Inc	\$ 233.50	Water Sampling
2826	Western Water Works	\$ 263.89	Industry Hills Meter Installations
2827	EcoTech Services Inc	\$ 2,340.00	PHET Program
2828	Answering Service Care	\$ 100.18	Answering Service
2829	Ferguson Enterprises Inc #1350	\$ 43.10	Industry Hills Meter Installations
2830	Industry Public Utility Commission	\$ 632.40	Industry Hills Power Expense
2831	InfoSend	\$ 674.87	Billing Expense
2832	Jack Henry & Associates	\$ 50.25	Web E-Check Fee's
2833	La Puente Valley County Water District	\$ 653.61	Web CC & Bank Fee's Reimbursement
2834	Lagerlof, Senecal, Gosney & Kruse	\$ 362.50	Attorney Fee's
2835	Peck Road Gravel	\$ 120.00	Asphalt & Concrete Disposal
2836	Platinum Consulting Group	\$ 306.25	Administrative Support
2837	Resource Building Materials	\$ 240.55	Industry Hills Meter Installations
2838	SC Edison	\$ 8,924.01	Power Expense
2839	Sunbelt Rentals	\$ 203.24	Equipment Rental
2840	Trench Plate Rental Co	\$ 271.80	Equipment Rental
2841	Vulcan Materials Company	\$ 323.97	Field Expense - Asphalt
2842	Weck Laboratories Inc	\$ 107.50	Water Sampling
2843	Cell Business Equipment	\$ 59.37	Office Expense
2844	Downs Energy Inc	\$ 485.95	Booster Maintenance
2845	Locus Technology	\$ 840.00	Technical Support
2846	Peck Road Gravel	\$ 1,200.00	Asphalt & Concrete Disposal
2847	Rafael Arambul & Son	\$ 8,060.00	Patchwork
2848	S & J Supply Co Inc	\$ 197.64	Field Supplies
2849	San Gabriel Valley Water Company	\$ 1,510.10	Purchased Water - Salt Lake
2850	SoCal Gas	\$ 15.29	Gas Expense
2851	Staples	\$ 97.00	Office Supplies
2852	Time Warner Cable	\$ 51.68	Telephone Service
2853	Verizon Wireless	\$ 76.02	Billing Expense
2854	Verizon Wireless	\$ 354.48	Cell Phone Service
2855	Weck Laboratories Inc	\$ 215.00	Water Sampling
2856	Petty Cash	\$ 81.16	Office/Field Expense
Online	Home Depot Credit Services	\$ 205.83	Field Supplies
Autodeduct	Wells Fargo Merchant Fee's	\$ 94.99	Merchant Fee's
Autodeduct	First Data Global Leasing	\$ 43.80	Credit Card Machine Lease - Monthly
Total November 2017 Disbursements		\$ 78,044.47	

Industry Public Utilities December 2017 Disbursements

Check #	Payee	Amount	Description
2857	Answering Service Care	\$ 130.12	Answering Service
2858	CCSInteractive	\$ 13.60	Monthly Website Hosting
2859	County of LA-Auditor Controller	\$ 37.40	Pipeline Rental Fee's
2860	Highroad IT	\$ 268.00	Technical Support
2861	InfoSend	\$ 749.83	Billing Expense
2862	La Puente Valley County Water District	\$ 52,201.42	Labor Costs November 2017
2863	Merritt's Hardware	\$ 83.55	Field Supplies
2864	Time Warner Cable	\$ 247.71	Telephone Service
2865	Underground Service Alert	\$ 60.27	Line Notifications
2866	Weck Laboratories Inc	\$ 322.50	Water Sampling
2867	County Sanitation Dists of LA County	\$ 90.52	Refuse Fee's
2868	E & M Tech Support	\$ 1,086.00	Annual Technical Support
2869	InfoSend	\$ 612.03	Billing Expense
2870	Jack Henry & Associates	\$ 35.50	Web E-Check Fee's
2871	La Puente Valley County Water District	\$ 617.89	Web CC & Bank Fee's Reimbursement
2872	La Puente Valley County Water District	\$ 45,517.50	4th Quarter 2017 O&M Fee
2873	McMaster-Carr Supply Co	\$ 233.13	Field Supplies
2874	S & J Supply Co Inc	\$ 1,385.70	Industry Hills Meter Installations
2875	San Gabriel Valley Water Company	\$ 1,310.90	Purchased Water - Salt Lake
2876	SoCal Gas	\$ 17.09	Gas Expense
2877	State Water Resource Control Board	\$ 500.00	Annual Permit Fee's
2878	Weck Laboratories Inc	\$ 215.00	Water Sampling
2879	Western Water Works	\$ 411.66	Field Supplies
2880	Cell Business Equipment	\$ 39.49	Office Expense
2881	Citi Cards	\$ 78.88	Booster Maintenance
2882	Hose-Man Inc	\$ 131.71	Field Supplies
2883	Industry Public Utility Commission	\$ 1,628.64	Industry Hills Power Expense
2884	InfoSend	\$ 131.60	Billing Expense
2885	Locus Technology	\$ 9,922.97	Emergency Communications Issue
2886	S & J Supply Co Inc	\$ 78.66	Field Supplies
2887	SC Edison	\$ 8,305.46	Power Expense
2888	SoCal Gas	\$ 14.79	Gas Expense
2889	Verizon Wireless	\$ 76.02	Cell Phone Service
2890	Weck Laboratories Inc	\$ 252.00	Water Sampling
2891	Western Water Works	\$ 189.16	Field Supplies
2892	Petty Cash	\$ 49.00	Office Expense
Online	Home Depot	\$ 381.70	Field Supplies
Online	County of LA Dept of Public Works	\$ 286.00	Permit Fee's
Autodeduct	Wells Fargo Merchant Fee's	\$ 76.18	Merchant Fee's
Autodeduct	First Data Global Leasing	\$ 43.80	Credit Card Machine Lease - Monthly
Total December 2017 Disbursements		\$ 127,833.38	

Attachment 3

Attachment 4

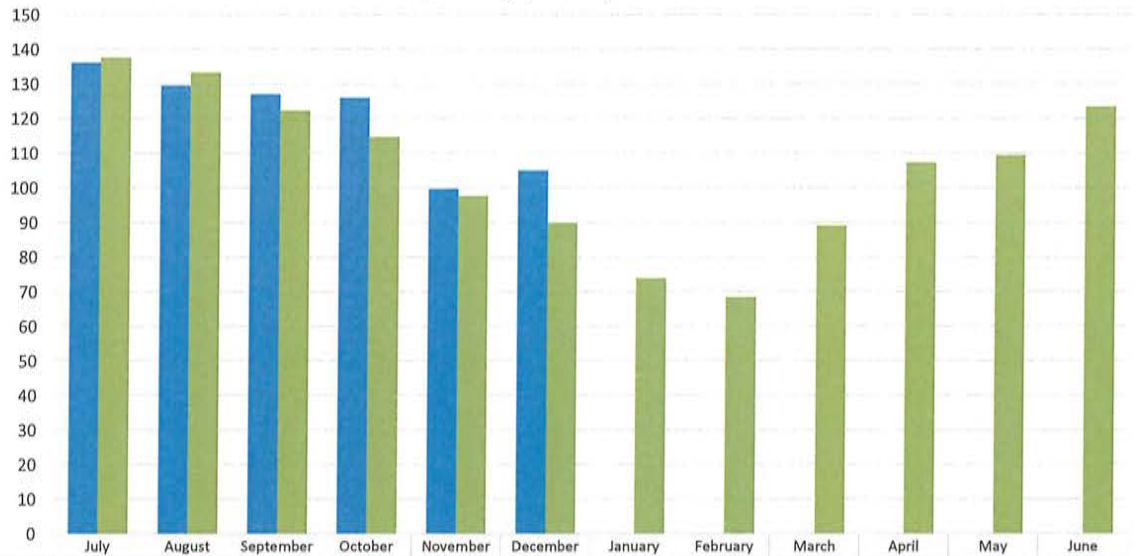
Industry Public Utilities - Water Operations

PRODUCTION REPORT - FISCAL 2017-18

CIWS PRODUCTION	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18	Feb-18	Mar-18	Apr-18	May-18	Jun-18	2017-18 FISCAL	2016-17 FISCAL
COI Well No. 5 To SGVCW B5	150.02	143.73	138.43	141.27	140.31	145.82							859.58	1711.77
Interconnections to CIWS														
SGVWC Salt Lake Ave	0.80	0.92	0.90	0.86	0.73	0.70							4.91	8.33
SGVWC Lomas Ave	135.81	127.72	127.13	126.19	90.14	104.45							711.44	1252.84
SGVWC Workman Mill Rd	0.03	0.20	0.17	0.14	0.27	0.48							1.29	1.32
Interconnections from LPVCWD	2.27	3.25	6.48	8.50	11.00	1.54							33.04	53.84
Subtotal	138.91	132.09	134.68	135.69	102.14	107.17	0.00	0.00	0.00	0.00	0.00	0.00	750.68	1316.33
Interconnections to LPVCWD	2.63	2.48	7.57	9.67	2.33	2.03							26.71	49.34
Production for CIWS 2017-18	136.28	129.61	127.11	126.02	99.81	105.14	0.00	0.00	0.00	0.00	0.00	0.00	723.97	1266.99

Industry Public Utilities - Water Operations

Water System Usage (Acre Feet)



■ Production for CIWS 2017-18	136.28	129.61	127.11	126.02	99.81	105.14	0.00	0.00	0.00	0.00	0.00	0.00
■ Production for CIWS 2016-17	137.60	133.34	122.27	114.78	97.72	89.81	73.89	68.48	89.05	107.33	109.35	123.37

Attachment 5

CIWS-LPVCWD WATER EXCHANGE SUMMARY (pursuant to July 2015 Water Exchange and Supply Agreement)

Deliveries from LPVCWD to CIWS

Report for Second Quarter 17/18

QTR	Zone 488 Deliveries							Zone 775 Deliveries							Combined		
	Connection 1	Connection 2	Connection 3	Connection 3A	Zone 488 Total	Zone 488 Running Total	Zone 488 Previous Year	Connection 4	Connection 5	Connection 6	Connection 7	Connection 7A	Zone 775 Total	Zone 775 Running Total	Zone 775 Previous Year	Total	Running Total
Prior Period (16-17)					102.88	102.88	0.00						62.37	62.37	0.00	165.25	111.92
17-18 QTR 1	4.75	0.00	0.00	0.00	4.75	107.63	1.64			7.24	0.00		7.24	69.61	22.92	11.99	123.91
17-18 QTR 2	8.74	0.00	0.00	0.00	8.74	116.37	2.05			36.79	0.00		36.79	106.40	0.00	47.53	171.44
17-18 QTR 3	0.00	0.00	0.00	0.00	0.00	116.37	6.32			0.00	0.00		0.00	106.40	5.83	0.00	171.44
17-18 QTR 4	0.00	0.00	0.00	0.00	0.00	116.37	6.62			0.00	0.00		0.00	106.40	7.95	0.00	171.44
Annual Total	13.49	0.00	0.00	0.00	116.37		102.88			46.03	0.00		106.40		62.37	224.77	171.44

Deliveries from CIWS to LPVCWD

QTR	Zone 488 Deliveries							Zone 775 Deliveries							Combined		
	Connection 1	Connection 2	Connection 3	Connection 3A	Zone 488 Total	Zone 488 Running Total	Zone 488 Previous Year	Connection 4	Connection 5	Connection 6	Connection 7	Connection 7A	Zone 775 Total	Zone 775 Running Total	Zone 488 Previous Year	Total	Running Total
Prior Period (16-17)					99.51	99.51	99.51						61.98	61.98	61.98	161.49	161.49
17-18 QTR 1	3.85	0.00		0.00	3.85	103.36	7.80	1.71	0.90	5.59	0.62	0.01	8.83	70.81	10.89	12.68	174.17
17-18 QTR 2	7.39	0.00		0.00	7.39	110.75	0.00	0.00	0.91	4.95	0.47	1.26	7.59	78.40	7.55	14.98	189.15
17-18 QTR 3	0.00	0.00		0.00	0.00	110.75	6.65	0.00	0.00	0.00	0.00	0.00	0.00	78.40	10.41	0.00	189.15
17-18 QTR 4	0.00	0.00		0.00	0.00	110.75	0.00	0.00	0.00	0.00	0.00	0.00	0.00	78.40	6.87	0.00	189.15
Annual Total	11.24	0.00		0.00	110.75		99.51	1.71	1.81	10.54	1.09		78.40		61.98	189.15	189.15

Delivery Summary

Quarter	LPVCWD Total to CIWS	CIWS Total to LPVCWD	Difference	A			B		C			D		E	
				LPVCWD to CIWS in 488	CIWS to LPVCWD in 488	488 Difference	Amount unable to exchange within 12 months in 488	CIWS owes \$ to LPVCWD for 448 Deliveries	LPVCWD to CIWS in 775	CIWS to LPVCWD in 775	775 Difference	Amount unable to exchange within 12 months in 775	LPVCWD owes \$ to CIWS for 775 Deliveries	LPVCWD Owes \$ to CIWS	
Prior Period (16-17)	165.25	161.49	-3.76	102.88	99.51	-3.37	0.00	0.00	62.37	61.98	-0.39	0.00	0.00	0.00	
17-18 QTR 1	11.99	12.68	0.69	4.75	3.85	-0.90	0.00	0.00	7.24	8.83	1.59	0.00	0.00	0.00	
17-18 QTR 2	47.53	14.98	-32.55	8.74	7.39	-1.35			36.79	7.59	-31.20	0.00	0.00	0.00	
17-18 QTR 3	0.00	0.00	0.00	0.00	0.00	0.00			0.00	0.00	0.00				
17-18 QTR 4	0.00	0.00	0.00	0.00	0.00	0.00			0.00	0.00	0.00				
Running Total	224.77	189.15	-35.62	116.37	110.75	-5.62			106.40	78.40	-28.00				
	Balance Owed by CIWS Overall			35.62	Balance Owed by CIWS in 488			5.62	Balance Owed to LPVCWD in 775			30.00			

Notes:

- Calculation of payment is not applicable until a full 12 months into the agreement that was entered into in July 2015
- Column A represents water delivered in Zone 488 that was not redelivered within 12 months.
- Column B represents the undelivered amount multiplied by the agreed rate to convey water to the 448 zone as detailed in example table above.
- Column C represents water delivered in Zone 775 that was not redelivered within 12 months.
- Column D represents the undelivered amount multiplied by the agreed upon rate to convey water to the 775 zone as detailed in example table above.
- Column E represents the difference between what each party owes.

Attachment 6



Main San Gabriel Basin WATERMASTER

JANUARY 3, 2018

REPORT OF THE WATERMASTER ENGINEER ON HYDROLOGIC CONDITIONS

Baldwin Park Key Well (see attached graph)

- Located in the central portion of the San Gabriel Valley within the City of Baldwin Park and used as a general indication of water elevations throughout the San Gabriel Valley
- One vertical foot is equivalent to about 8,000 acre-feet of groundwater in the Main Basin
- On November 22, 2017, the Baldwin Park Key Well groundwater elevation was 183.3 feet.
- On December 22, 2017, the Baldwin Park Key Well groundwater elevation was 181.5 feet. The historical low was 172.2 feet on September 30, 2016. **A decrease** of 0.5 feet from the prior week. A decrease of about 2 feet from the prior month.
 - ❖ About 2 feet higher than one year ago (represents about 16,000 acre-feet.) Includes about 161,000 acre-feet of untreated imported water in cyclic storage accounts, which represents about 20 feet of groundwater elevation at the Key Well.

Rainfall (see attached graphs)

- Data are readily available on a daily basis and are indicative of comparative amount of rainfall in the San Gabriel Valley (percent of average)
- Puddingstone Dam as of December 27, 2017
 - ❖ Average rainfall from July 1st through December 31st of each year is 6.00 inches
 - ❖ Rainfall during July 1, 2017 through December 27, 2017 is 0.11 inches, which is 2 percent of average
 - ❖ Rainfall during July 1, 2016 through December 31, 2016 was 6.66 inches, which was 111 percent of average
 - ❖ Rainfall last year (during July 1, 2016 through June 30, 2017) was 20.81 inches, which was 115 percent of average
- Los Angeles Civic Center as of December 27, 2017
 - ❖ Average rainfall from July 1st through December 31st of each year is 4.12 inches
 - ❖ Rainfall during July 1, 2017 through December 27, 2017 is 0.19 inches, which is 5 percent of average

- ❖ Rainfall during July 1, 2016 through December 31, 2016 was 5.90 inches, which was 143 percent of average
- ❖ Rainfall last year (during July 1, 2016 through June 30, 2017) was 19.00 inches, which was 125 percent of average

✚ Reservoir Storage and Releases

- There are three dams and reservoirs located along the San Gabriel River above San Gabriel Canyon. Their primary function is for flood control and also used to store watershed runoff for subsequent groundwater replenishment.
 - ❖ Cogswell Reservoir is located highest in the watershed and has a maximum storage capacity of 10,438 acre-feet
 - ❖ San Gabriel Reservoir is located downstream of and receives releases from Cogswell Reservoir, and has a maximum storage capacity of 44,106 acre-feet
 - ❖ Morris Reservoir is located downstream of and receives releases from San Gabriel Reservoir, and has a maximum storage capacity of 29,944 acre-feet. Releases from Morris Reservoir and San Gabriel Reservoir are used at local surface water treatment plants and used for groundwater replenishment
 - ❖ Total storage capacity is 84,488 acre-feet
 - ❖ Combined storage as of December 18, 2017 was 21,738 acre-feet (about 26 percent of capacity).
 - ❖ San Gabriel Reservoir inflow was 12 cfs and release was 0 cfs as of December 18, 2017.
 - ❖ Morris Reservoir inflow was 0 cfs and release was 18 cfs as of December 18, 2017.

✚ Untreated Imported Water Deliveries

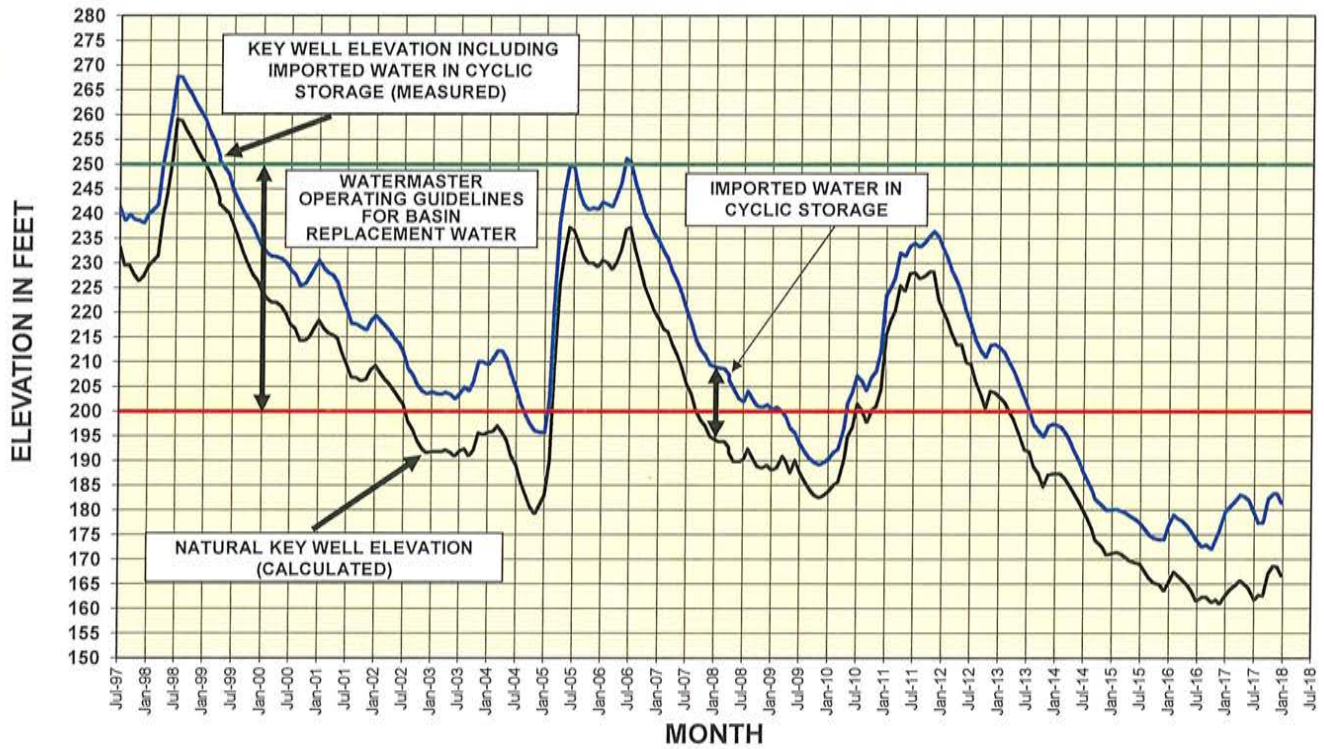
- Upper District
 - ❖ USG-3 is located in San Gabriel Canyon just below Morris Dam, it represents Upper District's primary point of delivery of untreated imported water for groundwater replenishment to the San Gabriel Valley. The typical delivery rate is about 190 cfs (or about 375 acre-feet per day)
 - Upper District started deliveries through USG-3 on August 3, 2017 at 250 cfs in association with the planned pre-delivery of approximately 80,000 acre-feet during calendar year 2017. Upper District and Watermaster have agreed to pay MWD for a minimum of 16,000 acre-feet per year over each of the next five years commencing in December 2017
 - During August 2017, 15,239.4 acre-feet was delivered through USG-3
 - During September 2017, 16,313.7 acre-feet was delivered through USG-3

Report of the Watermaster Engineer on Hydrologic Conditions – January 3, 2018 (continued)

- During October 2017, 9,467.6 acre-feet was delivered through USG-3. USG-3 was shutoff on October 31, 2017.
 - USG-3 resumed deliveries on November 17, 2017 at 30 cfs and was shutoff on November 21, 2017. During November 2017, 183.1 acre-feet was delivered through USG-3.
 - USG-3 will resume deliveries on December 29, 2017 and will shutoff on January 31, 2018 at 190 cfs. An estimated 13,500 acre-feet will be delivered.
- Three Valleys District
 - ❖ Three Valleys District delivered an estimated 300 acre-feet through PM-26 during December 2017.
 - San Gabriel District
 - ❖ San Gabriel District delivered about 2,000 AF to the San Gabriel Canyon Spreading Grounds during December 2017.

Landfill Report

- Watermaster staff toured the following landfills during the month of December 2017:
 - ❖ Azusa Land Reclamation
 - ❖ Peck Road
 - ❖ Arcadia Reclamation Inc. (formerly Nu Way – Arrow)
 - ❖ Manning Pit
- During the tour, Watermaster staff found that each landfill appeared to operate consistent with the conditions under each landfill's permit.

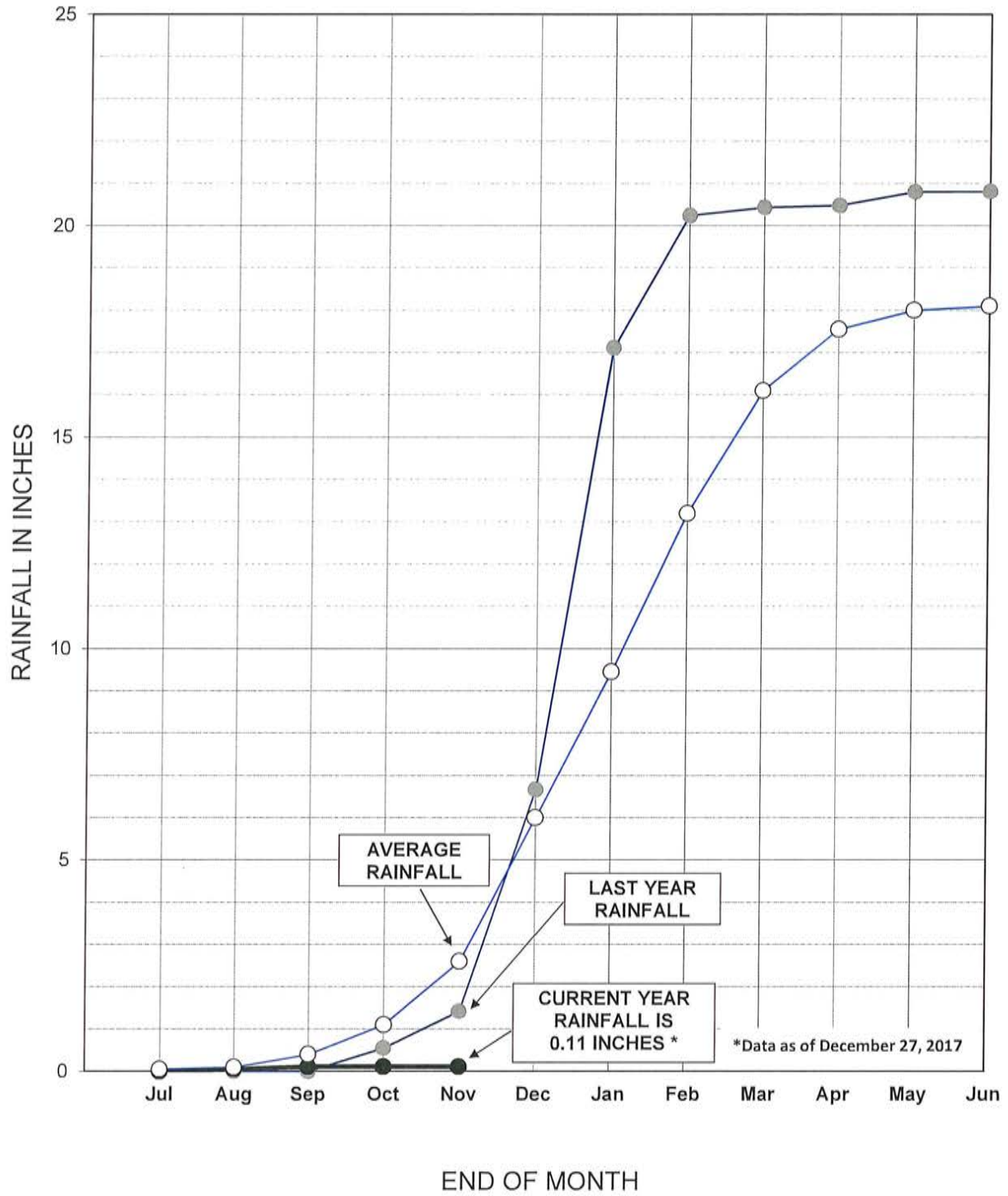


MAIN SAN GABRIEL BASIN WATERMASTER

**BALDWIN PARK KEY WELL
GROUNDWATER ELEVATION**



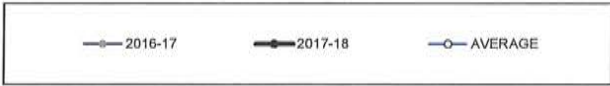
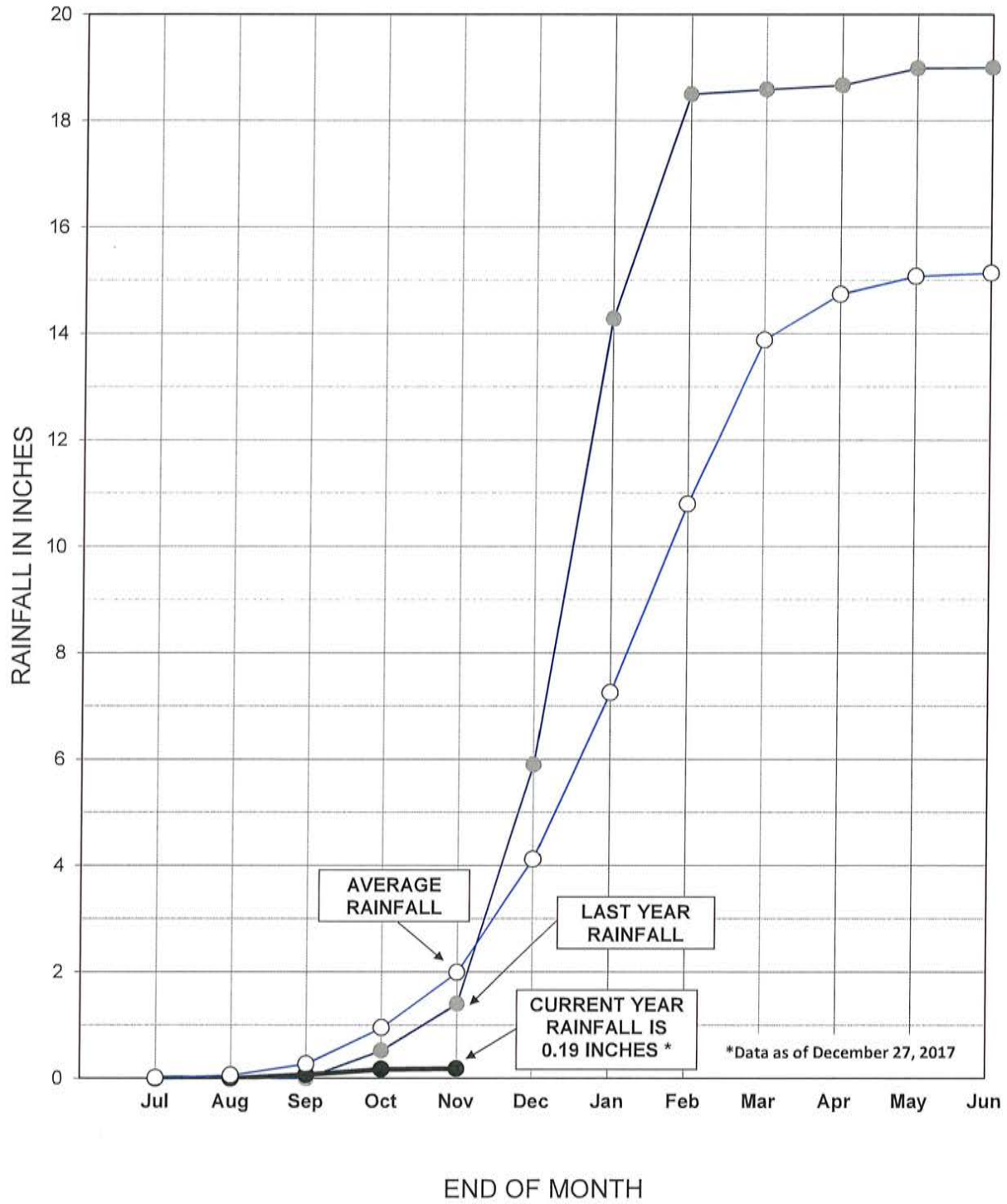
STETSON ENGINEERS INC.
Covina San Rafael Mesa, Arizona
WATER RESOURCE ENGINEERS



STETSON ENGINEERS INC.
 Covina San Rafael Mesa, Arizona
 WATER RESOURCE ENGINEERS

MAIN SAN GABRIEL BASIN WATERMASTER

**ACCUMULATED RAINFALL
 AT PUDDINGSTONE DAM (STATION NO. 96-C)**



STETSON ENGINEERS INC.
 Covina San Rafael Mesa, Arizona
 WATER RESOURCE ENGINEERS

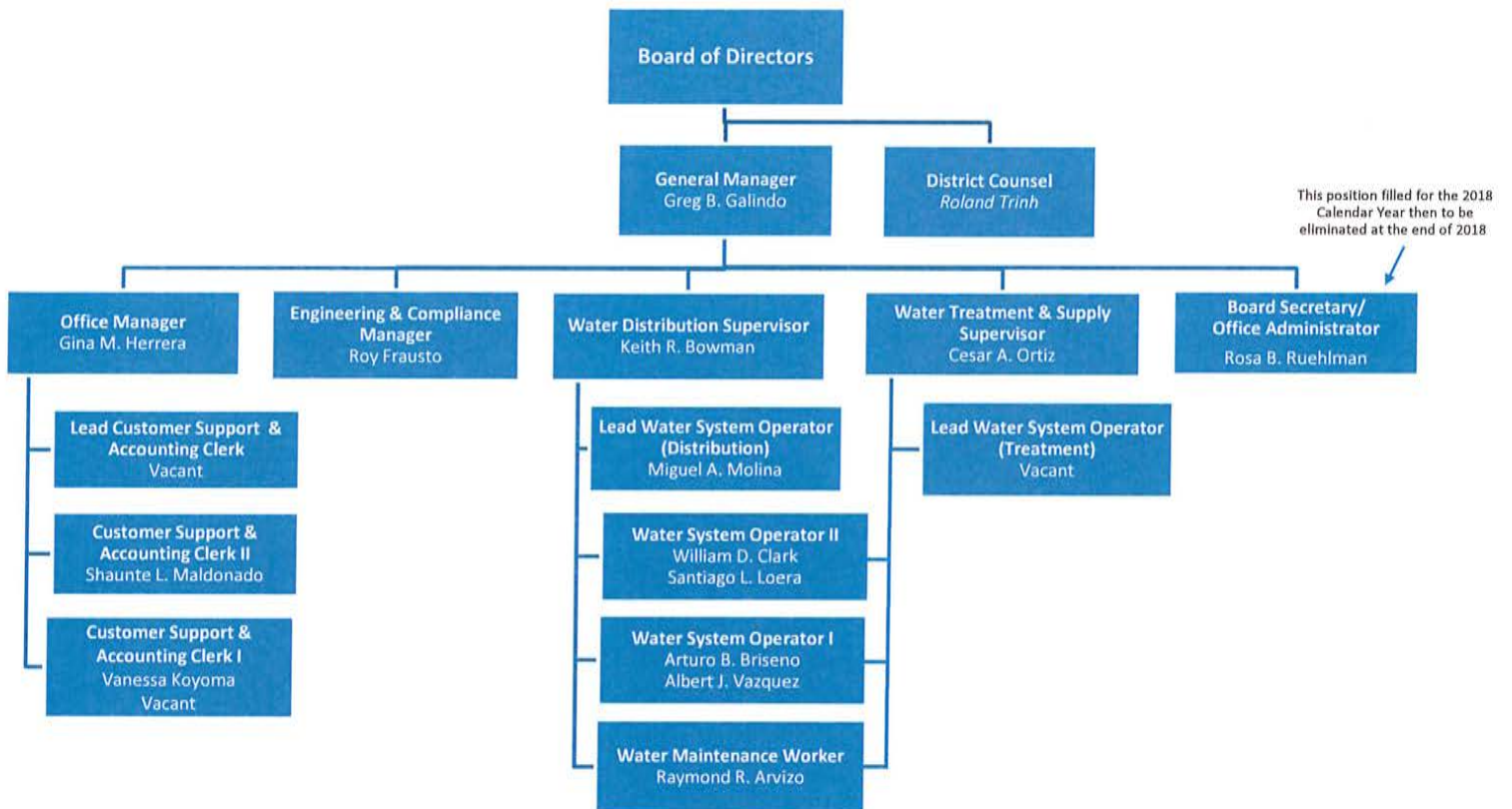
MAIN SAN GABRIEL BASIN WATERMASTER

**ACCUMULATED RAINFALL
 AT LOS ANGELES CIVIC CENTER**

Attachment 7

LPVCWD Organizational Chart

January 1, 2018



Attachment 8

SALARY AND BENEFITS SUMMARY OF LPVCWD STAFF - AS OF DECEMBER 31, 2017

EMPLOYEE	NO.	HOURLY RATE (Inc. Payroll Taxes)	OT HOURLY RATE (Inc. Payroll Taxes)	BENEFITS (Not Including Pers) PER HOUR	CalPERS PER HOUR	Wages, Benefits & CalPERS HOURLY
General Manager / Board Secretary	24	\$ 81.93		\$ 18.28	\$ 12.62	\$ 112.83
Office Administrator	1	\$ 44.49		\$ 24.80	\$ 6.97	\$ 76.26
Engineering & Compliance Manager	40	\$ 52.78		\$ 23.02	\$ 3.42	\$ 79.22
Office Manager	9	\$ 48.57		\$ 25.48	\$ 7.61	\$ 81.66
Water Treatment & Supply Supervisor	12	\$ 47.28	\$ 70.91	\$ 23.35	\$ 7.40	\$ 78.03
Water Distribution Supervisor	7	\$ 42.80	\$ 64.19	\$ 19.38	\$ 6.70	\$ 68.88
Water System Operator Lead (Dist)	15	\$ 38.32	\$ 57.47	\$ 22.31	\$ 6.00	\$ 66.63
Water System Operator II	23	\$ 39.07	\$ 58.61	\$ 22.42	\$ 6.12	\$ 67.61
Water System Operator II	38	\$ 34.78	\$ 52.17	\$ 19.53	\$ 2.25	\$ 56.56
Water System Operator I	31	\$ 29.44	\$ 44.17	\$ 20.70	\$ 4.61	\$ 54.75
Water System Operator I	22	\$ 29.65	\$ 44.47	\$ 21.26	\$ 4.64	\$ 55.55
Water Maintenance Worker	18	\$ 28.96	\$ 43.44	\$ 16.64	\$ 4.54	\$ 50.14
Customer Support and Accounting Clerk II	11	\$ 27.88	\$ 41.81	\$ 13.08	\$ 4.37	\$ 45.33
Customer Support and Accounting Clerk I (PT)	33	\$ 25.17	N/A	\$ 0.57	\$ 2.54	\$ 28.28