

SITE USE AND INSTALLATION AGREEMENT

THIS SITE USE AND INSTALLATION AGREEMENT (“**Agreement**” or “**Site Agreement**”), dated as of September __, 2021 (“**Effective Date**”), is made and entered into by and between THE CITY OF ROSEVILLE, a municipal corporation (“**Owner**”) and the CALIFORNIA DEPARTMENT OF WATER RESOURCES (“**CDWR**” or “**Licensee**”). Each of Owner and CDWR are also referred to herein as a “**Party**” and collectively as the “**Parties**”.

RECITALS

A. On July 30, 2021, the Governor of the State of California proclaimed a state of emergency due to the accelerating and compounding effects of continuing wildfires, ongoing drought, and extreme heat conditions caused by climate change, which have resulted in an additional projected energy supply shortage of up to 3,500 megawatts during the afternoon-evening “net-peak” period of high power demand on days when there are extreme weather conditions. The proclamation directs CDWR to enter into contracts for the procurement of materials, goods and services necessary for projects likely to be online by October 31, 2021 that would expand energy supply and storage to respond to these projected energy supply shortages.

B. Owner owns a site with available interconnection capacity that can be used for the siting and installation of two General Electric LM2500 combustion turbine generators with selective catalytic reduction systems (the “**Units**”) through the end of 2023. The Units could be used to provide some of the additional energy supplies required by the State of California during this period.

C. Owner is willing to grant CDWR a license to use the Site (as defined below) through the end of 2023 on the terms and conditions set forth herein.

D. CDWR is willing to grant Owner the right to purchase one or both of the Units, during a specified period during the term of the Site Agreement.

NOW, THEREFORE, for good and valuable consideration, the Parties agree as follows:

1. **Definitions.**

(a) When used herein, the following capitalized terms will have the meanings set forth below:

“**Access Area**” means the area designated “Access Area” on Exhibit A.

“**Access License**” has the meaning defined in Section 2(a)(ii).

“**Affected System**” means an electric system other than the Owner’s electric system that may be affected by the installation and interconnection of the Units.

“**Affiliate**” means, with respect to any Person, each other Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, that Person. For the purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly

or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

“**BANC**” means the Balancing Authority of Northern California.

“**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 and such petition filed or commenced against it is not stayed or dismissed within ninety (90) days thereafter, (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 become due.

“**Business Day**” means any day other than Saturday, Sunday, and any day that is a holiday observed by Federal Reserve member banks in San Francisco, California.

“**CAISO**” means the California Independent System Operator Corporation or any successor entity performing similar functions.

“**CAISO Controlled Grid**” means the system of transmission lines and associated facilities of the participating transmission owners that have been placed under the CAISO’s operational control.

“**CAISO Tariff**” means the California Independent System Operator Corporation Open Access Transmission Tariff, Business Practice Manuals (BPMs), and Operating Procedures, as the same may be amended or modified from time-to-time and approved by FERC.

“**CDWR Indemnified Parties**” has the meaning defined in Section 12(b).

“**CDWR’s Representative**” has the meaning defined in Section 3(h).

“**CEC**” means the California Energy Commission, or any successor agency performing similar functions.

“**Claiming Party**” has the meaning defined in Section 8(b).

“**Confidential Information**” means any information disclosed in writing or orally by one Party to the other Party that is or relates to (a) the terms and conditions of, and proposals and negotiations related to, this Agreement, (b) information necessary to protect the reliability and security of each Party’s electric systems, information defined as Critical Energy Infrastructure Information, as defined in Title 18 of the Code of Federal Regulations, or information related to any aspect of the business of a Party which is either information not known by actual or potential competitors of the other Party or is proprietary information of a Party, whether of a technical nature or otherwise, or (c) information that the Disclosing Party stamps or otherwise identifies as “confidential” or “proprietary” before disclosing it to the Receiving Party; provided however, that Confidential Information shall not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information

that becomes publicly available through no fault of the Receiving Party after the time of the delivery; (iii) information that was rightfully in the possession of the Receiving Party (without confidential or proprietary restriction) at the time of delivery or that becomes available to the Receiving Party from a source not subject to any restriction against disclosing such information to the Receiving Party; and (iv) information that the Receiving Party independently developed without a violation of this Agreement.

“Contract Year” means, as applicable, (i) the period from the Effective Date through December 31, 2021 and (ii) each subsequent calendar year thereafter.

“Contractor” means each of the Installation Contractor and the Equipment Vendor.

“Contractor’s Representative” has the meaning defined in Section 3(h).

“Defaulting Party” has the meaning set forth in Section 9.

“Early Termination Date” has the meaning set forth in Section 10(a)(i).

“Effective Date” has the meaning set forth on the Preamble.

“Emission Reduction Credits” or **“ERCs”** means credits earned by a Person when it reduces air emissions beyond what is required by applicable permits and rules. ERCs are assets that can be used by its owner or sold to Persons that need emission offsets.

“Energy Services Agreement” means that certain Energy Services Agreement, dated as of the Effective Date, by and between CDWR, as owner, and the City of Roseville, as service provider.

“Equipment Vendor” means General Electric Company.

“Event of Default” has the meaning defined in Section 9.

“Force Majeure” has the meaning defined in Section 8(a).

“Gas Interconnection Point” has the meaning defined in Section 3(g)(ii).

“GHG Costs” means the cost of ERCs and/or other pollution mitigation measures or offsets incurred by Owner in satisfying the conditions of any Required Permit to allow the units to be operated in the ordinary course of business and as required by its contractual obligations and the CAISO.

“Good Industry Practice” means those practices, methods and acts that would be implemented and followed by prudent builders,, owners, lessors, and operators of electric generation facilities similar to the Units in the western United States during the relevant time period, which practices, methods and acts, in the exercise of prudent and responsible professional judgment in the light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result consistent with good business practices, reliability and safety, and shall include, at a minimum, those professionally responsible practices, methods and acts described in the preceding sentence that comply with manufacturers’ warranties,

restrictions in this Agreement, and the requirements of governmental authorities, NERC or WECC reliability standards, the CAISO and applicable Laws. Good Industry Practice is not intended to be the optimum practice, method or act to the exclusion of all others, but rather is intended to be any of the practices, methods and/or actions generally accepted in the region.

“Governmental Authority” means any federal, state, local or municipal government, any political subdivision thereof or any other governmental, regulatory or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO; provided, however, that “Governmental Authority” shall not in any event include any Party.

“Greenhouse Gases” or **“GHGs”** means emissions into the atmosphere of carbon dioxide (CO₂), nitrous oxide (N₂O), and methane (CH₄) which are produced as the result of combustion of fossil fuels and which have been found or determined by a Governmental Authority to contribute to global warming or climate change. Other greenhouse gases included in this definition are hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulfur hexafluoride (SF₆). Greenhouse Gases may be defined or expressed in terms of a ton of CO₂-equivalent, in order to allow comparison between the different effects of gases on the environment.

“GSU” has the meaning defined in Section 3(g).

“GSU Interconnection Point” has the meaning defined in Section 3(g).

“Hazardous Substances” means (a) any chemical, material or substance that is listed or regulated under applicable Laws as a “hazardous” or “toxic” substance or waste, or as a “contaminant” or “pollutant” or words of similar import, (b) any petroleum or petroleum products, flammable materials, explosives, radioactive materials, asbestos, urea formaldehyde foam insulation, and transformers or other equipment that contain polychlorinated biphenyls, and (c) any other chemical or other material or substance, exposure to which is prohibited, limited or regulated by any Laws.

“Indemnified Party” means (i) if CDWR is the Indemnifying Party, each Owner Indemnified Party, and (ii) if Owner is the Indemnifying Party, each CDWR Indemnified Party.

“Indemnifying Party” means CDWR with respect to the indemnification obligations under Section 12(a), CDWR, and (ii) with respect to the indemnification obligations under Section 12(b), Owner.

“Installation Contractor” means Kiewit Corporation.

“Installation Plans and Specifications” has the meaning defined in Section 3(a).

“Interconnection Delays” means all delays in the modification of any interconnection facilities, or in the receipt of resource IDs and other approvals or certifications from the CAISO or any other applicable Person requiring approvals or certifications, necessary to permit interconnection of the Units to the CAISO Controlled Grid, as an EIM asset, and to schedule energy deliveries from the Units, and all other delays in providing interconnection service, including failures to obtain any required permissions or cancellations of such service, that are not due to the gross negligence or willful misconduct of Owner or its Affiliates.

“Law” means any law, statute, rule, regulation, decision, writ, order, decree or judgment, permit, license or authorization, or any interpretation thereof, promulgated, adopted or issued by a Governmental Authority.

“Lender” means, individually and collectively, any bank, financial institution, insurance company or other lender, including its or their agents and trustees, providing Owner and/or its Affiliates with financing or other credit facilities.

“License” means each of the Access License, the Site License and the Utility License.

“License Area” means each of the Site, Access Area and Utility Installation Area.

“License Fee” has the meaning defined in Section 6(a).

“Losses” has the meaning defined in Section 12(a).

“NERC” means North American Electric Reliability Corporation.

“Non-Defaulting Party” has the meaning defined in Section 10(a).

“O&M Agreement” means that certain Operation and Maintenance Agreement, dated as of the Effective Date, by and between CDWR, as owner of the Units, and the City of Roseville, as O&M Contractor.

“Owner Indemnified Parties” has the meaning defined in Section 12(a).

“Owner Supplied Facilities” has the meaning defined in Section 3(g).

“Owner’s Reimbursable Site Costs” has the meaning defined in Section 3(g).

“Owner’s Representative” has the meaning defined in Section 3(h).

“Permit” means any permit, authorization, consent, approval, license, order, filing, waiver, exception, variance or exemption filed with or issued by any Governmental Authority and shall include those siting and operating permits and licenses required for the installation, testing, commissioning, operation, maintenance, decommissioning or removal of the Units in compliance with all applicable Laws.

“Permit Applications” has the meaning defined in Section 5(a).

“Permitting Costs” means (i) all costs of preparing and submitting the Permit Applications, including the costs of all studies and modeling required for the Permit Applications and all costs of third party consultants or fees of attorneys engaged to prepare or assist in the preparation of the Permit Applications, (ii) all application fees and similar costs paid to Governmental Authorities in connection with submission of the Permit Applications, (iii) all other third party costs incurred by Owner or its Affiliates in applying for, acquiring and maintaining the Required Permits, (iv) all mitigation fees, ERCs, in lieu fees and other similar required to in order to obtain and maintain the Required Permits, (v) all GHG Costs, and (vi) other related costs.

“Person” means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

“Recycled Water Interconnection Point” has the meaning defined in Section 3(g).

“Requested Confidential Information” has the meaning defined in Section 17b).

“Required Permits” has the meaning defined in Section 5(a).

“SCR” has the meaning defined in Section 3(d).

“Site” means the area designated as the “Site” on Exhibit A.

“Site License” has the meaning defined in Section 2(a)(i).

“Telemetry Interconnection Point” has the meaning defined in Section 3(g).

“Term” has the meaning defined in Section 4.

“Unit Specifications” has the meaning defined in Section 5(a).

“Units” has the meaning defined in the recitals to this Agreement.

“Utility Installation Area” means the area shown as “Utility Installation Area” on Exhibit A.

“Utility License” has the meaning defined in Section 2(a)(iii).

“WAPA” means the Western Area Power Administration.

“WECC” means Western Electricity Coordinating Council.

(b) The following rules of interpretation shall apply to this Agreement, unless otherwise specified or required by the context:

(i) Terms defined in the singular shall include the plural and vice versa;

(ii) References to “Sections” and “Exhibits” shall be to sections or exhibits of this Agreement;

(iii) All references to a particular entity shall include a reference to such entity’s successors and permitted assigns;

(iv) The words “herein,” “hereof,” and “hereunder” shall refer to this Agreement as a whole and not to any particular section or subsection hereof;

(v) References to this Agreement shall include a reference to all exhibits hereto, as the same may be amended, modified, supplemented, or replaced from time to time;

(vi) Terms used in the masculine shall include the feminine and vice versa;

(vii) The terms “include” and “including,” when used in this Agreement, shall mean to include without limitation; and

(viii) The term “day” when used in this Agreement shall mean a calendar day unless specified otherwise.

Capitalized terms, used but not otherwise defined herein, shall have the meaning ascribed to them in the CAISO Tariff.

2. Use of Site.

(a) Owner hereby grants to Licensee the following licenses on and subject to the terms of this Agreement:

(i) A license to use the Site for the purposes of installing, testing, commissioning, operating, maintaining and decommissioning the Units (the “**Site License**”);

(ii) A license to use the Access Area for purposes of access to the Site for the purposes of installing, testing, commissioning, operating, maintaining and decommissioning the Units (the “**Access License**”); and

(iii) A license to use the Utility Installation Area for the purposes of installing, using and maintaining (A) pipes and related gas facilities between the Units and the Gas Interconnection Point, (B) electrical cables between the Units and the GSU Interconnection Point, (C) pipes and related water facilities between the Units and the Recycled Water Interconnection Point, (D) wires, meters and other telemetry and communications facilities and equipment between the Units and the Telemetry Interconnection Point (the “**Utility License**”).

(b) The Site License will be an exclusive license with respect to the Utility Installation Area on which the Units are physically located and a non-exclusive license for the remainder of the Site, but the use of the Site pursuant to the Site License shall be strictly limited to the purposes described in Section 2(a)(i) and must comply with the terms and conditions of this Agreement. Except as provided in the Installation Plans and Specifications or as approved in writing by Owner in its discretion, and other than as may necessary to install the Units, the Site License shall not include any right to disturb any of Owner’s existing improvements on the Site, to disturb the ground surface of the Site, to make any permanent changes to the Site, or to install any permanent improvements on the Site.

(c) The Access License and the Utility License will be non-exclusive licenses and will be subject to use by Owner and its Affiliates for such purposes as they may choose; provided that such uses do not materially interfere with the essential purposes of each such License. The uses

of the Access Area pursuant to the Access License and of the Utility Installation Area pursuant to the Utility License shall be strictly limited to the purposes described in Sections 2(a)(ii) and 2(a)(iii), respectively, must comply with the terms and conditions of this Agreement, and shall not interfere with the use by Owner or its Affiliates of the Access Area or the Utility Installation Area, including for the installation of improvements, equipment and facilities for Owner's or its Affiliate's intended use of such property as described in the recitals to this Agreement. The Access License and Utility License do not include any right to disturb any of Owner's existing improvements within the License Areas, to disturb the ground surface, to make any permanent changes, or to install any permanent improvements except as provided in the Installation Plans and Specifications or approved in writing by Owner in its discretion.

(d) The Licenses granted under this Agreement are licenses only and do not convey any estate or interest in real property or any right or interest to use or occupy the Site, the Access Area or the Utility Installation Area beyond the Term or other than as expressly provided in this Agreement.

(e) All use of the Licenses by CDWR, its agents, employees, representatives, contractors and consultants, shall comply with applicable Law and Permits, as well as with Owner's site safety and security rules as in effect from time to time. All Persons entering on to or using any of the License Areas shall be required to sign an agreement acknowledging such site safety and security rules and agreeing to comply with them.

3. Installation of the Units.

(a) Except as expressly provided in Sections 3(f), 3(g) and 5, CDWR and its Contractors will be fully responsible for the design, purchase, delivery, installation, testing, commissioning, operation, maintenance, decommissioning and removal of the Units and for the acts and omissions of the Contractors and their subcontractors, and of any other contractors or subcontractors engaged by CDWR. Except for Owner's obligation to provide Licenses for the Site and the other License Areas and to make the Owner Supplied Facilities available to CDWR, CDWR and its Contractors will be responsible for all work necessary to design, install, test and commission the Units. The Units and related facilities and equipment shall be installed on the Site, the Access Area and the Utility Installation Area in accordance with the Installation Plans and Specifications attached hereto as Exhibit C, with such modifications and supplements as may be agreed to by both Parties in writing from time to time (the "**Installation Plans and Specifications**"), covering both the initial installation of the Units and the subsequent installation of the SCRs as provided in Section 3(d) below.

(b) CDWR will purchase the Units from the Equipment Vendor and arrange for the delivery of the Units to the Site. CDWR has engaged the Installation Contractor to install, test and commission the Units on the Site and, in the event that Owner does not exercise its right to purchase one or both of the Units, will, prior to the end of the Term, engage one or more qualified contractors to decommission and remove the Units from the Site. Without limiting the foregoing, the Installation Contractor's scope of work shall include all interconnections between the Units and the Owner Supplied Facilities, all security fencing around the Site and such other matters as may be described in the Installation Plans and Specifications. Owner reserves the right to monitor the Installation Contractor's work.

(c) CDWR will hold Owner harmless from any and all costs of purchasing, delivering, installing, testing, commissioning, decommissioning and removing the Units. CDWR will keep the Site, the other License Areas and all other property of Owner and its Affiliates free and clean of all mechanic's and materialmen's liens and other liens or stop payment notices relating to payment or nonpayment of such costs and will pay or discharge any such liens within forty-five (45) days after notice thereof from Owner. If CDWR fails to do so, Owner may, without limiting its rights under Sections 9 or 10, pay or discharge any or all such liens, and CDWR shall promptly reimburse Owner for all amounts incurred in connection with the payment or discharge of such liens, including all amounts paid to the lien holder, attorneys' fees, filing or recording fees and title insurance costs.

(d) The Parties acknowledge and agree that the Permit Applications for the Units will include the installation of a selective catalytic reduction system ("**SCR**") on each of the Units, but that the SCRs are not currently available and therefore will not be part of the initial installation of the Units. CDWR agrees that, as part of its purchase of the Units, it will purchase SCRs for each Unit and that such SCRs will be delivered and installed as soon as reasonably possible and in all events within the time period required by the Permits for the Units. CDWR and its Contractors will be fully responsible for the delivery, installation, testing and commissioning of the SCRs in conformance with the Installation Plans and Specifications and otherwise in the same manner as the Units, including payment of all costs and keeping the Site, the other License Areas and all other property of Owner and its Affiliates free and clean of all mechanic's and materialmen's liens and stop payment notices as provided in Section 3(c). Upon installation, testing and commissioning of the SCRs, they will become part of the Units for all purposes hereunder. To the extent that the SCRs are not installed within the time period required by the Permits for the Units, Owner may exercise the right to terminate this Agreement, as provided in Section 10(c)(iii).

(e) All contractors and subcontractors other than the Contractors entering on to any of the License Areas shall be subject to Owner's prior review and approval, which will not be unreasonably withheld, prior to entry. Such approval may be conditioned on, among other things, proof that such contractor or subcontractor is properly licensed and is carrying adequate liability insurance that protects Owner and its Affiliates. In addition, all contractors and subcontractors entering on to any of the License Areas shall comply with Owner's safety and COVID-19 protocols.

(f) The Parties acknowledge that, as between them, operation and maintenance of the Units and the payment of the costs thereof are addressed in the O&M Agreement.

(g) In connection with the installation of the Units, Owner will provide the following (the "**Owner Supplied Facilities**"):

(i) Owner will provide an interconnection point to its two existing generation step up transformers (each a "**GSU**") in the location shown on the Installation Plans and Specifications (the "**GSU Interconnection Point**").

(ii) Owner will provide an interconnection point to its existing natural gas yard in the location shown on the Installation Plans and Specifications (the "**Gas Interconnection Point**").

(iii) Owner will provide an interconnection point to a supply of recycled water in the location shown on the Installation Plans and Specifications (the “**Recycled Water Interconnection Point**”).

(iv) Owner will provide an interconnection point to telemetry and communication facilities for communicating with WAPA and BANC in the location shown on the Installation Plans and Specifications (the “**Telemetry Interconnection Point**”).

Owner’s only obligation is to provide the Owner Supplied Facilities, and Owner does not have any other obligations with respect to the installation, testing, commissioning, operation, maintenance, decommissioning or removal of the Units or any related equipment or facilities. CDWR and its Contractor will be responsible for all interconnections between the Units and the Owner Supplied Facilities. CDWR will reimburse Owner for all third party costs and expenses, including consultant and legal fees, and Owner’s expenses and employee fully burdened labor rates, reasonably incurred by Owner and its Affiliates in carrying out Owner’s obligations under this Agreement and in making the Owner Supplied Facilities available to CDWR, including (A) costs of restoring and updating the gas yard and the electrical switchyard, (B) costs of preparing and, if necessary, modifying the GSUs, (C) costs of all metering and telemetry required by WAPA, BANC, CAISO or NERC with respect to the Units, (D) costs of extending recycled water facilities to the Recycled Water Interconnection Point, and (E) costs of preparation of the Site and other License Areas for use by CDWR pursuant to this Agreement (collectively, “**Owner’s Reimbursable Site Costs**”); provided that Owner’s Reimbursable Site Costs shall not in the aggregate exceed \$850,000.00 without CDWR’s written consent, which will not be unreasonably withheld. Owner will use commercially reasonable efforts to make the Owner Supplied Facilities on or before the target availability dates set forth in the Installation Plans and Specifications, but such dates may be extended due to Force Majeure, Interconnection Delays or delays in receipt of the Required Permits or any approvals, certifications, agreements or other actions by or from the CAISO. The Parties acknowledge and agree that this Agreement may be terminated for various reasons provided for herein prior to the Units having been installed, tested and commissioned, but agree that, so long as Owner uses commercially reasonable efforts to carry out its obligations under this Agreement and to make the Owner Supplied Facilities available to CDWR and its Contractors, CDWR will reimburse Owner and its Affiliates for all Owner’s Reimbursable Site Costs incurred hereunder (but not in excess of the maximum amount set forth above), regardless of whether or not the Units are ultimately installed, tested and commissioned.

(h) Owner will designate one or more individuals (collectively, “**Owner’s Representative**”) to act as the point of contact between Owner and CDWR and its Contractors and will notify CDWR and the Contractors of the name and contact information of such Owner Representative. CDWR will also designate one or more individuals (collectively, “**CDWR’s Representative**”) to act as the point of contact for CDWR and will cause its Contractors to likewise designate one or more individuals (each a “**Contractor’s Representative**”) to act as the point of contact for that Contractor and will notify Owner or cause each Contractor to notify Owner of the name and contact information of CDWR’s Representative and the respective Contractor Representatives. Owner’s Representative will coordinate with CDWR and its Contractors in connection with the installation, testing, commissioning, decommissioning and removal of the Units, including coordination of the schedules for work to be done by the Contractors and by Owner, respectively; provided that no such coordination or other activities by Owner’s Representative shall be considered an approval of or assumption of liability with respect to any work done by CDWR or its Contractors.

(i) During the Term of this Agreement, CDWR will be the owner of the Units, including the equipment and facilities installed by CDWR's Contractors to interconnect to the Owner Supplied Facilities, and Owner will not have any ownership interest in them. The Units will remain the personal property of CDWR and will not be deemed fixtures to the Site or any other License Area. CDWR will be responsible for and will timely pay all property taxes and other taxes, including possessory interest taxes if applicable, assessed against or with respect to the Units or assessed due to use of the License Areas. The Parties acknowledge and agree that Owner or its Affiliates own the GSUs, the gas yard, electrical switchyard, the recycled water facilities and the other gas, electric and utility facilities outside of the boundaries of the Site, except for equipment and facilities installed by CDWR and its Contractors in the License Areas pursuant to this Agreement. Owner will be responsible for and will timely pay all property taxes and other taxes assessed against or with respect to its property.

4. **Term.** This Agreement will be effective as of the Effective Date and will continue in effect until December 31, 2023, unless sooner terminated as provided herein (the "**Term**"). CDWR acknowledges and agrees that after December 31, 2023, there are no rights to extend the Term beyond that date.

5. **Permitting.**

(a) Owner will use commercially reasonable efforts to (i) determine what new Permits, or amendments or modifications to existing Permits are necessary in order to permit the installation, testing, commissioning, operation, maintenance, decommissioning and removal of the Units as contemplated by this Agreement, the O&M Agreement and the Energy Services Agreement in accordance with all applicable Laws (the "**Required Permits**"), (ii) submit applications ("**Permit Applications**") for the Required Permits to the appropriate Governmental Authorities, and (iii) seek to obtain approval of the Required Permits on the terms and conditions proposed in the Permit Applications or on such other terms and conditions as may be approved by the applicable Governmental Authorities that will permit the installation, testing, commissioning, operation, maintenance, decommissioning and removal of the Units as described in clause (i); provided, however, that if the terms and conditions of approval of a Required Permit proposed by the applicable Governmental Authority are materially different from those proposed in the Permit Application, Owner will consult with CDWR before accepting such terms and conditions and will not accept such new terms and conditions without CDWR's written consent. The Permit Applications may be submitted, and the Required Permits may be obtained, in the name of Owner and/or one or more of its Affiliates, as Owner may consider necessary or appropriate. All Permit Applications will be based on the design and specifications of the Units set forth on Exhibit B (the "**Unit Specifications**"), and CDWR shall not install, test or commission any Unit, or permit or cause the installation, testing or commissioning of any Unit, that differs from the Unit Specifications. Owner shall have the right to prohibit the installation, testing or commissioning of any Unit that does not conform to the Unit Specifications. In the event that Owner is unable to obtain one or more Required Permits based on Units as described in the Unit Specifications on terms and conditions that will permit the installation, testing, commissioning, operation, maintenance, decommissioning and removal of the Units as described in clause (i), the Parties will confer and use commercially reasonable efforts to agree on revisions to the Unit Specifications that will enable Owner to obtain the Required Permits consistent with the description in clause (i). Owner neither incurs nor assumes any liability under this Agreement if

CDWR will not accept new terms and conditions proposed by the applicable Governmental Authority for a Required Permit.

(b) The Parties acknowledge and agree that the Permit Applications will be based on the Units being installed with SCRs as provided in the Unit Specifications, *provided that* Owner will use commercially reasonable efforts to obtain temporary waivers or exceptions as may be necessary to allow the installation, testing, commissioning, operation and maintenance of the Units without SCRs. If Owner is unable to obtain such temporary waivers or exceptions, or is unable to obtain for the period of time that CDWR or its Contractor requires to deliver, install, test and commission the SCRs, the Parties will confer and use commercially reasonable efforts to agree on an accelerated schedule for the delivery, installation, testing and commissioning of the SCRs so that the foregoing can be completed as allowed by the temporary waivers or exceptions that can reasonably be obtained. For the avoidance of doubt, Owner neither incurs nor assumes any liability under this Agreement due to the inability using commercially reasonable efforts to obtain temporary waivers or exceptions for the installation, testing, commissioning, operation and maintenance of the Units without SCRs.

(c) CDWR will reimburse Owner and its Affiliates for all Permitting Costs reasonably incurred in preparing the Permit Applications and applying for, obtaining and maintaining the Required Permits; provided that Permitting Costs shall not in the aggregate exceed one hundred thousand dollars (\$100,000) without CDWR's written consent, which will not be unreasonably withheld. The Parties acknowledge and agree that there is no assurance that Owner and its Affiliates will be able to obtain the Required Permits, but agree that, so long as Owner uses commercially reasonable efforts to obtain the Required Permits as provided herein, CDWR will reimburse Owner and its Affiliates all Permitting Costs reasonably incurred by Owner and its Affiliates (but not in excess of the maximum amount set forth above), regardless of whether or not the Required Permits are ultimately obtained or the Units are installed, tested and commissioned.

(d) If Owner is unable, despite using commercially reasonable efforts, to obtain one or more of the Required Permits by October 31, 2021, the Parties will convene in an attempt to reach an agreement on a course of action within 60-days, otherwise, either party may elect, by written notice to the other Party, to terminate this Agreement with no further liability on the part of either Party, except (i) CDWR will reimburse Owner and its Affiliates for all Permitting Costs and Owner's Reimbursable Site Costs incurred by Owner and its Affiliates through the effective date of termination, (ii) no part of the License Fee previously paid shall be refundable or refunded on account of such termination, and (iii) all indemnification obligations in Section 12 shall survive such termination and shall continue in effect.

(e) CDWR shall design, install, test, commission, decommission, remove and, subject to compliance by Owner's Affiliates with their respective obligations under the O&M Agreement and the Energy Services Agreement, operate and maintain the Units in accordance with the Required Permits, all other applicable Permits and all applicable Laws.

6. **Compensation; Billing.**

(a) In addition to the reimbursement of Owner's Reimbursable Site Costs and Permitting Costs, CDWR will pay to Owner a fee for the Licenses granted herein ("**License Fee**")

for each Contract Year or part thereof during the Term, as of the target Commercial Operation Date of Sept 17, 2021, and as follows:

First Contract Year	\$1,000,000.00 upon full execution of this Agreement, the Operation and Maintenance Agreement, and the Energy Services Agreement
Second Contract Year	\$3,500,000.00 Payable in four equal installments on or before the first business day of each calendar quarter.
Third Contract Year	\$3,500,000.00 Payable in four equal installments on or before the first business day of each calendar quarter.

Unless stated otherwise in this Agreement, payment of the License Fee as and when required will be Owner's full compensation for the grant of the Licenses and use of the License Areas and for internal costs incurred by Owner and its Affiliates in carrying out Owner's obligations under this Agreement and making the Owner Supplied Facilities available to CDWR. CDWR shall pay the License Fee timely, irrespective of whether the Units are operating at full capacity or not at the time payment is due.

(b) The License Fee shall be payable by CDWR to Owner in accordance with the amounts and dates set forth in Section 6(a). Subject to CDWR's rights under Section 6(d), payments for reimbursement of Permitting Costs and other reimbursable amounts under this Agreement shall be made on or before the forty-fifth (45th) day after receipt of the invoice (California Prompt Payment Act; Government Code, Section 927, et seq). If the due date falls on a non-Business Day, then the payment shall be due on the following Business Day. Payment shall be deemed delivered on time if sent via electronic funds transfer, as set forth in Exhibit E, prior to 5 p.m. Pacific time on the due date. CDWR shall submit all payments under this Agreement to Owner at the payment address shown in Exhibit E. Any changes to the address designated for purposes of payment must be made by written notice to CDWR at the address listed in Exhibit E at least sixty (60) days prior to the first submittal of payment to the new address.

(c) The License Fee payable in each Contract Year is a fixed amount and is not subject to dispute. If CDWR wishes to dispute an invoice for Permitting Costs or other reimbursable costs in whole or in part, it must give Owner written notice of the amount in dispute on or before the due date for the invoice, including a reasonably detailed statement of the basis for such dispute (including supporting documentation), but it shall nonetheless pay the amount billed, including any disputed portion, on the due date for the invoice. If it is determined by a court of applicable jurisdiction that a disputed amount or part thereof that was paid was not in fact due and owing, Owner shall refund such amount to CDWR within thirty (30) days after resolution of

such dispute, together with interest on such amount from the date paid to, but not including, the date refunded at the interest rate set forth in Section 6(e).

(d) Penalties for delinquent payments shall be assessed in accordance with the California Prompt Payment Act (Government Code Section 927 et seq.) as may be amended. Interest on delinquent amounts (including amounts determined to be owed as a result of the resolution of a billing dispute) shall be calculated at the interest rate specified in the California Prompt Payment Act (Government Code Section 927 et seq.) as may be amended: from the original due date (or, for amounts not properly invoiced, the date that would have been the due date if such amounts were properly invoiced) to the date of payment.

(e) Owner and its Affiliates shall keep complete and accurate records of Permitting Costs and other reimbursable amounts hereunder and shall maintain records for a period of three (3) years from the due date of the applicable invoices. Within a three (3) year period from the original due date of an invoice, CDWR may request in writing copies of such records to the extent reasonably necessary to verify the accuracy of any invoice.

7. **Purchase Option.**

At any time beginning from the first day after completion of the First Contract Year until the end of the Term of the Agreement, Owner may notify CDWR of its intent to purchase one or both of the Units at the end of the term of the Agreement. CDWR and Owner shall execute the Option Agreement appended to and incorporated into this Agreement as Exhibit F. Owner is not required to exercise the purchase option set forth in this section. Except as permitted by Section 16, CDWR represents, warrants and covenants that it shall not sell or otherwise transfer, or offer to sell or transfer, either or both of the Units to any third party other than Owner until after this Agreement has terminated without Owner exercising its option to purchase.

8. **Force Majeure.**

(a) “**Force Majeure**“ means: any cause or event beyond the reasonable control of the affected Party which causes the affected Party to fail to perform that (i) was not specifically foreseeable as of the Effective Date, (ii) was not due to the fault or negligence of the affected Party, and (iii) could not reasonably have been avoided, overcome, prevented, or mitigated, by the affected Party’s exercise of due diligence and use of reasonable precautions and efforts. Subject to the foregoing requirements, events that could qualify as Force Majeure include (x) acts of God, such as droughts, floods, earthquakes, volcanic eruption, epidemics, pandemics or other natural disasters, (y) fires, explosions, or accidents that could not have been prevented by acting in accordance with Good Industry Practice, or (z) war (declared or undeclared), riots, insurrection, rebellion, acts of the public enemy, acts of vandalism, terrorism and/or sabotage, civil disturbance, public disorder, blockades, embargoes, sanctions, import-export controls, or industry-wide strikes. However, Force Majeure shall not include the following events except the portions of such events caused solely by an event of Force Majeure as enumerated in clauses (x), (y) and (z) of the preceding sentence: (1) general market conditions or the economic hardship of either Party, (2) events arising from the failure to design, install, test, commission, operate, maintain, decommission or remove the Units in accordance with Good Industry Practice, (3) failure of third parties to provide goods or services essential to a Party’s performance, (4) mechanical breakdown, or electrical breakdown, or failure of any machinery or equipment constituting all or part of a Unit, (5) Owner’s ability to license the use of the Site or the other Licenses Premises for

more than the License Fee, (6) CDWR's ability to license or obtain the use of an alternate Site for less than the License Fee, (7) any delay in obtaining, or denial of, any Required Permit, (8) any delay in providing, failure to obtain, or cancellation of, interconnection service, (9) the inability of CDWR to make payments when due under this Agreement, (10) a strike, work stoppage or labor dispute limited only to any one or more of CDWR, its Contractor, and their respective Affiliates or subcontractors or any other third party employed by CDWR to work on the Units, or (11) any delay resulting from litigation relating to or affecting the Units or the Site.

(b) To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement, and such Party (the "**Claiming Party**") gives notice and details of the Force Majeure to the other Party as soon as practicable, then, unless as otherwise expressly provided herein, and as limited in Section 8(c), the Claiming Party shall be excused from the performance of its obligations (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure) to the extent affected by the Force Majeure, and no Event of Default shall occur as a result of the failure to perform any excused obligation. 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.

(c) Any Party claiming Force Majeure shall advise the other Party as soon as possible of the occurrence of the Force Majeure event and shall provide the other Party with the basis of the claim, in writing, within ten (10) days of the occurrence of the Force Majeure event. The Parties shall make reasonable efforts to avoid the adverse impacts of a Force Majeure and to resolve the event or occurrence once it has occurred to resume performance.

9. **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) With respect to either Party:

(i) The failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within five (5) Business Days after written notice of the failure;

(ii) Any representation or warranty made by such Party herein that is false or misleading in any material respect when made or when deemed made or repeated if the representation or warranty is continuing in nature, which misrepresentation or breach of warranty is not cured within thirty (30) days after written notice thereof;

(iii) Except for an obligation to make payment when due, the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default or to the extent excused by a Force Majeure) if such failure is not remedied within thirty (30) days after written notice, which written notice sets forth in reasonable detail the nature of the failure; provided, however, that if such failure is not reasonably capable of being remedied within the thirty (30) day cure period, such Party may have such additional time as the Parties agree is reasonably necessary to remedy such failure, so long as such Party promptly commences and diligently pursues such remedy;

(iv) Such Party becomes Bankrupt;

(v) 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 that 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;

(vi) Such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 16; or

(b) With respect to CDWR as the Defaulting Party, the occurrence of any of the following:

(i) The installation, testing or commissioning of any Unit that does not conform to the Unit Specifications and the requirements of the Required Permits;

(ii) Failure of CDWR to comply and to cause its Contractors to comply with the obligations under Section 5(e);

(iii) Failure by CDWR to comply with its obligations under Section 3(c) within the time periods provided therein;

(iv) Failure by CDWR to install the SCRs by the time required under the Required Permits (including any temporary waivers or exceptions); provided that the remedies for this Event of Default shall be limited as provided in Section 10(b);

(v) Failure by CDWR to comply with its obligations under Section 12 within the time frames provided therein;

(vi) Use of any License Area other than as specifically permitted by the grant of the applicable License in Section 2, or interference with Owner or its Affiliates concurrent use of the Access Area or the Utility Installation Area, or any other property of Owner or its Affiliates, unless such non-licensed use or interference is remedied within ten (10) Business Days after written notice thereof; or

(vii) The O&M Agreement or the Energy Services Agreement is terminated as the result of an event of default by CDWR thereunder.

(c) With respect to Owner as the Defaulting Party, the occurrence of any of the following:

(i) Subject to CDWR's compliance with its obligations under this Agreement and receipt of the Required Permits, failure by Owner to provide CDWR access to the Site or other License Areas as provided in Section 2, unless such failure is remedied within ten (10) Business Days after written notice thereof;

(ii) Failure by Owner to use commercially reasonable efforts to prepare and submit the Permit Applications for the Required Permits as provided in Section 5(a), unless such failure is remedied within ten (10) Business Days after written notice thereof or this Agreement is terminated pursuant to Section 5(d); or

(iii) Failure by Owner to comply with its obligations under Section 12 within the time frames provided therein.

10. **Remedies; Termination Rights.**

(a) If an Event of Default with respect to a Defaulting Party has occurred and is continuing, the other Party ("**Non-Defaulting Party**") shall have the right to do any one or more of the following, which rights shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement:

(i) Terminate this Agreement by sending a written notice, designating a day, no earlier than the forty-fifth (45th) day after such notice is deemed to be received, as an early termination date of this Agreement ("**Early Termination Date**");

(ii) Accelerate all amounts owing between the Parties as of the Early Termination Date;

(iii) Withhold any payments due to the Defaulting Party under this Agreement pending resolution of amounts owed by or to each Party;

(iv) Suspend performance of its obligations under this Agreement;

(v) Subject to Section 15(c), recover monetary damages as allowed by law;
and

(vi) Exercise any other rights or remedies available at law or in equity to the extent otherwise permitted under this Agreement.

The Non-Defaulting Party's election to exercise or not exercise any of the above rights following an Event of Default shall not constitute a waiver by the Non-Defaulting Party of any remedy with respect to any subsequent Event of Default by the Defaulting Party. Amounts accelerated pursuant to Section 10(a)(ii) shall be netted, and the Party owing the net amount shall pay such amount to the other Party (or apply such amount against other amounts owed by the Defaulting Party, if the Non-Defaulting Party owes the net amount).

(b) Notwithstanding the foregoing, if an Event of Default occurs under Section 9(b)(iv), so long as CDWR has paid and continues to timely pay the License Fee and to timely reimburse Owner for all Permitting Costs and Owner's Reimbursable Site Costs, Owner shall not terminate this Agreement, but Owner shall be entitled to suspend its performance hereunder and under the O&M Agreement and the Energy Services Agreement, and to require CDWR to suspend operation of the Units, until the SCRs are installed, tested and commissioned in accordance with the Required Permits.

(c) In addition to a Non-Defaulting Party's right to terminate as the result of an Event of Default with respect to the Defaulting Party, the Parties will have the following rights to terminate this Agreement by sending written notice designating an Early Termination Date in the same manner as provided in Section 10(a)(i) (although such termination is not due to an Event of Default). Any such termination shall be with no further liability on the part of either Party, except (x) CDWR will reimburse Owner and its Affiliates for all Owner's Reimbursable Site Costs and Permitting Costs incurred by Owner and its Affiliates through the effective date of termination, (y) no part of the License Fee previously paid shall be refundable or refunded on account of such termination, and (z) all indemnification obligations in Section 10 shall survive such termination and shall continue in effect:

(i) Either Party may terminate this Agreement as provided in Section 5(d);

(ii) Owner may terminate this Agreement if after consultation with CDWR, it reasonably determines that operation of either or both of the Units, whether or not permitted under the Required Permits, would or is likely to adversely affect its or its Affiliate's ability to operate the Roseville Energy Park in any material respect, including as a result of limitations on air emissions, natural gas consumption or hours of operation;

(iii) Owner may terminate this Agreement if after consultation with CDWR it reasonably determines that installation, testing, commissioning or operation of either or both Units will violate the Required Permits or any other Laws or Permits applicable to Owner or its Affiliates or their respective properties, including the Roseville Energy Park for any reason other than the gross negligence or willful misconduct of Owner's Affiliates under the O&M Agreement or the Energy Services Agreement;

(iv) Owner may terminate this Agreement if it reasonably concludes after consultation with CDWR that any Losses or other liabilities, obligations or expenses that it or any of the Owner Indemnified Parties could incur and that are described in Section 12(a) would not be covered in full by CDWR's indemnification obligations under Section 12 or that CDWR would be excused from covering any such Losses or other liabilities, obligations or expenses under Section 12 for any reason other than Owner's breach of this Agreement or its gross negligence or willful misconduct; and

11. **Obligations Upon Termination.** In connection with the termination of this Agreement, whether as a result of the expiration of the stated Term of this Agreement, the declaration of an Early Termination Date, or otherwise, in addition to such obligations or liabilities as may arise due to an Event of Default, if Owner has not exercised its right to purchase one of more of the Units, CDWR shall, on or before the termination date, at its sole cost and expense, (i) decommission the Units, including obtaining all necessary consents and approvals from the applicable Governmental Authorities, (ii) disconnect the Units from the Owner Supplied Facilities, (iii) remove the Units and all related equipment and facilities owned by CDWR from the License Areas in accordance with all applicable Laws and Permits, and (iv) except as otherwise agreed by Owner and CDWR, restore the Site to substantially the same condition as it was on the Effective Date, and repair any damage to the Access Area or the Utility Installation Area caused by CDWR or its employees, agents, representatives, contractors or subcontractors during the Term or in connection with the decommissioning and removal of the Units. CDWR shall also

reimburse Owner for all Owner's Reimbursable Site Costs for installation of the Units and \$300,000 for the removal and Permitting Costs incurred by Owner and its Affiliates through the effective date of termination, and no part of the License Fee previously paid shall be refundable or refunded on account of such termination.

12. **Indemnification.**

(a) To the fullest extent allowed by law, CDWR shall indemnify, defend, save and hold harmless Owner, its Affiliates and their respective officers, directors, employees, partners, lenders, agents and representatives, and their respective successors and assigns (the "**Owner Indemnified Parties**") from and against any and all losses, claims, demands, damages, liabilities, judgments, fines, penalties, costs and expenses, including reasonable attorneys' fees, expert fees and court costs ("**Losses**"), incurred by or asserted against any Owner Indemnified Party arising out of or resulting from (i) any injury or damage to persons or property as a result of any acts or omissions of CDWR, its employees, agents, representative, contractors or subcontractors in, on or about the License Areas or in the performance of any work or activities related to this Agreement, (ii) the breach of any covenant or representation made by CDWR under this Agreement; (iii) any challenge to or invalidation of any Required Permit, (iv) all Permitting Costs and Owner's Reimbursable Site Costs (subject to the maximum amount limitations set forth above), (v) any use or operation of the Units in violation of this Agreement, the Required Permits or any other applicable Permit or Law, except to the extent caused by Owner's gross negligence or willful misconduct or the gross negligence or willful misconduct of its Affiliates under the O&M Agreement or the Energy Services Agreement, (vi) all costs and expenses that CDWR, its contractors and subcontractors are required to pay under this Agreement, (vii) all costs, charges, fees, penalties and other amounts assessed or charged by or payable to the CAISO or any other Governmental Authority in connection with the installation, testing, commissioning, operation, maintenance, decommissioning or removal of the Units, including interconnection- related costs, charges and fees, except to the extent caused by Owner's gross negligence or willful misconduct or the gross negligence or willful misconduct of its Affiliates under the O&M Agreement or the Energy Services Agreement, (viii) any claim, dispute or litigation, including those based on non-compliance with the requirements of Public Resources Code Division 13 (commencing with 21000) or regulations adopted pursuant to that Division, alleging, and any determination, that installation or operation of the Units was not permitted under applicable Law or that the Required Permits were issued in violation of applicable Law, (ix) any mitigation costs or payments required by a neighboring electric utility asserting a claim that it is an Affected System; (x) all GHG Costs, including any penalties, offset requirements, taxes, and compliance costs, or (xi) all costs, claims, clean up and remediation costs, fines, penalties and other liabilities arising from or related to the cleanup or disposal of any Hazardous Substances or air emissions brought on to or emitted from the Site, the other License Areas or any adjacent property of Owner or its Affiliates by CDWR, its employees, agents, representatives, contractors or subcontractors, or used by CDWR, its employees, agents, representatives, contractors or subcontractors, in connection with the installation, testing, commissioning, operation, maintenance, decommissioning or removal of the Units by CDWR, its employees, agents, representatives, contractors or subcontractors, except to the extent caused by Owner's gross negligence or willful misconduct or the gross negligence or willful misconduct of the Owner's Affiliates under the O&M Agreement or the Energy Services Agreement.

(b) To the fullest extent allowed by law, Owner shall indemnify and hold harmless CDWR and its officers, directors, employees, agents and representatives, and their respective

successors and assigns (the “**CDWR Indemnified Parties**”) from and against any and all Losses incurred by or asserted against any CDWR Indemnified Party arising out of or resulting from (i) any injury or damage to persons or property as a result of any acts or omissions of Owner, its employees, agents, representative, contractors or subcontractors in, on or about the License Areas or in the performance of any work or activities related to this Agreement, or (ii) the breach of any covenant or representation made by Owner under this Agreement.

(c) Promptly following receipt by an Indemnified Party of notice of a matter subject to indemnification under Section 12(a), including the commencement of any action, administrative or legal proceeding, or investigation as to which an indemnity provided for in Section 12(a) may apply, the Indemnified Party shall give the Indemnifying Party written notice of such matter. The Indemnifying Party shall assume the defense of such matter with, if applicable, counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party, *provided*, if both the Indemnified Party and the Indemnifying Party are involved in such matter (including as co-defendants) and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party or that there is a conflict of interest between the interests of the Indemnified Party and the Indemnifying Party in such matter, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party’s expense. If the Indemnifying Party fails to assume the defense of a claim or other matter properly indemnifiable under Section 12(a), the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim as it considers appropriate.

(d) The provisions of this Section 12 shall survive the termination of this Agreement.

13. **Insurance.** Each Party will obtain and maintain in force the insurance described in Exhibit D. However, such insurance shall not be a limitation on a Party’s liabilities or obligations hereunder, nor will failure to obtain or maintain any insurance relieve a Party of any such obligations or liabilities. Each Party shall be responsible for all deductible amounts under such insurance policies.

14. **Representations and Warranties.** As of the Effective Date, each Party represents and warrants to the other Party that:

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

(b) except for the Required Permits, it has received all known regulatory authorizations necessary for it to legally perform its obligations under this Agreement;

(c) it is registered with the California Secretary of State to do business in California, except it is agreed that CDWR and Owner are not required to do so;

(d) the execution, delivery and performance of this Agreement 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 applicable Law;

(e) this Agreement, and any other document executed and delivered in accordance with this Agreement, constitutes its legally valid and binding obligation enforceable against it in

accordance with its terms, subject to Laws of general applicability limiting the enforcement of creditors' rights and to any equitable defenses;

(f) 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; and

(g) there is not pending or, to its knowledge, threatened against it any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement.

15. **Limitations of Liability.**

(a) Amounts due under this Agreement from CDWR shall not be payable from funds available in the State Water Resources Development Fund (which is authorized by statute at sections 12930 et seq. of the California Water Code), or any successor fund to which the funds currently allocated to the State Water Resources Development Fund may be reallocated.

(b) Notwithstanding anything herein to the contrary, except for liability resulting from its gross negligence or willful misconduct, Owner's liability under this Agreement in any Contract Year shall not exceed the License Fee paid in that Contract Year.

(c) 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. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT WITH RESPECT TO LIABILITIES TO THIRD PARTIES, 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. THE PARTIES FURTHER AGREE THAT PAYMENT OF SUCH AMOUNT SHALL BE LIQUIDATED DAMAGES AND NOT AS A PENALTY, AND IS THEREFORE NOT SUBJECT TO AVOIDANCE UNDER CALIFORNIA CIVIL CODE SECTION 1671.

16. **Assignment.**

(a) Except as specifically provided herein, neither Party shall transfer or assign, or offer to transfer or assign, this Agreement or its rights hereunder, without the prior written consent of the other Party, which consent may not be unreasonably withheld, conditioned or delayed. Either Party may, without the consent of the other Party (and without relieving itself from any liabilities hereunder that arose prior to the date of such transfer unless assumed by the assignee) transfer or assign this Agreement or its rights hereunder: (i) to an Affiliate of such Party, or (ii) to any Person succeeding to all or substantially all of the assets of such Party; provided that the assignee assumes all of assignor's obligations; provided that such assignee assumes in writing all of assignor's obligations hereunder at least from and after the date of such assignment or transfer, and agrees to be bound by this Agreement. Owner also may, without CDWR's consent (and without relieving itself from any liabilities hereunder that arose prior to the date of such transfer unless assumed by the assignee) transfer or assign this Agreement or its rights hereunder to any purchaser of Owner's interest in the License Areas; provided that such purchaser assumes in writing all of Owner's obligations hereunder, at least from and after the date of such assignment or transfer, and agrees to be bound by this Agreement.

(b) Notwithstanding anything herein to the contrary, Owner may, without the consent of CDWR (and without relieving itself from any liabilities hereunder that arose prior to the date of such transfer), assign this Agreement to one or more Lenders as collateral for any financing or refinancing by Owner and/or its Affiliates. In connection with any such assignment of this Agreement by Owner, or any transfer, sale, pledge, encumbrance or assignment of this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, if requested by Owner, CDWR (acting reasonably) shall enter into a mutually agreeable consent to collateral assignment with the Lender(s) on market terms and conditions and containing market notice and cure provisions, rights to payment and performance, limitations of liability and other provisions; provided that Owner shall be responsible at CDWR's request for CDWR's reasonable costs associated with the review, negotiation and execution of such consent to collateral assignment, including without limitation reasonable attorneys' fees.

(c) Subject to the foregoing, this Agreement shall benefit and be binding on the permitted successors and assigns of the Parties hereto. Any assignment or transfer not made in compliance with these provisions shall be null and void and of no force or effect.

17. **Confidentiality.**

(a) The Party receiving Confidential Information (the "**Receiving Party**") from the other Party (the "**Disclosing Party**") shall not disclose Confidential Information to a third party (other than the Party's officers, employees, directors, Lenders (including potential Lenders), counsel, accountants, directors or advisors, or any such representatives of a Party's Affiliates, who have a need to know such information and have agreed to keep such terms confidential as provided herein) except in order to comply with any applicable Law, regulation, or any exchange, balancing authority area or independent system operator rule or in connection with any court or regulatory proceeding applicable to such Party or any of its Affiliates; provided, each Party shall use commercially 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.

(b) The Parties acknowledge and agree that each Party, this Agreement and the transactions hereunder are subject to the requirements of the California Public Records Act

(Government Code Section 6250 *et seq.*). Upon a Receiving Party's receipt of a request or demand from any Person not a Party hereto pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information ("**Requested Confidential Information**"), such Receiving Party shall promptly notify the Disclosing Party in writing via email that such request has been made. The Disclosing Party shall have the right to take, at its sole expense, whatever legal steps are necessary to prevent release of the Requested Confidential Information to such Person by the Receiving Party. If the Disclosing Party takes no such action within a reasonable period of time after receiving the foregoing notice from the Receiving Party, the Receiving Party may, in its discretion, comply with such third party request or demand and is not required to defend against it. If the Disclosing Party does take or attempt to take such action, the Receiving Party shall cooperate with the Disclosing Party in a timely manner, if and as requested by the Disclosing Party, and the Disclosing Party shall indemnify and hold harmless the Receiving Party from the non-disclosure of any Requested Confidential Information.

(c) Each Party acknowledges that its obligations hereunder as Receiving Party are necessary and reasonable in order to protect Disclosing Party and Disclosing Party's business, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth herein. Accordingly, each Party acknowledges that any such breach or threatened breach by it as Receiving Party will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

(d) Neither Party shall issue (or cause or permit its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement.

18. **Notices.** All notices required to be given under this Agreement shall, except as otherwise provided herein, be in writing and shall be sent by prepaid mail or overnight courier addressed to the respective Party at the addresses listed in Exhibit E or to such other address as may designated hereafter by a Party in writing by like notice from time to time. The Business Day the e-mail was sent shall be the date notice was deemed given if there is an electronic record on the date of transmission. Any notice delivered after 5:00 p.m. Pacific Time on a Business Day shall be deemed to have been delivered on the following Business Day.

19. **General.**

(a) This Agreement shall be governed by, construed under and enforced in accordance with the laws of the State of California without regard to principles of conflicts of law. The venue for any court action brought pursuant to this Agreement shall be Sacramento, California.

(b) To the extent that any provision of this Agreement or any paragraph, term, sentence, phrase, clause or word of this Agreement shall be found by a court of law having jurisdiction to be void, illegal or unenforceable for any reason, the Parties shall meet to determine whether this Agreement can fulfill the objectives of each Party notwithstanding such ruling. If either Party determines that this Agreement can no longer fulfill its objectives under such ruling, then either

Party may terminate this Agreement. Otherwise, such paragraph, term, sentence, phrase, clause or word shall be deemed modified or deleted in such a manner as to make the Agreement, as so modified, legal and enforceable under applicable Laws. The remainder of the Agreement shall remain in full force and effect.

(c) This Agreement does not create, modify, or diminish any ownership or property rights, nor creates any easements or rights of entry, except as set forth explicitly in this Agreement.

(d) This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one Agreement after each Party has signed at least one counterpart, and the Parties have exchanged signed counterparts. The exchange of copies of this Agreement and of signature pages by facsimile transmission, in portable document format (pdf) or by other electronic means shall constitute effective execution and delivery of this Agreement and may be used in lieu of the original Agreement for all purposes.

(e) Together with the O&M Agreement and the Energy Services Agreement and the respective exhibits attached thereto, this Agreement and the Exhibits attached hereto constitute the entire agreement and understanding between Owner and CDWR with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which shall be of no further force or effect. The Exhibits attached hereto are integral parts of this Agreement and are made a part of this Agreement by reference.

(f) This Agreement may only be amended by an instrument in writing duly executed by CDWR and Owner.

(g) No waiver of either Party of an Event of Default by the other Party, nor any election to exercise or not exercise any rights following an Event of Default, shall constitute a waiver by such Party of any subsequent Event of Default by the other Party, whether similar or dissimilar, or of any remedy with respect thereto.

(h) Nothing herein is intended to create or is to be construed as creating a joint venture, partnership, agency or other similar relationship between the Parties other than that of contracting parties as set forth in this Agreement. The rights and obligations of the Parties hereunder shall be independent of one another and shall be limited to those expressly set forth herein.

(i) This Agreement is for the benefit of the Parties hereto and is not intended to be for the benefit of any third party except their respective Affiliates and Lenders of the Parties to the extent expressly set forth herein.

(j) The Parties acknowledge and agree that each Party and its counsel have read this Agreement in its entirety, fully understand it and accept its terms and conditions. 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.

(k) Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments and assurances and take such additional actions as may

be reasonably requested by the other Party which are consistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

[The next page is the signature page.]

IN WITNESS WHEREOF, the City of Roseville, a municipal corporation, has authorized the execution of this Agreement in duplicate by its City Manager and attested to by its City Clerk under the authority of Resolution No. _____, adopted by the Council of the City of Roseville on the ___ day of _____, 2021, and the CALIFORNIA DEPARTMENT OF WATER RESOURCES represents that it has caused this Agreement to be duly executed.

CITY OF ROSEVILLE, a
municipal corporation

CALIFORNIA DEPARTMENT OF
WATER RESOURCES

BY: _____
DOMINICK CASEY
City Manager

BY: Ted Craddock
TED CRADDOCK
Deputy Director

ATTEST:

By: _____
SONIA OROZCO
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:

BY: _____
MICHELLE SHEIDENBERGER
City Attorney

BY: Robert Hedrick
ROBERT S. HEDRICK
Attorney IV

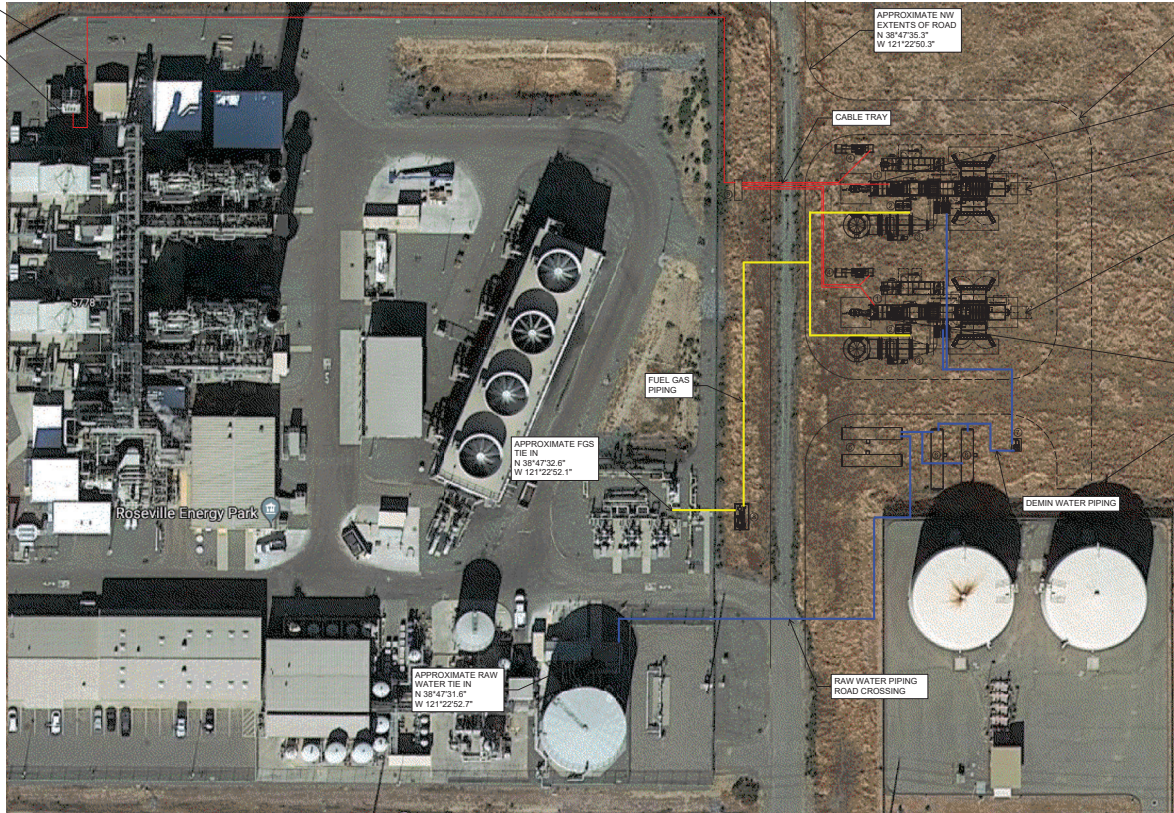
APPROVED AS TO SUBSTANCE:

BY: _____
MICHELLE BERTOLINO
Electric Utility Director

Exhibit A –Access Area (PRELIMINARY)

- ① TM2500
- ② COALESCING FILTER
- ③ SCR
- ④ MV/LV SKIDS
- ⑤ DM WATER TREATMENT MODULE
- ⑥ DM WATER STORAGE TANK
- ⑦ DM WATER FORWARDING PUMP SKID
- ⑧ GAS PRV SKID
- ⑨ MV SWITCHGEAR

CABLE TRAY ROAD CROSSING
 APPROXIMATE
 GSU TIE IN
 N 38°47'35.4"
 W 121°22'57.7"



APPROXIMATE NW
 EXTENTS OF ROAD
 N 38°47'35.3"
 W 121°22'50.3"

APPROXIMATE NE
 EXTENTS OF ROAD
 N 38°47'35.3"
 W 121°22'47.7"

APPROXIMATE C.L.
 WEST END OF UNIT 1
 N 38°47'34.6"
 W 121°22'48.8"

APPROXIMATE C.L.
 EAST END OF UNIT 1
 N 38°47'34.6"
 W 121°22'48.1"

APPROXIMATE C.L.
 EAST END OF UNIT 2
 N 38°47'33.6"
 W 121°22'48.1"

APPROXIMATE C.L.
 WEST END OF UNIT 2
 N 38°47'33.6"
 W 121°22'48.8"

APPROXIMATE SE
 EXTENTS OF ROAD
 N 38°47'32.9"
 W 121°22'47.7"

APPROXIMATE FGS
 TIE IN
 N 38°47'32.8"
 W 121°22'55.1"

APPROXIMATE RAW
 WATER TIE IN
 N 38°47'31.6"
 W 121°22'52.7"



ISSUED FOR REVIEW		
A	N. HIRT	05-10-21
REV	DESIGN BY	CHECKED BY DATE
ROSEVILLE ENERGY PARK		
MECHANICAL PLOT PLAN		
ENGINEER/DESIGN ORIGINATOR	DRAWING NUMBER	
N. HIRT	20041725-PP-301	
LEAD ENG	N. MILLER	
ENG MGR	M. WHEELER	
PROJ MGR	M. WHEELER	



KEY PLAN

1. ALL DIMENSIONS ARE IN MM

REFERENCE DOCUMENTS :-

DRAWING NUMBER	TITLE

No.	Revision	Date	Created by	Checked by	Approved by	Description

Cross Cnre

Replaces	Scale		Document Code
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Responsible Dept.	Document Type	Document Status	Format A1
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Title: Subtitle		Identification number	
		R0261005010-013-0A/102	
Rev.	Date	Lang.	Sheet
		En	1/1

Exhibit B – Unit Specifications

**GUARANTEE R1**

PROJECT: DWR ROSEVILLE ELECTRIC SITE
LOCATION: ROSEVILLE, CALIFORNIA, USA

UNIT NET, KW 27058
BTU/KW-HR, LHV 9883
KJ/KW-HR, LHV 10427

EMISSIONS ARE VALID FOR T2 WITHIN 18°F TO 115°F
AND A GTG LOAD DOWN TO 50% AS DEFINED IN STEADY
STATE CONDITIONS FOR EMISSIONS GUARANTEE

NOX: 25 PPMVD AT 15% O2
(50 mg/Nm3, AT 15% O2)
CO: 259 PPMVD AT 15% O2
(323 mg/Nm3)

Pinte, Mihai
Performance Engineer
Date: 08/11/2021

NOT VALID WITHOUT SIGNATURE

VALID UNTIL 11/30/2021

BASIS OF GUARANTEE:	BASE LOAD, GAS FUEL NOZZLE SYSTEM NO BLEED OR EXTRACTED POWER
ENGINE:	(1) GE TM2500+G4
FUEL:	20845 BTU/LB / (48486 kJ/kg) LHV, SITE GAS FUEL
FUEL SPEC:	MID-TD-0000-1 LATEST REVISION
FUEL TEMP:	77.0°F / (25°C)
FUEL PRESS:	495 PSIG +/- 20 PSIG (3413 KPAG +/- 138 KPAG)
GENERATOR:	GEPC A040
GENERATOR OUTPUT	13.8 kV, 60 Hz
POWER FACTOR:	0.85
AMBIENT TEMP:	100°F / (37.8°C)
AMBIENT RH:	50.0%
INLET CONDITIONING:	NONE
ALTITUDE:	87.0 ft / (26.5 m)
INLET FILTER LOSS:	5.8 inH ₂ O / (147.32 mmH ₂ O)
EXHAUST LOSS:	6.2 inH ₂ O / (157.48 mmH ₂ O)
NOX CONTROL:	Water
INJECTION RATE:	14753 lb/h (6692 kg/h)
INJECTION TEMP:	100 F (37.8 °C)
ENGINE CONDITION:	NEW AND CLEAN ≤ 200 SITE FIRED HOURS
FIELD TEST METHODS	
PERFORMANCE:	GE GAS POWER SGTGPTM
NOX:	EPA METHOD 20
CO:	EPA METHOD 10

BASIS OF GUARANTEE IS NOT FOR DESIGN, REFER TO PROJECT DRAWINGS FOR DESIGN REQUIREMENTS.
SI VALUES ARE FOR REFERENCE PURPOSES ONLY.

THIS GUARANTEE SUPERSEDES ANY
PREVIOUS GUARANTEES PRESENTED



GUARANTEE R1
PROJECT: DWR ROSEVILLE ELECTRIC SITE
LOCATION: ROSEVILLE, CALIFORNIA, USA

NOISE GUARANTEE IS FOR A SINGLE TM2500 GAS TURBINE PACKAGE
 AND EXCLUDES BOP

NEAR FIELD NOISE:

90 DB(A) ARITHMETIC AVERAGE SOUND PRESSURE LEVEL (dB
 REF 20 MICROPASCALS, RMS) OF LOCATIONS AROUND THE
 PACKAGE (VERTICAL DISTANCE OF 5FT. (1.5M) ABOVE
 PACKAGE BASE AT A HORIZONTAL DISTANCE OF 3FT. (1M)
 FROM THE EXTERIOR PLANE OF EQUIPMENT AS TESTED IN A
 FREE-FIELD CONDITION OVER A HARD REFLECTING GROUND
 PLANE, OPERATING AT BASE LOAD)

Pinte, Mihai
 Performance Engineer
 Date: 08/11/2021

NOT VALID WITHOUT SIGNATURE

VALID UNTIL 11/30/2021

BASIS OF GUARANTEE:	BASE LOAD, GAS FUEL NOZZLE SYSTEM NO BLEED OR EXTRACTED POWER
ENGINE:	(1) GE TM2500+G4
FUEL:	20845 BTU/LB / (48486 kJ/kg) LHV, SITE GAS FUEL
FUEL SPEC:	MID-TD-0000-1 LATEST REVISION
FUEL TEMP:	77.0°F / (25°C)
FUEL PRESS.:	495 PSIG +/- 20 PSIG (3413 KPAG +/- 138 KPAG)
GENERATOR:	GEPC A040
GENERATOR OUTPUT	13.8 kV, 60 Hz
POWER FACTOR:	0.85
AMBIENT TEMP:	100°F / (37.8°C)
AMBIENT RH:	50%
INLET CONDITIONING:	NONE
ALTITUDE:	87.0 ft / (26.5 m)
INLET FILTER LOSS:	5.8 inH2O / (147.32 mmH2O)
EXHAUST LOSS:	6.2 inH2O / (157.48 mmH2O)
NOX CONTROL:	Water
INJECTION RATE:	14753 lb/h (6692 kg/h)
INJECTION TEMP:	100 F (37.8 °C)
ENGINE CONDITION:	NEW AND CLEAN ≤ 200 SITE FIRED HOURS
FIELD TEST METHODS	
PERFORMANCE:	GE GAS POWER NOISE TEST METHOD
NOX:	EPA METHOD 20
CO:	EPA METHOD 10

BASIS OF GUARANTEE IS NOT FOR DESIGN, REFER TO PROJECT DRAWINGS FOR DESIGN REQUIREMENTS.
 SI VALUES ARE FOR REFERENCE PURPOSES ONLY.

THIS GUARANTEE SUPERSEDES ANY
 PREVIOUS GUARANTEES PRESENTED



GE GAS POWER

AUXILIARY LOADS FOR EQUIPMENT SUPPLIED BY GE AS INDICATED IN PROPOSAL

Normal Operating Auxiliary Loads for 1xTM2500 50Hz on NG with WI

August 11, 2021

STANDARD LOADS		
DESCRIPTION	QTY	KW
NOX WATER INJECTION PUMP	1	44.76
TURBINE ENCLOSURE VENT FAN	1	59.7
TURBINE LUBE OIL/HYDRAULIC OIL HEAT EXCHANGER FAN	1	5.6
GENERATOR LUBE OIL HEAT EXCHANGER FAN	1	5.6
LIGHTING AND DISTRIBUTION PANEL (230/133 3PH 4W 25 CKT)	1	10
LIGHTING AND DISTRIBUTION PANEL	1	45
TOTAL STANDARD LOADS:		171

BOP LOADS		
DESCRIPTION	QTY	KW
BOP LOADS	0	0
TOTAL OPTIONAL LOADS:		0

TOTAL LOADS: 170.66



GE POWER & WATER

Steady State Conditions for Emissions Guarantee

- | | |
|--|-----------------------------------|
| 1. Power Output (electrical) | $\pm 10.0\%$ / Min |
| 2. T2 Compressor Inlet air temperature | $\pm 2.5^\circ\text{F}$ / 5.0 Min |
| 3. Heat Value - gaseous fuel per unit volume | $\pm 0.25\%$ / Min |
| 4. Pressure - gaseous fuel as supplied to engine | ± 10 PSIG / 5.0 Min |



GE POWER & WATER

Conditions for Near Field Noise Guarantee

1. Based on arithmetic average of sound pressure levels at locations around the package.
2. GTG auxiliary trailer must be located less than 6-ft of the main unit.
3. Intentional left blank
4. Intentional left blank
5. Intentional left blank
6. Intentional left blank
7. Intentional left blank
8. Per unit basis.
9. Start-up and Shut-down excluded.
10. GE Power & Water GTG package scope of supply only, customer supplied equipment is not included.
11. GE Power & Water GTG package scope of supply only, GE Power & Water supplied BOP equipment is not included.
12. If GE Power & Water supplies BOP equipment, then GE Power & Water is to advise best location.

Estimated Average Engine Performance NOT FOR GUARANTEE, REFER TO PROJECT F&ID FOR DESIGN



GE Gas Power

Performance By: Pinteau, Mihai
Project Info:

Engine: TM2500-G4 -TM2500-G4-A-0220-L3
Deck Info: GE166B - 8al.scfp
Generator: GEPC A040, 60Hz, 13.8 kV, 0.85 PF
Fuel: Site GAS FUEL

Date: 11/08/2021
Time: 13:41:26

Case	100
Ambient Conditions	
Dry Bulb Temp., °F	100
Wet Bulb Temp., °F	83.2
Relative Humidity, %	50
Elevation a.s.l., ft	87
Barometric Press., psi	14.686
Engine Inlet	
Comp. Inlet Temp., °F	100
Comp. Inlet RH, %	50
Type	None
Chill/Heat Cap., kBtu/h	None
Pressure Losses	
Inlet Press. Loss, inH2O	5.8
Exh. Press. Loss, inH2O	6.2
GTG Load, %	
Gen. Output, Gross, KW	27229
HR, btu/(KW*hr)	9748
Aux Load, KW	170.66
Gen. Output, Unit Net, KW	
G-HR, Unit Net, btu/(KW*hr)	9883
Comp. Inlet Temp., °F	100
Fuel Flow	
Fuel Number	801-3082
Fuel Name	Roseville CT2
Fuel LHV, BTU/lb	20845
Heat Input, MMBTU/h	265.40
Fuel Flow, lb/s	3.54
Vol. Fuel Flow, scfm	4756.1
Fuel Temp., °F	77
NOx Control	
Water	
Diluent Injection	
Diluent Flow, lb/h	14753
Diluent Temp., °F	100
Exhaust Parameters	
Exhaust Temp., °F	983.35
Exhaust Flow, lb/s	1774.6
Energy (Ref OR), BTU/s	67615
Emissions (ESTIMATED, NOT FOR GUARANTEE)	
NOx, Ref % O2, ppmvd	25
Aero Energy Fuel Number	
Hydrogen, %Volume	0.0818
Methane, %Volume	94.23
Ethane, %Volume	3.971
Ethylene, %Volume	0
Propane, %Volume	0.3083
Propylene, %Volume	0
Butane, %Volume	0.0923
Butylene, %Volume	0
Butadiene, %Volume	0
Pentane, %Volume	0.0177
Cyclopentane, %Volume	0
Hexane, %Volume	0.0039
Heptane, %Volume	0.005
Carbon Monoxide, %Volume	0
Carbon Dioxide, %Volume	0.56
Nitrogen, %Volume	0.73
Water Vapor, %Volume	0
Oxygen, %Volume	0
Hydrogen Sulfide, %Volume	0
Ammonia, %Volume	0
LHV, BTU/lb	20845
HHV, BTU/lb	23120
NOx Scalar	1.0311
Specific Gravity	0.586
MWL (Btu/SCF)/SQRT(R)	52.763
LHV, BTU/scf	937
HHV, BTU/scf	1037
Exh Wght % Wet (NOT FOR USE IN ENVIRONMENTAL PERMITS)	
AR, %	1.2075
N2, %	70.8255
O2, %	14.0059
CO2, %	5.4208
H2O, %	8.5352
SO2, %	0
CO, %	0.0021
HC, %	0.0002
NOX, %	0.0029
Exh Mole % Dry (NOT FOR USE IN ENVIRONMENTAL PERMITS)	
AR, %	0.969
N2, %	81.0454
O2, %	14.0314
CO2, %	3.9486
H2O, %	0
SO2, %	0
CO, %	0.0024
HC, %	0.0004
NOX, %	0.0029
Exh Mole % Wet (NOT FOR USE IN ENVIRONMENTAL PERMITS)	
AR, %	0.8412
N2, %	70.3594
O2, %	12.1814
CO2, %	3.4279
H2O, %	13.1852
SO2, %	0
CO, %	0.0021
HC, %	0.0003
NOX, %	0.0025
Exhaust Parameters	
Sp. Heat, BTU/(lb*°R)	0.286
Exh Mol Wght, lb/lb-mol	27.83
Exh. Flow, ACFM	398552.6
Exh. Flow, SCFM	145267.5

Estimated Average Engine Performance NOT FOR GUARANTEE, REFER TO PROJECT F&ID FOR DESIGN



GE Gas Power

Performance By: Pinteau, Mihai
Project Info:

Engine: TM2500+G4 - TM2500-G4-A-0220-L3
Deck Info: GE166B - 8al.scp
Generator: GEPC A640, 60Hz, 13.8 kV, 0.85 PF
Fuel: Site GAS FUEL

Date: 11/08/2021
Time: 13:41:26

Case 100

Ambient Conditions
Dry Bulb Temp., °C 37.8
Wet Bulb Temp., °C 28.4
Relative Humidity, % 50
Elevation a.s.l., m 26.52
Barometric Press., kPa 101.23

Engine Inlet
Comp. Inlet Temp., °C 37.8
Comp. Inlet RH, % 50
Type None
Chill-Heat Cap., MJ/h None

Pressure Losses
Inlet Press. Loss, mmH2O 147.32
Exh. Press. Loss, mmH2O 157.48

GTG Load, % 100
Gen. Output, Gross, kW 27229
HR, kJ/(kW*h) 10284.72
Aux Load, kW 170.66

Gen. Output, Unit Net, kW 27058
G-RR, Plant Net, kJ/(kW*h) 10427
Comp. Inlet Temp., °C 37.8

Fuel Flow
Fuel Number 801-3082
Fuel Name Roseville CT2
Fuel LHV, kJ/kg 48485
Heat Input, MW 77.78
Fuel Flow, kg/s 1.60
Vol. Fuel Flow, Nm3/hr 8081
Fuel Temp., °C 25.0

NOx Control Water

Diluent Injection
Diluent Flow, kg/h 6692
Diluent Temp., °C 37.78

Exhaust Parameters
Exhaust Temp., °C 529
Exhaust Flow, kg/s 80.6
Energy (Ref OR), kW 71337.882

Emissions (ESTIMATED, NOT FOR GUARANTEE)
NOx, Ref % O2, mg/Nm3 51.3

Aero Energy Fuel Number 801-3082
Hydrogen, %Volume 0.0818
Methane, %Volume 94.23
Ethane, %Volume 3.971
Ethylene, %Volume 0
Propane, %Volume 0.3083
Propylene, %Volume 0
Butane, %Volume 0.0923
Butylene, %Volume 0
Butadiene, %Volume 0
Pentane, %Volume 0.0177
Cyclopentane, %Volume 0
Hexane, %Volume 0.0039
Heptane, %Volume 0.005
CarbonMonoxide, %Volume 0
Carbon Dioxide, %Volume 0.56
Nitrogen, %Volume 0.73
Water Vapor, %Volume 0
Oxygen, %Volume 0
HydrogenSulfide, %Volume 0
Ammonia, %Volume 0
LHV, kJ/kg 48486
HHV, kJ/kg 53777
NOx Scalar 1.011
Specific Gravity 0.586
MWL (kJ/Nm3)/SQRT(K) 0.999
LHV, kJ/Nm3 36907
HHV, kJ/Nm3 40834

Exh Wght % Wet (NOT FOR USE IN ENVIRONMENTAL PERMITS)

AR, % 1.2075
N2, % 70.8235
O2, % 14.0093
CO2, % 5.4208
H2O, % 8.5352
SO2, % 0
CO, % 0.0021
HC, % 0.0002
NOX, % 0.0029

Exh Mole % Dry (NOT FOR USE IN ENVIRONMENTAL PERMITS)

AR, % 0.969
N2, % 81.0454
O2, % 14.0314
CO2, % 3.9486
H2O, % 0
SO2, % 0
CO, % 0.0024
HC, % 0.0004
NOX, % 0.0029

Exh Mole % Wet (NOT FOR USE IN ENVIRONMENTAL PERMITS)

AR, % 0.8412
N2, % 70.3594
O2, % 12.1814
CO2, % 3.4279
H2O, % 13.1852
SO2, % 0
CO, % 0.0021
HC, % 0.0003
NOX, % 0.0025

Exhaust Parameters
Sp. Heat, kJ/(kg*°K) 1.196
Exh Mat Wght, kg/mol 27.83
Exh. Flow, ACFM 398552.6
Exh. Flow, SCFM 145267.5

Exhibit C – Installation Plans and Specs

Mr. Traverse
 August 12, 2021
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WORK SCOPE

The TM2500 aeroderivative gas turbines have the following characteristics:

Manufacturer	General Electric
Net Output (MVA)	37
Net Heat Rate (Btu/kWh, LHV)	9333
Net Heat Rate (kJ/kWh, LHV)	9846
Net Efficiency (% , LHV)	36.6%
Ramp Rate (MW/minute)	20
Startup time (cold iron) (min)	5
Cooling (Gallons/min)	30
Natural Gas (lbs/hr)	20000

The general scope of work shall include, but not limited to the following:

1. The work performed will be done on a non-DWR facility, own and operated by Roseville Electric Utility (Site Owner). Contractor and its subcontractors shall respect and follow the Site Owner's policies and procedures where applicable.
2. Submit a project schedule identifying all relevant milestones including lead-time for materials and services within a week of receiving this request.
3. Submit a Pre-Work Safety Plan (PWSP) specific to the site including Personal Protective Equipment (PPE) and documentation of a established Injury & Illness Prevention Program (IIPP) include diagrams where applicable.
4. Under current Cal/OSHA standards, Roseville Energy Park project will be considered a multi-employer worksite. All Contractors shall have a site safety plan consisting of the following items at minimum while onsite:
 - a) Contractor's Injury and Illness Prevention Program guidelines
 - b) A copy of the Company's Lockout/Tagout Procedure with sign-off sheet
 - c) A copy of the Company's Job Hazard Assessment sign-off sheet
 - d) Permits and certification requirements related to the work that is being performed. For example: fall protection, confined space, arc flash, welding, etc.
5. Make the necessary arrangements and manage the logistics for transportation of personnel to the site and delivery of all necessary construction equipment and components and parts procured under this LOA.

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Page 5

6. Provide necessary resources, technical support, tooling, and equipment for the installation and commissioning of two (2) GE TM2500 aeroderivative gas turbines and all required auxiliaries equipment.
 - a) Contractor shall provide a detailed scope work document to be included as Attachment A.
7. Procure required equipment and materials necessary for the installation, including, but not limited to:
 - a) Electrical cables
 - b) Conduits
 - c) Cable trays
 - d) Pumps
 - e) Switchgear
 - f) Transformer
 - g) Instrumentation
 - h) Breakers
 - i) PLC
8. The Contractor shall maintain a clean and safe area, free of any unnecessary hazards, throughout the duration of the project.
9. The Contractor shall prepare and submit a final project report documenting the work performed, including information such as summary and details of the work accomplished, engineering and design drawings used and updated to accomplish the scope of work, Quality Assurance (QA) and Quality Control (QC) documents used to track the progress of the work, and a section with recommendations for DWR to address, monitor, and maintain the equipment. The report may be submitted as a hard copy or, preferably, electronically in Adobe PDF or Microsoft Word format. All electrical and mechanical test data and photographs depicting the progress of work shall be included in the final project report.
10. Performance of the work and documentation for this project will be tracked through Engineering Submittals which shall include the final project report and engineering drawings, using DWR's electronic web-based system called LISP. DWR's comments and markups will be transmitted back to the Contractor using the same system. The following information and access to the web-based system will be provided to the Contractor once the Job Identification (ID) is created:
 - DWR's website <https://lisp.water.ca.gov> where submittals are to be

Mr. Traverse
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- uploaded
- Login name and password
- Job number and title
- Instructions for uploading submittals
- Explanation of file naming conventions to be used for electronic submittals
- Available instructional video help
- Tutorial – step by step process to access and use DWR's web-based system (same information presented in the video help file)

- The Contractor Electronic Submittal Flow Chart – overview of electronic submittal process

For all submittals, drawings, and schematics, PDF format is acceptable, but all drawings and schematics shall be sized ANSI D. In the case of As-Builts the native file shall be provided for Schematics and drawings.

While the Master Service Agreement is finalized, the following will be the primary contact for coordinating and directing work under this LOA:

Musa Aziz, Senior Hydroelectric Power Utility Engineer

You may contact Musa via either method presented below:

(916) 628-0432

Musa.Aziz@water.ca.gov

Please contact Musa as instructed for pick-ups, delivery of the equipment, and for any additional information regarding directions to the site.

The site is located at:

Roseville Energy Park
5120 Phillip Rd.
Roseville, CA 95747

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Labor, material, equipment, and other expenses will be invoiced in accordance with DWR Service Agreement No. 46000xxxx, Exhibit B, Attachment 1 and/or the proposal.

Submit two (2) copies of each invoice to the Contract Representative at the following address:

Musa Aziz
Electrical Engineering Services, Branch 2
Division of Operations and Maintenance
Department of Water Resources
Post Office Box 942836
Sacramento, CA 94236-0001

Submit one (1) additional copy of each invoice simultaneously to DWR Accounting Office at the following address in order to expedite approval and payment:

Accounting Office
Contracts Payable Section, Room 831
Division of Fiscal Services
Department of Water Resources
Post Office Box 942836
Sacramento, CA 94236-0001

Kiewit is hereby notified that:

Musa Aziz will be authorized to act as DWR's Representative on this project. Musa will be your primary point of contact for this DWR authorized work. All orders, directives, instructions, and notices regarding the project, including any changes in the work, shall be provided in writing to Musa.

If you have any question or need additional information, please contact Musa via either method provided above.

General Electric Company

***CONTRACT FOR SALE OF
EQUIPMENT AND SERVICES***

***STATE OF CALIFORNIA, DEPARTMENT OF WATER
RESOURCES***

***STATE POWER AUGMENTATION PROJECT – ROSEVILLE
ENERGY PARK***

August 11, 2021

THIS CONTRACT FOR SALE OF EQUIPMENT AND SERVICES (this "Contract") is entered into as of the Effective Date by and between:

GENERAL ELECTRIC COMPANY, a Delaware corporation, having a principle place of business at **1 River Rd., Schenectady, NY 12345** (the "Seller"); and

STATE OF CALIFORNIA, DEPARTMENT OF WATER RESOURCES, a having a principal place of business at **715 P Street, Sacramento, California 95814** (the "Buyer"). The Buyer and the Seller are referred to herein, individually, as a "Party" and, collectively, as the "Parties".

RECITALS

WHEREAS, the Seller is engaged in the business of manufacturing and delivering various kinds of power plant equipment and of providing services and training in support of the installation and commissioning and use thereof.

WHEREAS, the Buyer desires to purchase, and the Seller desires to sell the Equipment, together with certain installation and commissioning support, performance testing and Training Services in connection with Buyer's Project located at Roseville, California where the Equipment will be installed and the Services performed (the "Facility" or "Site"), all subject to the terms set forth herein.

NOW, THEREFORE, in consideration of the mutual promises stated herein, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

Article 1 Definitions

(a) Definitions.

As used in this Contract, the following terms have the meanings indicated:

"Affiliate" shall mean any entity that directly or indirectly controls, is controlled by or is under common control with a Party. For the purposes of this definition, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the controlled entity, whether through the ownership of voting securities or partnership or other ownership interests or by contract or otherwise.

"Ambient Site Conditions" shall have the meaning ascribed in Article 15 of this Contract.

"Balance of Plant" or "BOP" shall mean the equipment so identified in Sections 3 and 4 of Attachment 1 to this Contract.

“Buyer” shall mean the entity so identified in the foreword of this Contract.

“Buyer Taxes” shall mean all taxes, duties, fees, or other charges of any nature (including, but not limited to, ad valorem, consumption, excise, franchise, gross receipts, import, license, property, sales, stamp, storage, transfer, turnover, use, or value-added taxes, and any and all items of withholding, deficiency, penalty, addition to tax, interest, or assessment related thereto), other than Seller Taxes, imposed by any governmental authority of any country on Seller or Buyer or their respective employees, Subcontractors or Suppliers due to the execution of any agreement or the performance of or payment for Work hereunder.

“Change in Control” shall mean the occurrence of one or more of the following events: (i) any entity shall become the direct or indirect beneficial owner of a majority of the equity interest in the Buyer; (ii) any entity shall obtain, by contract or otherwise, the power to direct the affairs of or elect any of the directors (or other members of the governing body) of the Buyer; or (iii) any sale, lease, exchange, or other transfer (in one transaction or a series of related transactions) of a majority of the operating assets of the Buyer to any entity.

“Change in Law” shall mean a new Law or change to an existing Law, or a change in the interpretation or application of a Law by the cognizant executive or judicial authorities occurring after the date of Seller’s proposal to Buyer.

“Change Order” shall mean a written agreement to change the Equipment, Services, or any provision of this Contract, which describes the change, identifies the agreement as a Change Order, sets out adjustments, if any, in the Contract Price and any other provision of this Contract which is affected, and is signed by the Parties.

“Codes and Standards” shall have the meaning ascribed in Article 15 of this Contract.

“Confidential Information” shall have the meaning ascribed in Article 26 of this Contract.

“Contract Currency” shall mean the currency in which the Contract Price is stated.

“Contract Documents” shall have the meaning ascribed in Article 31 of this Contract.

“Contract Price” shall mean the total price as consideration for the Equipment and the Services, as set forth in Article 3 of this Contract, and as may be adjusted from time to time in accordance with this Contract.

“Customer Collaboration System” shall have the meaning ascribed in Article 16 of this Contract.

“Customer Kickoff Meeting” shall mean a project kick-off meeting between the Seller's project execution team and the Buyer's project team.

“Day” or “Days” shall mean a calendar day, including Saturdays, Sundays, and holidays, except that in the event that an obligation is due for performance on a Saturday, Sunday or US national legal holiday and state of California legal holiday, the obligation shall be deemed due on the next business day thereafter.

“Delivery Point” shall have the meaning ascribed in Article 7 of this Contract

"Down Payment" shall mean the initial payment described in Article 5 of this Contract.

“Effective Date” shall mean the date described in Article 34 of this Contract.

“Eligible Assignee” shall have the meaning ascribed in Article 30 of this Contract.

“Equipment” shall mean all of the equipment described in the “Equipment” portion of Attachment 1 Scope of Supply.

“Facility” shall have the meaning ascribed in the Recitals of this Contract.

“Governing Law” shall have the meaning ascribed in Article 33 of this Contract.

“Indemnified Party” shall have the meaning ascribed in Article 20 of this Contract.

“Indemnifying Party” shall have the meaning ascribed in Article 20 of this Contract.

“Law” or “Laws” shall mean those laws, regulations, decrees or similar orders with mandatory effect issued by the legislative, judicial or executive branch of any relevant government, in effect as of the date of Seller’s proposal to Buyer, to the extent such laws, regulations, decrees or similar orders are applicable to the scope of this Contract.

“Local Laws” shall have the meaning ascribed in Article 15 of this Contract.

“Major Component” shall mean the turbine with its base, the generator, generator base, the air intake system components (collectively), and the main auxiliary skid containing the gas turbine lube oil reservoir and starting system.

“Minimum Performance Guarantees” shall mean at least ninety-five percent (95%) of the Performance Guarantee for output and no more than one hundred and five percent (105%) of the Performance Guarantee for heat rate.

“Must Meet Remedy” is a one-time rather than continuing obligation on the part of Seller to repair or replace the Equipment so that the Equipment meets a designated

performance criterion (e.g., the Minimum Performance Guarantees). A Must Meet Remedy is offered in lieu of other remedies such as liquidated damages or warranty.

“National Laws” shall have the meaning ascribed in Article 15 of this Contract.

“Options” shall have the meaning ascribed in Article 4 of this Contract.

“Owner” shall mean that corporation, partnership, individual, or other entity which owns the Facility in which the Equipment will be installed.

“Party” and “Parties” shall have the meanings ascribed in the foreword to this Contract.

“Payment Schedule” shall mean the schedule of payments described in Article 5 of this Contract and Attachment 7.

“Payment Security” shall have the meaning ascribed in Article 5 of this Contract.

“Performance Guarantees” shall mean the guaranteed values identified in the signature box on the Stamped Guarantee Sheet attached hereto as Attachment 6.

“Personal Data” shall have the meaning ascribed in Article 28 of this Contract.

“Project” shall mean Buyer’s project for which the Seller is supplying Equipment and/or Services as described in this Contract.

“Scheduled Major Component RTS Dates” shall have the meaning ascribed in Article 7 of this Contract.

“Scope of Supply” shall mean the Equipment plus the Services, as set forth in Attachment 1 Scope of Supply.

“Seller” shall mean the entity so identified in the foreword to this Contract.

“Seller Taxes” shall mean corporate and individual taxes that are measured by net income or profit imposed by any governmental authority of any country on Seller, its employees, Subcontractors or Suppliers due to the execution of any agreement or the performance of or payment for Work hereunder, except for withholding tax for income on payments to Seller which are addressed in Article 14 of the Contract.

“Services” shall mean those services described in Attachment 1. If the Scope of Supply does not contain any Services, then this term shall not be applicable in this Contract.

“Site” shall mean the location of the Project and place where the Equipment will be installed, as indicated in the Recitals to this Contract. The Site address is 5778 Phillip Rd., Roseville, CA 95747.

“Software” means a computer program or compilation of data that is fixed in any tangible medium of expression, or any storage medium from which the program may be perceived, reproduced or otherwise communicated, either directly or with the aid of a machine or device, and shall include without limitation any of Seller’s proprietary operating Software, provided for the ordinary operation of the Equipment, any optional Software to enhance the operation of the Equipment, as well as any upgrades or revisions of this material the Seller provides in fulfillment of a specific written commitment or otherwise.

“Spare Parts” shall mean those spare parts as described in Appendix 6.9 of Attachment 1 (Recommended Spare Parts.)

“State Laws” shall be those state Laws that are listed in Attachment 1 Scope of Supply and agreed to be incorporated into the design and manufacturing of the Unit(s) by Seller. If no State Laws are set forth in Attachment 1, the manufacturing process shall not incorporate any consideration of State Laws.

“Subcontractor(s)” shall mean any corporation, partnership, or individual having a contract with the Seller to provide specific services to be performed at the Site in connection with this Contract.

“Supplier(s)” shall mean any corporation, partnership, or individual having a contract with the Seller to supply material, equipment, labor, goods, or services to the Seller for inclusion in the Equipment or Services provided by Seller under this Contract, other than those specific services to be performed by Subcontractors at the Site.

“Technical Advisory Services” shall have the meaning ascribed in Attachment 1 of this Contract.

“Termination Schedule” shall mean the schedule of termination charges described in Article 23 and Attachment 7 of this Contract

"Unimpeded Access" shall mean the Buyer providing Seller with access to the Unit(s) while the Buyer ensures that the following conditions are met: (i) the necessary fuels, lubricants, operating supplies and third party interconnections are continuously available; (ii) the Buyer’s trained operators are available for operation of the Unit(s); (iii) the Buyer will operate portions or all of the Facility at the times and at the loads reasonably requested by the Seller; (iv) the Seller will have unimpaired access to all Facility work areas, station cranes and similar equipment; and (v) a copy of the control room log is made available to the Seller.

“Unit” shall mean a single gas turbine and its associated generator, together with those accessories associated with that gas turbine.

“Unit Price” shall have the meaning ascribed in Article 3 of this Contract.

“Warranty Period” shall have the meaning ascribed in Article 13 of this Contract.

“Work” shall mean the procurement, fabrication, and supply of the Equipment and the performance of the Services, and any corrective actions undertaken pursuant to Article 13.

(b) Rules of Interpretation

The following rules of interpretation shall apply in construction of this Contract. Unless otherwise required by the context in which any term appears: (i) capitalized terms used in this Contract have the meanings specified in this Article, or as otherwise defined in this Contract, (ii) the singular shall include the plural, (iii) the words “herein,” “hereof” and “hereunder” shall refer to this Contract as a whole and not to any particular section or subsection of this Contract, (iv) references to this Contract shall include a reference to all appendices, annexes, schedules and exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time, (v) the words “include,” “includes” and “including” are not limiting, (vi) any consent to be given by either Party hereunder shall not be unreasonably withheld, delayed or conditioned, except as explicitly stated to the contrary herein, and (vii) references to any agreement, document or instrument shall mean a reference to such agreement, document or instrument as the same may be amended, modified, supplemented or replaced from time to time.

Article 2 Scope of Supply

The Seller shall manufacture and deliver the Equipment and perform the Services as more fully described in Attachment 1 Scope of Supply, subject to the terms and conditions set forth in this Contract. The Equipment includes two (2) Units.

Article 3 Price

The Buyer shall pay to the Seller the following “Contract Price” in consideration of the Equipment and Services. The Contract Price is stated exclusive of sales, VAT or other taxes, which will be added at the time of invoicing. The Contract Price shall be adjusted as necessary to take account of (a) Change Orders, including those related to the exercise of Options (as defined in Article 4 below), or (b) other adjustments specifically provided for in this Contract. Payment shall be made in accordance with the Payment

Schedule set forth in Attachment 7 and the payment terms set forth in Article 5. In the case of Change Orders, payment shall be made in accordance with those terms stated in the Change Order.

REF	GTG PACKAGE EQUIPMENT DESCRIPTION	Unit Price (USD)	QTY	Extended Price (USD)
1	Pre Mobilization Work		2	
2	TM2500+G4 Unit Including Extended Warranty and Import Duty		2	
3	Option A - TM2500 Lifting Equipment		1	
4	Option B - TM2500 Stairs and Platforms		2	
5	Option C - Remote HMI		1	
6	Option D - Lube Oil Filtration Kit		1	
7	MV/LV SG Skid		2	
8	Gas Fuel Pressure Reduction Skid		1	
9	Gas Fuel Filter/Coalescing Skid		2	
10	Demin Water Forwarding Pump Skid		1	
11	First Fill lubricants per TM2500		2	
12	Performance Testing		1	
13	Training		1	
14	Transportation		Lot	
15	Spare Parts		Lot	
16	TA services – Field Representative Straight Time*		1286	
17	TA services – Field Representative Over Time*		1414	
18	TA services – Specialty Field Representative Straight Time*		760	
19	TA services – Specialty Field Representative Over Time*		836	
20	TA services – Site Manager Straight Time*		1110	
21	TA services – Site Manager Over Time*		999	
Total Contract Price		\$		

* TA Service rates are exclusive of T&L/Per Diem

Article 4 Options

The Buyer shall have the right to exercise options to purchase additional Equipment or Services which are described in the Schedule of Options attached to this Contract as

Attachment 2 (the "Options") within the times and at the prices therein stated. If any Option is exercised in writing prior to the option exercise deadline(s) set forth in Attachment 2, the Contract Price and Scheduled RTS Date will be automatically adjusted as set forth in the Schedule of Options and the associated adjustment to the Payment Schedule shall be set forth in a Change Order.

Article 5 Payments

(a) Payment Schedule.

Payments shall be made as set forth in Attachment 7. Wire transfer instructions shall be provided on each invoice.

(b) Effect of Changes in Contract Price.

If any adjustment results in an increase to the Contract Price, Buyer shall pay for the increase in accordance with the corresponding invoice submitted by Seller. If any adjustment results in a decrease in the Contract Price, payments previously made shall be retained by the Seller and will be applied to subsequent payments as they become due.

(c) Field Modifications and Offsets

Seller shall not be responsible for backcharges or field modifications performed by Buyer unless Seller authorizes such charges in writing prior to the incurrence thereof. Buyer specifically waives any right of set-off relating to such charges. Any claim or set-off for backcharges shall be accompanied by a copy of such written authorization. In no event shall Buyer offset any amounts due under this Contract by amounts that may be due Buyer from Seller or any of its Affiliates under this Contract or any other agreement, judgment or order.

Article 6 Buyer's Obligations

(a) Permits.

The Buyer shall be responsible for timely obtaining all environmental and use permits, all other licenses (including but not limited to export licenses, import licenses), exemptions, permits (including but not limited to foreign exchange permits and work permits), authorizations, approvals, local building and construction permits, and easements necessary for the construction and operation of the Facility, and shall be responsible for any additional costs, fees or fines arising from any delay or failure to obtain such permits, licenses, exemptions, authorizations or approvals, even though any such permits, licenses, exemptions, authorizations or approvals may be applied for by Seller.

(b) Permitting Support.

The Seller shall provide reasonable assistance to the Buyer in its endeavors relating to the permitting of the Facility by providing information and support during the permitting process. In undertaking such assistance, the Seller shall not be obligated to incur out-of-pocket costs and expenses without reimbursement from the Buyer. Seller shall not be liable if any permit, license, exemption, authorization or approval is delayed, denied, revoked, restricted or not renewed and Buyer shall not be relieved thereby of its obligations under this Contract, including paying Seller for the Equipment and Services.

Article 7 Title Transfer, Delivery, Risk of Loss, Shipment to Storage

(a) Title.

Title to each portion of the Equipment, Services or any Spare Parts under this Contract shall, at Seller's option, transfer from the Seller to the Buyer upon:

- (i) payment in full of the Contract Price applicable to the Equipment, Balance of Plant, or Spare Parts as the case may be, or
- (ii) upon Seller's Delivery of the Equipment, Balance of Plant or Spare Parts.

Seller shall notify Buyer of the title transfer point at Seller's Notice of RTS.

Title to Services shall transfer to the Buyer as performed.

(b) Delivery.

Once an item is available for shipment, Seller will notify Buyer of such status in writing (such written notice, the "Notice of Readiness to Ship" or "Notice of RTS").

Transportation Services have been elected by Buyer. The Seller shall deliver the Equipment DDP (Incoterms 2020) to the Delivery Point. For the purposes of this Article, "Delivery Point" shall mean the Site (prior to unloading) except in a storage situation as described in Section 8(d) below, upon which "Delivery Point" shall mean the designated storage facility (prior to unloading).

(c) Risk of Loss.

With respect to each item of Equipment, Balance of Plant, or Spare Parts, risk of loss shall pass to the Buyer upon the earliest of:

- (A) delivery in accordance with the Incoterms specified in Section 7(b) ,

(B) delivery to storage in accordance with Section 7(d), or

(d) Shipment to Storage.

If any part of the Equipment cannot be shipped to the Buyer when ready due to any cause not attributable to the Seller, the Seller may, on Buyer's behalf, ship such Equipment to storage, such storage being in accordance with any technical specifications or other instructions provided by the Seller. Buyer shall make all reasonable efforts to inform Seller of the potential for this event to occur. If such Equipment is placed in storage, including storage at the facility where manufactured, the following conditions shall apply:

- (i) risk of loss shall thereupon pass to the Buyer unless shipment to storage is the result of Seller's suspension for non-payment pursuant to Section 22(c);
- (ii) any amounts otherwise payable to the Seller upon Notice of RTS or shipment shall be payable upon presentation of the Seller's invoice(s);
- (iii) all expenses incurred by the Seller, such as for preparation for and placement into storage, handling, inspection, short-term preservation, storage, removal charges and any taxes shall be payable by the Buyer upon submission of the Seller's invoice(s); and
- (iv) when conditions permit and upon payment of all amounts due hereunder, the Seller shall resume delivery of the Equipment, provided, however, that if any Equipment is placed in storage due to a suspension by Seller under Article 23, title to such Equipment shall not transfer to Buyer.

Notwithstanding anything to the contrary contained herein, shipment to storage, storage, and arranging for insurance once in storage is the sole and direct responsibility of the Buyer and the Seller shall not assume any liability associated therewith and Buyer shall be responsible for any damages, costs, expenses and fees. Any shipment to storage by Seller is only a service provided to the Buyer and represents no direct or indirect responsibility on the part of Seller to Buyer associated with such storage.

Article 8 Schedule

(a) Scheduled RTS Date.

An item of the Equipment will be "**Ready to Ship**" (or "**RTS**") when it is available for shipment from the manufacturer's facility or warehouse. The Seller shall provide the Notice of RTS for the Major Components for each Unit by the date(s) set forth in the Scheduled Major Component RTS Date(s) schedule attached to this Contract as

Attachment 4 (each, a "Scheduled Major Component RTS Date"). Partial shipments will be allowed.

(b) Liquidated Damages.

If any Major Component associated with any Unit is not delivered on or before their Scheduled RTS Date(s) for reasons attributable to the Seller and not excused elsewhere in this Contract, and to the extent that the Buyer suffers actual damages as a result of such delay, the Seller shall pay as liquidated damages, and not as a penalty, a sum calculated in accordance with the table below, until actual RTS of all Major Components of such Unit:

Days	Liquidated Damages
1-15	\$0, Grace Period
16-30	\$5,000.00 Per Day
31-60	\$10,000.00 Per Day
Over 60	\$15,000.00 Per Day

Liquidated damages, if any, shall be computed based on the date of RTS of the principle portion of the Major Component and such computations shall disregard any part of or accessory to the Major Component which may be shipped separately.

(c) Limitations.

The Seller's aggregate liability hereunder for liquidated damages for delay in RTS shall not exceed five percent (5%) of the Unit Price for the Unit giving rise to such claim. Notwithstanding the foregoing, the Seller shall have no liability to the Buyer for liquidated damages for delay in RTS unless such delay is the direct cause of an actual delay in the initial commercial operation of the Project and the Buyer suffers economic harm as a result of such delay. The liquidated damages for delay in RTS shall be the Buyer's exclusive remedy for and the Seller's sole obligations arising out of delay.

Article 9 Performance Guarantees

When tested in accordance with and subject to the conditions specified in Attachment 6 and the Seller's Site-specific performance test measurement specification to be provided during the course of project execution (see Attachment 5 for a typical specification provided as reference), the Seller guarantees that each Unit will achieve the output and heat rate Performance Guarantees and emissions levels set forth in the signature block on the Stamped Guarantee Sheet attached hereto as Attachment 6. If the performance of any Unit fails to achieve the output or heat rate Performance Guarantees after the final performance test provided for in Article 10 below, the Seller shall pay to the Buyer as liquidated damages, and not as a penalty, a sum calculated in

accordance with the table below for each Unit that fails to achieve the output or heat rate Performance Guarantees:

Criterion	Test Measurement Point	Liquidated Damages
Output	At generator terminals	\$ 500.00 for each kW below the applicable Performance Guarantee
Heat Rate	At turbine fuel meter	\$1,000.00 for each Btu/kWh (LHV) above the applicable Performance Guarantee
NOx and CO Emissions	At turbine exhaust flange	Liquidated damages not applicable. In lieu of any damages, Seller has a one-time duty to adjust and repair the Unit until the Performance Guarantee for NOx and CO is met. (Must Meet Remedy).

The Seller's aggregate liability hereunder for liquidated damages for failure to achieve the output Performance Guarantee shall not exceed five percent (5%) of the Unit Price of the Unit giving rise to such claim. The Seller's aggregate liability hereunder for liquidated damages for failure to achieve the heat rate Performance Guarantee shall not exceed five percent (5%) of the Unit Price of the Unit giving rise to such claim. The liquidated damages for failure to achieve the Performance Guarantees and the corrective action to be taken by the Seller for deficiencies in performance shall be the Buyer's exclusive remedies for and the Seller's sole obligations arising out of such deficiencies.

Notwithstanding the foregoing, the Seller shall have no liability to the Buyer for liquidated damages for failure to achieve the Performance Guarantees with respect to any Unit unless the Buyer suffers economic harm as a result of the failure of such Unit to achieve the Performance Guarantees.

In addition to the Performance Guarantees for output and heat rate, when tested in accordance with the Seller's Site-specific performance test measurement specification and subject to the conditions set forth in Attachment 6, the Seller guarantees that each Unit will meet the Minimum Performance Guarantee. If when first so tested, any Unit fails to meet the minimum Performance Guarantee, in lieu of liquidated damages, the Seller shall have a one-time duty to adjust and repair the Unit until the Minimum Performance Guarantee is met ("Must Meet Remedy").

Future SCR/COR

A SCR/COR Catalyst may be included in this Contract at some point in the future via a Change Order at a price to be agreed. At that point, subject to the Best Available Control Technology still being available a SCR/COR would be capable of reducing the TM2500 Unit emissions from the as-guaranteed value for NOx and CO in Seller's

Performance Guarantee in Attachment 6 (Performance Guarantee) down to the NOx, CO, and VOC levels indicated in the “Future SCR/COR Table” below.

The emissions values for PM10 and SOx will be based on the sulfur content in the supplied fuel, up to < 0.75 grains S/100 dscf.

Future SCR/COR Table

VOC: 2 PPM @ 15% O₂

CO: 6 PPM @ 15% O₂

NOx: 5 PPM @ 15% O₂

Article 10 Performance Guarantee Testing

(a) Performance Tests.

The performance tests shall be arranged and conducted by the Seller or its designee at Seller's cost except as specifically otherwise stated below in paragraph (e).

(b) Performance Testing.

The tests for output and heat rate shall be performed using the Seller's Site-specific performance test measurement specification to be provided during the course of project execution (see Attachment 5 for typical specification provided as reference) and subject to conditions set forth in Attachment 6, and shall be conducted immediately following the start-up period and after the Seller has conducted final check-out of the Unit. If the output and heat rate tests are not conducted within the first 200 fired hours, degradation shall be applied in accordance with clause (f) below.

(c) Emissions Testing.

Seller or its designee shall conduct the emissions tests at the engine exhaust. Seller shall provide Buyer a copy of the initial compliance test report (which shall not be deemed Confidential Information).

(d) Cure Period.

If when first tested, any Unit does not meet the heat rate or output Performance Guarantees, the Seller shall be afforded ninety (90) Unimpeded Access Days of access to the Unit to undertake corrective action. The Unit will be re-tested when the Seller so requests, but in any event at the end of this cure period.

(e) Cost of Tests and Re-Tests.

The Seller shall perform the initial performance tests at its cost. The Buyer shall be notified of, and shall be represented at, all such tests. If a re-test is required and to the extent the Seller was the cause of such re-test, the actual cost of the retest will be borne by the Seller. The actual cost of the re-test shall mean (i) cost of special test personnel

or special operating personnel provided by the Buyer, (ii) cost of special instrumentation and equipment (including rental cost) and including required calibration of the instrumentation, and (iii) the Seller's personnel cost, but in no event whatsoever will the Seller be responsible for the cost of fuel or other consumables, normal operating personnel, or any other such cost typically borne by the Buyer.

(f) Degradation.

In conducting the initial performance test or re-tests, the performance of the Unit shall not be adjusted for degradation until such Unit has operated in excess of two hundred (200) hours. The Seller's degradation curve shall be used to determine the adjustment for Unit output and Unit heat rate.

(g) Performance Credits.

In the event the Seller is liable to the Buyer for liquidated damages in accordance with the provisions herein for the failure to meet any output or heat rate Performance Guarantee, the calculation of such liquidated damages shall include a credit when the actual performance of any Unit is demonstrated to have been better than the output or heat rate Performance Guarantees. Any credit shall be calculated using the same dollar values by which the liquidated damages are calculated. The Seller's credit or liability shall be the net calculation.

(h) Delayed Tests.

If for reasons not attributable to the Seller, the performance tests are not started within sixty (60) Days of the Seller's written notice to Buyer that the Unit is ready for use by Buyer, the tests shall be deemed waived and each Unit shall be deemed to have achieved the Performance Guarantees. In the event the Equipment is not installed at the Site and/or the performance tests are not completed within one (1) year after expiry of the Warranty Period, the Performance Guarantees will be void and Seller shall have no obligations under this Article 10.

Article 11 Aggregate limitation on Liquidated Damages

The Seller's overall aggregate liability hereunder for all forms of liquidated damages provided for in this Contract shall not exceed ten percent (10%) of the Unit Price of the Unit giving rise to such claims. The Parties agree that the amount of liquidated damages set forth above are reasonable in light of the anticipated harm caused by the breach of duty related thereto and the difficulties of proof of loss and inconvenience or non-feasibility of obtaining any adequate remedy and the Parties are estopped from contesting the validity or enforceability of such liquidated damages.

Article 12 Observation, Inspection and Factory Testing

(a) Observation at the Site.

The Seller shall be afforded access during normal business hours to observe the work in progress at the Site. The Seller may visit the Site at any time or times, or may maintain representatives to observe Buyer's or Buyer's contractors work, provided such activity and inspections do not interfere with the Work.

(b) Inspections and Tests at Site.

Buyer shall be able to inspect the Units once delivered at Site. The Seller shall not be required to delay manufacturing or other activities to accommodate Buyer's inspection.

(c) Inspection Not Acceptance.

The Buyer's inspection of the Equipment or its failure to inspect does not relieve the Seller of its obligation to fulfill the requirements of this Contract, nor is it to be construed as acceptance by the Buyer.

Article 13 Warranty

(a) Warranty Period.

The Seller shall warrant the Equipment and the associated Services on the terms set forth in this Article for twenty four (24) months following the date fuel is first combusted in the Unit at the Site or thirty six (36) months following the date of Seller's Notice of RTS, whichever period shall first expire (the "Warranty Period"), provided, however, that the warranty applicable to the Training Services shall be solely as set forth in **Attachment 9**.

(b) Warranty.

The Seller warrants to the Buyer that during the Warranty Period

- (i) the Equipment to be delivered hereunder shall be
 - (A) designed and fit for the purpose of generating electric power when operated in accordance with the Seller's specific written operation instructions or, in the absence thereof, in accordance with generally accepted operation practices of the electric power producing industry, and
 - (B) free from defects in material, workmanship and title; and
- (ii) the Services shall be performed in a competent, diligent manner.

(c) Remedy.

If the Equipment delivered or Services performed hereunder do not meet the above warranties during the Warranty Period, the Buyer shall promptly notify the Seller in writing and make the Equipment available for correction. The Seller shall thereafter, as soon as is practicable, correct any warranty defect, at its option and expense,

- (i) by re-performing the defective Services,
- (ii) repairing the defective part of the Equipment, or
- (iii) making available necessary replacement parts at Seller's factory.

Buyer shall, at Seller's option, return any defective part that is replaced by Seller at Seller's expense to Seller's facility within thirty (30) Days from the date of written instruction by Seller. The Seller shall provide technical advisory Services reasonably necessary for any such repair of the Equipment, but the Seller shall not be responsible for

- (iv) removal or replacement of structures or other parts of the Facility and
- (v) Site labor or transportation of parts or components.

The Buyer shall be responsible for the installation of any repaired or replacement part and for payment of any customs duties or similar levies, which may be assessed as a result of the shipment of any such replacement parts. If a defect in the Equipment or part thereof cannot be corrected by the Seller's reasonable efforts, the Parties will negotiate an equitable adjustment in price with respect to such Equipment or part thereof.

(d) Warranty on Remedial Work.

Any re-performed Service or repaired or replacement part furnished under this warranty shall carry warranties on the same terms as set forth above, except that the applicable warranty period for the repair/replacement part or re-performed Service shall be for the longer of

- (i) the remainder of the original Warranty Period or
- (ii) six (6) months from the date of such re-performance, repair or replacement.

In any event the repair/replacement warranty period and the Seller's responsibilities set forth herein for such repaired or replacement part or re-performed Service shall end no later than six (6) months after expiration of the original Warranty Period.

(e) Exclusions.

The Seller does not warrant the Equipment or any repaired or replacement parts against normal wear and tear, including that due to environment or operation, type of fuel, detrimental air inlet conditions or erosion, corrosion or material deposits from fluids. The warranties and remedies set forth herein are further conditioned upon

- (i) the proper storage, installation, operation, and maintenance of the Equipment in conformance with the operation instruction manuals (including revisions thereto) provided by the Seller and/or its Subcontractors or Suppliers, as applicable (including any required warranty preservation services in the event of long term storage) and
- (ii) repair or modification pursuant to the Seller's instructions or approval.

The Buyer shall keep proper records of operation and maintenance during the Warranty Period. These records shall be kept in the form of log sheets and copies shall be submitted to the Seller upon its request.

(f) Exclusive Remedies and Warranties.

THE PRECEDING PARAGRAPHS OF THIS ARTICLE 13, ARTICLE 9 AND ARTICLE 20 SET FORTH THE SOLE AND EXCLUSIVE REMEDIES FOR ALL CLAIMS BASED ON FAILURE OF OR DEFECT IN THE EQUIPMENT AND SERVICES PROVIDED UNDER THIS CONTRACT, WHETHER THE FAILURE OR DEFECT ARISES BEFORE OR DURING THE WARRANTY PERIOD AND WHETHER A CLAIM, HOWEVER INSTITUTED, IS BASED ON CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. THE FOREGOING WARRANTIES ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES AND GUARANTEES WHETHER WRITTEN, ORAL, IMPLIED OR STATUTORY. NO IMPLIED STATUTORY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE SHALL APPLY.

Article 14 Taxes

(a) Seller Taxes.

Unless otherwise specified in this Contract, the Seller shall be responsible for, and shall pay directly, Seller Taxes. If Buyer deducts or withholds Seller Taxes, the Buyer shall furnish within thirty (30) Days of the Seller's request official receipts from the appropriate governmental authority for each deducted or withheld Seller Tax.

(b) Buyer Taxes.

The Buyer shall be responsible for, and shall, where required or allowed by Law, pay directly when due and payable, any and all Buyer Taxes, and all payments due and payable by the Buyer to the Seller hereunder shall be made in the full amount of the Contract Price, free and clear of all deductions and withholding, for Buyer Taxes. If the Buyer deducts or withholds Buyer Taxes from Seller payments, the Buyer shall pay

additional amounts to the Seller to cause the amounts actually received by the Seller, net of deducted or withheld Buyer Taxes, to equal the full amount of the Contract Price, and shall provide to the Seller within thirty (30) Days of Seller's request, accurate official receipts from the appropriate governmental authority for deducted or withheld Buyer Taxes. If the Seller is required by Law to collect and remit or to pay Buyer Taxes, the Buyer shall, promptly upon presentation of the Seller's invoice for such Buyer Taxes, pay to the Seller an amount equal to the U.S. dollar value of such Buyer Taxes.

TAXES: Unless otherwise required by law, the State of California is exempt from Federal excise taxes.

(c) Invoices.

The Seller shall issue an official invoice itemizing the appropriate taxes.

Article 15 Compliance with Laws, Codes and Standards

The Contract Price is based on the engineering and manufacture of the Equipment in accordance with the Seller's design criteria, manufacturing processes and procedures and quality assurance programs, so as to comply with:

- (i) those portions of the codes and standards identified in Attachment 1 which the Seller has deemed applicable to the Equipment ("Codes and Standards"),
- (ii) the applicable national Laws of the country where the relevant Equipment is manufactured ("National Laws"),
- (iii) the Site Conditions (including temperature, humidity, elevation and any seismic or wind-loading requirements) identified by Buyer prior to Effective Date and set forth in Attachment 1 ("Site Conditions"),
- (iv) those local Laws which have been identified in Attachment 1 ("Local Laws"), and
- (v) those state Laws which have been identified in Attachment 1 ("State Laws").

If no Local or State Laws are set forth in Attachment 1 and agreed to by Seller, the manufacturing process shall not incorporate any consideration of such Local or State Laws.

Article 16 Project Management

(a) Original Equipment Definition.

The original Equipment definition is established in Attachment 1 Scope of Supply.

(b) Customer Kickoff Meeting.

Unless otherwise agreed, the Seller will schedule a Customer Kickoff Meeting within forty-five (45) Days of the Effective Date.

(c) Project Manager.

No later than the date of the Customer Kickoff Meeting, the Buyer will appoint an individual person as its Project Manager and will authorize that person to act on its behalf in matters connected with this Contract or the Project.

(d) Global Sourcing.

The Seller reserves the right in its discretion to obtain, source, subcontract, manufacture, fabricate and assemble the Equipment and any of its components and systems from non-domestic concerns; it being understood that the quality standards and warranties of the Seller under this Contract shall be adhered to in all cases irrespective of source. Seller shall be responsible for those direct costs associated with its global sourcing and manufacturing activities that occur prior to title transfer to Buyer.

(e) Electronic Communication.

The Parties agree to use the Seller's Customer Collaboration System as the primary medium for the storage and transmittal of drawings, specifications and project reports. The current Customer Collaboration System is Documentum.

Article 17 Changes

(a) Changes Resulting from Changes in Codes and Changes in Law.

If any change to the Codes and Standards, Ambient Site Conditions, Site Requirements or any Change in Law requires a change to the Equipment, the Seller shall be entitled to a Change Order that includes equitable adjustments to the Contract Price and to the Scheduled RTS Date(s) and other provisions of this Contract that are impacted. If the Seller is entitled to a Change Order pursuant to the provisions of this paragraph, the Seller shall submit to the Buyer a draft Change Order.

(b) Changes and Improvements Beyond Scope.

The Seller has the right to make changes in its product design and add improvements to products or services at any time without incurring any obligations to install the same on or in connection with the Equipment and Services provided hereunder. In addition, during the manufacturing process at its discretion, the Seller may make minor changes to the Equipment without entering into a Change Order, provided that such minor changes do not alter the Contract Price, Performance Guarantees, Buyer interface points with the Equipment or Scheduled RTS Date(s).

(c) Buyer-Initiated Changes.

The Buyer shall have the right to request that the Seller consider changes to the Equipment or the Services, including modifications, alterations or additions. If the Buyer wishes to request such a change, the Buyer shall notify the Seller in writing. Within fifteen (15) Days after receipt of such notice (unless otherwise extended by mutual agreement), the Seller shall advise the Buyer of the feasibility of the requested change and shall submit to the Buyer a draft Change Order, unless the matter requires further investigation and research in which case Seller will provide an estimate of the time frame in which Seller will be able to submit a detailed response to Buyer.

(d) Seller-Initiated Changes.

If the Seller wishes to propose a change, or if the Seller is entitled to a Change Order pursuant to the provisions of this Contract, the Seller shall submit to the Buyer a draft Change Order.

(e) Contents of Draft Change Order

The draft Change Order shall include:

- (i) a technical description of the proposed change in such detail as the Buyer may reasonably require,
- (ii) a lump sum firm price adjustment (increase or decrease) in the Contract Price, if any, caused by the proposed change,
- (iii) all potential effect(s), if any, on the Scheduled RTS Date(s), or any other schedule or date for performance by the Seller hereunder caused by the proposed change, and
- (iv) all potential effect(s), if any, on the Seller's ability to comply with any of its obligations hereunder, including the Seller's warranties and Performance Guarantees caused by the proposed change.

(f) Process for Concluding Change Order.

The Buyer shall, within ten (10) Days from the date of receipt of such information, either approve or disapprove the draft Change Order in writing or request additional time to consider the draft Change Order. If the Buyer approves the Change Order, the Buyer and the Seller shall then sign the Change Order that shall operate as an amendment to this Contract.

(g) Agreement Required.

Except for Change Orders to which the Seller is expressly entitled pursuant to this Contract, all changes under this Contract shall be subject to mutual agreement, and no Change Order will be effective until signed by both Parties.

(h) Changes to Equipment Not Practicable.

If the Seller determines that any change to the Equipment contemplated in the immediately preceding paragraphs is not practicable, the Seller will so notify the Buyer and the Buyer may at its option terminate this Contract in accordance with Article 23.

Article 18 Excusable Delays

(a) Excusable Delays.

The Seller shall not have any liability or be considered to be in breach or default of its obligations under this Contract to the extent that performance of such obligations is delayed or prevented, directly or indirectly, due to, but not limited to, the following ("Excusable Delay"):

- (i) causes beyond its reasonable control; or
- (ii) acts of God, acts (or failures to act) of governmental authorities, fires, severe weather conditions, earthquakes, strikes or other labor disturbances, floods, war (declared or undeclared), terrorism, epidemics, civil unrest, riots, delays or accidents in transportation or car or transporter shortages; or
- (iii) delays in the prerequisite work of the Buyer, Buyer's other contractors or suppliers, or other acts (or omissions) of the Buyer, including but not limited to failure to promptly: (A) provide the Seller with information and approvals necessary to permit the Seller to proceed with work immediately and without interruption, or (B) comply with the terms of payment; or
- (iv) shipment to storage in accordance with Article 7 of this Contract.

The Seller shall notify the Buyer of any such delay. The Scheduled RTS Date(s) or date of performance shall be extended for a period of time necessary to overcome the effect of such Excusable Delay. The Seller shall also be entitled to an equitable price adjustment.

(b) Termination for Extended Delay.

If any Excusable Delay extends for more than one hundred eighty (180) Days and the Parties have not agreed upon a revised basis for continuing the Work at the end of the Excusable Delay, including adjustment of the Contract Price, then either Party (except where Excusable Delay is caused by the Buyer, in which event only the Seller), upon thirty (30) Days written notice, may terminate this Contract with respect to the portion of Equipment to which title has not yet passed, whereupon the Buyer shall promptly pay the Seller termination charges as set forth in the Termination Schedule.

Article 19 Patents

(a) Indemnity.

The Seller shall indemnify the Buyer against any damages, costs and expenses arising out of any suit, claim, or proceeding (a "Claim") alleging that the Work infringes a patent in effect in the U.S., Canada, an EU member state or the country of installation (provided there is a corresponding patent issued by the U.S. or an EU member state or the country of installation) if:

- (i) the Buyer promptly notifies the Seller in writing of the Claim;
- (ii) the Buyer makes no admission of liability and gives Seller sole authority, at the Seller's expense, to direct and control the defense and any settlement and compromise negotiations; and
- (iii) the Buyer provides the Seller with full disclosure and assistance that may be reasonably required to defend any such Claim.

(b) Exclusions.

The Seller shall have no obligation or liability with respect to any Claim based upon:

- (i) any Work that has been altered by any Party other than the Seller;
- (ii) the combination or use of the Work with other products not supplied by the Seller when the combination is part of any alleged infringement;
- (iii) failure of the Buyer to implement any update provided by the Seller that would have prevented the Claim;
- (iv) unauthorized use of the Work, whether or not in breach of the provisions of this Contract; or
- (v) Buyer's specifications.
 - a. Seller certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Contract for the acquisition, operation or maintenance of computer software in violation of copyright laws.
 - b. The foregoing states the entire liability of the Seller to the Buyer with respect to infringement of patents, copyrights or trade secrets.

(c) Remedies.

If the Work or any portion thereof becomes the subject of a Claim, the Seller may at its option, either

- (i) settle or defend the claim or any suit or proceeding and pay all damages and costs awarded in it against the Buyer, or
- (ii) procure for the Buyer the right to continue using the Equipment, or
- (iii) modify the Equipment so that it becomes non-infringing, or
- (iv) replace the Equipment with non-infringing Equipment; or
- (v) remove the infringing Equipment or part thereof and refund the price of the infringing Equipment or part thereof.

If, in any suit arising from such a claim, the continued use of the Equipment for the purpose intended is forbidden by any court of competent jurisdiction, the Seller shall at its option take one or more of the actions under (ii), (iii); (iv) or (v) above.

(d) Sole Liability.

The above states the Seller's entire liability for indemnification for patent, trademark, copyright, and trade secret infringement for the Work.

(e) Exclusion.

Notwithstanding this, with respect to the Work or any portions thereof that are not manufactured or developed by the Seller, only the indemnity of the manufacturer or developer, if any, applies.

Article 20 General Indemnity

(a) General Indemnity.

Seller shall be liable to and indemnify the Buyer, its officers, employees, agents and subcontractors for bodily injury to third parties or damage to tangible third party property, and, at its expense, shall defend against and hold the Buyer harmless from any such claims raised by a third party arising in connection with this Contract, to the extent they are caused by the negligence of the Seller or its officers, employees, agents or subcontractors and to the extent the Seller is liable to the third party under applicable law.

(b) Concurrent Negligence.

If damage or injury is caused by the joint or concurrent negligence of the Parties, their officers, employees, agents, or subcontractors, the Parties shall bear the loss in

proportion to their or their officers', employees', agents' or subcontractors' percentage of negligence.

(c) Notice.

The indemnities provided in this Article shall apply only if the Party seeking indemnity gives the Indemnifying Party prompt notice of any claim and provides the Indemnifying Party all necessary information and assistance so that the Indemnifying Party may, at its option, defend or settle the claim.

(d) "Third Parties" Defined.

"Third parties" under this Article do not include the Parties, the owner of the Site, their affiliates, agents, successors or assigns, any operation or maintenance contractor of the Parties or the owner of the Site, or any entity

- (i) with an equity or security interest in any Party or the owner of the Site, or their assets or property,
- (ii) that seeks to claim any rights, power or privileges of one of the Parties or the owner of the Site, or
- (iii) that seeks to claim as a third party beneficiary of this Contract or one of the Parties or the owner of the Site.

No portion of the Equipment, the Facility, electricity, fuel or hydrocarbons is "third party property" for the purposes of this Article.

(e) Waiver.

The Buyer hereby waives rights of recovery against the Seller, whether as breach of Contract, warranty, indemnity, tort or other extra-contractual liability (including negligence or strict liability) or otherwise, for loss or damage to the Buyer or Owner's property. If Buyer is not the Owner of both the Facility and the Site, the Buyer will obtain from the Owner a similar waiver in respect of the Owner's interest in the Facility and/or the Site. If the Buyer fails to obtain such a waiver, or if the waiver is determined to be void or unenforceable, the Buyer, to the extent allowed by law, will indemnify the Seller for any liability that might arise out of damage to the Owner's property.

Article 21 Insurance

Insurance for Injuries to Workers.

During the term of this Contract, Seller shall maintain:

- (i) Worker's compensation insurance for work-related injuries or disease of their own employees in such forms and amounts as may be required by Laws that are applicable to each Party and its employees and

- (ii) employer's liability insurance for work-related injuries or disease of their own employees with a limit of not less than U.S. \$1,000,000 per occurrence or, if higher, the limit required by applicable Law.

(a) General Liability and Automobile Insurance

During the term of this Contract, the Seller shall maintain the following insurance coverage at its own expense to protect its own interests:

- (i) Commercial General Liability or Public Liability insurance, in broad form, either per occurrence or if claims made, effective for at least three years after the expiration of this Contract, that includes coverage for contractual liability, bodily injury and third party property damage, with a combined single limit of not less than U.S. \$5,000,000 per occurrence and U.S. \$5,000,000 in the aggregate annually, for primary and excess policies combined; and
- (ii) automobile liability insurance covering all owned, non-owned, and hired automobiles used by it in connection with the Work, if any, with a combined single limit of not less than U.S. \$5,000,000 per occurrence, but in no event less than required by applicable Law, for primary and excess policies combined.

Each of the foregoing insurance policies shall not be cancelled or materially changed without thirty (30) Days' advance written notice to the other Party or, in the case of non-payment, ten (10) Days' advance written notice. Upon request, each Party shall deliver to the other Party certificates of insurance showing that the foregoing insurance is in full force and effect.

(b) All Risk Property Insurance.

The Buyer or Owner shall maintain or cause to be maintained through the end of the Warranty Period, as it might be extended, "All Risk" Property Insurance on existing property/Facility/plant/Site and including Equipment taken over during the term of the Contract. The policy shall cover "all risks" of physical loss or damage including coverage for boiler and machinery (electrical and mechanical breakdown), in an amount equal to the replacement value of the relevant property. Buyer or Owner and its insurers, for these property insurances, including any business interruption coverage, shall waive right of recovery or subrogation against the Seller, its Affiliates, Suppliers and Subcontractors. The policy shall not be canceled or materially changed without thirty (30) Days' advance written notice to the Seller, or, in the case of non-payment, ten (10) Days' advance written notice.

(c) All Risk Builders Risk/Construction All Risk Insurance.

The Buyer shall provide and maintain in effect or cause to be maintained, to protect the interests of the Buyer and the Seller, either Construction All Risk (CAR) Insurance or All Risk Builder's Risk Insurance (ARBR). In the event of a loss or damage to the facility before completion, the Seller shall be responsible for the lesser of:

- (i) the actual cost to repair or replace;
- (ii) the actual CAR/ARBR policy deductible; or
- (iii) \$50,000 per occurrence to the extent the loss or damage is the fault of the Seller.

Provided, however, Seller's responsibility shall not exceed Seller's limitation of liability as outlined in Article 25. Except as provided in the preceding sentences, the Seller shall not be responsible for any insurance exclusions or deductibles or any uninsured or uninsurable loss or damage to the facility or other loss or damage to the facility under construction. The CAR/ARBR policy shall at a minimum meet the following requirements:

- (iv) the Buyer shall provide the Seller a copy of the policy prior to the scheduled start of any on Site work;
- (v) the policy shall be in effect from the planned start of any on-Site activity through the completion of the facility and the end of the Seller's obligations and be non-cancelable by the Buyer and by the insurer;
- (vi) the policy shall include extended maintenance coverage through the end of the Warranty Period, as required;
- (vii) the policy shall be provided by responsible insurers properly authorized to provide insurance in the jurisdiction(s) where the Work will be performed;
- (viii) the policy shall include as named insureds the Buyer, the Seller, any additional parties to the Contract and, any Affiliate of any Party to the Contract that is performing work in connection with the Contract, and as additional insureds, all subcontractors (regardless of tier) and assignees of any party to the Contract; and the policy shall also include a waiver of subrogation in favor of all insureds;
- (ix) the policy shall cover all risks of physical loss or damage to the Facility, including mechanical and electrical breakdown, in the course of construction, start-up, testing and commissioning, including materials, equipment and

furnishings, up to the value of the Facility at full completion, except for customary exclusions;

- (x) the Seller shall be permitted to examine the original insurance policies or summaries with respect to Insurance for Works which shall include sums insured, loss limits, deductible details of cover, exclusions or conditions, and a list of security (each insurance companies' participation in the insurance policy required for this Project only);
- (xi) the Seller's approval of, or non-objection to Buyer's insurance certificates or policies shall neither relieve Buyer nor impose on Seller any obligation or liability under the Contract;
- (xii) the minimum design/defects coverage shall equal LEG 2 or DE 4;
- (xiii) the insurers shall be reasonably acceptable to the Seller, rated at least A-VII by the AM Best Insurance Report or rated at similar levels by other internationally recognized insurance rating experts; and
- (xiv) the Seller shall have the right to submit claims directly to the insurers and receive payment directly from the insurers for any amounts that are Seller's responsibility under the Contract

(d) Failure to Maintain Insurance.

If at any time the Buyer fails to maintain or cause to be maintained in full force and effect, insurance complying with the requirements of this Article,

- (i) the Buyer shall be responsible for any resulting losses or costs sustained by the Buyer or the Seller and shall hold the Seller harmless from actions brought against the Seller as the result of the absence of the Buyer's required insurance, and
- (ii) the Seller shall not be required to but may elect to do any or all of the following:
 - a. immediately suspend all or a portion of the Work and be entitled to an equitable adjustment in the Contract Price, Scheduled Major Component RTS Date(s) and other terms of this Contract for the impact of the suspension,
 - b. pay the premiums or procure alternate insurance at Buyer's expense, or
 - c. pursue such other remedies as may be allowed by Law, equity, or this Contract.

(e) Buyer's Risks.

In no event shall the Seller be responsible for losses or damages due to

- (i) war, hostilities, terrorism, rebellion, revolution, civil disturbances, nuclear radiation or similar occurrence,
- (ii) acts or omissions of the Buyer,
- (iii) natural perils (such as flood or earthquake) or other perils to the extent that peril is excluded from the ARBR/CAR policy coverage
- (iv) deductibles from any insurance policy under Buyer's responsibility including ARBR/CAR deductibles or
- (v) loss in excess of the policy limits.

Article 22 Suspension

(a) Suspension by Buyer of Work at Site.

The Buyer shall have the right, at any time, to suspend Work at the Site upon written notice to the Seller. Any cost incurred by the Seller in accordance with any such suspension (including storage costs) shall be payable by the Buyer upon submission of the Seller's invoice(s). Performance of the Seller's obligations shall be extended for a period of time reasonably necessary to overcome the effects of such suspension.

(b) Suspension by Buyer of Manufacturing.

It is expressly agreed that the Buyer shall have no right to suspend manufacture of the Equipment.

(c) Suspension by Seller.

The Seller shall have the right to suspend all Work, including the delivery of any Equipment, upon the failure of the Buyer to make any payment when due. Without limiting the foregoing, the Seller shall have the right to suspend any shipment of the Equipment and may, but shall not be obligated to, ship such Equipment to storage in accordance with Article 8 if all payments due prior to the applicable Scheduled RTS Date have not been made. Any cost incurred by the Seller in accordance with any such suspension (including storage costs) shall be payable by the Buyer upon submission of the Seller's invoice(s). Performance of the Seller's obligations shall be extended for a period of time reasonably necessary to overcome the effects of such suspension, except that Seller's suspension shall not be deemed to extend the Warranty Period hereunder.

Article 23 Termination by Buyer for Convenience

The Buyer shall have the right to terminate this Contract for convenience with respect to any Equipment until title to such Equipment has passed to the Buyer or such Equipment has been delivered to the Buyer in accordance with Article 7, whichever shall first occur. Such termination shall be effective upon the later of receipt by the Seller of written notice of termination or receipt by the Seller of termination charges in accordance with the Termination Schedule in Attachment 7.

If this Contract is terminated for convenience by the Buyer pursuant to this Article 23, the Seller shall retain title to terminated Equipment. Title to each item of Equipment comprising the non-terminated Units, if applicable, shall pass to the Buyer upon the later of (i) payment to the Seller of 100% of the Unit Price of each non-terminated Unit and of the termination charges calculated in accordance with this Attachment 7, and (ii) when title to such item of Equipment would otherwise have passed pursuant to Article 7.

Seller shall have the right to suspend performance upon receipt of Buyer's termination notice and await the payment of termination charges without liability to Seller.

Article 24 Termination for Cause

(a) Grounds for Termination by Buyer.

The Buyer shall have the right to terminate this Contract for cause in the event that the Seller:

- (i) becomes insolvent, makes an assignment for the benefit of its creditors, has a receiver or trustee appointed for the benefit of its creditors, or files for protection from creditors under any bankruptcy or insolvency laws; or
- (ii) substantially breaches and fails to comply with or perform its material obligations hereunder (but only with respect to a material obligation for which this Contract does not provide exclusive remedies), provided that:
 - (A) the Buyer shall first have provided the Seller with written notice of the nature of such breach and of the Buyer's intention to terminate this Contract as a result of such breach, and
 - (B) either:
 - (1) with respect to a breach that can be cured within thirty (30) days, the Seller shall have failed to cure such breach within thirty (30) Days after receipt of such notice (or such extended period as is considered reasonable by the Parties); or

- (2) with respect to a breach that cannot be cured within thirty (30) days, Seller, upon its receipt of such notice, either
 - (x) failed to commence to cure such breach and diligently thereafter to pursue such cure, or
 - (y) failed to provide to Buyer reasonable evidence that no such breach has occurred.

(b) Remedy in the Event of Termination of Buyer.

If the Buyer terminates this Contract as provided above, the Buyer shall pay the Seller for that portion of the Contract Price allocable to the Equipment title transferred or Services performed prior to the termination. If the payments received by the Seller as of the date of such termination are in excess of such portion of the Contract Price, the Seller shall return the excess of such payments to the Buyer. In addition, the Seller shall pay to Buyer an amount equal to the difference between that portion of the Contract Price allocable to the terminated Work and such actual and reasonable amount paid by the Buyer to complete the Work or to another vendor for equipment comparable to the Equipment terminated.

(c) Grounds for Termination by Seller.

The Seller shall have the right to terminate this Contract for cause in the event that the Buyer:

- (i) suspends Work at the Site pursuant to the Article 22 of this Contract for a single period of twelve (12) months or for a cumulative total of one hundred and eighty (180) Days;
- (ii) becomes insolvent, makes an assignment for the benefit of its creditors, has a receiver or trustee appointed for the benefit of its creditors, or files for protection from creditors under any bankruptcy or insolvency laws; or
- (iii) substantially breaches and fails to comply with or perform its material obligations hereunder, including failure to comply with Article 30 of this Contract, or fails to make any payment when due or to fulfill any payment conditions, including providing any payment security, as set forth in this Contract, provided:

(A) that the Seller shall first have provided the Buyer with written notice of the nature of such failure and of the Seller's intention to terminate this Contract as a result of such failure, and

(B) that the Buyer shall have failed within thirty (30) Days after receipt of such notice to correct such failure.

(d) Remedy in the Event of Termination of Seller.

If the Seller terminates this Contract as provided above, the Buyer shall pay to the Seller the charges set forth in Attachment 7.

Article 25 Limitation of Liability

(A) LIMITATION.

THE TOTAL LIABILITY OF THE SELLER FOR ALL CLAIMS ARISING OUT OF OR RELATING TO THE PERFORMANCE OR BREACH OF THIS CONTRACT OR USE OF ANY EQUIPMENT SHALL NOT EXCEED THE PORTION OF THE CONTRACT PRICE ALLOCABLE TO THE EQUIPMENT GIVING RISE TO THE CLAIM. THE SELLER'S LIABILITY SHALL TERMINATE TWELVE (12) MONTHS FOLLOWING THE END OF THE WARRANTY PERIOD FOR THE EQUIPMENT GIVING RISE TO THE CLAIM. THE BUYER MAY ENFORCE A CLAIM THAT ACCRUED BEFORE THAT DATE BY COMMENCING AN ACTION, UNDER ARTICLE 32, BEFORE THE EXPIRATION OF THE APPLICABLE STATUTE OF LIMITATIONS OR REPOSE AS APPLICABLE, BUT NOT LATER THAN TWELVE (12) MONTHS AFTER THE EXPIRY OF THE WARRANTY PERIOD.

(B) CONSEQUENTIAL DAMAGES.

THE SELLER SHALL NOT BE LIABLE FOR LOSS OF PROFIT OR REVENUES, LOSS OF PRODUCT, LOSS OF USE OF THE WORK OR ANY ASSOCIATED EQUIPMENT, INTERRUPTION OF BUSINESS, COST OF CAPITAL, COST OF REPLACEMENT EQUIPMENT OR POWER, DOWNTIME COSTS, INCREASED OPERATING COSTS, CLAIMS OF THE BUYER'S CUSTOMERS FOR SUCH DAMAGES, OR FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES.

(C) SALE, TRANSFER, ASSIGNMENT TO THIRD PARTY.

IF THE BUYER IS SUPPLYING, TRANSFERRING OR ASSIGNING THE WORK TO A THIRD PARTY, THE BUYER SHALL REQUIRE THE THIRD PARTY TO AGREE TO BE BOUND BY THIS ARTICLE.

(D) GRATUITOUS ADVICE.

THE SELLER SHALL NOT BE LIABLE FOR ANY ADVICE OR ASSISTANCE THAT IS NOT REQUIRED UNDER THIS CONTRACT.

(E) BUYER'S PROPERTY.

EXCEPT TO THE EXTENT SELLER HAS RESPONSIBILITY UNDER ARTICLE 13 (WARRANTY), BUYER WAIVES RIGHTS OF RECOVERY AGAINST SELLER, FOR LOSS OR DAMAGE TO PROPERTY OF BUYER.

(F) "SELLER" DEFINED.

FOR THE PURPOSES OF THIS ARTICLE, THE TERM "SELLER" SHALL MEAN THE SELLER, ITS AFFILIATES, SUBCONTRACTORS AND SUPPLIERS OF ANY TIER, AND THEIR RESPECTIVE AGENTS AND EMPLOYEES, INDIVIDUALLY OR COLLECTIVELY.

(G) LIMITATIONS TO PREVAIL.

THE LIMITATIONS AND EXCLUSIONS IN THIS ARTICLE SHALL APPLY WHETHER A CLAIM IS BASED IN CONTRACT (INCLUDING WARRANTY OR INDEMNITY), TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), STATUTE, EQUITY OR ANY OTHER EXTRA-CONTRACTUAL THEORY.

(H) LIMITATION OF REMEDIES; OVERRIDING EFFECT.

THE BUYER'S AND THE SELLER'S RIGHTS, OBLIGATIONS AND REMEDIES ARISING OUT OF OR RELATING TO THE WORK ARE LIMITED TO THOSE RIGHTS, OBLIGATIONS AND REMEDIES DESCRIBED IN THIS CONTRACT. THIS ARTICLE SHALL PREVAIL OVER ANY CONFLICTING OR INCONSISTENT TERMS IN THIS CONTRACT, UNLESS THOSE TERMS FURTHER RESTRICT THE SELLER'S LIABILITY.

Article 26 Proprietary Information

(a) Information Subject to Restriction.

In connection with this Contract, the Seller and the Buyer (both as to information disclosed, a "Disclosing Party") may each provide the other (both as to information received, a "Receiving Party") with "Confidential Information." "Confidential Information" means

- (i) all draft documents related to pricing and terms of this Contract,
- (ii) all information that is designated in writing as "confidential" or "proprietary" by the Disclosing Party at the time of written disclosure, and (iv) all information that is orally designated as "confidential" or "proprietary" by the Disclosing Party at the time of oral disclosure and is confirmed to be "confidential" or "proprietary" in writing within ten (10) Days after oral disclosure.
- (iii) CONFIDENTIALITY OF DATA: All financial, statistical, personal, technical and other data and information relating to the Buyer operation which are designated confidential by the Buyer and made available to the Seller in order to carry out this Contract, or which become available to the Seller in carrying out this Contract, shall be protected by the Seller from unauthorized use and disclosure through the observance of the same or more effective

procedural requirements as are applicable to the Buyer. The Seller shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the Seller's possession, is independently developed by the Seller outside the scope of this Contract, or is rightfully obtained from third parties.

- (iv) **NEWS RELEASES:** Unless otherwise exempted, news releases pertaining to this Contract shall not be made without prior written approval of the Director or designee of the Department of Water Resources.

The obligations of this Article shall not apply as to any portion of the Confidential Information that:

- (v) is or becomes generally available to the public other than from disclosure by the Receiving Party, its representatives or its Affiliates;
- (vi) is or becomes available to the Receiving Party or its representatives or Affiliates on a non-confidential basis from a source other than the Disclosing Party when the source is not, to the best of the Receiving Party's knowledge, subject to a confidentiality obligation to the Disclosing Party;
- (vii) is independently developed by the Receiving Party, its representatives or Affiliates, without reference to Confidential Information;
- (viii) is required to be disclosed by law, a valid legal process or a government agency; or
- (ix) is approved for disclosure in writing by an authorized representative of the Disclosing Party.

(b) Obligations of Receiving Party.

The Receiving Party agrees:

- (i) to use the Confidential Information only in connection with this Contract and permitted use(s) and maintenance of the Work,
- (ii) to take reasonable measures to prevent disclosure of the Confidential Information, except to its employees, agents or financing parties who have a need to know for the Receiving Party to perform its obligations under this Contract or to use and maintain the Work, and
- (iii) not to disclose the Confidential Information to a competitor of the Disclosing Party.

The Receiving Party shall obtain a written commitment from any recipient of Confidential Information to comply with the terms of this Article. Confidential Information shall not be reproduced without the Disclosing Party's written consent, and the Receiving Party shall return all copies of Confidential Information to the Disclosing Party upon request except to the extent that this Contract entitles the Receiving Party to retain the Confidential Information. The Seller may also retain one copy of the Buyer's Confidential Information until all of Seller's potential liability under this Contract terminates.

(c) Disclosure Pursuant to Legal Process.

If either Party or any of its Affiliates or representatives is required by law, legal process or a government agency to disclose any Confidential Information, that Party agrees to provide the Disclosing Party with prompt written notice to permit the Disclosing Party to seek an appropriate protective order or agency decision or to waive compliance by the Receiving Party with the provisions of this Article. If efforts to secure confidential treatment are unsuccessful, the Disclosing Party may lawfully revise the Confidential Information to make it nonproprietary or to minimize the loss of its proprietary value.

(d) Intellectual Property.

Nothing in this Article grants the Receiving Party any license under any invention, patent, trademark or copyright now or later owned or controlled by the Disclosing Party.

(e) Disclosure by Buyer.

The Buyer shall not disclose Confidential Information to the Seller unless it is required to do so to enable the Seller to perform Work under this Contract. If the Buyer does disclose Confidential Information, the Buyer warrants that it has the right to disclose the information, and the Buyer shall indemnify and hold the Seller harmless against any claims or damages resulting from the Buyer's improper disclosure.

(f) Term.

As to any individual item of Confidential Information, unless otherwise agreed by the Parties, the restrictions of this Article shall expire ten (10) years after the date of disclosure of the Confidential Information.

(g) Priority.

This Article does not supersede any separate confidentiality or nondisclosure agreement signed by the Parties.

Article 27 Software License

(a) Grant of License.

Only to the extent necessary to operate and use the Equipment supplied by the Seller, for the purposes for which such Equipment is supplied, the Seller grants to the Buyer a non-exclusive right to use Software, firmware, programs, Confidential Information and

any other technology necessary to operate and use the Equipment delivered to the Buyer by Seller. This right shall be non-assignable and non-transferable by the Buyer (except for sub-licenses to any subsequent purchaser of the Equipment) and shall apply and be irrevocable with respect to the Equipment purchased under this Contract and paid for in full by the Buyer.

(b) Limitations.

Unless otherwise agreed to by the Seller, the Buyer has only the right to install and use a single copy of the Software for each Unit of associated Equipment. The Buyer may make one copy of the Software for backup purposes only, in machine-readable form. The Buyer has no right to

- (i) disassemble, decompile, reverse engineer, or otherwise attempt to reconstruct or discover the source code of the Software or third-party Software;
- (ii) remove any product identification, copyright, trademark, or other notice from the Software;
- (iii) modify, adapt or translate the Software.

(c) Third-Party Software.

Certain Software the Seller provides to the Buyer may contain third-party Software which may be provided with a separate end-user agreement. Use of such third-party Software and its source code shall be governed by this Contract and such end-user license agreements. To the extent there is any conflict between the terms of this Contract and the applicable end-user license agreement, the end-user license agreement shall prevail. If requested by the Seller at any time, the Buyer shall execute a copy of the applicable end-user license agreement.

Article 28 Personal Data Protection

“Personal Data” is any information relating to an identified or identifiable natural person (“Data Subject”). The Buyer and the Seller each agree that any Personal Data obtained from the other Party will be deemed “Confidential Information” of the other Party as defined in this Contract whether or not the Personal Data is publicly available. The Buyer and the Seller shall provide security for the Personal Data they receive from each other and limit its disclosure and use. The Buyer and the Seller each represent that in providing Personal Data to one another they will comply with all applicable Laws and regulations, including but not limited to providing notices to or obtaining consents from the Data Subjects when required.

Article 29 Export Control

(a) Export Controls.

All sales hereunder of U.S.-origin goods and related technical data (including Software) shall at all times be subject to the export control laws and regulations of the U.S. Government and any amendments thereof. The Buyer hereby agrees that it shall not, except as said laws and regulations may expressly permit, make any disposition by way of transshipment, re-export, diversion or otherwise, of U.S. origin goods and technical data (including computer Software), or the direct product thereof, supplied by the Seller hereunder. The obligations of the Parties to comply with all applicable export control laws and regulations shall survive any termination, or discharge of any other Contract obligations.

(b) Buyer to Keep Informed.

The Buyer undertakes to keep itself fully informed of, and to comply with, the export control laws and regulations of the respective governmental authorities and any amendments thereof.

(c) Weapons

The Buyer hereby certifies that the Work, technical data, Software or other information or assistance furnished by the Seller or its Affiliates under this Contract will not be used in the design, development, production, stockpiling or use of chemical, biological, or nuclear weapons either by the Buyer or by any entity acting on the Buyer's behalf.

Article 30 Assignment and Change in Control

(a) Eligible Assignees.

An Eligible Assignee is either:

- (i) an Affiliate of the Buyer, or
- (ii) an engineering or construction contractor under contract with the Buyer for the installation of the Equipment,

that in each case both:

- (iii) offers the Seller satisfactory evidence of its ability (both financial and otherwise) to fulfill the obligations of Buyer hereunder and
- (iv) assignment to such Eligible Assignee by the Buyer would not cause the Seller to be penalized or become subject to additional requirements under any Law as a result of entering into contract with such person.

(b) Buyer's Right to Assign to Eligible Assignees.

The Buyer may once assign its rights and delegate its obligations under this Contract to an Eligible Assignee, provided:

- (i) that the Buyer shall notify the Seller of its intent to assign no less than ten (10) Days prior to the execution of any such assignment;
- (ii) that Buyer shall either
 - a. guarantee the obligations of the assignee by executing a guaranty in a form acceptable to Seller or
 - b. retain its obligations under any payment, indemnity and bonus provisions of this Contract;
- (iii) that the first Eligible Assignee may not further assign or delegate any rights or obligations hereunder except to the original Buyer; and
- (iv) that the Buyer shall in no event assign to its engineering or construction contractor the right to receive liquidated damages under this Contract.

(c) Collateral Assignment.

The Buyer may also assign a collateral interest in this Contract to a lender who is not an Eligible Assignee as collateral security for a loan for the acquisition of the Equipment, provided however, that Buyer and Lender agree that any future assignment to the Lender shall occur only as the result of the exercise by Lender of its remedies under the loan agreements relative to a bankruptcy or liquidation of Buyer. Under no circumstances, however, shall a collateral assignment require Seller to deliver Equipment to Buyer or an assignee if Seller has not been fully paid for such Equipment.

(d) All Other Assignments and Transfers by Buyer.

All other assignments or transfers by Buyer of any or all of its duties or rights under this Contract (by operation of law or otherwise) are subject to Seller's prior written consent. Further, Buyer agrees that, until Buyer receives title to the Equipment as set forth herein, Buyer shall not, directly or indirectly sell, offer to sell or otherwise broker the Equipment.

(e) Seller's Right to Assign.

The Seller may assign its rights and delegate its obligations under this Contract to any Affiliate. Buyer consents to Seller assigning its accounts receivables under this Contract to any party. Seller may assign its rights and obligations to other parties with the prior written consent of Buyer. In the event of such assignment, the Seller's assignee will be responsible for the assigned Work

and will invoice directly to and collect payments directly from the Buyer. This Contract is not assignable by the Seller, either in whole or in part, without the consent of the Buyer in the form of a formal written amendment.

(f) Conditions.

Any assignment shall be subject to all limitations and exclusions of liability contained in this Contract. The Buyer may not assign this Contract except in accordance with this Article. Any purported assignment not in accordance with this Article shall be void and without effect.

Article 31 Contract Documents

The following documents shall comprise and shall together be referred to as the "Contract":

- (a) Main Contract body (Recitals, Article 1 through Article 36)
- (b) Attachment 1,
- (c) Attachment 7,
- (d) Attachment 4,
- (e) Attachment 6,
- (f) Attachment 8,
- (g) Attachment 9,
- (h) Attachment 2,
- (i) Attachment 5, and
- (j) Attachment 3.

In the event of any conflict between the terms of this Contract, the provisions of the document first listed above shall prevail.

Article 32 Dispute Resolution

- (a) The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, Seller shall submit to the Department Director or designee a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to or involving this Contract, unless the Buyer, on its own initiative, has already rendered such a final decision. Seller's written demand shall be fully supported by factual information, and if such demand involves a cost adjustment to the Contract, Seller shall include with the demand a written statement signed by an authorized person indicating that the demand is made in good faith, that the supporting data are accurate and complete and that the amount requested accurately reflects the Contract adjustment for which Seller believes the Buyer is liable. If the Seller is not satisfied with the decision of the Department Director or

designee, the Seller may appeal the decision to the Department of General Services, Deputy Director, Procurement Division. In the event that this Contract is for information technology goods and/or services, the decision may be appealed to an Executive Committee of Buyer and Seller personnel.

- (b) Pending the final resolution of any dispute arising under, related to or involving this Contract, Parties agree to diligently proceed with the performance of this Contract, including the delivery of goods or providing of services in accordance with the Buyer's instructions. Seller's failure to diligently proceed in accordance with the Buyer's instructions shall be considered a material breach of this Contract.
- (c) Any final decision of the Buyer shall be expressly identified as such, shall be in writing, and shall be signed by the Department Director or designee or Deputy Director, Procurement Division if an appeal was made. If the Buyer fails to render a final decision within 90 days after receipt of Seller's demand, it shall be deemed a final decision adverse to Seller's contentions. The Buyer's final decision shall be conclusive and binding regarding the dispute unless Seller commences an action in a court of competent jurisdiction to contest such decision within 90 days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.

(d) Venue.

Any legal action or proceeding with respect to this Contract shall be brought in the United States District Court for the Eastern district of California, or, if such court lacks jurisdiction, in the Superior Court of the State of California in Sacramento County. Each of the Parties hereby accepts and consents to, generally and unconditionally, the jurisdiction of the aforesaid courts and applicable appellate courts for any appeal thereof. Each Party irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to such Party at the address first set forth in this Contract.

Article 33 Governing Law

This Contract, including but not limited to, the validity, performance and all matters relating to the interpretation and effect of this Contract and all further documents executed pursuant to it, shall be construed and interpreted in accordance with the laws of the State of California.

Article 34 Effective Date

This Contract shall become effective when it is signed by both Parties (the "Effective Date"), however, the Seller shall not be required to commence any Work associated

with, connected to, or arising from, directly or indirectly, the Equipment, Balance of Plant, or Services, until the Seller receives the Buyer's Purchase Order (the "Full Notice to Proceed" or "FNTP.")

Article 35 Entire Agreement

This Contract together with the Buyer's Purchase Order represent the entire agreement between the Parties and supersedes in its entirety all prior agreements concerning the subject matter hereof, and no modification, amendment, revision, waiver, or other change shall be binding on either Party unless consented to in writing by the Party's authorized representative. Any oral or written representation, warranty, course of dealing, or trade usage not contained or referenced herein shall not be binding on either Party. Each Party agrees that it has not relied on, or been induced by, any representations of the other Party not contained in this Contract.

Article 36 Miscellaneous Provisions

(a) Third-Party Beneficiaries.

Except as provided in the Article 25 "Limitation of Liability", this Contract and its provisions are for the benefit of the Parties hereto and not for any other third party.

(b) Survival.

All provisions or obligations contained in this Contract which by their nature or effect are required or intended to be observed, kept or performed after termination or expiration of this Contract shall survive and remain binding upon and for the benefit of the Parties, including, without limitation, the Articles with the following titles, which shall survive expiration or termination of this Contract: Taxes, Warranty, Patents, General Indemnity, Limitation of Liability, Proprietary Information, Dispute Resolution, Governing Law, Software License, Personal Data Protection, Export Control, Contract Documents, Entire Agreement and Miscellaneous Provisions.

(c) Non-Waiver.

Waiver by either Party of any right under this Contract shall not be deemed a waiver by such Party of any other right hereunder.

(d) Invalidity.

The invalidity in whole or in part of any part of this Contract shall not affect the validity of the remainder of this Contract.

(e) No Nuclear Use.

The Equipment and Services sold hereunder are not intended for application (and shall not be used) in connection with any nuclear installation or activity and Buyer warrants that it shall not use the Equipment and Services for such purposes, or permit others to use the Equipment or Services for any such purposes. If, in breach of the foregoing, any

such use occurs, Seller shall have no liability for any nuclear or other damage, injury or contamination, and Buyer shall indemnify Seller, its Affiliates, Subcontractors and Suppliers of every type and tier against any such liability, whether arising as a result of breach of contract, warranty, indemnity, tort (including negligence), strict liability or otherwise.

(f) Counterparts and DocuSign.

This Contract may be signed in DocuSign and/or in any number of counterparts, each of which shall constitute one and the same instrument.

(g) Remote Diagnostic Services

Buyer will provide on-site support, if requested by Seller, as required for installation and operation of Seller's remote diagnostic system and services during the installation, commissioning, and warranty period. The Buyer will permit Seller to operate a data retrieval system on the Buyer's Equipment to collect, transmit, diagnose, and store plant operating data, and will permit Seller to remotely access and conduct troubleshooting and adjustment of Unit control systems. The purpose of these remote services is to enable additional support to the Buyer's Equipment during commercial operation. Upon completion of the Equipment Warranty Period, remote diagnostic services may be terminated or continued under other contractual agreements as desired by Buyer and Seller.

(h) EXAMINATION AND AUDIT: In accordance with Cal. Gov. Code § 8546.7, notwithstanding any other provision of law, Seller agrees that the California State Auditor ("Auditor") shall have the right to examine and audit any records and supporting documentation pertaining to the performance of this Contract, at the request of the public entity or as part of any audit of the public entity, for a period of three years after final payment under the Contract. Seller further agrees to maintain such records and supporting documentation for possible audit for a minimum of three (3) years after final payment, unless a longer period of records and supporting documentation retention is stipulated. Seller agrees to allow the Auditor(s) access to such records during normal business hours and to allow interviews of any Seller employees, in the presence of Contractor Management or equivalent GE employee, or others who might reasonably have information related to such records.

(i) COVENANT AGAINST GRATUITIES:

General Electric Co. ("GE") is a diversified services, technology, and manufacturing company with more than 200,000 employees operating in more than 100 countries worldwide. GE's corporate headquarters are in Boston, Massachusetts. GE is comprised of various business units that enter into prime and lower-tier government contracts for defense, energy, healthcare and other highly regulated areas. Gas Power, doing business as General Electric Company, is a business unit of GE that provides goods and services in the energy sector and operates in the highly regulated industry of power generation.

Seller warrants, to the best of its knowledge and belief, that no gratuities (in the

form of entertainment, gifts, or otherwise) were offered or given by the Seller, or any agent or representative of the Seller, to any officer or employee of the Buyer with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the Buyer shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the Buyer in procuring on the open market any items which Seller agreed to supply shall be borne and paid for by the Seller. The rights and remedies of the Buyer provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.

(j) **NONDISCRIMINATION CLAUSE:**

During the performance of this Contract, Seller and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. Seller and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Seller and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Contract by reference and made a part hereof as if set forth in full. Seller and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

- a. The Seller shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform Services under the Contract.

(k) **NATIONAL LABOR RELATIONS BOARD CERTIFICATION:**

General Electric Co. ("GE") is a diversified services, technology, and manufacturing company with more than 200,000 employees operating in more than 100 countries worldwide. GE's corporate headquarters are in Boston, Massachusetts. GE is comprised of various business units that enter into prime and lower-tier government contracts for defense, energy, healthcare and other highly regulated areas. Gas Power, doing business as General Electric Company, is a business unit of GE that provides goods and services in the energy sector and operates in the highly regulated industry of power generation.

In the ordinary course of business, GE and its divisions are routinely audited or inspected for compliance with regulatory and contractual requirements. We believe none of these actions are material to this proposed transaction.

To the best of its knowledge and belief, Seller swears, to the best of its knowledge and belief under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against the Seller within the immediately preceding two-year period because of Seller's failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, PCC Section 10296.

(l) DRUG FREE WORKPLACE CERTIFICATION:

General Electric Co. ("GE") is a diversified services, technology, and manufacturing company with more than 200,000 employees operating in more than 100 countries worldwide. GE's corporate headquarters are in Boston, Massachusetts. GE is comprised of various business units that enter into prime and lower-tier government contracts for defense, energy, healthcare and other highly regulated areas. Gas Power, doing business as General Electric Company, is a business unit of GE that provides goods and services in the energy sector and operates in the highly regulated industry of power generation.

Seller certifies under penalty of perjury under the laws of the Buyer of California that the Seller will comply with the requirements in sections a. and c. of the Drug Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug free workplace by taking the following actions:

(a) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).

(b) Not Used:

(c) Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed or resulting Contract:

- (i.) will receive a copy of the company's drug free policy statement; and,*
- (ii.) will agree to abide by the terms of the company's statement as a condition of employment on the Contract.*

(m) FOUR-DIGIT DATE COMPLIANCE: Seller warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or services to the Buyer. "Four Digit Date Compliant" Deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this

Contract and does not limit the generality of warranty obligations set forth elsewhere herein.

(n) Human Rights: Seller shall require subcontractors and suppliers (i) To respect human rights of Seller's employees and others in Seller's business operations; (ii) not employ workers younger than sixteen (16) years of age or below the applicable minimum age, whichever is higher; (iii) not use forced, prison or indentured labor, or workers subject to any form of physical, sexual or psychological compulsion, exploitation or coercion, or to engage in or abet trafficking in persons.

(o) **CHILD SUPPORT COMPLIANCE ACT:** For any Contract in excess of \$100,000, the Seller acknowledges in accordance with PCC Section 7110, that:

- (A) The Seller recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
- (B) The Seller, to the best of its knowledge, is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

(p) **AMERICANS WITH DISABILITIES ACT:** Seller assures the Buyer that Seller complies with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq).

(q) **USE TAX COLLECTION:** General Electric Co. ("GE") is a diversified services, technology, and manufacturing company with more than 200,000 employees operating in more than 100 countries worldwide. GE's corporate headquarters are in Boston, Massachusetts. GE is comprised of various business units that enter into prime and lower-tier government contracts for defense, energy, healthcare and other highly regulated areas. Gas Power, doing business as General Electric Company, is a business unit of GE that provides goods and services in the energy sector and operates in the highly regulated industry of power generation.

In accordance with Public Contract Code (PCC) Section 10295.1, Seller certifies, to the best of its knowledge and belief, that it complies with the requirements of Section 7101 of the Revenue and Taxation Code. Seller further certifies that it will immediately advise Buyer of any change in its

retailer's seller's permit or certification of registration or applicable affiliate's seller's permit or certificate of registration as described in subdivision (a) of PCC Section 10295.1.

- (r) **EXPATRIATE CORPORATIONS:** General Electric Co. ("GE") is a diversified services, technology, and manufacturing company with more than 200,000 employees operating in more than 100 countries worldwide. GE's corporate headquarters are in Boston, Massachusetts. GE is comprised of various business units that enter into prime and lower-tier government contracts for defense, energy, healthcare and other highly regulated areas. Gas Power, doing business as General Electric Company, is a business unit of GE that provides goods and services in the energy sector and operates in the highly regulated industry of power generation. Seller hereby declares, to the best of its knowledge and belief, that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC Section 10286 and 10286.1, and is eligible to contract with the Buyer.
- (s) **LOSS LEADER:** It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10302(b).).
- (t) **GENDER IDENTITY:** General Electric Co. ("GE") is a diversified services, technology, and manufacturing company with more than 200,000 employees operating in more than 100 countries worldwide. GE's corporate headquarters are in Boston, Massachusetts. GE is comprised of various business units that enter into prime and lower-tier government contracts for defense, energy, healthcare and other highly regulated areas. Gas Power, doing business as General Electric Company, is a business unit of GE that provides goods and services in the energy sector and operates in the highly regulated industry of power generation. For contracts of \$100,000 or more, Seller certifies, to the best of its knowledge and belief, that Seller is in compliance with Public Contract Code section 10295.35.
- (u) The following laws apply to persons or entities doing business with the State of California.
1. **CONFLICT OF INTEREST:** Seller shall be aware of the following provisions regarding current or former state employees. In the event Seller has any questions on the status of any person rendering services or involved with the Agreement, Seller must contact the awarding

agency immediately for clarification.

2. Current State Employees (Pub. Contract Code §10410):

(i) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.

(ii) No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

3. Former State Employees (Pub. Contract Code §10411):

(i) For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.

(ii) For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Seller violates any provisions of above paragraphs in Article 36, Section (u) 3 (i) and (ii), such action by Seller shall render this Agreement void. (Pub. Contract Code §10420)

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

(v) SELLER NAME CHANGE: A Change Order is required to change the Seller's name as listed on this Contract. Upon receipt of legal documentation of the name change the Buyer will process the Change Order. Payment of invoices presented with a new name cannot be paid prior to approval of said Change Order.

(w) CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:

i. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the Seller is currently qualified to do

business in California in order to ensure that all obligations due to the state are fulfilled.

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

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

EXHIBIT D

INSURANCE

1. At all times during the Term of this Agreement, each Party shall maintain, at its own expense, with responsible insurers who maintain a financial strength rating of "A-" or higher and a financial size category of VIII or higher with AM Best, or through an applicable public agency insurance risk pool or other self-insurance, the insurance described below with coverages no less than the minimums indicated. If either Party fails to comply with the provisions of this Exhibit D, it shall hold harmless and indemnify the other Party from any direct or indirect losses and liability, including attorney's fees and costs of litigation, resulting from the injury or death of any person or damage to any property, to the extent the indemnified Party would have been protected had the indemnifying Party complied with the requirements of this Exhibit D.
 - (a) **General Liability.** Each Party shall maintain general liability on an occurrence form with limits not less than one million dollars (\$1,000,000) per occurrence for bodily injury and property damage liability and an annual policy aggregate of three million dollars (\$3,000,000). The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal & advertising injury, and liability assumed under an insured contract. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to each Party's limit of liability. The policy shall be endorsed to include the other Party, its officers, agents, and employees as additional insureds, but only with respect to work performed under the Agreement and the indemnity obligations hereunder.
 - (b) **Automobile Liability.** Each Party shall maintain motor vehicle liability with limits not less than one million dollars (\$1,000,000) combined single limit per accident. Such insurance shall cover liability arising out of a motor vehicle including owned, hired and non-owned motor vehicles. The policy shall be endorsed to include the other Party, its officers, agents, and employees as additional insureds, but only with respect to work performed under the Agreement and the indemnity obligations hereunder.
 - (c) **Worker's Compensation and Employer's Liability.** Each Party shall maintain statutory worker's compensation and employer's liability coverage for all its employees, or employees of its Affiliate, who will be engaged in the performance of the Agreement. Employer's liability insurance shall not be less than one million dollars (\$1,000,000) for injury or death occurring as a result of each accident.
 - (d) **Excess/Umbrella Liability Insurance.** Excess/umbrella liability insurance covering claims in excess of the underlying insurance described in Sections 1(a) through 1(c) with a combined single limit and annual aggregate limit of twenty-five million dollars (\$25,000,000). The policy shall be endorsed to include the other Party, its officers, agents, and employees as additional insureds, but only with respect to work performed under the Agreement and the indemnity obligations hereunder.

- (e) **Pollution Liability.** Each Party shall maintain pollution liability coverage with limits not less than five million dollars (\$5,000,000) per incident and ten million dollars (\$10,000,000) in the annual aggregate covering liability for bodily injury, property damage, and environmental damage resulting from pollution and related cleanup costs incurred, all arising under this Agreement. Coverage shall be provided for both work performed on site and during transportation as well as proper disposal of hazardous materials. Proof of Pollution Liability coverage during transportation can also be provided by endorsement to the Auto Liability policy.
 - (f) **Professional Liability.** As applicable, CDWR shall require any Contractor performing construction related services to maintain errors and omissions/professional liability coverage with limits not less than one million dollars (\$5,000,000) each occurrence and in the annual aggregate.
 - (g) **Property Insurance.** Each Party shall obtain and maintain in full force and effect during the term of this Agreement, all-risk property insurance in an amount equal to the full replacement cost value with respect to any equipment, parts, materials or other property owned by each Party with sub-limits as appropriate for facilities similar to this Site. Each Party shall be liable for all deductible amounts under any such all-risk property coverage. The policy shall waive all rights of subrogation against the other Party.
 - (h) **Builder's Risk Insurance.** As applicable, CDWR shall provide, or have its Contractor provide, builder's risk property insurance during the period of construction, including testing and commissioning, in an amount equal to the full replacement cost value with respect to any equipment, parts, materials or other property owned and with sublimits as appropriate for facilities similar to this Site. CDWR shall be responsible for any deductibles under such builder's risk policy. The policy shall name Owner as an additional insured, and insurers shall agree to provide a waiver of subrogation in favor of Owner under the policy.
2. If any policy is written on a claims-made basis, provide the following:
- (a) The Retroactive Date must be shown and must be before the date of the Agreement or the beginning of work performed under the Agreement.
 - (b) Insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the Agreement.
 - (c) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Execution date, the Seller must purchase "extended reporting" coverage for a minimum of three (3) years after completion of the Agreement.
3. **Coverage Term.** Coverage shall remain in force for the complete term of the Agreement. If insurance expires during the term of the Agreement, a new certificate must be provided to the other Party as soon as practicable but no later than 15 days following the expiration of the insurance.

4. Deductible. Each Party is responsible for any deductible or self-insured retention contained within their insurance program.
5. Primary Clause. Any required insurance contained in this Agreement shall be primary, and not excess or contributory, to any other insurance carried by the other Party.
6. Inadequate Insurance. Inadequate or lack of insurance does not negate Each Party's obligations under the Agreement.
7. Should either party elect to self-insure for any required insurance, that Party shall be liable to O&M Contractor for the full equivalent of insurance coverage which would have been available to O&M Contractor the applicable insurance policies had been obtained by the Party from a third party insurer, in full compliance with the provisions under this Exhibit D, and shall pay on behalf of or indemnify O&M Contractor for all amounts which would have been payable by the third party insurer. In addition, CDWR shall act with the same promptness and be subject to the same standards of good faith as would apply to a third-party insurance company.
8. Waiver of Subrogation. All insurance or self-insurance required by this Exhibit D shall waive any right of recovery the insurer (or CDWR in the case of self-insurance) may have against the other Party because of payments the insurer or CDWR makes for injury or damage in connection with this Agreement.
9. Certificate(s). Certificate(s) shall include at least the following information: (i) the name of the insurance company, policy number and expiration date; (ii) the coverage and limits per required coverage, including the amounts of deductibles.

Exhibit E – Notices and Payments

Notice to DWR

Ted Craddock
Office of the Director
California Department of Water Resources
P.O. Box 899
Sacramento, CA 94236-0001
Email: Ted.Craddock@water.ca.gov

Robert Hedrick
Office of General Counsel
California Department of Water Resources
P.O. Box 899
Sacramento, CA 94236-0001
Email: Robert.Hedrick@water.ca.gov

Notice to Owner

City of Roseville
Attn: City Clerk
311 Vernon Street
Roseville, CA 95678

Roseville Electric
Attn: Electric Utility Director
2090 Hilltop Circle
Roseville, CA 95747

EXHIBIT F

Option Agreement

OPTION AGREEMENT

This OPTION AGREEMENT (“**Option Agreement**”) is made and entered as of _____, ____ (the “**Effective Date**”) by and between the CITY OF ROSEVILLE, CALIFORNIA, (“**Roseville**” or “**Purchaser**”) and the CALIFORNIA DEPARTMENT OF WATER RESOURCES (“**CDWR**” OR “**Seller**”). Purchaser and Seller are referred to individually as a “**Party**” and collectively as the “**Parties**”.

WHEREAS, Purchaser and Seller have entered into that certain Site Use and Installation Agreement (“**Site Agreement**”) whereby Purchaser granted Seller licenses to use a site, as specified in that agreement, through the end of 2023;

WHEREAS, the licenses contemplated in the Site Agreement are intended for the siting, installation, and use of two General Electric LM2500 combustion turbine generators (the “**Units**”) through the end of 2023;

WHEREAS, The Units could be used to provide some of the additional energy supplies required by the State of California during this period;

WHEREAS, Seller desires to grant to Purchaser an exclusive option to purchase one hundred percent (100%) of either or both of the Units and all appurtenances, subject to the terms and conditions set forth in this Option Agreement.

NOW, THEREFORE, in consideration of the promises and the covenants and conditions contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Purchaser and Seller, intending to be legally bound, hereby agree as follows:

SECTION 1. DEFINITIONS. Capitalized terms used herein but not otherwise defined shall have the meaning ascribed to them in the Site Agreement. In addition to the terms defined in the preamble and the recitals to this Option Agreement, the following terms shall have meanings assigned to them below:

“Asset Purchase Option” shall have the meaning set forth in Section 2.

“Closing” shall have the meaning set forth in Section 2(b).

“Effective Date” shall be date set forth in the preamble.

“Exercise Notice” shall have the meaning set forth in Section 2(a).

“Exercise Period” shall be the period beginning from the first day after completion of the First Contract Year until the end of the Term of the Site Agreement, during which Purchaser may exercise the option to purchase either or both of the Units.

“Governmental Approval” means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions and declarations of or with any Governmental Authority and shall include those siting and operating permits and licenses, and any of the foregoing under any applicable environmental law, that are required for the installation, use, and operation of the Units.

“Ground Lease” shall mean such other agreement allowing Seller the right to occupy the real estate comprising the Site for the duration of the Delivery Term under the PPA or this Option Agreement.

“Plant Assets” shall mean the Units, selective catalytic reduction systems, mounting structures, wiring, control systems, inverters, transformers, fencing, improvements to the premises, computer systems and other tangible assets integral to and necessary for the ongoing production of electrical energy by the Units, but shall specifically exclude:

i) all monetary assets of Seller, including but not limited to, cash and cash equivalents, accounts receivable, loans or notes receivable, prepaid expenses, deferred charges, related party debts, insurance proceeds receivable, beneficial interests in any ongoing legal proceedings of which Seller is or may become a party to; and

ii) all other assets of Seller, whether recorded on the then current balance sheet of Seller or otherwise, whether tangible or intangible, which are not integral to or necessary for the ongoing production of electrical energy by the Units.

“Proceeding” shall have the meaning set forth in Section 5(c).

“Purchase Price” shall have the meaning set forth in Section 3.

In this Option Agreement, unless otherwise indicated, the singular includes the plural and plural the singular, and the words “including,” “includes” and “include” shall be deemed to be followed in each instance by the words “without limitation.” References to Sections shall be deemed to be to Sections of this Option Agreement unless otherwise indicated; references to agreements and other contractual instruments shall be deemed to include all subsequent amendments, extensions and other modifications to such instruments (without, however, limiting any prohibition on any such amendments, extensions and other modifications by the terms of this Option Agreement).

SECTION 2. PURCHASE OPTION. Seller grants Purchaser the exclusive option, but not the obligation, to purchase a one hundred percent (100%) interest in the Plant Assets of either or both of the Units during the Exercise Period (“Asset Purchase Option”).

(a) At any time during the Exercise Period, Purchaser shall have the right, but not the obligation, to exercise the Asset Purchase Option by delivering written notice of exercise (“Exercise Notice”) to Seller. The Purchaser shall specify whether Purchaser intends to purchase one or both of the Units. If electing to purchase one Unit, Purchaser shall have the right in its sole discretion to select which Unit it elects to purchase. Upon receipt of Exercise

Notice, Seller shall be obligated to sell to Purchaser one hundred percent (100%) of the then-owned Plant Assets, for the Unit or Units described in the Exercise Notice. If the Purchaser exercises the Asset Purchase Option as to only one of the Units, the Purchase shall retain the right, but not the obligation, to exercise a second Asset Purchase Option for the second Unit, so long as such Asset Purchase Option is exercised during the Exercise Period. The rights and obligations of the Parties shall apply as set forth in this Option Agreement as to the second Asset Purchase Option, in the same manner as they apply for the first Asset Purchase Option.

(b) Upon receipt of Exercise Notice by Seller, Seller and Purchaser shall use commercially reasonable efforts to close and consummate the sale and purchase transaction ("Closing") within six (6) months of such receipt.

(c) The Asset Purchase Option shall terminate if any of the following events occur:

(i) Purchaser provides written notice to Seller, at any time prior to the expiry of the Exercise Period, stating Purchaser declines its Asset Purchase Option;

(ii) The Asset Purchase Option is not exercised prior to expiry of the Exercise Period;

(iii) The Site Agreement terminates prior to exercise of the Asset Purchase Option by Purchaser.

SECTION 3. PURCHASE PRICE. If Purchaser exercises the Asset Purchase Option, the "Purchase Price" for the Plant Assets, shall be calculated as follows:

The purchase price to be paid by Purchaser for the Units is ten million dollars (\$10,000,000.00) for the first Unit and eleven million dollars (\$11,000,000.00) for the second Unit, computed as the price equal to seventy percent (70%) of the estimated equipment value of approximately twenty million dollars (\$20,000,000.00) per Unit, minus three million dollars (\$3,000,000.00) per unit for avoided decommissioning costs, and minus an additional one million dollars (\$1,000,000.00) of avoided decommissioning administration costs.

SECTION 4. SELLER REPRESENTATIONS, WARRANTIES AND COVENANTS.

Throughout the effectiveness of this Option Agreement, Seller represents, warrants and covenants as follows:

(a) Except as permitted under the Site Agreement, Seller shall not sell or otherwise transfer the Plant Assets associated with the Units for which Purchaser has specified in its Exercise Notice to any third party other than Purchaser. For the avoidance of doubt, any sale or transfer of an affiliated entity which has an ownership interest in the Plant Assets to any third party other than Purchaser is expressly prohibited. Purchaser shall have all remedies available to it at law and in equity to enforce its exclusive purchase right hereunder, including injunctive relief.

SECTION 5. CLOSING CONDITIONS. The Parties agree that any sale of the Plant Assets by Seller, as the case may be, to Purchaser under this Option Agreement shall be made pursuant to a purchase agreement in a form to be mutually agreed upon between the Parties ("Purchase Agreement"). Such Purchase Agreement shall incorporate the relevant terms of this Option Agreement, plus contain conditions, covenants, representations, warranties, remedies and other

provisions which are typical in the industry. In addition, the following conditions must be satisfied before or at Closing:

- (a) Default. Seller shall not be in default under the Site Agreement.
- (b) Resolutions; Incumbency Certificates. Purchaser shall have received copies of all requisite resolutions and incumbency certificates of Seller and any other documents evidencing all actions taken by Seller, as applicable to authorize the consummation of the transactions contemplated by the Closing, such resolutions to be certified as of the closing date by an authorized representative of Seller.
- (c) Litigation. No action, order, writ, judgment or decree outstanding, audit, hearing, investigation, claim, litigation, or suit (whether civil, criminal, regulatory, administrative, investigative, or informal) commenced, brought, conducted, or heard by or before, or otherwise involving, any Person ("Proceeding") shall have been instituted by any Governmental Authority or by any other Person and, at what would otherwise have been the Closing date, remain pending to delay, restrain or prohibit any part of the transactions contemplated by this Option Agreement or to seek any divestiture or to revoke or suspend any Governmental Approval by reason of any or all of the transactions contemplated by this Option Agreement; nor shall any Governmental Authority have notified either Party or any of their respective Affiliates that consummation of any part of the transactions contemplated by this Option Agreement would constitute a violation of any requirements of law or any jurisdiction or that it intends to commence a Proceeding to restrain or prohibit any part of the transactions contemplated by this Option Agreement or to require such divestiture, revocation or suspension; unless, in any such case, such Governmental Authority or other Person shall have withdrawn such notice and abandoned such Proceeding to the satisfaction of Purchaser.
- (d) Assets and Property. From the date hereof to the Closing date, there must not have been material, damage to or destruction or loss of, the machinery or equipment in the Plant Assets, whether or not covered by insurance, reasonable wear and tear excluded.
- (e) No Liens or Encumbrances. Seller shall convey to Purchaser the Plant Assets specified in the Exercise Notice free and clear of liens, encumbrances, mortgages, leases, obligations, security interests, irregularities, pledges or defects.
- (f) No Material Adverse Effect. Seller shall have confirmed, in its reasonable determination, that to its knowledge, it is not aware of facts or circumstances exist that do or could reasonably be expected to have, and no action shall have been taken or omitted and no event shall have occurred or be threatened which has had or could reasonably be expected to result in, a material adverse effect on the value, the remaining useful life or the utility of the Plant Assets specified in the Exercise Notice.
- (g) Title. Seller shall convey all titles, deeds, interests and rights to the Plant Assets specified in the Exercise Notice, good and marketable to Purchaser, and shall cooperate with Purchaser to record, as applicable, all titles, deeds, interests and rights to Plant Assets with appropriate Governmental Authorities.

(h) Governmental Approvals. If applicable, Seller shall have validly assigned to Purchaser at Closing all Governmental Approvals necessary for Purchaser's ownership and operation of the Plant Assets.

(i) Deliveries. Each of the following documents must have been delivered to Purchaser:

(i) A certificate, in form and substance satisfactory to Purchaser, executed by an officer of Seller certifying that each of the conditions specified in this Section 5 have been satisfied;

(ii) If applicable, all titles, deeds, interests and rights to the Plant Assets subject to the Exercise Notice;

(iii) If applicable, a bill of sale, dated the Closing date;

(iv) If applicable, transfer documents for the Plant Assets subject to the Exercise Notice, as applicable dated the Closing date; and

(v) Such other documents as Purchaser may reasonably request for the purpose of (a) evidencing the accuracy of any Seller's representations and warranties, (B) evidencing the performance by Seller of, or the compliance by Seller with, any covenant or obligation required to be performed or complied with by Seller, or (C) evidencing the satisfaction of any condition referred to in this Section 5.

SECTION 6. ADDITIONAL CLOSING REQUIREMENTS. If Purchaser decides to proceed to Closing, then at Closing, Seller and Purchaser shall deliver the Purchase Agreement duly executed by an authorized officer of Seller and Purchaser. In addition, at Closing:

(a) Purchaser shall pay the Purchase Price to Seller in lawful currency of the United States of America.

(b) Seller and Purchaser shall each bear their own costs and expenses incurred in connection with such purchase and sale, and shall equally share any mutually applicable Closing costs.

(c) Seller shall be responsible for payment of any sales and transfer taxes customarily payable by a seller following the sale of the Plant Assets, as applicable, to Purchaser, and Purchaser shall be responsible for payment of any sales and transfer taxes customarily payable by a buyer following the purchase of the Plant Assets, as applicable, by Purchaser, to the extent Purchaser is otherwise required by federal or state law to pay such taxes.

(d) Seller shall deliver to Purchaser all consents and approvals required for sale and transfer to Purchaser of the Plant Assets, as applicable.

(e) Seller shall provide to Purchaser a training program in which Purchaser employees are trained in Plant Assets operation and maintenance.

(f) Seller shall deliver to Purchaser all relevant Plant Asset documents and drawings in its possession, including but not limited to an as-built survey of the Site, Unit as-built drawings and Unit manuals and recommended operating and maintenance procedures, but not including any proprietary or confidential information, except that for any confidential information that is necessary for Purchaser to safely and reliability own and operate the Units in conformance with applicable Law and mandatory reliability standards issued by the NERC and/or WECC, the Seller shall deliver such documents and drawings to Purchaser, and the Parties shall negotiate commercially reasonable terms to protect such documents and drawings, consistent with applicable Law, and NERC and WECC reliability standards.

SECTION 7. DESIGNEES, SUCCESSORS AND ASSIGNS.

(a) Subject to Section 4(a), this Option Agreement shall be binding on and enforceable against Seller (or any successor entity thereof which owns and operates the Plant Assets), including any creditors of Seller to the extent they acquire possession of, or the right to sell, lease, assign, gift, hypothecate, transfer or otherwise dispose of (including as a result of any operation of law, voluntarily or involuntarily) all or any portion of Plant Assets as result of exercising any remedies against Seller.

(b) This Option Agreement and the rights and options granted in it shall inure to the benefit of Purchaser and its permitted designees, successors and assigns.

SECTION 8. AMENDMENT; WAIVER.

(a) This Option Agreement may not be amended or otherwise modified except by a written instrument signed by the Parties to this Option Agreement.

(b) Purchaser may at any time waive any of its rights under this Option Agreement, but only by a written instrument signed by Purchaser; and any such waiver shall be effective only in the specific instance and for the specific purpose stated in such written instrument. No waiver other than as set forth in the preceding sentence shall be effective.

SECTION 9. NOTICES.

(a) Any notice or other written communication under this Option Agreement must be in writing and will be deemed to have been duly given only if delivered personally or by facsimile transmission (with printed confirmation) or by overnight courier to the parties at the following addresses or facsimile numbers:

If to Seller:

Ted Craddock
Office of the Director
California Department of Water Resources
P.O. Box 899
Sacramento, CA 94236-0001

If to Purchaser:

City of Roseville
Attn: City Clerk
311 Vernon Street
Roseville, CA 95678

(b) All notices and other communications to be given under this Option Agreement will (i) if delivered personally to the address provided in Section 9(a) above, be deemed given upon delivery and (ii) if delivered by overnight courier to the address as provided in Section 9(a) above, be deemed given upon receipt.

(c) Any Party from time to time may change its address, facsimile number or other information for the purpose of notices to that Party by giving written notice specifying such change to the other Parties to this Option Agreement.

SECTION 10. DISPUTE RESOLUTION.

(a) Dispute of Claim. Any action, claim or dispute with which either Party may have against the other arising out of or relating to this Option Agreement or the transactions contemplated hereunder, or the breach, termination or validity thereof ("Dispute") which any Party may have against the other shall be submitted in writing to the other Party. The written submission of any Dispute shall include a concise statement of the question or issue in dispute together with a statement listing the relevant facts and documentation that support the claim.

(b) Good Faith Resolution. The Parties agree to cooperate in good faith to expedite the resolution of any Dispute. Pending resolution of a Dispute, the Parties shall proceed diligently with the performance of their obligation under this Option Agreement.

(c) Informal Negotiation. The Parties shall first attempt in good faith to resolve any Dispute through informal negotiations by the senior management of each Party.

(d) Litigation Rights. In the event the Parties are unable to satisfactorily resolve the Dispute within ninety (90) days from the receipt of notice of the Dispute, subject to any extensions of time as may be mutually agreed upon in writing, either Party may initiate litigation in a court of law with jurisdiction located in Sacramento County, California, which shall be the exclusive venue to litigate disputes.

(e) Recovery Costs. In the event any action is brought at law or in equity in court to enforce any provision of this Option Agreement, or for damages by reason of any alleged breach of this Option Agreement, then the prevailing Party will be entitled to recover from the other Party all costs of the suit, including, court costs and the prevailing Party's reasonable attorney's fees and related costs and expenses of litigation.

SECTION 11. MISCELLANEOUS.

(a) The headings used in this Option Agreement have been inserted for convenience of reference only and do not define, limit, interpret or constitute a part of this Option Agreement.

(b) Any provision of this Option Agreement which is held to be illegal, invalid or unenforceable in any jurisdiction under any present or future law shall, as to such jurisdiction, be

ineffective to the extent of such illegality, invalidity or unenforceability without invalidating the remaining provisions of this Option Agreement.

(c) This Option Agreement shall be governed and construed in accordance with the laws of the state of California.

(d) Any Party to this Option Agreement shall be entitled to pursue any and all remedies available at law or in equity (including specific performance and injunctive relief) for any failure to comply with any material terms of this Option Agreement.

(e) This Option Agreement may be executed in any number of counterparts, each of which, when executed and delivered to the other Parties, will be deemed an original, but all of which together will constitute one and the same instrument.

* * *

IN WITNESS WHEREOF, each Party to this Option Agreement has caused this Option Agreement to be executed by its duly authorized officer as of the date first above written.

**CALIFORNIA DEPARTMENT OF WATER
RESOURCES**

CITY OF ROSEVILLE, CALIFORNIA

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____