San Francisco Water Power Sewer

Services of the San Francisco Public Utilities Commission

CleanPowerSF Update

December 13, 2011

Mike Campbell
Director, CleanPowerSF
San Francisco Public Utilities Commission

Summary of Recommended Resolution

- Approves Shell contract so long as final contract is substantively similar to draft
- Authorizes General Manager to submit Shell contract and supplemental appropriation of $19.5M to Board of Supervisors for consideration
- Requires General Manager to return to SFPUC for authorization regarding means of meeting CPUC performance bond requirement and prior to executing initial Confirmation Agreement
- Establishes conditions precedent contract effectiveness and program launch
- Directs General Manager to continue to negotiate with Noble Americas

Conditions Precedent to Final Shell Agreement and Program Launch

- Shell contract approvals in two steps:
  (1) Master Contract – "rules of the road" for roles and responsibilities for Shell and City
  (2) Confirmation Agreement – final pricing and details of products purchased for initial phase
- Execution of Confirmation Agreement requires:
  - CleanPowerSF rates approved by SFPUC through rate-setting process (including Rate Fairness Board hearings)
  - SFPUC has resources necessary to meet CPUC bond amount
  - Appropriations for supplier contracts have been authorized
  - Power Enterprise has rates in place to be financially stable
  - Back office contract with Noble Americas or another entity approved
  - The termination provisions of the contract do not take effect unless and until a confirm is signed by the City

Noble Americas: Term Sheet Highlights

- Noble Americas to provide:
  - (1) Electronic transaction information regarding customer participation, usage, and billing information
  - (2) Customer call center functionality, with service level agreement specifying handling of customer contacts
- Customer call center offices to be located within San Francisco
- Requires appropriation of $250,000 to cover termination of contract prior to contract expiration
- Working on finalizing contract language consistent with term sheet

San Francisco Water Power Sewer

Timeline for Serving Customers

Date	Action
Dec 2011	**SFPUC approval of Master Contract with Shell and supplemental appropriation of $19.5M**
Dec 2011	Master Contract with Shell and $19.5M appropriation introduced at Board of Supervisors
Jan 2012	Completion of contract with Noble Americas
Jan 2012	City Economist and Controller reports on CleanPowerSF
Jan 2012	**Approvals for Contracts and Appropriations**
Feb 2012	Commission approves indicative rates and final rate design for CleanPowerSF through rate-setting process (including Rate Fairness Board hearings)
Feb 2012	Anticipated date for CPUC decision on CCA bond amount (if later, may push out launch date)
Feb 2012	Commission identifies resources to satisfy CPUC bond
Mar 2012	Final CleanPowerSF rates approved by Commission and Confirmation Agreement with shell executed
Mar – Oct 2012	Customer education and notifications for opt-out
July – Aug 2012	**Enrollment Phase 1**

Background Materials

San Francisco Water Power Sewer

Proposed Program & Goals

Item	Goal (from 2007 Ord.)	Proposed Program
Rates	Meet or Beat PG&E	Premium Rate
Stability	Multi-year fixed rates	Multi-year fixed rates
Energy Mix	51% renewable in 10 yrs	100% renewable day 1
Renewable Dev.	360 MW new resources	Develop resources to match program size and financial capacity
Enrollment	Entire City (375K accts)	Phased approach -- initial 30MW program (230K res accts in Phase 1)
Supplier	Single suppler	(1) Energy supplier, and (2) Back office suppler
Risk	Supplier takes all risk	Appropriation of $19.5M as collateral for Phase 1

Contract & Term Sheet Highlights

- Mitigation of program risk by phasing program
  - Initial target of 75,000 participating residential customers
  - Opt-outs to be sent to approximately 2/3 of eligible residential accounts
  - Assume high opt-out rates, based on market research, to mitigate risk of "guessing wrong" and having insufficient load to satisfy contractual obligation.
- Offer customers 100% renewable product.
- Program to launch in mid-2012 to correspond to PG&E's rate shift to "flat" generation rates.
- Shell Energy to provide energy products, Noble Americas to provide customer-side services. (4.5 year initial term)
- City would be required to appropriate approximately $19.5 million to get initial phase launched.
- Once customer revenue stream established, renewable build-out to follow, with City resources layered in to replace Shell resources.

Shell Highlight - Appropriations for Shell Contract: $19 Million

- $15 Million to secure City's obligation to make Shell whole if City defaults and contract terminates prior to contract expiration.
  - $15 Million appropriation would reside in "escrow" account .
  - Method for reducing $15 collateral over duration of contract.
- $4.0 Million appropriated as reserves to mitigate potential program risks.
- Note: $15 of the $19 Million is collateral to be used **only** in unlikely event of early program termination.

Shell Highlight: City Liability Could Exceed $15 M in Limited Circumstance

- If the program is not financially successful, requiring the City to default and terminate the contract, the City must reimburse Shell for its losses, but liability is capped at $15 million.
- Should the City default while the program is successful, and the contract is terminated, the City must reimburse Shell for its losses, and liability is not capped.
  - SFPUC is committed to requesting supplemental appropriation for Shell losses that may exceed the $15M cap.

Shell Highlight: Shell Services

- Shell takes on banded volume risk.
  - 5% +/- compared to forecast monthly sales volumes.
  - Actual sales volumes above or beyond band to be set by weighted average spot price during the period.
- Shell to provide specified renewables volumes
  - Contract specifies volumes of renewables, and specifies the type of renewables to be provided (based on CA regulatory framework)
- Shell to provide scheduling services for all supplies

Shell Highlight: Financial Structure

- Customer revenues deposited from PG&E directly to lockbox controlled by Shell.
  - Contract terms specify approved transactions.
  - $2.5M reserve balance required in account at all times.
  - Shell to pay itself monthly from customer receipts after invoicing.
  - CleanPowerSF to get "swept" account of remaining funds after Shell makes monthly payment.
  - SFPUC to have full access to review lockbox balance and transactions.
  - Shell has first priority lien on lockbox funds.
- Lockbox structure provides Shell with additional collateral benefit (reducing overall appropriation).

Preconditions to Launch

- After SFPUC and Board have approved master contract language, the final contract documents must be executed that include final pricing and launch date.
- Preconditions to signing final contract include:
  - CleanPowerSF rates approved by SFPUC through rate-setting process
  - SFPUC has resources necessary to meet CPUC bond amount
  - Appropriations for supplier contracts have been authorized
  - Power Enterprise has rates in place to be financially stable

AGENDA ITEM
Public Utilities Commission
City and County of San Francisco

DEPARTMENT Power Enterprise AGENDA NO. **12**

MEETING DATE December 13, 2011

Approve a Contract and Necessary Appropriations for Phase One of CleanPowerSF Program and Authorize the General Manager to Introduce the Contract and Appropriations to the Board of Supervisors for Consideration and Take Additional Steps to Complete Development of CleanPowerSF: Regular Calendar
Director: Michael Campbell, Community Choice Aggregation Program

CS-160: Approve Contract and Necessary Appropriations for Phase One of CleanPowerSF Program and Authorize the General Manager to Introduce the Contract and Appropriations to the Board of Supervisors for Consideration and Take Additional Steps to Complete Development of CleanPowerSF.

Summary of Proposed Commission Action:	**Approve Contract and Necessary Appropriations for Phase One of CleanPowerSF Program and Authorize the General Manager to Introduce the Contract and Appropriations to the Board of Supervisors for Consideration and Take Additional Steps to Complete Development of CleanPowerSF.** The attached resolution approves a contract between the City, acting through the San Francisco Public Utilities Commission, and Shell Energy North America (Shell) for CleanPowerSF, San Francisco's Community Choice Aggregation (CCA) program, as detailed in the attached draft contract. The resolution authorizes the General Manager to execute a final contract that is substantially in the form of the attached draft, subject to approval by the Board of Supervisors and satisfaction of other specified conditions. The resolution also authorizes the General Manager to submit to the Board of Supervisors for review and consideration the draft contract with Shell and appropriations of $19.5 million. The resolution further authorizes the General Manager to take additional steps necessary to complete development of CleanPowerSF, including continuing negotiations with Noble Americas for customer care and billing services, as reflected in the attached term sheet.

APPROVAL:

DEPARTMENT / BUREAU — 12/9/11

FINANCE — Todd L. Rydstrom

COMMISSION SECRETARY — Mike Housh

GENERAL MANAGER — Ed Harrington

Background:	Assembly Bill 117 (Migden, 2002) allows public agencies to aggregate the electrical load of interested electricity consumers within their jurisdictional boundaries. Pursuant to this law, the City has established a CCA program known as CleanPowerSF to provide electric power to the residents and businesses located within its jurisdiction. The San Francisco Board of Supervisors established the City's CCA program in May 2004 (Ordinance 86-04). The Ordinance found that CCA would allow the City to increase the scale and cost-effectiveness of renewable energy, conservation and energy efficiency in San Francisco and to increase local control over electricity prices and resources. To implement the program, Ordinance 86-04 directed the development of a draft Implementation Plan ("IP") and the preparation of a draft Request For Proposals ("RFP") to solicit an electricity supplier for the program. In December 2004, the Board of Supervisors created a Citizens Advisory Task Force ("Task Force") to advise the City regarding the draft Implementation Plan and the draft RFP. Mayor Gavin Newsom signed a Declaration of Mayor or Chief County Administrator Regarding Investigation, Pursuit or Implementation of Community Choice Aggregation on December 16, 2005. This form was submitted to PG&E to initiate the process of obtaining access to confidential PG&E customer data in pursuit of establishing a CCA program. After an extensive process that involved public meetings of the San Francisco Local Agency Formation Commission ("LAFCO") and the Task Force, and that benefited from the participation of interested parties and advocacy groups, the Board of Supervisors approved a Draft Implementation Plan (Draft IP) in June 2007 (Ordinance 147-07). The adopted Draft IP set forth goals and policies for the City's CCA program. Based on the Draft IP, Ordinance 147-07 also provided direction for the City's RFP for an electricity supplier. The Ordinance further directed the issuance of a Request For Information ("RFI") to solicit input from interested parties regarding the development of the program. Ordinance 147-07 found that the RFI responses and other information obtained in implementing the program would necessitate changes to the Draft IP and, accordingly, directed SFPUC, in consultation with LAFCO, to prepare a revised IP for review and approval by the Board of Supervisors. As required by Ordinance 147-07, SFPUC issued an RFI in November 2007. In April 2009, SFPUC issued a request for qualifications ("RFQ") from potential electricity suppliers. SFPUC, in consultation with LAFCO, used the information obtained from these solicitations to prepare an RFP.

	The Board of Supervisors approved the issuance of an RFP in October 2009 (Ordinance 232-09). In November 2009, SFPUC issued the RFP. The City received five responses to its RFP and, in January 2010, identified Power Choice, LLC as the highest ranked proposer. The City engaged in negotiations with Power Choice, LLC for electricity supply and other services. In January 2010, SFPUC prepared a revised Implementation Plan (IP) and Statement of Intent for approval by the Board of Supervisors to file with the CPUC in accordance with Ordinance 147-07. The Implementation Plan was revised to allow more flexibility in the resources that may be used to make up the CleanPowerSF supply portfolio, and to notify the CPUC that the SFPUC may roll out the program in phases if phasing allows it to maximize demand-side management programs and renewable energy impacts, synergies with local ordinances and other customer programs, cost of service and customer load characteristics, and other operational considerations. The Board of Supervisors held a hearing on the IP in the Budget and Finance Committee on February 17, 2010, and forwarded the Ordinance adopting the IP to the full Board of Supervisors with a recommendation for approval. The Board of Supervisors considered and voted on the Ordinance adopting the revised IP at its public meetings on February 23, 2010 and March 2, 2010. On March 2, 2010, The Board of Supervisors finally approved the Ordinance and authorized the filing of the IP with the CPUC (Ordinance 45-10). The IP was certified by the CPUC on May 18, 2010. The SFPUC authorized the General Manager to execute a service agreement with Pacific Gas and Electric Company (PG&E) on May 11, 2011. The General Manager executed the Community Choice Aggregation Service Agreement (the Service Agreement) with PG&E on May 27, 2010. The Service Agreement is a contract which governs the business relationship between PG&E and the City with respect to CleanPowerSF. Among other things, the Service Agreement includes provisions for audits, dispute resolution, events of default, billing and payment terms and indemnity. The Service Agreement incorporates by reference PG&E's CCA tariffs which set forth the operational and financial duties of aggregators and PG&E in establishing and conducting CCA service. Negotiations with Power Choice, LLC, were unsuccessful, and on August 5, 2010, the SFPUC issued a second RFP seeking an electricity supplier for the program. No bidders met the minimum qualifications of that RFP, and on February 8, 2011, the SFPUC authorized the General Manager to negotiate with one or more creditworthy firms to create a program that most closely achieves the City's goals (Resolution 11-0027). Shortly thereafter, SFPUC engaged in negotiations with Shell Energy North America for electricity supply

	and Noble Americas for customer care and billing services. **Contract with Shell** The SFPUC has negotiated the key terms of a contract with Shell for electricity necessary to serve Phase One of the CleanPowerSF Program. The contract consists of three parts: (i) a Master Agreement (setting forth general terms and conditions and providing that Shell and the City may enter into transactions to buy particular amounts, quantities and types of electric products); (ii) a Security Agreement (giving Shell control over the account that holds the receipts received from CleanPowerSF customers and a first priority security interest in that account); and (iii) one or more Confirmations (specifying the price, quantity and type of products for specific electricity purchase transactions). Under this contract, Shell will provide and the City will purchase the following for four and one half-years: (i) electricity to serve CleanPowerSF customers, including renewable energy; (ii) scheduling coordinator services to go along with the power supplied. Under the contract with Shell, the City must provide $19 million for startup costs and program reserves. The $19.5 million appropriation consists of the following: (1) $15,000,000 to be held in an escrow account to fund the contract termination payment to Shell. The termination payment is intended to cover reasonable risk and costs that might be incurred by Shell should the program cease operations during the contract period. (2) $2,500,000 to fund a Program Reserve to be deposited into the customer revenues secured account, controlled by Shell. The Program Reserve amount is intended to provide security to Shell that there will be sufficient cash on hand in the customer revenues secured account to cover Shell Energy's monthly bills. (3) $1,500,000 to be held in an Operating Reserve, to ensure short-term unanticipated costs associated with startup and initial operations do not create long-term program stability issues (for example, additional costs associated with bringing in additional customers, or delays in receipt of revenues, in the event that opt-out rates are higher than anticipated). (4) $500,000 to fund additional start-up costs as well as a potential contract termination payment to Noble Americas to cover reasonable risk and costs that might be incurred by Noble Americas should the program cease operations during the contract period. Shell will not have a right to collect the termination payment or reserves unless and until the City executes a confirmation and all other conditions are satisfied. The $19.5 million is in addition to a total of $6 million that already has been appropriated to CleanPowerSF through September 2011, including $1 million in July 2011.

	The draft contract does not specify the cost of the electricity to be provided by Shell. These costs will be determined before the program is launched, after Shell has obtained prices for the electricity it will provide. Rates for CleanPowerSF will be established based on cost estimates developed by SFPUC using market information and information from Shell. The proposed resolution authorizes the General Manager to execute the contract upon its approval by the Commission and the Board of Supervisors. The contract would not become effective until satisfaction of conditions established by the contract as well as those established by the Commission or the Board of Supervisors. The proposed resolution imposes the following conditions on the launch of the CleanPowerSF: (1) CleanPowerSF rates are approved by the SFPUC and Board of Supervisors through the process established in section 8B.125 of the City's Charter, and the SFPUC has determined that those rates are sufficient to cover the cost of power and services provided by Shell as well as other costs required for the program, (2) the California Public Utilities Commission (CPUC) has made its final determination of the CCA bond amount required by Public Utilities Code Section 366.2 and the SFPUC has the resources and all necessary authorizations to obtain the bond, (3) all appropriations required by the CCA supplier contracts have been authorized, and (4) the SFPUC Power Enterprise has rates in place to be financially stable and in compliance with its reserve policies, (5) a contract for customer billing, data management and other administrative services with Noble Americas or another entity has been approved. Phase One of the CleanPowerSF program will follow the state-mandated opt-out process for a subset of customers in San Francisco in order to meet the supply amount determined in the contract with Shell. In addition, any customer in San Francisco may choose to participate in Phase One.
Result of Inaction:	Commission action is required to approve the Shell contract and grant authority to the General Manager to submit the contract and appropriations for review and consideration by the Board of Supervisors.
Schedule:	If the Commission approves the attached Resolution, the General Manager will forward the Shell Energy North America draft contract and appropriations to the Board of Supervisors for its review and consideration. The SFPUC staff, in concert with LAFCo staff, will continue negotiations with Noble Americas to develop a contract consistent with the attached term sheet and will bring any final contract to the Commission for its approval.
Recommendation:	SFPUC staff recommends that the Commission adopt the attached

	Resolution.
Attachment:	SFPUC Resolution Draft contract with Shell Energy North America Draft Term Sheet with Noble Americas Request for Supplemental Appropriation

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. _____

WHEREAS, The San Francisco Board of Supervisors established a Community Choice Aggregation (CCA) program in 2004 (Ordinance 86-04) and has implemented the program, called CleanPowerSF, through the work of the SFPUC in consultation with the San Francisco Local Agency Formation Commission (Ordinances 146-07, 147-07, and 232-09); and

WHEREAS, The SFPUC, in response to direction from the Board of Supervisors, issued two Request for Proposals (RFPs) seeking suppliers to provide key services for CleanPowerSF; and

WHEREAS, The SFPUC RFPs stated the City's goals of meeting the state's Renewables Portfolio Standard, providing 51% renewable energy at prices that meet or beat PG&E rates, developing new renewable energy resources, and providing these benefits with no financial risk to the City; and

WHEREAS, Upon advice from LAFCO and the SFPUC, and approval of the Board of Supervisors, the first RFP, CS-978R, was issued on November 5, 2009 for electricity supply, renewable project development and customer care and billing services; and

WHEREAS, In order to elicit the largest possible pool of respondents, CS-978R afforded respondents flexibility with respect to meeting certain City goals for CCA including the timeline to achieve the requested renewable portfolio content and development of new renewable resources; and

WHEREAS, The SFPUC received five (5) responses to CS-978R on December 29, 2009, from Fotowatio Renewable Ventures, Invenergy, LLC, Main Street Power, Power Choice, LLC , and Shell Energy North America, but only two (2) of these included electricity supply; and

WHEREAS, Negotiations with the highest ranked proposer (Power Choice, LLC) were not successful; and

WHEREAS, After further consideration and review by the SFPUC and LAFCO, a decision was made to provide for development of new renewable resources by the City through a separate process, and a second RFP, CS-160, was issued on August 5, 2010, for electricity supply and customer care and billing services for CleanPowerSF; and

WHEREAS, The SFPUC received four (4) responses to CS-160 on November 3, 2010, from Constellation Energy, Noble Americas, Power Choice, Inc, and Shell Energy North America, and none met the minimum qualifications and minimum proposal requirements of the RFP; and

WHEREAS, On November 15, 2010, respondents were informed of the deficiencies in their proposals and were given until December 10, 2010, to supplement their proposals; and

WHEREAS, The revised proposals were received on December 10, 2010, and still failed to meet minimum qualifications and minimum proposal requirements set forth in the RFP, including a comprehensive pricing proposal that meets or beats PG&E rates; and

WHEREAS, The General Manager of the SFPUC determined that the RFP could not be altered and reissued in a manner likely to attract responsive offers; and

WHEREAS, On February 8, 2011, the SFPUC authorized the General Manager to negotiate with one or more creditworthy firms for power supply and customer care and billing services for CleanPowerSF; and

WHEREAS, SFPUC staff began negotiations with Shell Energy North America and Noble Americas in February 2011 for electricity supply services and customer care and billing services that most closely achieve the City's goals; and

WHEREAS, SFPUC has negotiated a draft contract with Shell Energy North America that would (i) mitigate program risks by using a phase-in approach, (ii) offer customers a 100% renewable product, (iii) require a $19.5 million initial appropriation to fund program security and reserves ($19 million) and additional start-up costs ($500,000), and (iv) allow for development of new renewable resources to be added in to the electricity portfolio as a customer revenue stream is established; and

WHEREAS, Phase One of the CleanPowerSF program will follow the state-mandated opt-out process, enrolling sufficient customers to meet the contracted volume of electricity not to exceed an average of approximately 30 MW, and any customer within San Francisco will be eligible to participate during Phase One; and

WHEREAS, As reflected in the attached term sheet, SFPUC staff is negotiating an agreement with Noble Americas for startup, data management, customer information, billing administration and periodic reporting services, and intends to require Noble Americas to make commercially reasonable efforts to locate a call center in San Francisco that will provide local jobs; and

WHEREAS, The contract terms negotiated with Shell Energy and the Draft Term Sheet reflecting negotiations with Noble Americas do not represent any binding agreements, and SFPUC and the Board may each in its sole discretion approve or reject any proposed contract with Shell Energy or Noble Americas submitted to such body for its approval; now, therefore be it

RESOLVED, That the SFPUC approves the contract with Shell Energy North America to purchase up to 30 MW of electricity under terms that are substantively similar to the attached drafts and authorizes the General Manager to execute the contract subject to approval by the Board of Supervisors; and be it

FURTHER RESOLVED, That the SFPUC General Manager is authorized to continue negotiating with Noble Americas for customer care and billing services for the CleanPowerSF program consistent with the terms described in the attached and to bring to the Commission a final contract for its review; and be it

FURTHER RESOLVED, That the SFPUC General Manager will not be authorized to sign a final contract with Noble Americas until after such contract has been approved by the

SFPUC and Board of Supervisors each in its sole and absolute discretion irrespective of whether or not such contract reflects the terms set forth in the "Draft Term Sheet"; and be it

FURTHER RESOLVED, That the SFPUC approves the use of $19.5 million for the initial phase of the CleanPowerSF program for the purposes of providing financial security to its supplier counterparties, as well as ensuring sufficient financial capacity for the program's financial health over the term of the initial contract; and be it

FURTHER RESOLVED, That to mitigate the financial risks associated with starting a Community Choice Aggregation Program the initial opt-out notices shall be directed to a portion of the available residential accounts in San Francisco, in order to provide a reserve of residential accounts that could be offered the program should opt-outs be higher than estimated; and be it

FURTHER RESOLVED, That if a contract with Shell is approved by the Board of Supervisors, the SFPUC General Manager will only have authorization to launch the program if the following conditions are met: (1) CleanPowerSF rates are approved by the SFPUC and Board of Supervisors through the process established in section 8B.125 of the City's Charter, and the SFPUC has determined that those rates are sufficient to cover the cost of power and services provided by Shell as well as other costs required for the program, (2) the California Public Utilities Commission (CPUC) has made its final determination of the CCA bond amount required by Public Utilities Code Section 366.2 and the SFPUC has the resources and all necessary authorizations to obtain the bond, (3) all appropriations required by the CCA supplier contracts have been authorized, and (4) the SFPUC Power Enterprise has rates in place to be financially stable and in compliance with its reserve policies, (5) a contract for customer billing, data management and other administrative services with Noble Americas or another entity has been approved; and be it

FURTHER RESOLVED, That the General Manager shall return to the SFPUC for additional approval before the initial Confirmation with Shell is signed; and be it

FURTHER RESOLVED, That the SFPUC authorizes the General Manager to submit the draft contract with Shell and the appropriation of $19.5 million to the Board of Supervisors for its review and consideration.

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of _____

_____

Secretary, Public Utilities Commission

Draft Term Sheet

Between Noble Americas Energy Solutions LLC ("Noble")
And City and County of San Francisco ("City")

This document describes the status of the contract discussions with Noble Americas Energy Solutions LLC ("Noble") for back office services necessary to support the financial and informational transactions for the operation of its Community Choice Aggregation program (named "CleanPowerSF"). The City and County of San Francisco (the "City") acting by and through the SFPUC is in the process of implementing the CleanPowerSF Program. This document makes no commitments to Noble of any kind in relation to the CCA Program. The SFPUC, and the Board, may each in its sole discretion approve or reject any proposed contract with Noble submitted to such body for its approval irrespective of whether or not such contract is consistent with the status of the negotiations described in this Term Sheet. This Term Sheet does not constitute an agreement between the City and Noble. Any such binding agreement would only arise as a result of the negotiation, approval, execution and delivery of a contract as contemplated hereby. Neither the City nor Noble may bring any claim or action against the other party as a result of a failure to agree on or enter into such contract.

EFFECTIVE PERIOD: July 1, 2012 through December 31, 2016

SERVICES PROVIDED BY NOBLE:

1. Start-Up Services: Demonstrate that Noble can exchange information with PG&E using Electronic Data Interchange ("EDI"), Internet or an electronic format acceptable to the PG&E. Specifically, confirm system compatibility and exchange capabilities related to CCA Service Requests ("CCASR's"), billing collections, meter reading and electricity usage data. Execute the Meter Data Management Agent services agreement with PG&E to order to make the PG&E data accessible to Noble.
2. Data Manager Services: Noble shall provide the following Data Manager Services using EDI to facilitate information exchange with PG&E as follows: 1) Receive CCASRs indicating changes to enrollment status of customer accounts (814 Electronic Data Interchange Files); 2) Obtain customer usage data from the PG&E's server (867 Electronic Data Interchange Files); 3) Communicate the amount to be billed by PG&E for services provided by the CCA (810 Electronic Data Interchange Files); 4) Receive transaction data pertaining to customer payment of CCA charges after PG&E receives such payments (820 Electronic Data Interchange Files).
3. Customer Information Services: Maintain a customer data base of all CCA Customers and identify each customer's enrollment status, payment and collection status.
4. Customer Call Center Services: Staff a Call Center between the hours of 8 AM and 8 PM PPT Monday through Friday, excluding holidays. Respond to telephone inquiries from CCA customers using a script developed by the CCA. For questions not addressed by the script, refer inquiries either back to PG&E or to the CCA. Respond to inquiries received via telephone, Internet Chat or email within 24 hours.
5. Local Hire: Core call center operations shall be located in the City and County of San Francisco (CCSF) no later than January 1, 2013. Commercially reasonable efforts shall be made to locate core call center operations in the City and County of San Francisco as soon as possible, ideally at the onset of the effective period.
6. Billing Administration Services: Maintain a table of rate schedules provided by the CCA and apply PG&E account usage against applicable rate. Provide billing information to PG&E as required to comply with PG&E's billing schedule. Use commercially reasonable efforts to remedy billing errors in a timely manner.
7. Periodic Reporting Services: Provide daily and monthly report of billing information (usage, dollars, etc) and payment transactions received. Provide Weekly reports of delinquent accounts, exceptions (usage delayed, usage received but unbilled, usage gaps, etc), accounts added and dropped. Provide Monthly reports of error rates, billing timeliness, Call Center inquiries including average response time to inquiry and percentage of issues resolved per inquiry.
8. Settlement Quality Meter Data ("SQMD"): Provide such data to the CCA as required by the CAISO.

FEES PAYABLE BY CITY OF SAN FRANCISCO TO NOBLE

1. Cancellation Fee. A One Time fee payable by the CCA to Noble if an only if the CCA determines in its sole and absolute discretion, not to proceed with the CCA program. The Cancellation Fee will be 1) $50,000 for cancellation prior to April 1, 2012; 2) $100,000 for cancellation after April 1, 2012 and prior to July 1, 2012; or 3) $250,000 for termination after July 1, 2012 and prior to end of contract.
2. Electricity Usage Fee: A monthly fee of $0.45 for every MWh of metered usage of CCA customers.
3. Meter Fee: A monthly fee of $1.75 for each CCA Customer meter enrolled in the CCA service.

PRICING ASSUMPTIONS: Noble assumed that the CCA will eventually serve 75,000 residential meters and a small number of commercial meters using 283,000 MWhr per year in the PG&E service territory. If there is a Material Change to these quantities, a modification of the implementation phases, or a change in the CCA rate structure, Noble could adjust the Fees discussed above in order to cover its additional costs. A "Material change" shall be at least a 20% deviation from these quantities.

ADDITIONAL SERVICES The Fees defined above include only the services set forth in this Term Sheet.

NON-BINDING DRAFT; Subject to further review by the City Attorney. Final approval is contingent on review of all documents in final form, approval by respective bodies and execution.

ENERGY PURCHASE AND SALE AGREEMENT

This Energy Purchase and Sale Agreement ("Master Agreement") made as of _____ ("Signature Date") is by and between the City and County of San Francisco, a municipal corporation (the "City") acting by and through its Public Utilities Commission and Shell Energy North America (US), L.P., a Delaware limited partnership ("Shell Energy"). The City and Shell Energy may be collectively referred to hereunder as the "Parties" and individually as a "Party." The Master Agreement, together with the appendices, exhibits, schedules hereto and all Confirmations shall be referred to as the "Agreement."

ARTICLE ONE: GENERAL DEFINITIONS

Unless otherwise required by the context in which any term appears, (i) initially-capitalized terms used in this Master Agreement shall have the meanings specified in this Section; (ii) terms defined in the singular shall include the plural and vice versa; (iii) references to "Articles," "Sections," and "Exhibits" shall be to articles, sections, or exhibits of this Master Agreement; (iv) all references to a particular entity shall include a reference to such entity's successors and permitted assigns; (v) the words "herein," "hereof," and "hereunder" shall refer to this Master Agreement as a whole and not to any particular section or subsection hereof; (vi) references to this Master Agreement shall include a reference to all appendices and Exhibits hereto, as the same may be amended, modified, supplemented, or replaced from time to time; (vii) terms used in the masculine shall include the feminine and neuter and vice versa; and (viii) the term "including," when used in this Agreement, shall mean to include without limitation.

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

1.2
"Ancillary Services" means those ancillary services, including but not limited to those described in FERC Order No. 888, that may from time to time be required by FERC to be offered by the CAISO.

1.3 "
Applicable Law" means any statute, law, treaty, rule, regulation, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction; or any binding interpretation of the foregoing, as any of them is amended or supplemented from time to time.

1.4 "
Bankrupt" means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of

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

1.5 "Blocked Account Agreement" means that certain Blocked Account Agreement by and among City, Shell Energy and _____ [t

1.6 "Business Day" means any day except a Saturday, a Sunday, a holiday observed by the City as posted on the City's website, a Federal Reserve Bank holiday and the Friday immediately following the US Thanksgiving holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.7 "CAISO" means the California Independent System Operator Corporation or the successor organization to the functions thereof.

1.8 "CAISO Tariff" means the electric tariff filed by CAISO with the FERC, as such document is amended and replaced by CAISO from time to time.

1.9 "Candidate CRR Holder" has the definition set forth in the CAISO Tariff.

1.10 "Capacity" means the net generating capability of a generating resource or generating resources. Capacity is expressed in megawatts ("MW").

1.11 "CCA" or "Community Choice Aggregator" means an entity authorized by California Public Utilities Code Sections 366.1, et. seq. to aggregate residential and commercial and industrial load for Energy and other Products.

1.12 "CCA Bond" means the financial security required to be posted by the City, in form and substance satisfactory to the City in its sole discretion, pursuant to a final order by the California Public Utilities Commission that is applicable to the CleanPowerSF.

1.13 "CCA Policies" means policies approved by the City to operate the CCA, for bad debt,

customer confidentiality, deposits, establishment of credit, departure fees, as such policies may be amended, restated, supplemented or otherwise modified by the City.

1.14 "CEC" means the California Energy Commission, or its successor agency.

1.15 "City Change in Law" means any change in Applicable Law enacted by the City after the Signature Date, including any new ordinance or revision to the City Charter, which impairs Shell Energy's rights under this Agreement and which is not of general applicability to persons contracting with the City for products or services.

1.16 "City Performance Assurance Account" means an escrow account held at a bank that is a Qualified Institution and is mutually acceptable to both Parties in which the City Performance Assurance Amount is deposited.

1.17 "City Performance Assurance Amount" means fifteen million ($15,000,000) United States dollars deposited by the City in the City Performance Assurance Account as collateral for the Termination Payment. This amount may be reduced in accordance with Section 5.3, or changed in accordance with Section 5.4.

1.18 "Claiming Party" has the meaning set forth in Section 3.5.

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

1.20 "CleanPowerSF" means the CCA program implemented by the City by and through its Public Utilities Commission.

1.21 "Collecting Utility" means the host utility that is billing Customers in the City's service territory and collects payments from such Customers on behalf of the City. At the commencement of this Agreement, PG&E is the Collecting Utility.

1.22 "Confirmation" means a written agreement, executed by the authorized representative of each Party, setting forth the terms of a Transaction which terms shall be within the limits detailed in Appendix I, as set forth in Section 2.1.

1.23 "Congestion Charge" has the meaning set forth in the CAISO Tariff.

1.24 "Contract Price" means the price in $U.S. (unless otherwise provided for) to be paid by the City to Shell Energy for the purchase of a Product, as specified in a Confirmation.

1.25 "Controller" means the controller of the City and County of San Francisco.

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

1.27 "CPUC" means the California Public Utilities Commission, or its successor agency.

1.28 "Credit Rating" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issues rating by S&P, Moody's or any other rating agency mutually agreed to in writing by the Parties.

1.29 "CRRs" means Congestion Revenue Rights as defined in the CAISO Tariff.

1.30 "CRR Allocation" has the definition set forth in the CAISO Tariff.

1.31 "CRR Auction" has the definition set forth in the CAISO Tariff.

1.32 "CRR Holder" has the definition set forth in the CAISO Tariff.

1.33 "Customers" shall mean electricity accounts designated by the City from time to time to be served by Shell Energy pursuant to this Agreement. Customers may include only electricity accounts that are customers of CleanPowerSF.

1.34 "Defaulting Party" has the meaning set forth in Section 6.1.

1.35 "Delivery Period" means the period of delivery for a Transaction, as specified in a Confirmation.

1.36 "Delivery Point" unless otherwise set forth in a Confirmation means the PG&E Load Aggregation Point as defined in the CAISO Tariff, or any subsequent CAISO load aggregation settlement location applicable to the Customers.

1.37 "Early Termination Date" has the meaning set forth in Section 6.2.

1.38 "Effective Date" has the meaning set forth in the Section 2.3 of this Master Agreement.

1.39 "Energy" means the electrical energy produced, flowing or supplied by generation, transmission or distribution facilities, being the integral with respect to time of the instantaneous power, measured in units of watt-hours or standard multiples thereof, e.g., 1,000 Wh=1kWh, 1,000 kWh=1MWh, etc.

1.40 "Equitable Defenses" means any defenses to liability from bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

1.41 "Event of Default" has the meaning set forth in Section 6.1.

1.42 "FERC" means the Federal Energy Regulatory Commission or any successor government agency.

1.43 "Force Majeure" means an event or circumstance that prevents one Party from performing its obligations under one or more Transactions, which event or circumstance was not anticipated and could not have been reasonably anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of the City's markets; (ii) the City's inability economically to use or resell the Product purchased hereunder; (iii) the loss or failure of Shell Energy's supply; (iv) Shell Energy's inability to sell the Product at a price greater than the Contract Price; or (v) the City's compliance with a City Change in Law. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (i) such Party has contracted for firm transmission with a

Transmission Provider for the Product to be delivered to or received at the Delivery Point and (ii) such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the Transmission Provider's tariff, provided, however, that the existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances that in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred.

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

1.45 "Governmental Authority" means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, having jurisdiction as to the matter in question.

1.46 "Governmental Charges" has the meaning set forth in Section 10.2.

1.47 "Incorrect Withdrawal" has the meaning set forth in Section 7.4.

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

1.49 "Letter(s) of Credit" means one or more irrevocable, transferable standby letters of credit substantially in the form of Exhibit XX that are issued by a Qualified Institution. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

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

1.51 "Monthly Statement" has the meaning set forth in Section 7.3(c).

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

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

1.54 "Non-Defaulting Party" has the meaning set forth in Section 6.2.

1.55 "PG&E" means Pacific Gas and Electric Company, its successors and assigns.

1.56 "Potential Event of Default" means an event which, with notice or passage of time or both, would constitute an Event of Default.

1.57 "Product" means Capacity, Energy, Renewable Energy, Resource Adequacy Capacity or other product(s) sold in a Transaction as specified by the Parties in a Confirmation.

1.58 "Qualified Institution" means (i) the U.S. office of a commercial bank or trust company (that is not an affiliate of either Party) organized under the laws of the United States (or any state or a political subdivision thereof) with an office in California, or (ii) the U.S. branch of a foreign bank (that is not an affiliate of either Party) with an office in California; reasonably acceptable to the City; having assets of at least ten billion dollars ($10,000,000,000); having Credit Ratings of at least A3 by Moody's and at least A- by S&P. In the case of a Qualified Institution for the Secured Account and for the City Performance Assurance Account, the Qualified Institution shall have an office in San Francisco and shall be capable of meeting the applicable City standard professional services contracting requirements. In the case of a Letter of Credit, Shell Energy shall make commercially reasonable efforts to use a Qualified Institution having an office in San Francisco. In the case of a Qualified Institution for the Secured Account and for the City Performance Assurance Account, the Qualified Institution shall be the Bank of American until and unless the City and Shell Energy mutually agree on use of another bank that meets the requirements for a Qualified Institution.

Comment [JS1]: City to determine whether this requirement applies to banks issuing a letter of credit.

1.59 "Quantity" means that quantity of the Product that Shell Energy agrees to make available or sell and deliver, or cause to be delivered, to the City, and that the City agrees to purchase and receive, or cause to be received, from Shell Energy in a Transaction as specified in a Confirmation.

1.60 "Renewable Energy" means electricity that qualifies as eligible pursuant to California

Public Utilities Code Section 399.16(b) for compliance with the California Renewable Portfolio Standard.

1.61

Renewable Energy, Type 1" means Energy that meets the requirements of Section 399.16(b)(1) of the California Public Utilities Code.

1.62

Renewable Portfolio Standard" means the California Renewable Portfolio Standard, codified in California Public Utilities Code, Section 399.11 et. seq.

1.63

"Replacement Price" means an auditable amount comprised of the price at which the City, acting in a commercially reasonable manner and as necessary to ensure that Customers receive the Products for which they paid, purchases at the Supply Point a replacement for any Product specified in a Confirmation but not delivered by Shell Energy, plus (i) costs reasonably incurred by the City in purchasing such substitute Product and (ii) additional transmission charges, if any, reasonably incurred by the City to the Supply Point, or at the City's option, the market price at the Delivery Point for such Product not delivered as determined by the City in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall the City be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Shell Energy's liability. **[To be discussed use by City of its own resources or resources it already contracted with to replace products not supplied by Shell Energy and the price assumed for such products.]**

1.64

Reserve Amount" means an amount in US$ required to be retained in the Secured Account.

1.65

"Resource Adequacy Capacity" means capacity procured to meet those resource adequacy requirements that the City is required to comply with pursuant to Applicable Law.

1.66

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

1.67

"Sales Price" means an auditable amount comprised of the price at which Shell Energy, acting in a commercially reasonable manner, resells at the Supply Point any Product not received by the City, deducting from such proceeds any (i) costs reasonably incurred by Shell Energy in reselling such Product and (ii) additional transmission charges, if any, reasonably incurred by Shell Energy in delivering such Product to the third party purchasers, or at Shell Energy's option, the market price at the Delivery Point for such

Product not received as determined by Shell Energy in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Shell Energy be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize the City's liability. For purposes of this definition, Shell Energy shall be considered to have resold such Product to the extent Shell Energy shall have entered into one or more arrangements in a commercially reasonable manner whereby Shell Energy repurchases its obligation to purchase and receive the Product from another party at the Supply Point.

1.68

"Scheduling Coordinator" shall have the meaning set forth in the CAISO Tariff.

1.69

"Secured Account" has the meaning given to such term in the Security Agreement.

1.70

"Security Agreement" means that certain Security Agreement between the Parties dated as of the Effective Date of this Master Agreement giving Shell Energy a first lien on the amounts on deposit in the Secured Account.

1.71

"Security Contracts" mean collectively the following agreements: (a) that certain Blocked Account Control Agreement between the City, Shell Energy and the financial institution that maintains the Secured Account; (b) the Security Agreement; (c) that certain Escrow Agreement between the City, Shell Energy and a financial institution which maintains the City Performance Assurance Account.

1.72

"Settlement Amount" means, with respect to a Transaction and the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such party incurs as a result of the liquidation of a Terminated Transaction pursuant to Section 6.2. Settlement Amount also includes, as applicable, all additional amounts provided for in Section 6.2.

1.73

"Signature Date" means the date set forth in the first paragraph of this Master Agreement.

1.74

"Supply Point" unless otherwise set forth in a Confirmation means the NP 15 Existing Zone Generation Trading Hub (as defined in the CAISO Tariff).

1.75 "

Terminated Transaction" has the meaning set forth in Section 6.2.

1.76 "

Termination Payment" has the meaning set forth in Section 6.4.

1.77 "Termination Without Cause" has the meaning set forth in Section 7.9.

1.78 "Transaction" means a particular transaction agreed to by the Parties by executing a Confirmation, relating to the sale and purchase of a Product pursuant to this Agreement.

1.79 "Transmission Provider" means any entity or entities transmitting or transporting the Product on behalf of Shell Energy or the City to or from the Delivery Point in a particular Transaction.

1.80 "Unrestricted Net Assets" means the difference between total assets and total liabilities of CleanPowerSF, less restricted amounts. **[SF to provide section and line reference for Unrestricted Net Assets based on proforma exchanged and reviewed by the Parties and included as an exhibit to the Master Agreement]** Unrestricted Net Assets will be calculated in accordance with generally accepted accounting principles including in particular, (1) Governmental Accounting Standards Board Statement 34: *Basic Financial Statements—and Management's Discussion and Analysis—for State and Local Governments*, and (2) Governmental Accounting Standards Board Statement 46: *Net Assets Restricted by Enabling Legislation—an amendment of GASB Statement No. 34*. The City shall include the Unrestricted Net Assets in the statement of net assets for CleanPowerSF prepared pursuant to Subsection 9.3(c)(i).

1.81 "WREGIS" means the Western Renewable Energy Generation Information System, or its successor.

ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS

2.1 Transactions. The Parties may agree to undertake particular Transactions pursuant to this Master Agreement solely upon the written execution by both Parties of a confirmation ("Confirmation"). No Confirmation shall be binding (a) until executed by the General Manager of the San Francisco Public Utilities Commission on behalf of the City, and by Shell Energy and (b) the Transaction described therein is within the limits set forth in Appendix I. Provided that a Confirmation is executed as set forth in this Section and the terms are within the limits set forth in Appendix I, each Party agrees not to contest, or assert any defense to, the validity or enforceability of the Transaction entered into in accordance with this Agreement based on any lack of authority of the Party or any lack of authority of any employee of the Party to enter into a Transaction. Either Party may terminate this Agreement by giving ten (10) days written notice to the other Party, if the Parties have failed to enter into a Transaction within five (5) months of the Effective Date. Upon such written notice of termination, this Agreement shall terminate with no liability by either Party to the other Party.

(a) At its sole discretion, Shell Energy may offer the City to enter into a Confirmation substantially in the form of the Confirmation attached to this Master Agreement as Appendix II. If the unit price offered by Shell Energy for a Product is five percent (5%) or more higher than the indicative unit price as of December 9, 2011, set forth in Appendix II, Shell Energy shall provide to the City a written statement discussing the rational for the higher prices. Nothing herein shall be interpreted to require Shell Energy or the City to enter into any Confirmation during the term of this Master Agreement irrespective of whether or not such Confirmation is substantially in the form of Appendix II. Each Party retains sole and absolute discretion on whether or not, and on what terms to enter into a Confirmation pursuant to this Master Agreement, except that the General Manager of the San Francisco Public Utilities Commission may only to enter into a Confirmation with terms within the limits set forth in Appendix I.

2.2 G overning Terms. Each Transaction between the Parties shall be governed by this Master Agreement. This Master Agreement (including all exhibits, schedules and any written supplements hereto) and all Confirmations shall form a single integrated agreement between the Parties. Any inconsistency between any terms of this Master Agreement and any terms of a Confirmation shall be resolved in favor of this Master Agreement. Unless otherwise agreed herein, no tariff of a Party shall apply to that Party's performance of its obligations under this Agreement.

2.3 Conditions Precedent. This Master Agreement shall not be effective, and no Confirmation between the Parties pursuant to this Master Agreement shall be effective, until the date (the "Effective Date") on which the following conditions have been satisfied (such conditions shall be referred to collectively as the "Conditions Precedent"):

For the City:

(a) 1) The San Francisco Public Utilities Commission, and the San Francisco Board of Supervisors, has each in its sole discretion approved this Master Agreement, and 2) the Mayor has not, within ten days thereof vetoed such approval;

(b) the General Manager of the San Francisco Public Utilities Commission has executed this Master Agreement;

(c) the conditions placed by the City on the launch of CleanPowerSF, set forth in Resolution[s] [XX], have been satisfied;

(d) the City has appropriated funds in an amount sufficient to fund the Reserve Amount and deposited the Reserve Amount into the Secured Account;

(e) the City has appropriated funds in an amount sufficient to fund an operating reserve for CleanPowerSF in an amount of one million, five hundred thousand dollars ($1,500,000);

(f) the City has appropriated funds in an amount sufficient to fund the City Performance Assurance Amount, and deposited these funds into the City Performance Assurance Account;

(g) The Controller has certified in accordance the City's Charter that sufficient unencumbered balances are available in the proper fund for the operating reserve described in Subsection 2.3(c), Reserve Amount, and the Performance Assurance Amount.

(h) the City has entered into a Community Choice Aggregator Service Agreement with Pacific Gas & Electric Company on terms and conditions that are similar, in Shell Energy's reasonable discretion, to those in the draft of agreement attached to this Master Agreement as Exhibit X;

(i) the City has directed PG&E to deposit into the Secured Account the payments from Customers for amounts due to the City for CleanPower SF services and paid to PG&E;

(j) the City has executed a third party services agreement for billing and data management services the City shall require during the operation of CleanPowerSF;

(k) the City has delivered to Shell Energy an opinion of counsel for the City, in form and substance and from a law firm reasonably satisfactory to Shell Energy, regarding the following matters (i) the City is a validly existing CCA, (ii) the City has the power and authority to execute, deliver and perform the Master Agreement, (iii) the execution, delivery and performance by the City of the Master Agreement does not contravene: (A) Applicable Law, or (B) the City's charter, and (iv) the Master Agreement has been executed and delivered and is enforceable against the City in accordance with its terms; **[still under consideration by the City]**

Comment [JS2]: Subject to discussion with the City Attorney.

(l) the CPUC has accepted the amendment to the City's implementation plan and statement of intent filed with the CPUC pursuant to California Public Utilities Code Section 366.3, that identifies Shell Energy as the supplier of power for CleanPowerSF;

(m) the City has adopted the CCA Policies;

(n) the City has provided to Shell Energy certified copies of all ordinances, resolutions, public notices and other City materials evidencing the necessary authorizations with respect to the execution, and delivery by the City of this Master Agreement and the Security Contracts and a certification that the City has the ability to receive renewable energy credits from Shell Energy through WREGIS;

(o) the City has posted the CCA Bond and advised Shell Energy of the amount thereof;

For both:

(p) the City and Shell Energy have executed the Security Contracts, on terms and conditions acceptable to each Party in its sole discretion which, among other things, provide for the establishment of the Secured Account and the City Performance Assurance Account and give Shell Energy a first lien on the amounts on deposit in the Secured Account;

(q) each of the representations and warranties of the Parties contained in this Master Agreement are true and correct in all material respects as of the Signature Date and as of the Effective Date as though such representations or warranties had been made or given on such date;

(r) each Party has performed and complied with, in all material respects, its respective obligations that are to be performed by or complied with prior to or on the Effective Date under this Agreement;

(s) the Parties have obtained the express written consent of Pacific Gas and Electric Company ("PG&E") to the receipt by Shell Energy of any information required by Shell Energy to supply Products to the City in accordance with this Agreement and have cooperated and entered into any necessary confidentiality agreements necessary to obtain such consent;

For Shell Energy:

(t) Shell Energy has a Credit Rating of no less than A- from S&P and A2 from Moody's; and

(u) Shell Energy has provided to the City:

(i) A certificate dated as of the Effective Date and signed by Shell Energy's duly authorized officer certifying (1) the fulfillment of the conditions precedent set forth in the foregoing that apply to Shell Energy, including as to Shell Energy those that apply to both Parties, (2) that Shell Energy is a Scheduling Coordinator in good standing with the CAISO; and (3) that Shell Energy has the ability to transfer renewable energy credits to the City through WREGIS;

(ii) Certificates of the Secretaries of State of Delaware and California dated no more than two (2) weeks prior to the Effective Date certifying that Shell Energy is validly existing, in good standing and qualified to do business in each state as applicable; and

(iii) A certificate executed by a duly authorized officer of Shell Energy, in form and substance satisfactory to the City, certifying that attached thereto are true, complete and accurate minutes of a meeting of Shell Energy's board of directors duly authorizing the execution, delivery and performance of this Master Agreement and the Security Contracts, and certifying that such minutes are in full force and effect as of the Effective Date.

Each Party shall advise the other Party in writing as each such Condition Precedent is satisfied. In the event all Conditions Precedent have not been satisfied and the relevant Party declines to waive in writing any unsatisfied Conditions Precedent following the expiration of six (6) months from the Signature Date, either Party may at any time thereafter elect to terminate this Agreement by giving the other Party ten (10) days written notice, and upon such notice this Agreement shall terminate with no liability by either Party to the other Party.

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

3.1 S hell Energy's and the City's Obligations. With respect to each Transaction, Shell Energy shall sell and deliver, or cause to be delivered, and the City shall purchase and receive, or cause to be received, the Quantity of each Product at the Delivery Point, and the City shall pay Shell Energy the Contract Price for such Product. In addition, Shell Energy and the City shall perform all obligations regarding any Schedule Coordinator services set forth in a Confirmation. Except as otherwise agreed herein or in a Confirmation, Shell Energy shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Supply Point and the City shall be responsible for any costs or charges imposed on or associated with the Product or its receipt at and from the Supply Point. To the extent Shell Energy provides a Product pursuant to this Agreement or any Transaction hereunder from a unit specific source, the fuel for such source shall not be coal or nuclear.

3.2 T ransmission. Unless otherwise set forth in a Confirmation, Shell Energy shall schedule transmission service to the Delivery Point and the City shall be responsible for and pay (on a pass through basis) all Congestion Charges and losses associated with the delivery of Products from the Supply Point to the Delivery Point. The City anticipates that PG&E will be responsible for transmission service at and from the Delivery Point, consistent with applicable CCA tariffs.

3.3 C RR. For so long as the City shall in its sole discretion so direct, Shell Energy shall represent the City in the CRR Allocation and CRR Auction processes, including representing the City as a Candidate CRR Holder and CRR Holder with respect to CleanPowerSF. Shell Energy will advise the City on CRR nomination strategies and shall implement the nomination strategies as directed by the City. Shell Energy shall not enter into any transaction related to a CRR for the City's behalf without the City's prior

written consent and acceptance of such transaction. All CRR revenues resulting from the CRRs obtained on behalf of the City shall be for the City's sole benefit and shall be credited to the City, and all charges resulting from the CRR's shall be the City's responsibility and shall be invoiced to the City, on the next invoice submitted by Shell Energy to the City following Shell Energy's receipt of such amounts or an invoice for such amounts. Nothing herein shall be construed as limiting the City's ability to obtain advice on CRR nomination strategies from parties other than Shell Energy, or, upon thirty (30) days written notice to Shell Energy, to itself or by a third party, replace Shell Energy as the City's Candidate CRR Holder and CRR Holder with respect to CleanPowerSF.

3.4 U

sage of Customer Data. Shell Energy shall limit the access to the City's electric customer data (including but not limited to, power usage and payment history) to only those persons within Shell Energy who need to review such information for Shell Energy to comply with its obligations under this Agreement. Shell Energy shall not require the City to supply to it, directly or through third parties, any Customer specific data on a non-aggregated basis (such as Customer name, Energy usage, address, telephone number, social security number, credit score, family size, rate class, bank account number, payment history etc.). If the City inadvertently supplies Shell Energy with such information, in no event, shall Shell Energy make the City's electronic customer data available to any person within Shell Energy who engages in the marketing or the provision of electric services to retail customers within the City and County of San Francisco. In addition, during the term of all Transactions, Shell Energy shall not use such information in marketing or contracting the sale of electricity, natural gas or related products to or with any entity that is or was a customer of CleanPowerSF during the term of this Agreement or such Transactions. Further Shell Energy shall comply with any confidentiality agreement it enters into with PG&E and/or the City with respect to the receipt and use of confidential PG&E or Customer information, pursuant to Subsection 2.3(s).

3.5 F

orce Majeure. 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 the terms of the Confirmation specify otherwise, the Claiming Party shall be excused from the performance of such obligations (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure. [If a Party is prevented from performing its material obligations under this Agreement for a period of either (i) one hundred and eighty (180) consecutive days or more or (ii) three hundred and sixty-five (365) non-consecutive days or more (whether full or partial days), the other Party may terminate this Agreement, without liability by either Party to the other, upon thirty (30) days written notice at any time during the Force Majeure Event.

3.6 Compliance with Regulations. The City shall comply with any requirement imposed by a Governmental Authority that apply to a CCA with respect to the Customers, including reporting and compliance with requirements related to resource adequacy, power content reporting, the Renewable Portfolio Standard, and cap and trade regulations related to greenhouse gas reduction. Shell Energy shall provide to the City any information it controls that is necessary for the City to comply with such requirements; subject to confidentiality restrictions applicable to such information. The City will be responsible for all regulatory reporting required with respect to Customers (including but not limited to Resource Adequacy reports required by the CPUC) other than those reporting obligations being satisfied by Shell Energy in its performance of Schedule Coordinator services (if any), and Shell Energy will provide information to City necessary for City to timely comply with all monthly, annual and periodic regulatory reporting requirements for the Renewable Portfolio Standard and Resource Adequacy requirements and as otherwise required by Applicable Law with respect to any Product. Shell Energy agrees that it will indemnify and hold harmless the City with respect to any fines or penalties that may be assessed against the City by a Governmental Authority as a result of inaccurate information that Shell Energy reported to the City in writing (including electronic communications), [other than information based on third party data on which Shell Energy reasonably relied on for its accuracy. **Under review by the City.**]

ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER

4.1 S hell Energy Failure. If Shell Energy fails to schedule and/or deliver all or part of the Products pursuant to a Confirmation, and such failure is not excused under the terms of this Master Agreement, the Confirmation or by the City's failure to perform, then Shell Energy shall pay the City, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

4.2 R enewable Energy.

(a) If Shell Energy fails to deliver all or part of the Renewable Energy it is required to deliver pursuant to a Confirmation, and such failure is not excused under the terms of this Master Agreement, the Confirmation or by the City's failure to perform, then Shell Energy shall pay the City, in addition to amounts payable under Section 4.1, any penalties assessed to the City by the CPUC or the CEC for the City's noncompliance with the Renewable Portfolio Standard as a result of Shell Energy's failure to deliver such Renewable Energy. Shell Energy shall pay to the City any amount owed pursuant to this Section within ten (10) days of receipt of an invoice from the City setting forth the amount of the penalty and

reasonable supporting documentation therefor, or if such day is not a Business Day, then on the next Business Day.

(b) If, in any calendar year, Shell Energy delivers only ninety percent (90%) or less of the amount of Renewable Energy, Type 1 it is required to deliver in thatcalendar year pursuant to a Confirmation, and such failure is not excused under the terms of this Master Agreement, or the Confirmation or by the City's failure to perform, then in addition to the payments required from Shell Energy pursuant to Sections 4.1 and 4.2(a), Shell Energy shall pay the City an amount equal to twenty-five percent (25%) of the Contract Price for the Renewable Energy, Type 1, set forth in the applicable Confirmation, for each MWh of Renewable Energy, Type 1 that Shell Energy failed to deliver during that calendar year. No later than April 1 of each year for which a Transaction included the sale by Shell Energy to the City of Renewable Energy, Type 1 during the prior calendar year, Shell shall calculate whether it delivered more than ninety percent (90%) of the Renewable Energy, Type 1 that it was required to deliver in the prior calendar year, and, if not, shall credit the amounts required by this Sub-section in its next monthly invoice submitted to the City. The invoice shall include the basis for calculation of the credit and Shell Energy shall provide to the City any information reasonably requested by the City to demonstrate Shell Energy's compliance with this Subsection.

4.3 R

esource Adequacy Capacity. If Shell Energy fails to schedule and/or deliver all or part of the Resource Adequacy Capacity it is required to schedule and/or deliver pursuant to a Confirmation, and such failure is not excused under the terms of this Master Agreement, the Confirmation or by the City's failure to perform, then Shell Energy shall pay the City any penalties assessed to the City by a Governmental Authority and any charges assessed by the CAISO as a result of Shell Energy's failure to schedule and/or deliver. Shell Energy shall pay to the City, in addition to the amounts payable under Section 4.1, any amount owed pursuant to this Section within ten (10) days of receipt of an invoice from the City setting forth the amount of the penalty, or if such day is not a Business Day, then on the next Business Day.

ARTICLE FIVE: FINANCIAL REQUIREMENTS

5.1 M

aintenance of Financial Health. The City shall (1) fund CleanPowerSF such that on the close of each fiscal month during the term of this Agreement, as determined by the Controller, the Unrestricted Net Assets of CleanPowerSF is equal to at least zero dollars, as presented in the statement of net assets; and (2) pay the non-contested charges in the CleanPowerSF customer services and billing provider invoices as they become due. The City shall submit to Shell Energy a statement of net assets as set forth in Section 9.2.c.i;

(i) If a statement of net assets provided by the City to Shell Energy, indicates that the Unrestricted Net Assets are below zero dollars ($0), the City may take action to cure this deficiency provided that 1) Unrestricted Net Assets must be restored to at least zero dollars ($0) and the City must provide evidence reasonably satisfactory to Shell energy of the corrective action no later than sixty (60) calendar days from the date that the City provided the initial statement of net assets to Shell Energy; and 2) during the sixty (60) day cure period, the amounts in the Secured Account must remain sufficient to timely pay undisputed amounts owed to Shell Energy and the City must maintain the Reserve Amount pursuant to Section 5.2.

(ii) (a) Unrestricted Net Assets shall be deemed to be at least zero dollars ($0), unless either 1) the statement of net assets indicates otherwise, or 2) within fifteen (15) days from receiving the statement of net assets, Shell Energy either (i) disputes the representations in the statement of net assets in writing or (ii) provides a written request for information to the City within. The City shall respond to a Shell Energy request for information within [fifteen (15) days. **Under review by the City.]** If Shell Energy does not dispute the representations in the statement of net assets in writing within five (5) days of receipt of the information it requested from the City, the Unrestricted Net Assets shall be deemed to be at least zero dollars ($0). A dispute of a statement of net assets by Shell Energy shall be in writing and shall set forth in reasonable detail the figure Shell Energy disputes, the basis for the dispute and Shell's Energy's position on the amount Shell Energy believes should be replace the disputed figure.

(b) If Shell Energy disputes the representations in the statement of net assets in writing, either 1) within fifteen (15) days of receipt of the statement of net assets or 2) within five (5) days of receipt of the information requested from the City, the City may take action to cure the deficiency provided that 1) Unrestricted Net Assets must be restored to at least zero dollars ($0) and the City must provide evidence reasonably satisfactory to Shell Energy of the corrective action no later than ninety (90) calendar days from the date Shell Energy disputes the representations in the statement of net assets in writing; and 2) during the ninety (90) day cure period, the amounts in the Secured Account must remain sufficient to timely pay undisputed amounts owed to Shell Energy and the City must maintain the Reserve Amount as set forth in Section 5.2.

(c) During the ninety (90) day cure period, the City may retain an auditor at the City's expense to examine CleanPowerSF financial statements, including the statement of net assets. The City may use an internal City auditor or a third party auditor. The auditor's review shall be limited to an assessment of whether the Unrestricted Net

Assets for the period in question are at least zero ($0) dollars. The auditor's opinion shall be made available to Shell Energy for review. The auditor's opinion shall be non-binding on the Parties.

5.2 Replenishing the Reserve Amount / No Waiver. At any time the Reserve Amount retained in the Secured Account is less than the amount required hereunder, the City shall transfer an amount to the Secured Account in order to satisfy such shortfall not later than five (5) Business Days following receipt of a written request therefore from Shell Energy that complies with the requirements of Section 11.9. Shell Energy's written request for replenishment shall include records sufficient to verify deposits to, withdrawals and transfers from and balances contained in the Reserve Amount.

5.3 Reduction of the City Performance Assurance Amount. Starting September 3, 2013 and thereafter each September 1st during the term of this Agreement, or if such date is not a Business Day then the then next following Business Day (each such date, a "Calculation Date"), Shell Energy shall calculate the potential Termination Payment that would then be due from the City to Shell Energy if an Event of Default were to occur with regard to the City and shall provide such calculation and its results in writing to the City. The result of such calculation shall be not be discounted to the Calculation Date (a discount rate of zero (0) shall be used) and the resulting amount shall be the "Potential Termination Payment." If the Potential Termination Payment is less than the City Performance Assurance Amount in the City Performance Assurance Account, Shell Energy shall cooperate with the City to submit a joint instruction to the bank holding the City Performance Assurance Account for release to the City of an amount equal to the then-current amount of the City Performance Assurance Amount less the Potential Termination Payment (the "Collateral Return Amount"), as calculated by Shell Energy, by September 30. If the Parties disagree on the Collateral Return Amount, Shell Energy shall cooperate with the City to submit a joint instruction to the bank holding the City Performance Assurance Account for release to the City of any adjustment to the Collateral Return Amount agreed to by the Parties, within ten (10) Business Days following the Parties' agreement on such adjustment. Shell Energy shall provide its calculation of the Potential Termination Payment to the City, along with reasonable supporting documentation (excluding the Intercontinental Exchange quote referenced below) not later than 10 (ten) Business Days following each Calculation Date. Each Party shall work in good faith to resolve any disagreements concerning the determination of the Potential Termination Payment. In determining the Potential Termination Payment, (a) the market price for Energy shall be determined by an Intercontinental Exchange quotation (by the applicable tenor and on-peak/off-peak NP15 EZ Gen Hub) less the applicable Price Value, and (b) for Renewable Energy and Resource Adequacy, the market prices will be deemed to be 50% of the respective Contract Prices. If the Potential Termination Payment is more than the City Performance Assurance Amount in the City Performance Assurance Account, there shall be no change in the City Performance Assurance Amount.

"Price Value" shall mean the following amount:

$20.00/MWh for the Potential Termination Payment calculation in September 2013

$17.50/MWh for the Potential Termination Payment calculation in September 2014
$12.00/MWh for the Potential Termination Payment calculation in September 2015
$5.00/MWh for the Potential Termination Payment calculation in September 2016

5.4. Other Changes to the City Performance Assurance Amount. **[PLACEHOLDER TO ADJUST THE PERFORMANCE ASSURANCE AMOUNT IN THE CONTEXT OF NEGOTIATION OF A SECOND CONFIRMATION.]**

5.5 Expenses incurred by Shell Energy with respect to the Security Agreement. The City shall pay to Shell Energy on demand any and all reasonable expenses, including reasonable attorneys' fees and disbursements, incurred or paid by Shell Energy in protecting, preserving or enforcing Shell Energy's rights and remedies under the Security Agreement in respect of any of the Collateral (as defined in the Security Agreement).

ARTICLE SIX: EVENTS OF DEFAULT; REMEDIES

6.1 E
vents of Default. An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

(a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice, unless another cure period is explicitly provided for herein, in which case such other cure period shall apply (for the avoidance of doubt, in the case of a City payment of a Shell Energy invoice pursuant to Section 7.3(b), the City will be deemed to have paid Shell Energy on the payment due date if on such date there were sufficient funds on deposit in the Secured Account to pay the portion of the Shell Energy invoice approved in writing by the City);

(b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;

(c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Seller's obligations to deliver the Products, the exclusive remedy for which is provided in Article Four) if such failure is not remedied within three (3) Business Days after written notice;

(d) such Party becomes Bankrupt;

(e) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article Nine hereof;

(f) such Party voluntarily or by operation of law consolidates or amalgamates with, or merges with or into, or transfers all or a controlling interest of its assets to, another entity without the express prior written agreement of the other Party; or

(g) the City fails to maintain the Reserve Amount and Unrestricted Net Assets at the levels set forth in Article 5 and does not cure such failure consistent with the requirements of Section 5.1(i).

6.2 Termination Without Cause. A Termination Without Cause shall occur if this Agreement is terminated, and each of the following conditions are met (a "Termination Without Cause"):

(a) there exists an uncured Event of Default by the City;

(b) there does not exist an uncured Event of Default by Shell Energy; and

(c) the Unrestricted Net Assets balance for CleanPowerSF is equal to at least zero dollars.

6.3 Declaration of an Early Termination Date and Calculation of Settlement Amounts. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate all, but not less than all, Transactions (each referred to as a "Terminated Transaction") between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under Applicable Law on the Early Termination Date, as soon thereafter as is reasonably practicable). As an additional Settlement Amount, if Shell Energy is the Defaulting Party, Shell Energy shall pay to the City, all costs reasonably necessary to either, at the City's sole option and discretion, (i) maintain service to Customers by replacing the services provided by Shell Energy, including any incremental costs of such services or (ii) terminate the CCA program including (a) any costs paid from the CCA Bond posted by the City, and (b) any actual reentry fees assessed by PG&E, regardless of the amount of the security posted.

6.4 Termination Payment. The Non-Defaulting Party shall aggregate all Settlement Amounts into a single amount by: netting out (a) all Settlement Amounts that are due to the

Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party pursuant to Article Nine, plus any or all other amounts due to the Defaulting Party under this Agreement against (b) all Settlement Amounts that are due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount (the "Termination Payment") payable to the Non-Defaulting Party. Any positive Termination Payment shall be due to the Non-Defaulting Party. If the Termination Payment is negative, the Non-Defaulting Party shall not be required to make a Termination Payment to the Defaulting Party. Notwithstanding the foregoing, except in the case of a Termination Without Cause, a Termination Payment paid by the City to Shell Energy shall not exceed the amount of the funds in the City Performance Assurance Account.

6.5 N

otice of Amount and Payment of Termination Payment. As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether a Termination Payment is due to the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Defaulting Party to the Non-Defaulting Party within two (2) Business Days after such notice is effective. The Termination Payment shall bear interest at the Interest Rate from the date upon which notice is effective until paid.

6.6 D

isputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within two (2) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Termination Payment.

6.7 S

uspension of Performance. Notwithstanding any other provision of this Agreement, if (a) an Event of Default or (b) a Potential Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance under any or all Transactions; provided, however, in no event shall any such suspension continue for longer than twenty (20) NERC Business Days with respect to any single Transaction unless an early Termination Date shall have been declared and notice thereof pursuant to Section 6.2 given, and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.

ARTICLE SEVEN: PAYMENT AND NETTING

7.1 B

illing Period. Unless otherwise specifically agreed upon by the Parties in a Confirmation, the calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments and payments pursuant to Article Four). As soon as practicable after the end of each month, but in no event later than fifteen (15) calendar days after the end of that month, each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month utilizing a form of invoice, to the extent applicable, mutually acceptable to the Parties.

7.2 T

imeliness of Payment. Unless otherwise agreed by the Parties in a Confirmation, all invoices under this Agreement (including charges and reimbursements associated with the SC Services) shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twenty-fifth (25th) day of each month, or tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

7.3 A

llocation and Disbursement of Funds in the Secured Account. Provided that no Event of Default has occurred and is continuing, Shell Energy shall allocate and/or disburse funds in the Secured Account in the following order and priority, once a month, except if the City is responsible for an uncured Event of Default in which case Shell Energy may allocate and/or disperse funds as frequently as Shell Energy deems necessary or advisable in its sole discretion:

(a) First to the City for Customer Deposits. The amount of funds that the City has required from its Customers as a deposit, security interest, or collateral ("Customer Deposits") shall be paid directly by the Customers to the City. If, notwithstanding such requirement, Customers or the Collecting Utility pay Customer Deposits into the Secured Account, all such Customer Deposits will be disbursed from the Secured Account to the City within five Business Days following Shell Energy's notification of the identification of such funds.

(b) Second to Shell Energy Pursuant to Section 7.2. On the date payments are due pursuant to Section 7.2 hereunder, and except if the City is responsible for an uncured Event of Default, Shell Energy Shall direct the Secured Account Bank to disburse from the Secured Account to Shell Energy the amount set forth in the Shell Energy invoice to the City for that month that the City has

previously approved in writing. The City shall either approve or dispute in good faith a Shell Energy monthly invoice within ten (10) days of receipt thereof. In the event amounts in the Secured Account are insufficient to pay the amounts due to Shell Energy in any given month without drawing the Secured Account below the Reserve Amount, Shell Energy may utilize the Reserve Amount to fund any such deficiency.

(c) Third to the City Operating Account. Amounts remaining or deposited in the Secured Account on the date payments are due pursuant to the Energy Agreement, after payment to Shell Energy pursuant to Section 7.3(b) and retention in the Secured Account of the Reserve Amount, shall be disbursed from the Secured Account to the City Operating Account and Shell Energy shall direct the Secured Account Bank to make such disbursements as promptly as possible, but in no event later than one (1) Business Day after the monthly payment is due by the City to Shell Energy pursuant to Section 7.3(b). On the date, Shell Energy directs the Secured Account Bank to disburse funds to the City pursuant to this Section, Shell Energy shall provide to the City a written statement (the "Monthly Statement") via electronic e-mail setting forth the account activity in the Secured Account from the date of the previous statement through the date of the disbursement, showing (i) starting balance in the account, (ii) total funds deposited over the period of the statement, (iii) resulting funds available for disbursement pursuant to this Section 7.3(c), (iv) amounts transferred pursuant to Section 7.3(a), (v) the amount paid to Shell Energy pursuant to Section 7.3(b) together with a reconciliation to amounts invoiced by Shell, (vi) the amount Shell directed the banking institution to disburse to the City, (vii) the amount remaining in the Secured Account, and (viii) any shortfalls in the Reserve Amount.

Comment [JS3]: Needs to be confirmed by Shell Energy and City.

7.4 S

ource of Payments / Incorrect Withdrawal. Except in the case of a Termination Payment, Shell Energy shall be paid exclusively from funds deposited in the Secured Account, pursuant to the process for such payment set forth in the Section 7.3. The City shall not direct PG&E to deposit payments from Customers for amounts due to the City and paid to PG&E into any account other than the Secured Account unless either (I) (a) Shell Energy withdraws funds from the Secured Account that (i) are not due and owing to Shell Energy pursuant to this Agreement, (ii) are in excess of amounts invoiced by Shell Energy and approved by the City, or (iii) are being disputed by the City in good faith (each such event an "Incorrect Withdrawal"), and (b) Shell Energy fails to return such amounts to the City within two (2) Business Days of the City's notice to Shell Energy regarding such Incorrect Withdrawal, (II) Shell is responsible for an Event of Default pursuant to Section 6.1 and the City is not responsible for an unrelated Event of Default, or (III) this

Agreement terminates in accordance with its terms. If the City believes that an Incorrect Withdrawal has occurred and provides notice of such belief to Shell Energy prior to 11am prevailing Central time on any Business Day, Shell Energy shall confirm to the City the receipt of such notice and Shell Energy's intention (if Shell Energy agrees that an Incorrect Withdrawal has occurred) to return the funds subject to the Incorrect Withdrawal not later than close of business on the second Business Day following delivery of the City's notice regarding the Incorrect Withdrawal.

7.5 D

isputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 7.5 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance of a Transaction occurred, the right to payment for such performance is waived. Shell Energy shall be responsible for reviewing all CAISO invoices and timely initiating disputes with the CAISO for incorrect invoice amounts, consistent with Section [XX] and the CAISO Tariff. Shell Energy shall credit to the City any adjustments that result from such disputes except to the extent the adjustments are Shell Energy's responsibility pursuant to the applicable Transaction.

7.6 N

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

7.7 P

ayment Obligation Absent Netting. If no mutual debts or payment obligations exist and

only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any related damage amounts calculated pursuant to Article Four, interest, and payments or credits, that Party shall pay such sum in full when due.

7.8 Security. Except in connection with a liquidation and termination in accordance with Article Six, all amounts netted pursuant to this Article Seven shall not take into account or include any security or collateral which may be in effect to secure a Party's performance under this Agreement.

ARTICLE EIGHT: LIMITATIONS

8.1 Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A CONFIRMATION, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. 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, PROVIDED HOWEVER, NOTHING IN THIS SENTENCE SHALL AFFECT THE ENFORCEABILITY OF THE PROVISIONS OF THIS AGREEMENT RELATING TO REMEDIES FOR FAILURE TO DELIVER IN ARTICLE 4 AND CALCULATION AND PAYMENT OF THE TERMINATION PAYMENT IN ARTICLE 6. 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 AND ARE NOT PENALTIES.

8.2 C

ertification of Funds; Budget and Fiscal Provisions.

(a) (i) This Agreement is subject to the budget and fiscal provisions of the City's charter, (ii) charges will accrue only after prior written authorization certified by the Controller, and (iii) the amount of the City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse Shell Energy for, Products beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

(b) Except in the case of a Termination Without Cause in accordance with Section 6.2 or a failure on the part of the City to replenish the Reserve Amount in accordance with Section 5.2, Shell Energy shall have no recourse pursuant to this Agreement to any City funds whatsoever other than (1) funds deposited in the Secured Account and (2) funds deposited in the City Performance Assurance Account.

(c) In the event of a Termination Without Cause or in the event of a failure on the part of the City to replenish the Reserve Amount as required under Section 5.2, Shell Energy shall have no recourse pursuant to this Agreement for payment of the applicable Termination Payment calculated pursuant to Section 6.4 or for any other purpose to funds other than: (a) any funds in the CleanPowerSF operating reserve; (b) Hetch Hetchy power funds within the Hetch-Hetchy Enterprise current appropriations; (c) funds deposited in the Secured Account; and (d) funds deposited the City Performance Assurance Account. Notwithstanding the forgoing, a failure by City to pay to Shell Energy all of the

applicable Termination Payment in the event of a Termination Without Cause shall constitute a separate Event of Default by the City allowing Shell Energy to pursue the City for such Termination Payment amount in excess of that paid by the City pursuant to the terms hereunder. In the event of a Termination Without Cause, the City covenants and agrees that the General Manager of the San Francisco Public Utilities Commission shall seek approval of an appropriation or supplemental appropriation, as the case may be, of the San Francisco Public Utilities Commission and/or the Board of Supervisors in an amount necessary for payment of the corresponding Termination Payment, if any, within sixty days of an agreement by the Parties as to the amount of such Termination Payment (as such amount shall be determined in accordance with Section 6.4 of this Agreement). The Parties hereto acknowledge and agree that the approval of any such appropriation shall be within the sole discretion of the San Francisco Public Utilities Commission and/or the Board of Supervisors. Nothing in this Section shall be interpreted as limiting Shell Energy's rights to pursue all available remedies under this Agreement, if the Termination Payment is not paid within six months of the Early Termination Date.

(d) In no event shall the amounts due from the City to Shell Energy under this Agreement exceed the sum of the amounts due from the City to Shell Energy pursuant to each Confirmation executed hereunder.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

ARTICLE NINE: CREDIT AND COLLATERAL REQUIREMENTS

9.1 City Credit Protection.

(a) Downgrade Event. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), Shell Energy's Credit Rating falls to or below BBB- with a negative outlook from S&P or Baa3 with a negative outlook from Moody's or if Shell Energy is not rated by either S&P or Moody's, then the City, on any Business Day, may request that Shell Energy provide a Letter of Credit in an amount equal to the lesser of (a) the then current calculation of a

Termination Payment that could be owed by Shell Energy to the City upon an Event of Default with regard to Shell Energy, or (b) fifteen million dollars ($15,000,000). Such Letter of Credit shall be delivered to the City within three (3) Business Days of the date of such request. A failure by Shell Energy to provide the Letter of Credit pursuant to the terms of this Article Nine within three (3) Business Days, shall be an Event of Default. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Shell Energy, at its sole cost, may request that such Letter of Credit be reduced correspondingly to the amount of the then current calculation of a Termination Payment, if any.

For purposes of this Section 9.1(a), the calculation of the Termination Payment shall be calculated pursuant to Section 6.4 by the City as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Shell Energy to the City, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions. In addition, for purposes of calculating the Termination Payment pursuant to this Section 9.1(a), each Settlement Amount shall be calculated, with respect to a Transaction and the City, as the Losses or Gains and Costs, expressed in U.S. Dollars, which the City would incur as a result of the liquidation of a Terminated Transaction pursuant to Section 6.2.

A Letter of Credit provided pursuant to Section 9.1(a) above, shall be issued in favor of the City as beneficiary, in a form reasonably acceptable to the City utilizing the form attached hereto as Exhibit XX.

(b) No later than thirty (30) days before expiration of any Letter of Credit, Shell Energy will furnish to the City a new Letter of Credit in the amount required in Section 9.1(a). In the event that Shell Energy does not timely supply the City with a replacement Letter of Credit, such failure shall be an Event of Default authorizing the City to make a demand to draw down the existing Letter of Credit, and to pursue all other remedies available to the City in an Event of Default.

(c) If at any point during the term of a Letter of Credit the bank issuing such Letter of Credit no longer qualifies as a Qualified Institution, Shell Energy shall, within twenty (20) days of its actual knowledge of such non-satisfaction, substitute a new Letter of Credit issued by a bank that is a Qualified Institution, at Shell Energy's expense.

(d) The Letter of Credit shall provide that immediate payment shall be made to the City upon receipt by the issuing bank of a written certificate of the General Manager of the San Francisco Public Utilities Commission for the City, or the functional successor to such officer, demanding payment of a sum identified in the written certificate, certifying that said sum is due and owing in respect of the obligations of Shell Energy with respect to this Agreement.

(e) The Letter of Credit shall provide that the City may make consecutive or successive demands for payment under the Letter of Credit until its entire principal balance has been paid to the City.

9.2 Financial Information.

(a) Shell Energy Reporting Requirements: During the term of this Agreement, Shell Energy shall provide the City with access to, but not possession of, the reports required below and any clarifications requested regarding such reports and such other information the City reasonably requests regarding Shell Energy's financial performance. In the event Shell Energy fails to provide the City with access to any required reports or such additional information or clarifications reasonably requested by the City and such failure is not remedied within fifteen (15) Business Days of the City's written request therefor, such failure shall be an Event of Default in accordance with Article Six and Shell Energy shall therefore be the 'Defaulting Party' with regard to such failure to perform. Shell Energy shall provide the City access to but not possession of the reports set forth herein at a place and in a manner reasonably satisfactory to the City. To the extent such access is provided outside of San Francisco, Shell Energy shall reimburse the City for its reasonable travel and lodging costs of accessing the documents at the remote location.

(i) Quarterly and Annual Reports. Commencing on the date on which the first Confirmation is executed hereunder, Shell Energy shall provide to the City access to but not possession of:

1) within 60 calendar days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Shell Energy's quarterly report containing unaudited consolidated financial statements for such fiscal quarter and

2) within 120 calendar days following the end of each fiscal year, a copy of Shell Energy's audited consolidated financial statements for such fiscal

year. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles.

3) Should any such statements not be available on a timely basis due to a delay in preparation for certification, such delay shall not be an Event of Default so long as Shell Energy diligently pursues the preparation, certification and provision of access to the statements.

9.3 Shell Energy Credit Protection.

(a) Compliance with Agreements and Policies. During the term of the effectiveness of this Agreement, the City shall comply with the Security Contracts. The City shall give Shell Energy copies of any revisions to the CCA Policies not less than thirty (30) days prior to the effectiveness of such revisions. Upon the occurrence of an event of default (after giving effect to any applicable notice and cure periods) by the City under the Security Agreement or a termination of the Security Agreement by Shell Energy due to the City's failure to perform in accordance with the terms thereof, such event shall constitute an Event of Default in accordance with Article Six hereunder and the City shall therefore be the 'Defaulting Party' with regard to such failure to perform.

(b) City Reporting Requirements. During the term of any Transaction, the City shall provide Shell Energy with the reports required below and any clarifications requested regarding such reports and such other information Shell Energy reasonably requests regarding the City's financial performance or the ongoing viability of the CleanPowerSF. In the event the City fails to provide Shell Energy with any required reports or such additional information or clarifications reasonably requested by Shell Energy and such failure is not remedied within forty-five (45) days of Shell Energy's written request therefor, such failure shall be an Event of Default in accordance with Article 6 and the City shall therefore be the 'Defaulting Party' with regard to such failure to perform. In all cases the reports shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, should any such statements not be

delivered on a timely basis due to a delay in preparation for certification, such delay shall not be an Event of Default so long as the City diligently pursues the preparation, certification and delivery of the statements. Shell Energy shall take all actions and execute any and all instruments and other documents with the Secured Account Bank to enable the City to monitor electronically as close to real time as is commercially practicable, the status of, current balance of, and history of transactions in the Secured Account. The City shall reasonably cooperate with Shell Energy in obtaining the visibility and access to the Secured Account as required in the immediately preceding sentence. In the event that Shell Energy does not timely provide the City with the foregoing visibility, invoice or Monthly Statement, the City shall be excused from the reporting requirements set forth in this Section and the City's failure to comply shall not constitute an Event of Default.

(c) Reports. Commencing on (A) the date on which the first Confirmation is executed hereunder with regard to the reports requested in subsection (i) below and (B) the actual commencement of Energy deliveries with regard to the first Confirmation to be executed hereunder, for all other reports requested below in subsections (ii) and (iii), the City shall provide the following reports with regard to the CleanPowerSF program to Shell Energy not later than twenty (20) Business Days following Shell Energy's provision to the City of the Monthly Statement, and each report shall be with regard to the most recent calendar month for which Shell Energy provided a detailed invoice and Monthly Statement:

(i) Monthly and year to date consolidated and consolidating financial statements for such month prepared in accordance with generally accepted accounting principles. Such financial statements shall include, a detailed operating statement, a statement of net assets, a statement of cash flow, monthly and year to date financial projections showing line item and total variances between such financial projections and actual results and an executive summary describing the causes of any variances which are +/- 5% between the monthly financial statements and the financial projections. Such report shall be in the format as Shell Energy may reasonably require from time to time;

(ii) Certificate of compliance with CCA Policies;

(iii) A summary of all net meter data, grossed-up meter data and the difference between the two amounts on a daily and hourly interval basis.

(iv) Customer deposit report including a summary report of all collateral the City is holding from any Customer in the format agreed to between the Parties;

(v) [Summary of billing information regarding Energy delivered to Customers; and **under Shell review]**

(vi) Summary of payments made by Customers or other entities to the City and a summary of delinquent accounts regarding Customer for each period of 30, 60, 90 and 120 days and total accounts receivable;

Comment [JS4]: Subject to discussion with Noble.

(d) Annual Report. The City shall provide to Shell Energy annual financial reports with regard to CleanPowerSF not later than 180 days following the end of each fiscal year with regard to such previous fiscal year (or portion thereof with regard to the first report) consisting of, at a minimum, an operating statement, a statement of net assets, a cash flow statement, each as prepared in accordance with generally accepted accounting principles and audited by an independent certified public accountant chosen at the sole discretion of the City.

(e) In its financial reports, if the amount of a financial transaction is disputed by Shell Energy or a third party, or amounts reflected in the invoice provided by Shell Energy are disputed by either Party, the City may replace disputed values with the values it believes to be correct, until the disputes are resolved.

9.4 UCC Waiver. Article Nine of this Agreement and the Security Agreement, set forth the entirety of the agreement of the Parties regarding credit, collateral and adequate assurances. Except as expressly set forth in this Article Nine or the Security Agreement, neither Party:

(a) has or will have any obligation to post margin, provide letters of credit, pay deposits, make any other prepayments or provide any other financial assurances, in any form whatsoever, or

(b) will have reasonable grounds for insecurity with respect to the creditworthiness of a Party that is complying with the relevant provisions of Article Nine of this Agreement and with the Security Agreement;

and all implied rights relating to financial assurances arising from Section 2-609 of the Uniform Commercial Code or case law applying similar doctrines, are hereby waived.

ARTICLE TEN: GOVERNMENTAL CHARGES

10.1 C
ooperation. Each Party shall use reasonable efforts to implement the provisions of and to

administer this Agreement in accordance with the intent of the Parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

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

10.3 P ossessory Interest Tax. Without limiting Section 10.2, Shell Energy recognizes and understands that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Shell Energy to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

1) Shell Energy, on behalf of itself and any permitted successors and assigns, recognizes and understands that Shell Energy, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;

2) Shell Energy, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Shell Energy accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

3) Shell Energy, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Shell Energy accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

4) Shell Energy further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

ARTICLE ELEVEN: MISCELLANEOUS

11.1 Term of Agreement. The term of this Master Agreement shall commence on the Effective Date and shall remain in effect until the earlier of (i) termination in accordance with Section 2.1, 2.3, 3.5, 6.1, or 6.2 of this Agreement; and (ii) [five (5) full years, after the Effective Date; provided, however, 1) such termination shall not affect or excuse the performance of either Party under any provision of this Agreement that by its terms survives any such termination, 2) the matters listed in Section 11.9 survive as set forth therein, and, 3) this Agreement and any other documents executed and delivered hereunder shall remain in effect with respect to the Confirmation(s) entered into prior to the effective date of such termination until either (a) both Parties have fulfilled all of their obligations with respect to such Confirmation(s), or (b) the underlying Transaction(s) have been terminated under Section 6.2 of this Agreement.

11.2 Representations, Warranties and Covenants.

(a) Mutual Representations and Warranties. On the Effective Date and the date of executing each Confirmation, each Party represents, warrants and covenants to the other Party that:

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

(ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;

(iii) 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 law, rule, regulation, order or the like applicable to it;

(iv) this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;

(v) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

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

(vii) no Event of Default or Potential Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;

(viii) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement; it has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Products referred to in such Confirmation to which it is a Party; and

(ix) the material economic terms of each Confirmation are subject to individual negotiation by the Parties.

(b) City Representations, Warranties and Covenants.

On the Effective Date and the date of executing each Confirmation, the City further represents, warrants and covenants to Shell Energy that continuing throughout the term of this Agreement, with respect to this Master Agreement and each Confirmation within the limits set forth in Appendix I,

all acts necessary to the valid execution, delivery and performance of this Master Agreement, including without limitation, competitive bidding, public notice, election, referendum, or other required procedures has or will be

taken and performed as required under the City's charter, ordinances, bylaws or other regulations.

(ii) the City shall maintain all licenses and permits (and provide copies of all such licenses and permits to Shell Energy upon Shell Energy's request) and operate its CCA business in full compliance with all applicable federal, state and local laws, regulations, rules, statutes and ordinances.

(c) Shell Energy Representations and Warranties. On the Effective Date and the date of executing each Confirmation, the Shell Energy further represents, warrants and covenants to the City that continuing throughout the term of this Agreement, with respect to this Master Agreement and each Confirmation:

(i) no new facilities are required to be constructed in order for Shell Energy to meet its supply obligation under this Agreement;

(ii) Shell Energy shall not construct any new facilities to meet its supply obligation hereunder unless such new facility has satisfied all Applicable Law, including the California Environmental Quality Act ("CEQA") and any other applicable California environmental statutes relating to the construction and operation of such facilities. The foregoing representation shall not limit Shell Energy's ability to use newly built facilities to supply a Product hereunder provided such facilities have satisfied all Applicable Law, including CEQA and any other applicable California environmental statutes relating to the construction and operation thereof. Shell Energy further agrees to waive any claims against the City for failure to perform City's obligations under this Agreement to the extent that such failure is a result of Shell Energy's violation or breach of the foregoing representations, warranties and covenants or as a result of litigation against the City as a result of Shell Energy's violation or breach of the foregoing representations, warranties and covenants;

(iii) to the extent a Product provided pursuant to this Agreement is provided from a unit-specific source, such source is not coal or nuclear;

(iv) Shell Energy is a Scheduling Coordinator in good standing with the CAISO; and

(v) Shell Energy has obtained and currently has market-based rate authority from the Federal Energy Regulatory Commission.

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

11.4 Indemnity.

Shell Energy agrees to defend, indemnify and hold harmless the City, its officers, employees and agents, from any and all acts, claims, omissions, liabilities and losses by whomever asserted arising out of acts or omissions of Shell Energy in the performance of its obligations under this Agreement except those arising by reason of the sole negligence of the City, its officers, employees and agents.

The City agrees to defend, indemnify and hold harmless Shell Energy, its officers, employees and agents, from any and all acts, claims, liabilities and losses by whomever asserted arising out of acts or omissions of the City in the performance of its obligations under this Agreement except those arising by reason of the sole negligence of Shell Energy, its officers, employees and agents.

In the event of concurrent negligence of the City, its officers, employees and agents, and Shell Energy and its officers, employees and agents, the liability for any and all claims for injuries or damages to persons and/or property shall be apportioned under the California doctrine of comparative negligence. **Still under discussion.**

Comment [JS5]: Subject to further discussion with City risk manager, City Attorney and Shell Energy.

11.5 Assignment. In entering this Agreement, the City is relying on the particular expertise of Shell. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion.

11.6 Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH PARTY CONSENTS TO THE EXCLUSIVE JURISDICTION OF THE FEDERAL COURTS IN SAN FRANCISCO, CALIFORNIA HAVING SUBJECT MATTER JURISDICTION ARISING UNDER THIS AGREEMENT. IF THE FEDERAL COURTS IN SAN FRANCISCO, CALIFORNIA WILL NOT ACCEPT JURISDICTION OVER DISPUTES ARISING OUT OF THIS AGREEMENT, THEN

THE PARTIES SHALL CONSENT TO THE STATE COURTS IN SAN FRANCISCO, CALIFORNIA.

11.7 N

otices. Unless otherwise specified in a Confirmation, all notices, requests, statements or payments shall be made as specified as set forth below to the contacts set forth in Exhibit C. Notices (other than scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. Any notice of default must be sent by registered mail. A Party may change its addresses by providing notice of same in accordance herewith. Courtesy copies of all notices shall be sent simultaneously via electronic mail to the email address(es) set in Exhibit C, but copies sent by electronic mail shall not constitute notice hereunder.

11.8 G

eneral. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect outstanding Transactions under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). All indemnity and audit rights shall survive the termination of this Agreement for twelve (12) months and the rights of either Party pursuant to (i) Article Five, (ii) Section 7.1, (iii) and Section 10.11 (vi) the obligation of either Party to make payments hereunder shall also survive the termination of the Agreement or any Transaction. This Agreement shall be binding on each Party's successors and permitted assigns.

Comment [JS6]: Requires review and needs to be harmonized with Section 11.1.

11.9 A

udit. Each Party agrees to maintain and make available to the other Party, during regular business hours, accurate books and accounting records relating to its obligations and the Transactions under this Agreement. Each Party will permit the other Party to audit, examine and make excerpts and transcripts from such books and records, and to audit all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Shell Energy shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement, or until after a final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this Section. If any examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest

calculated at the Interest Rate from the date the overpayment or underpayment was made until paid.

11.10 F

orward Contract / Bankruptcy Issues. The Parties intend that all Transactions constitute a "forward contract" within the meaning of the United States Bankruptcy Code (the "Bankruptcy Code").

11.11 C

onfidentiality.

(a) In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors' bids, responses to solicitations and all other records of communication between the City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

(b) Shell Energy understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Shell Energy may have access to private or confidential information that may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Shell Energy agrees that all information disclosed by City to Shell Energy shall be held in confidence and used only in performance of the Agreement. Shell Energy shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

(c) Shell Energy has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Shell Energy agrees that any failure of Shell Energy to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate this Agreement and any Transactions hereunder, bring a false claim action against Shell Energy pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar Shell Energy.

11.12 N

o Impairment of Obligations. The City may not take any actions to alter Shell Energy's rights or the City's obligations under this Agreement in a manner that would violate the provisions in the California or United States constitutions barring laws that impair obligations including without limitation Article I, Section 9 of the California State Constitution.

11.13 Compliance with Laws. Shell Energy and the City understand and agree that the City is entering this Agreement in its capacity as purchaser of electric power. Nothing in this Agreement shall limit in any way Shell Energy's obligation to obtain any required approvals from City departments, boards or commissions having jurisdiction over this Agreement. By entering this Agreement, the City is in no way modifying Shell Energy's obligation to undertake all business pursuant to this Agreement in accordance with all Applicable Laws. Shell Energy shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all Applicable Laws as they may be amended from time to time.

11.14 No Immunity Defense. If and to the fullest extent permitted by law, the City agrees that it will not assert the defense of sovereign immunity with respect to the enforcement of the City's obligations under this Agreement, provided that nothing in this Section shall prevent the City from asserting any other defenses it may have in law or at equity.

11.15 F

ERC Standard of Review; Mobile-Sierra Waiver. Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver in subsection below is unenforceable or ineffective as to such Party), a non-party or FERC acting sua sponte, shall solely be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. __, 128 S.Ct. 2733 (2008) (the "Mobile-Sierra" doctrine).

11.18 Additional City Requirements. Shell shall comply with the City requirements set forth on Exhibit B, attached hereto and incorporated herein.

11.19 Subcontracting. Shell Energy shall not subcontract this Agreement or any part thereof unless such subcontracting is first approved by the City in writing, in City's sole discretion. Neither Party shall, on the basis of this Agreement contract on behalf of or in the name of the other Party. An agreement made in violation of this provision shall confer no rights on any Party and shall be null and void. The City acknowledges and agrees that Shell Energy's purchase of Products for redelivery to the City pursuant to a

Confirmation and Shell Energy's retention of Czarnecki-Yester Consulting Group LLC for the collection, assimilation and summation of Shell Energy's portfolio CAISO meter data for Shell Energy's internal purposes shall not constitute subcontracting hereunder.

11.20 Severability. Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provisions shall be enforced to the maximum extent possible so as to effect the intent of the Parties and shall be reformed without further action by the Parties to the extent necessary to make such provision valid and enforceable.

11.21 Modification or Amendment. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement, except that on behalf of the City, the General Manager of the San Francisco Public Utilities Commission may approve in writing modifications that do not materially change the benefits and burdens of this Agreement as between the City and Shell Energy.

11.22 Construction. All paragraph captions are for reference only and shall not be considered in construing this Agreement.

11.23 Cooperative Drafting. This Agreement has been drafted through the cooperative effort of both parties and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

11.24 Entire Agreement. This Master Agreement, the appendices, exhibits, schedules hereto and all Confirmations set forth the entire Agreement between the Parties and supersedes all other oral and written provisions. This Agreement may only be modified as provided for in Section 11.20.

11.25 Non-Waiver of Rights. The omission by either Party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other Party at the time designated, shall not be a waiver of any such default or right to which the Party is entitled nor shall it affect the right of the Party to enforce such provisions therefore.

11.26 No Authority. NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, SHELL ENERGY DOES NOT AND SHALL NOT HAVE TITLE OR DEED TO ANY CITY PROPERTY; SHELL ENERGY SHALL HAVE NO POWER OR AUTHORITY TO BIND THE CITY BY ANY CONTRACT OR OTHERWISE, TO DISPOSE OF ANY CITY PROPERTY, TO PLEDGE THE CITY'S CREDIT, OR TO RENDER THE CITY LIABLE FOR ANY PURPOSE OR TO ANY AMOUNT. Shell Energy shall not represent or otherwise hold itself out to other entities

as having any authority beyond that provided in this Agreement. Shell Energy shall not use the City's name for any purpose without the City's prior express written consent.

IN WITNESS WHEREOF, this Agreement has been duly executed as of the first date written above.

[CITY SIGNATURE BLOCK]

_____
Name:
Title:

SHELL ENERGY NORTH AMERICA (US), L.P.

_____
Name:
Title:

NON-BINDING DRAFT; Subject to further review by the City Attorney. Final approval is contingent on review of all documents in final form, approval by respective bodies and execution.

EXHIBIT XX

FORM OF IRREVOCABLE STANDBY LETTER OF CREDIT

IRREVOCABLE STANDBY L/C NO.: _____

Issued in _____ on _____, 20___

BENEFICIARY:

APPLICANT:

_____
_____
_____
_____

AMOUNT:
USD $_____
_____ Million and no/100 U.S. Dollars

Expiry Date:
_____, 20___

We hereby establish our Irrevocable Standby Letter of Credit in favor of [_____ _____] (hereinafter referred to as "Beneficiary") for the account of:

_____
_____
_____
_____

For an aggregate amount of _____ Million and no/100 U.S. Dollars (USD _____) available at [Bank's address]_____ _____, by payment against your drafts at sight (in the form attached hereto as Annex I) to be accompanied by either:

(i) a signed statement by a purportedly authorized representative of Beneficiary that the amount drawn under this Letter of Credit represents an amount due and owing to Beneficiary and unpaid by [_____] under the terms of [one or more agreements and/or confirmations for the purchase and sale of electric energy and other

energy products pursuant to an Energy Purchase and Sale Agreement and Confirmation (collectively, the "Agreements") between [_____] and Beneficiary, or

(ii) a signed statement by a purportedly authorized representative of Beneficiary that (a) [_____] has contractual obligations to Beneficiary which extend beyond the expiration date of this Letter of Credit, and (b) [_____] has not provided a substitute letter of credit prior to ten (10) business days before the expiration date of this Letter of Credit, and (c) Beneficiary is therefore drawing upon this Letter of Credit and will hold the proceeds as collateral in accordance with the Agreements.

It is not necessary to present the original Letter of Credit in connection with any drawing hereunder.

This Letter of Credit may not be amended, changed or modified without the express written consent of Applicant, Beneficiary and us; provided, however, the amount available for drawing under this Letter of Credit may be reduced from time to time by written instructions to us executed by both Applicant and Beneficiary.

Except as otherwise stated, this Letter of Credit is subject to the International Standby Practices (ISP98) and the laws of the State of New York.

We will be responsible for the acts and omissions of our branches, agencies or other offices. In the event this Letter of Credit is stolen, lost, mutilated or destroyed, we will issue a replacement Letter of Credit (marked as such) provided we have received indemnities and assurances from Beneficiary satisfactory to us with respect to the original Letter of Credit.

Beneficiary's drawing rights under this Letter of Credit are fully transferable in their entirety and we are bound to transfer such drawing rights except where doing so would violate any applicable law or regulation. It shall not be necessary to present the original of the Letter of Credit in connection with such a transfer.

We engage with you that drafts drawn and presented under and in compliance with the terms of this credit will be duly honored.

Reimbursement instructions: Payment to be effected per your instructions against conforming documents presented at our counters.

Sincerely,

[NAME OF BANK]

_____

Authorized Signature(s)

NON-BINDING DRAFT; Subject to further review by the City Attorney. Final approval is contingent on review of all documents in final form, approval by respective bodies and execution.

Contact Name: _____
Telephone: _____
Fax: _____

NON-BINDING DRAFT; Subject to further review by the City Attorney. Final approval is contingent on review of all documents in final form, approval by respective bodies and execution.

ANNEX I

SIGHT DRAFT FOR PAYMENT DRAWN
LETTER OF CREDIT NO. _____

Date:_____

TO: **[insert Bank information]**
_____
_____
_____
Attn: Letter of Credit Department

PAY AT SIGHT TO: the order of [_____] the sum of _____ Million and no/100 U.S. Dollars (USD _____).

By:_____
Name:_____
Title:_____

Drawn under Irrevocable Letter of Credit No. _____ dated _____ issued by _____.

NON-BINDING DRAFT; Subject to further review by the City Attorney. Final approval is contingent on review of all documents in final form, approval by respective bodies and execution.

APPENDIX II

SENA PRICE CURVE DATE: *12/6/2011*

CleanPowerSF Bandwidth Pricing Sheet					
5% Monthly Load Following Product @ NP-15					
Term	Jul 12 - Dec 12	Jan 13 - Dec 13	Jan 14 - Dec 14	Jan 15 - Dec 15	Jan 16 - Dec 16
TOTAL Brown Energy Offer Price ($/MWh)	$45.27	$51.03	$56.61	$61.08	$65.34

	Renewable Energy #1	Renewable Energy #2	Renewable Energy #3	Resource Adequacy Greater Bay	Resource Adequacy Other PG&E	Resource Adequacy System
Jul-Dec 2012	$48.00	$12.00	$10.50	$4.25	$3.75	$2.00
CY 2013	$48.50	$14.00	$12.50	$4.25	$3.75	$2.00
CY 2014	$48.50	$17.00	$15.50	$4.25	$3.75	$2.00
CY 2015	$49.00	$21.00	$18.50	$4.25	$3.75	$2.00
CY 2016	$49.50	$24.00	$21.50	$4.25	$3.75	$2.00

NON-BINDING DRAFT; Subject to further review by the City Attorney. Final approval is contingent on review of all documents in final form, approval by respective bodies and execution.

Exhibit B

For purposes of this exhibit B, Contractor shall mean Shell Energy.

8. Submitting False Claims; Monetary Penalties. Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code is available on the web at http://www.municode.com/Library/clientCodePage.aspx?clientID=4201. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

14. Independent Contractor; Payment of Taxes and Other Expenses

a. **Independent Contractor.** Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

b. **Payment of Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon

notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in City's financial liability so that City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

15. Insurance [UNDER DISCUSSION WITH RISK MANAGER]

a. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than $1,000,000 each accident, injury, or illness; and

2) Commercial General Liability Insurance with limits not less than $1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

3) Commercial Automobile Liability Insurance with limits not less than $1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

4) Professional liability insurance, applicable to Contractor's profession, with limits not less than $1,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.

b. Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

1) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. Regarding Workers' Compensation, Contractor hereby agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

d. All policies shall provide thirty days' advance written notice to the City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the City address in the "Notices to the Parties" section.

e. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

f. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

g. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

h. Before commencing any operations under this Agreement, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

i. Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.

j. If a subcontractor will be used to complete any portion of this agreement, the Contractor shall ensure that the subcontractor shall provide all necessary insurance and shall name the City and County of San Francisco, its officers, agents and employees and the Contractor listed as additional insureds.

23. Conflict of Interest. Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

32. Earned Income Credit (EIC) Forms. Administrative Code section 12O requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found. Contractor shall provide EIC Forms to each Eligible Employee at each of the following times:

(i) within thirty days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If, within thirty days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law. Any Subcontract entered into by Contractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

34. Nondiscrimination; Penalties

a. **Contractor Shall Not Discriminate.** In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

b. **Subcontracts.** Contractor shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

c. **Nondiscrimination in Benefits.** Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

d. **Condition to Contract.** As a condition to this Agreement, Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

e. **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of $50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

35. MacBride Principles—Northern Ireland. Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

36. Tropical Hardwood and Virgin Redwood Ban. Pursuant to §804(b) of the San Francisco Environment Code, the City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

37. Drug-Free Workplace Policy. Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Contractor agrees that any violation of this prohibition by Contractor, its employees, agents or assigns will be deemed a material breach of this Agreement.

38. Resource Conservation. Chapter 5 of the San Francisco Environment Code ("Resource Conservation") is incorporated herein by reference. Failure by Contractor to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

42. Limitations on Contributions. Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of

personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of $50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Contractor further agrees to provide to City the names of each person, entity or committee described above.

43. Requiring Minimum Compensation for Covered Employees

a. Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Sections 12P.5 and 12P.5.1 of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/olse/mco. A partial listing of some of Contractor's obligations under the MCO is set forth in this Section. Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

b. The MCO requires Contractor to pay Contractor's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Contractor is obligated to keep informed of the then-current requirements. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.

c. Contractor shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

d. Contractor shall maintain employee and payroll records as required by the MCO. If Contractor fails to do so, it shall be presumed that the Contractor paid no more than the minimum wage required under State law.

e. The City is authorized to inspect Contractor's job sites and conduct interviews with employees and conduct audits of Contractor

f. Contractor's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Contractor fails to comply with these requirements. Contractor agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Contractor's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

g. Contractor understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

h. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

i. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than $25,000, but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed $25,000 in the fiscal year.

44. Requiring Health Benefits for Covered Employees

Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of section 12Q.5.1 of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at www.sfgov.org/olse. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

j. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

k. Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

l. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

m. Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

n. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

o. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

p. Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.

q. Contractor shall keep itself informed of the current requirements of the HCAO.

r. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

s. Contractor shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.

t. Contractor shall allow City to inspect Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with HCAO.

u. City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City when it conducts such audits.

v. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than $25,000 ($50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with City to reach $75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City to be equal to or greater than $75,000 in the fiscal year.

45. First Source Hiring Program

a. Incorporation of Administrative Code Provisions by Reference.

The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

b. First Source Hiring Agreement.

As an essential term of, and consideration for, any contract or property contract with the City, not exempted by the FSHA, the Contractor shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the contract or property contract. Contractors shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs maybe certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The

duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

4) Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals.

5) Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

6) Set the term of the requirements.

7) Set appropriate enforcement and sanctioning standards consistent with this Chapter.

8) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.

9) Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

c. **Hiring Decisions**

Contractor shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

d. **Exceptions**

Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

e. **Liquidated Damages.**

Contractor agrees:

1) To be liable to the City for liquidated damages as provided in this section;

2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;

3) That the contractor's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantity; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to $5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.

4) That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to $10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;

5) That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this section is based on the following data:

(a) The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of $348 per month, totaling approximately $14,379; and

(b) In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year;

Therefore, liquidated damages that total $5,000 for first violations and $10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and

conservative attempt to quantify the harm caused to the City by the failure of a contractor to comply with its first source referral contractual obligations.

6) That the failure of contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law; and

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of $5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

f. **Subcontracts.**

Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

46. Prohibition on Political Activity with City Funds. In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Contractor from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Contractor's use of profit as a violation of this section.

47. Preservative-treated Wood Containing Arsenic. Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Contractor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

58. Graffiti Removal. Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and

private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti. Contractor shall remove all graffiti from any real property owned or leased by Contractor in the City and County of San Francisco within forty eight (48) hours of the earlier of Contractor's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a Contractor to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

Any failure of Contractor to comply with this section of this Agreement shall constitute an Event of Default of this Agreement.

CONFIRMATION

This confirmation agreement (together with accompanying exhibits, this "Confirmation") dated as of _____, 20__ (the "Execution Date") is between the City and County of San Francisco ("City") and Shell Energy North America (US), L.P. ("Shell Energy"). City and Shell Energy have executed that certain Energy Purchase and Sale Agreement dated _____, 20___ (the "Energy Agreement"). This Confirmation authorizes a Transaction as contemplated by Section 2.1 of the Energy Agreement and constitutes part of and is subject to the terms and provisions of such Energy Agreement. Neither Party shall have any obligations hereunder unless and until the conditions precedent set forth in Section 2.3 of the Energy Agreement are satisfied, and unless and until the Parties have duly executed this Confirmation.

DEFINITIONS.

Unless otherwise required by the context in which any term appears, (i) initially- capitalized terms used in this Confirmation shall have the meanings specified in this Section and if not otherwise defined herein shall have the meanings ascribed to such terms in the Energy Agreement; (ii) terms defined in the singular shall include the plural and vice versa; (iii) references to "Articles," "Sections," and "Exhibits" shall be to articles, sections, or exhibits hereof; (iv) all references to a particular entity shall include a reference to such entity's successors and permitted assigns; (v) the words "herein," "hereof," and "hereunder" shall refer to this Confirmation as a whole and not to any particular section or subsection hereof; (vi) all accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles; (vii) references to this Confirmation shall include a reference to all appendices and Exhibits hereto, as the same may be amended, modified, supplemented, or replaced from time to time; (viii) terms used in the masculine shall include the feminine and neuter and vice versa; (ix) the term "including," when used in this Agreement, shall mean to include without limitation; and (x) capitalized terms used herein but not otherwise defined herein shall have the meanings ascribed to such terms in the Energy Agreement.

"Additional Bay Area Local Resource Adequacy Capacity" means, for any month, any positive difference between the City's Bay Area Local Resource Adequacy Requirement and the Committed Bay Area Local Resource Adequacy Quantity, procured in accordance with Section 7.2.

"Additional Other PG&E Local Resource Adequacy Capacity" means, for any month, any positive difference between the City's Other PG&E Local Resource Adequacy Requirement and the Committed Other PG&E Local Resource Adequacy Quantity, procured in accordance with Section 7.2 .

"Additional Resource Adequacy Capacity" means for any month, the Additional Bay Area Local Resource Adequacy Capacity, the Additional Other PG&E Local Resource Adequacy Capacity and the Additional System Resource Adequacy Capacity.

"Additional System Resource Adequacy Capacity" means, for any month, any positive difference between the City's System Resource Adequacy Requirement and the Committed System Resource Adequacy Quantity, procured in accordance with Section 7.2.

"Agreement" means this Confirmation.

"Balanced Monthly Usage" has the meaning set forth in Section 4.4.

"Baseline Monthly Usage" means the amount of Energy specified in **[Exhibit 1A]**.

"Bay Area Local Resource Adequacy Capacity" means Local Capacity Area Resources (as defined in the CAISO Tariff) that are identified by the CAISO as being in the San Francisco Greater Bay Area Local Capacity Area (as defined in the CAISO Tariff) as described in the Local Capacity Technical Study (as defined in the CAISO Tariff).

"Buyer" means the City.

"CAISO Charges" means those amounts (other than the LMP charged to scheduled load, and Imbalance Energy Charges) charged to Shell Energy by the CAISO and associated with the procurement and delivery at the Delivery Point of any Product sold by Shell Energy to the City pursuant to this Confirmation, including charges associated with Ancillary Services, as such charges may be adjusted from time to time pursuant to the CAISO Tariff.

"CAISO Credits" means those amounts (other than the LMP credited to scheduled supply, and Imbalance Energy Charges) credited to Shell Energy by the CAISO and associated with the procurement and delivery at the Delivery Point of any Product sold by Shell Energy to the City pursuant to this Confirmation, including credits associated with Ancillary Services, as such credits may be adjusted from time to time pursuant to the CAISO Tariff.

"Carbon Neutral Energy" means (i) Renewable Energy, (ii) Energy produced by hydro-electric, wind, solar thermal or photovoltaic resources that does not qualify as Renewable Energy (iii) with respect to any system power delivered by Shell Energy to City, the quantity of hydro-electric, nuclear and Renewable Energy included in such system power, or (iv) other Energy, the production of which does not result in the release of Greenhouses Gases, as determined by the City in its sole discretion.

"CEC" means the California Energy Commission, or its successor organization.

"City Facilities" has the meaning set forth in Section 9.

"City's Renewable Objectives" has the meaning set forth in Section 6.1.1.

"Commercially Reasonable Efforts" for the purposes of this Confirmation, "commercially reasonable efforts" or acting in a "commercially reasonable manner" shall not require a Party to undertake extraordinary or unreasonable measures.

"Committed Bay Area Local Resource Adequacy Capacity Quantity" means the amount (in kW-month) of Bay Area Local Resource Adequacy Capacity that the City commits to purchase from Shell Energy at the Contract Price set forth in Section 5.3, as shown in Exhibit 1D.

"Committed Other PG&E Local Resource Adequacy Capacity Quantity" means the amount (in kw-month) of Other PG&E Local Resource Adequacy Capacity that the City commits to purchase from Shell Energy at the Contract Price set forth in Section 5.3, as shown in Exhibit 1D.

"Committed Renewable Energy, Type 1, Quantity" means the amount (in MWh) of Renewable Energy, Type 1, that the City commits to purchase at the Contract Price set forth in Section 5.2, as shown in Exhibit 1C, except to the extent the amount is modified pursuant to Section 6.

"Committed Renewable Energy, Type 2, Quantity" means the amount (in MWh) of Renewable Energy, Type 2, that the City commits to purchase at the Contract Price set forth in Section 5.2, as shown in Exhibit 1C, except to the extent the amount is modified pursuant to Section 6.

"Committed Renewable Energy, Type 3, Quantity" means the amount (in MWh) of Renewable Energy, Type 3, that the City commits to purchase at the Contract Price set forth in Section 5.2, as shown in Exhibit 1C, except to the extent the amount is modified pursuant to Section 6.

"Committed System Resource Adequacy Capacity Quantity" means the amount (in kW-month) of System Resource Adequacy Capacity that the City commits to purchase at the Contract Price set forth in Section 5.3, as shown in Exhibit 1D.

"Delivery Term" has the meaning set forth in Section 2.

"Distribution Loss Factors" means the factors identified by PG&E to represent distribution losses between the Delivery Point and the Customers' meters.

"Environmental Products" includes environmental credit offset products (such as CO_2 credits, VER), bundled or stand alone renewable energy credits or CO_2 offsets. Environmental Products must be verifiable through a recognized registry and are not geographically limited to a specific region or source.

"Excess Bay Resource Adequacy Capacity" means for any month any positive difference between the Committed Bay Area Local Resource Adequacy Quantity and the City's Bay Area Local Resource Adequacy Requirement, sold in accordance with Section 7.1.

"Excess Other PG&E Local Resource Adequacy Capacity" means for any month any positive difference between the Committed Other PG&E Local Resource Adequacy Quantity and the City's Other PG&E Local Resource Adequacy Requirement, sold in accordance with Section 7.1.

"Excess Resource Adequacy Capacity" means for any month the Excess Bay Area Local Resource Adequacy Capacity, the Excess Other PG&E Local Resource Adequacy Capacity and the Excess System Resource Adequacy Capacity.

"Excess System Resource Adequacy Capacity" means for any month any positive difference between the Committed System Resource Adequacy Quantity and the City's System Resource Adequacy Requirement, sold in accordance with Section 7.1.

"Excess Renewable Energy" has the meaning set forth in Section 6.1.

"Excess Quantity" has the meaning set forth in Section 5.1.2

["Green Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere;[1] (3) the reporting rights to these avoided emissions, such as

[1] Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Green Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program.

Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Project, (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits. If the Project is a biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project.

"Greenhouse Gases" means carbon dioxide, methane and other gases that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere.

"HHWP" means Hetch Hetchy Water and Power.

"HHWP Energy Bank" means the Energy account known as the Deferred Delivery Account in the interconnection agreement between PG&E and City, originally entered into on December 21, 1987 as amended on October 25, 2007.

"HHWP Energy Bank Withdrawals" means previously-banked Energy from HHWP Generation that is withdrawn from the HHWP Energy Bank to serve Customers.

"HHWP Generation" means generating resources operated by Hetch Hetchy Water and Power.

"HHWP Logical Meter" means the mechanism by which the HHWP may transfer to the Customers any net positive energy deviations calculated by the City from the HHWP portfolio associated with HHWP Generation using a logical generation meter.

"Imbalance Energy Charges" means those CAISO charges and credits associated with energy imbalances (identified by the CAISO on the Effective Date as charge code 6475).

"LAP" means Load Aggregation Point as defined in the CAISO Tariff.

"LMP" means Locational Marginal Price as defined in the CAISO Tariff.

"Meter Data Manager" means the entity that, on behalf of the City, obtains from PG&E, reviews, and consolidates meter data, pursuant to the requirements of the California Public Utilities Commission and CAISO Tariff.

"Monthly CAISO Electricity Usage" means the Monthly Metered Electricity Usage, grossed up by the Distribution Loss Factors provided by PG&E. This amount shall equal total electricity usage identified

by the City's Meter Data Manager and submitted to the CAISO as Settlement Quality Meter Data each month by the City or its designee.

"Monthly Lower Limit" means the amount of Energy specified in Section [4.4].

"Monthly Upper Limit" means the amount of Energy specified in Section [4.4].

"Monthly Metered Electricity Usage" means the metered amount of electricity used by the Customers each month, as reported by the City's Meter Data Manager.

"NP15 EZ Gen Hub" means the NP15 Existing Zone Generation Trading Hub, as defined in the CAISO Tariff.

"Other PG&E Local Resource Adequacy Capacity" means Local Capacity Area Resources (as defined in the CAISO Tariff) that are identified by the CAISO as being in Local Capacity Areas (as defined in the CAISO Tariff) in the PG&E TAC Area other than the San Francisco Greater Bay Area Local Capacity Area (as defined in the CAISO Tariff) as described in the Local Capacity Technical Study (as defined in the CAISO Tariff).

"PG&E DLAP" means the PG&E TAC Area Default LAP, as defined in the CAISO Tariff, or any subsequent CAISO load aggregation settlement location applicable to the Customers.

"Project" means **TBD**.

"Renewable Energy" means Energy that meets the requirements of Section 399.16(b)(1), Section 399.16(b)(2), or Section 399.16(b)(3) of the California Public Utilities Code.

"Renewable Energy, Type 1" means Energy that meets the requirements of Section 399.16(b)(1) of the California Public Utilities Code.

"Renewable Energy, Type 2" means Energy that meets the requirements of Section 399.16(b)(2) of the California Public Utilities Code.

"Renewable Energy, Type 3" means Energy that meets the requirements of Section 399.16(b)(2) of the California Public Utilities Code.

"Renewable Energy Credit" or "RECs" has the meaning set forth in Section 399.12(h) of the California Public Utilities Code.

"Resource Adequacy Capacity" means the Bay Area Local Resource Adequacy Capacity, the Other PG&E Local Resource Adequacy Capacity and the System Resource Adequacy Capacity.

"Resource Adequacy Capacity Requirement" means those requirements described in Section 40 of the CAISO Tariff applicable to community choice aggregators.

"RPS Obligations" means the requirements that apply to the City in its capacity of CCA for the Customers pursuant to the California Renewable Portfolio Standard, codified in California Public Utilities Code, Section 399.11 et. seq.

"Supplier" means Shell Energy.

"System Resource Adequacy Capacity" means capacity in any qualifying TAC Area (as defined in the CAISO Tariff) from Resource Adequacy Resources (as defined in the CAISO Tariff), other than from Bay Area Local Resource Adequacy Capacity resources or Other PG&E Local Resource Adequacy Capacity resources.

"Underused Quantity" has the meaning set forth in Section 5.1.3.

"USD" means United States Dollars, the lawful currency of the United States of America.

"VER" means verified emission reduction credits.

"Weighted Average Price" shall mean a price determined on a monthly basis as a function of Customers' actual Energy consumption and the average CAISO Real-Time PG&E TAC Area Default LAP Price for each corresponding hour (as posted by the CAISO). The Weighted Average Price calculation is as set forth below.

For months in which the Monthly CAISO Electricity Usage is greater than the Monthly Upper Limit, the weighted average price shall be:

Weighted Average Price$_{\text{Above Upper Limit}}$ = the sum over all hours [max (Hourly Load – Hourly Upper Limit, 0) * Hourly Price] / sum over all hours [max (Hourly Load – Hourly Upper Limit, 0)]

For months in which the Monthly CAISO Electricity Usage is less than the Monthly Lower Limit, the weighted average price shall be:

Weighted Average Price$_{\text{Below Lower Limit}}$ = the sum over all hours [max (Hourly Lower Limit - Hourly Load, 0) * Hourly Price] / sum over all hours [max (Hourly Lower Limit - Hourly Load, 0)]

Where the Hourly Lower Limit means the amount of Energy specified in Confirmation Exhibit [xx]; and

Hourly Upper Limit means the amount of Energy specified in Confirmation Exhibit [xx]; and

Hourly Price is the simple average CAISO Real-Time PG&E TAC Area Default LAP Price for that hourly interval; and

Hourly Load is the metered amount of electricity used by the Customers each hour, as reported by the City's Meter Data Manager, grossed up by the Distribution Loss Factors. This amount should equal total electricity usage identified by the City's Meter Data Manager and submitted to the CAISO as Settlement Quality Meter Data for each hourly interval by the City or a third party on behalf of the City.

1. **PRODUCT.**

1.1 Shell Energy Supply Obligation. Throughout the Delivery Term, Shell Energy shall sell and deliver or, in the case of Resource Adequacy Capacity, supply to the City, and the City shall purchase and pay for:

(a) a quantity of Energy each month equal to the Monthly CAISO Electricity Usage;

(b) a quantity of Renewable Energy, Type 1, a quantity of Renewable Energy, Type 2, and a quantity of Renewable Energy, Type 3, as set forth in Exhibit 1C, except to the extent such quantities may be adjusted as a result of transactions consummated pursuant to Section 6;

(c) a quantity of Resource Adequacy Capacity as set forth in Exhibit 1D and as may be adjusted in accordance with Section 7;

(d) Ancillary Services required to serve the Customers at the Delivery Point; and

(e) Scheduling Coordinator Services as set forth in Exhibit XX of the Confirmation, the compensation for which is included in this Contract Price for Energy.

1.2 Renewable Energy. During the Delivery Term ([plus no more than the applicable WREGIS transfer time period] solely for purposes of transferring to the City the applicable Renewable Energy Credits through WREGIS), Shell Energy shall sell and deliver to the City, and the City shall purchase and pay for, Renewable Energy no less than in the quantity and of the types set forth in Exhibit 1C, except to the extent such quantities may be adjusted as a result of transactions consummated pursuant to Section 6, and Shell Energy shall, pursuant to Section 6, offer the City Renewable Energy in amounts and types sufficient to ensure that (i) 100% of the Energy used to serve the Monthly Metered Electricity Usage qualifies as Renewable Energy and (ii) City meets all RPS Obligations. The Renewable Energy sold by Shell Energy to City shall include any and all Green Attributes associated with such Renewable Energy. [Shell Energy's performance of its obligation to deliver Renewable Energy hereunder shall be tested annually following the conclusion of the calendar year during the Delivery Term, taking into account the applicable WREGIS transfer time period for the transfer of Renewable Energy Credits for the then-previous calendar year. **Under review by the City.]**

Shell Energy shall deliver Renewable Energy to the City by (1) transferring to the City the applicable Renewable Energy Credits through WREGIS; (2) delivering to the City all the information, documentation, certificates and other evidence with Shell Energy's control that the City requires to document that such Renewable Energy qualifies under the California Renewable Portfolio Standard legislation and regulations as the particular type of Renewable Energy delivered; and (3) transferring to the City all other Green Attributes associated with the Renewable Energy delivered.

The following California Public Utilities mandated non-modifyable standard terms apply with respect to the sale by Shell Energy of Renewable Energy to the City:

Transfer of Renewable Energy Credits a. Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the

Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

Tracking of RECs in WREGIS Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract.

Eligiblity. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

Governing Law. This agreement and the rights and duties of the parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this agreement.

Green Attributes. Seller hereby provides and conveys all Green Attributes associated with all electricity generation from the Project to Buyer as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Project, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Project.

Comment [JS1]: Place holder pending further review. Inconsistent with aspects of the Energy Agreement.

I.3 Carbon Neutral Energy. Shell Energy shall provide Energy hereunder to City such that the average carbon content of such Energy is equal to or less than the average carbon content of Energy supplied by PG&E to its customers. This commitment shall be tested on an annual basis at the end of each calendar year and shall compare the proportion of Carbon Neutral Energy disclosed or reported by PG&E in publicly available information, such as the PG&E power content label, for the immediately preceding calendar year (or part thereof for the initial and the final contract year) with the proportion of Carbon Neutral Energy delivered by Shell Energy to City during such time period. To the extent that the proportion of Carbon Neutral Energy delivered by Shell Energy to City during such time period is less than the proportion of Carbon Neutral Energy disclosed or reported by PG&E, Shell Energy and City shall timely identify Environmental

Products sufficient to make the proportion of Carbon Neutral Energy provided to Customers hereunder, at least as great as the proportion of Carbon Neutral Energy supplied by PG&E to its customers. Shell Energy shall procure the identified Environmental Products within 90 days of the end of such calendar year; provided, however, that Shell Energy shall only purchase Environmental Products with the express prior written approval of the City and City reserves the right to identify and purchase (or direct Shell Energy to purchase) Environmental Products offered on more favorable commercial terms to satisfy the Carbon Free Shortfall. For purposes of clarification, the Parties agree that all costs for securing the Carbon Neutral Energy as required by this Section 1.3 shall be paid for by City. In the event City is no longer within the PG&E service territory, the references in this Section 1.3 to 'PG&E' shall be replaced by the identity of the utility in whose service territory City is located.

1.4 Resource Adequacy Capacity: During the DeliveryTerm, Shell Energy shall sell and supply to the City, and the City shall purchase and pay for, Resource Adequacy Capacity in the amount and of the types set forth in Exhibit 1D, and shall offer the Resource Adequacy Capacity in amounts sufficient to allow the City to meet the Resource Adequacy Capacity Requirements that apply to the City with respect to the Customers, pursuant to Section 7.

1.5 Change in Law. If a Governmental Authority enacts a change in Applicable Law (including a change to SB X 12) (a "Change in Law") after the date of this Confirmation that results in changes to City's or Shell Energy's obligations with regard to Energy or other Products sold hereunder, the Parties shall work in good faith to try and revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of such Products or City's compliance with RPS obligations on economic terms equal to those in force on the execution date hereof. For purposes of this section, the Parties agree that Senate Bill (SB) X 12 passed in 2011 is in effect as of the Effective Date and to the extent they are included in SB X 12 references to Public Utilities Code sections in this Confirmation shall be deemed to references to those sections as they appear in SB X 12. **To be reviewed when Confirmation is ready for execution]** In the event the Parties cannot reach agreement on any amendments to this Confirmation within 60 days following the Change in Law, Shell Energy shall perform its obligations hereunder with regard to sale of Products hereunder or City's compliance with the RPS Obligations in accordance with the Applicable Law immediately prior to the Change in Law.

2. **DELIVERY TERM.** Following execution of this Confirmation (the "Effective Date"), the terms set forth in this Confirmation shall apply from the Start Date through the End Date (the "Delivery Term"):

Start Date (at 00:00 P.P.T.:	End Date (at 23:59 P.P.T.):
___, 2012	___, 201[6]

3. **LOCATION AND DELIVERY POINT.**

The Supply Point and the Delivery Point shall be in the CAISO market area and are as defined in the Energy Agreement. The City's local utility is Pacific Gas and Electric Company ("PG&E").

4. **PRICING.**

4.1. Contract Price (**Energy**): From the Start Date, City shall pay the following Contract Price for Energy and for Shell Energy acting as the Scheduling Coordinator as described in Exhibit XX attached hereto, (expressed in USD per MWh) for all Monthly CAISO Electricity Usage that is within the Balanced Monthly Usage.

Portion of the Delivery Term	**Contract Price (Energy) (in US$/MWh)**
e.g., Start Date – End Date? (unless prices vary for different time periods)	$
	$

4.2 Contract Price (**Renewable Energy**): During the Delivery Term, the Contract Price (Renewable Energy) for Renewable Energy Products (expressed in USD per MWh) shall be the following respective premium prices to be paid in addition to the price(s) paid for Energy specified in Section 4.1:

	Renewable Energy, Type 1	**Renewable Energy, Type 2**	**Renewable Energy Type 3**
Premium Price (in US$/MWh)			

4.3 Contract Price (**Resource Adequacy Capacity**): During the Delivery Term, the Contract Price (Resource Adequacy Capacity) for Resource Adequacy Capacity (expressed in USD per kilowatt-month) shall be the following respective prices:

	System Resource Adequacy Capacity	**Bay Area Local Resource Adequacy Capacity**	**Other PG&E Local Resource Adequacy Capacity**
Price ($/kW-mo)	$	$	$

4.4 Balanced Monthly Usage: The Balanced Monthly Usage shall be a volume of Energy bounded by the Monthly Lower Limit and the Monthly Upper Limit as defined and set forth below:

Balanced Monthly Usage Limits	
Monthly Lower Limit 95% of Baseline	Monthly Upper Limit

Monthly Usage	105% of Baseline Monthly Usage
See attached **Confirmation Exhibits 1A and 1B**	See attached **Confirmation Exhibits 1A and 1B**

4.5 Pass-Through Charges and Credits: Shell Energy shall be responsible for bidding and scheduling the loads of all Customers in accordance with Applicable Law, including the CAISO Tariff. Shell Energy shall pass through to City (1) all CAISO Charges and CAISO Credits associated with the Monthly CAISO Electricity Usage at the Delivery Point; (2) City CAISO congestion and loss charges for delivering Energy from the Supply Point (or, if City Facilities are utilized, from the City Facilities) to the Delivery Point; and (3) all CAISO Charges and CAISO Credits associated with City's Congestion Revenue Rights. All CAISO Charges and CAISO Credits passed through to the City by Shell Energy pursuant to this section shall be included in the next monthly invoice from Shell Energy to the City following receipt by Shell Energy of an invoice from CAISO reflecting such CAISO Charges and CAISO Credits.

4.6 Pass-Through Revenues: In addition, Shell Energy shall pass through to City, or pay to third parties as directed by City, all net revenues received from CAISO resulting from integration of Energy, Resource Adequacy Capacity, Ancillary Services and Renewable Energy from City Facilities pursuant to Section 9.

5. MONTHLY BILLING SETTLEMENT.

Shell Energy's monthly invoice to City shall include the pass through of charges, credits and revenues, described in Sections 4.5 and 4.6 and the charges and credits described in this Section 5 for Energy, Renewable Energy, and Resource Adequacy Capacity.

5.1 Energy

5.1.1 Balanced Monthly Usage: During any calendar month of delivery, if City's Monthly CAISO Electricity Usage for Energy (expressed in MWh) is within the Balanced Monthly Usage, Shell Energy shall invoice City an amount equal to the Monthly CAISO Electricity Usage multiplied by the Contract Price (Energy).

5.1.2 Energy Usage Above Upper Limit: During any calendar month of delivery, if City's Monthly CAISO Electricity Usage for Energy (expressed in MWh) exceeds the Monthly Upper Limit (the amount of such excess referred to herein as "Excess Quantity"), Shell Energy shall invoice City an amount equal to the Monthly Upper Limit multiplied by the Contract Price (Energy), plus the Excess Quantity multiplied by the monthly Weighted Average $\text{Price}_{\text{Above Upper Limit}}$.

5.1.3 Energy Usage Below Lower Limit: During any calendar month of delivery, if City's Monthly CAISO Electricity Usage for Energy (expressed in MWh) is less than the Monthly Lower Limit (the amount of such shortfall referred to herein as "Underused Quantity"), Shell Energy shall invoice the City with an amount equal to the Monthly Lower Limit multiplied by the Contract Price (Energy), less the Underused Quantity multiplied by the monthly Weighted Average $\text{Price}_{\text{Below Lower Limit}}$.

5.2 Renewable Energy

5.2.1 An invoice amount (in $) for Renewable Energy, Type 1 equal to Renewable Energy, Type 1 (in MWh) delivered to City each month multiplied by the Contract Price of Renewable Energy, Type 1 (in $/MWh).

5.2.2 An invoice amount (in $) for Renewable Energy, Type 2 equal to the Renewable Energy, Type 2 (in MWh) delivered to City each month multiplied by the Contract Price of Renewable Energy, Type 2 (in $/MWh).

5.2.3 An invoice amount (in $) for Renewable Energy, Type 3 equal to the Renewable Energy, Type 3 (in MWh) delivered to City each month multiplied by the Contract Price of Renewable Energy, Type 3 (in $/MWh).

5.2.4 An invoice amount for any charges, credits or pass-through of costs to the City from Shell Energy in connection with the remarketing or procurement of Renewable Energy in accordance with Section 6.

5.2.5 Except in accordance with Section 6, the cumulative Renewable Energy delivered to the City during a calendar year through the end of a given billing month may not exceed the cumulative Monthly Metered Electricity Usage during that calendar year through the end of that billing month.

5.2.6 Notwithstanding any other provision herein, Shell Energy shall not bill the City or otherwise seek compensation for any Renewable Energy that it did not deliver to the City, except in accordance with Section 6 with respect to the sale of Anticipated or Actual Excess Renewable Energy.

5.3 Resource Adequacy Capacity

5.3.1 Charges for Committed Quantities of Resource Adequacy Capacity

5.3.1.1 A System Resource Adequacy Capacity invoice amount (in $) equal to the Committed System Resource Adequacy Quantity multiplied by the Contract Price for System Resource Adequacy Capacity (in $/kW-mo).

5.3.1.2 A Bay Area Local Resource Adequacy Capacity invoice amount (in $) equal to the Committed Bay Area Local Resource Adequacy Capacity Quantity multiplied by the Contract Price for Bay Area Local Resource Adequacy Capacity (in $/kW-mo).

5.3.1.3 An Other PG&E Local Resource Adequacy Capacity invoice amount (in $) shall equal the Committed Other PG&E Local Resource Adequacy Quantity multiplied by the Contract Price for Other PG&E Local Resource Adequacy Capacity (in $/kW-mo).

5.3.2 Charges and Credits for Procuring Additional or Remarketing Excess Resource Adequacy Capacity

5.3.2.1 An invoice amount (in $) resulting from any Additional System Resource Adequacy Capacity multiplied by the actual price charged to Shell Energy for

the purchase of the Additional System Resource Adequacy Capacity, less a credit for any Excess System Resource Adequacy Capacity multiplied by the actual price realized by Shell Energy for the sale of the Excess System Resource Adequacy Capacity, pursuant to Section 7.

5.3.2.2 An invoice amount (in $) resulting from any Additional Bay Area Local Resource Adequacy Capacity multiplied by the actual price charged to Shell Energy for the purchase of the Additional Bay Area Local Resource Adequacy Capacity, less a credit for any Excess Bay Area Local Resource Adequacy Capacity multiplied by the actual price realized by Shell Energy for the sale of the Excess Bay Area Local Resource Adequacy Capacity, pursuant to Section 7.

5.3.2.3 An invoice amount (in $) resulting from any Additional Other PG&E Local Resource Adequacy Capacity multiplied by the actual price charged to Shell Energy of the Additional Other PG&E Local Resource Adequacy Capacity, less a credit for any Excess Other PG&E Local Resource Adequacy Capacity multiplied by the actual price realized by Shell Energy for the sale of the Excess Other PG&E Local Resource Adequacy Capacity, pursuant to Section 7.

6. RENEWABLE ENERGY ADJUSTMENTS AND RECONCILIATION.

6.1. Quarterly Renewable Energy Adjustments

6.1.1. No later than [_____], [ ], [ ] and [_____] **TBD** of each calendar year during the term of this Confirmation, Shell Energy shall provide City with written notice stating Shell Energy's then-current estimate of City's compliance with the Renewable Portfolio Standards and the City's commitment to provide 100% Renewable Energy to Customers for such calendar year (together, such compliance and commitment referred to herein as "City's Renewable Objectives") together with documentation setting forth amounts of Renewable Energy that were required to be delivered for the preceding three-month period to achieve these objectives. Following delivery of this notice, the Parties shall work together promptly to determine appropriate actions to ensure that Shell Energy will deliver sufficient amounts of Renewable Energy to ensure the City complies with the City's Renewable Objectives.

6.1.2. [Anticipated Excess Renewable Energy. In the event the Parties anticipate that deliveries of one or more types of Renewable Energy during a future time period will be greater than needed for City's compliance with the City's Renewable Objectives (the amount of such anticipated excess(es) referred to herein as "Anticipated Excess Renewable Energy"), Shell Energy shall offer to remarket such Anticipated Excess Renewable Energy for City during such time period. For each such remarketing transaction that is consummated, Shell Energy shall credit or charge the City for the difference between the proceeds received by Shell Energy from remarketing the Anticipated Excess Renewable Energy and what Shell Energy would have received if the Anticipated Excess Renewable Energy had been delivered to the City. Shell Energy shall make commercially reasonable efforts to maximize the value of such Anticipated

Excess Renewable Energy offered to be remarketed on behalf of City provided that Shell Energy shall not enter into any such transaction for remarketing without City's prior written consent and acceptance of such transaction. Each remarketing of Renewable Energy consummated pursuant to this Subsection 6.1.2 shall adjust (i.e., reduce) the Committed Quantity of Renewable Energy in Exhibit 1C by the amount of Renewable Energy remarketed for the applicable type of Renewable Energy and applicable time period. **Under review by Shell Energy]**

6.1.3. [Anticipated Deficient Renewable Energy. In the event the Parties anticipate that deliveries of one or more types of Renewable Energy for a future time period will be less than needed for City's compliance with the City's Renewable Objectives (the amount of such anticipated deficiency(ies) referred to herein as "Anticipated Deficient Renewable Energy"), Shell Energy shall offer to procure sufficient quantities of the needed type of Renewable Energy required to meet the City's Renewable Objectives during such time period. For each such procurement that is consummated, Shell Energy shall pass through to the City the costs incurred by Shell Energy to procure the Anticipated Deficient Renewable Energy. Shell Energy shall make commercially reasonable efforts to minimize the cost of such Anticipated Deficient Renewable Energy procured on behalf of City provided that Shell Energy shall not enter into any such transaction for procuring additional Renewable Energy without City's prior written consent and acceptance of such transaction. Each procurement of Renewable Energy consummated pursuant to this Subsection 6.1.3 shall adjust (i.e., increase) the Committed Quantity of Renewable Energy in Exhibit 1C by the amount of Renewable Energy procured for the applicable type of Renewable Energy and applicable time period. **Under review by Shell Energy]**

6.1.4. All charges, credits, and pass-throughs of costs and revenues resulting from consummated transactions as provided for in Subsections 6.1.2 and 6.1.3 shall be included in Shell Energy's next invoice following Shell Energy's incurrence of such costs or receipt of such revenues.

6.2. Annual Reconciliation of Renewable Energy Quantities

6.2.1. [Within [X] days following the end of each calendar year, Shell Energy shall provide the City with a reconciliation of quantities of Renewable Energy for that year. The reconciliation shall include: (a) the Committed Quantity for each type of Renewable Energy, as adjusted pursuant to Subsections 6.1.2 and 6.1.3; (b) the quantity of each type of Renewable Energy delivered to the City; (c) the quantity of each type of Renewable Energy needed to meet the City's Renewable Objectives; and the annual cumulative Monthly Metered Electricity Usage. **Under review by Shell Energy]**

6.2.2. [Actual Excess Renewable Energy. For each amount by which (a) the sum of the quantities delivered of all three types of Renewable Energy exceeds the annual cumulative Monthly Metered Electricity Usage, or (b) the quantity delivered of each type of Renewable Energy exceeds the respective quantity of that type needed to meet the City's Renewable Objectives (each such excess referred to herein as an amount of "Actual Excess Renewable Energy"), the City may, in its sole discretion, to the extent

permitted under Applicable Law, bank and carry over such amount of Actual Excess Renewable Energy for use in the succeeding calendar year. For each amount of Actual Excess Renewable Energy the City chooses not to bank and carry over, Shell Energy shall offer to remarket such amount. If the remarketing transaction is consummated, Shell Energy shall credit or charge the City for the difference between the proceeds received by Shell Energy from remarketing such amount of Actual Excess Renewable Energy and what Shell Energy would have received if such amount had been delivered to the City. Shell Energy shall make commercially reasonable efforts to maximize the value of each amount of Actual Excess Renewable Energy offered to be remarketed on behalf of City provided that Shell Energy shall not enter into any such transaction for remarketing without City's prior written consent and acceptance of such transaction. Each remarketing of Renewable Energy consummated pursuant to this Subsection 6.1.2 shall adjust (i.e., reduce) the Committed Quantity of Renewable Energy in Exhibit 1C by the amount of Renewable Energy remarketed for the applicable type of Renewable Energy. If the City rejects a Shell Energy remarketing offer, or if Shell Energy is unable to remarket an amount of Actual Excess Renewable Energy, Shell Energy shall deliver such amount and type of Renewable Energy to the City. **Under review by Shell Energy]**

6.2.3. [Actual Deficient Renewable Energy. For each amount by which (a) the sum of the quantities delivered of all three types of Renewable Energy is less than the annual cumulative Monthly Metered Electricity Usage, or (b) the quantity delivered of each type of Renewable Energy is less than the respective quantity of that type needed to meet the City's Renewable Objectives (each such deficiency referred to herein as an amount of "Actual Deficient Renewable Energy"), Shell Energy shall offer to procure sufficient quantities of the needed type of Renewable Energy required to meet the City's Renewable Objectives for the year for which the reconciliation is being performed. If a procurement is consummated, Shell Energy shall pass through to the City the costs incurred by Shell Energy to procure such amount of Actual Deficient Renewable Energy. Shell Energy shall make commercially reasonable efforts to minimize the cost of any Actual Deficient Renewable Energy procured on behalf of City provided that Shell Energy shall not enter into any such transaction for procuring additional Renewable Energy without City's prior written consent and acceptance of such transaction. Each procurement of Renewable Energy consummated pursuant to this Subsection 6.2.3 shall adjust (i.e., increase) the Committed Quantity of Renewable Energy in Exhibit 1C by the amount of Renewable Energy procured for the applicable type of Renewable Energy. **Under review by Shell Energy]**

6.2.4. All charges, credits, and pass-throughs of costs and revenues resulting from consummated transactions as provided for in Subsections 6.2.2 and 6.2.3 shall be included in Shell Energy's next invoice following Shell Energy's incurrence of such costs or receipt of such revenues.

7. **MONTHLY RESOURCE ADEQUACY CAPACITY RECONCILIATION**. Each year, no later than sixty (60) days before the annual report on Resource Adequacy Capacity is due to the relevant Governmental Authority, each month, no later than thirty days (30) days before the monthly report on Resource Adequacy Capacity is due to the relevant Governmental Authority, Shell Energy shall

provide City with a written report of City's compliance with the Resource Adequacy Capacity Requirements. Following delivery of this report, the Parties shall work together in good faith to determine appropriate actions to ensure that Shell Energy will provide the necessary amounts of Resource Adequacy Capacity to meet the Resource Adequacy Capacity Requirements that apply to the City with respect to the Customers.

7.1 Excess Resource Adequacy Capacity. In the event the Parties anticipate that there will excess Resource Adequacy Capacity during a month or a year, Shell Energy shall remarket such excess Resource Adequacy Capacity for City and shall credit City's account by an amount equal to the amount received by Shell Energy for such sales efforts. Shell Energy shall make commercially reasonable efforts to maximize the value of such excess Resource Adequacy Capacity remarketed on behalf of City provided that Shell Energy shall not enter into any such transactions for remarketing without City's prior written consent and acceptance of such transactions.

7.2 Deficient Resource Adequacy Capacity. In the event the Parties anticipate that the amount of Committed Resource Adequacy Capacity purchased by the City will be less than required to meet the Resource Adequacy Capacity Requirements that apply to the City with respect to the Customers during a month or a year, Shell Energy shall seek to procure the Additional Resource Adequacy Capacity required by City in such month or year. Shell Energy shall make commercially reasonable efforts to minimize the cost of the purchases of Additional Resource Adequacy Capacity purchased on behalf of City provided that Shell Energy shall not enter into any such transactions for procuring Additional Resource Adequacy Capacity without City's prior written consent and acceptance of such transactions. City may use capacity available from City Facilities pursuant to Section 9 to address Resource Adequacy Capacity deficiencies.

7.3 Limit. Notwithstanding any other provision herein, Shell Energy may not bill the City for any Resource Adequacy Capacity that it did not supply to the City or that was not credited to serve the Customers by the CAISO.

8. **LOAD SERVED.** The services and the Products described under this Confirmation shall be provided to the Customers, as specified by City. Beginning on the Start Date for this Confirmation, the Customers will be switched to CCA service over an approximately 30-day period in accordance with the applicable meter reading cycle for such Customers. At the end of each month, City shall provide to Shell Energy updated summary level information for Customers to be served during the upcoming month. City shall also provide to Shell Energy a daily report of Customers' sales based on the meter data reported by the City's Meter Data Manager. Shell Energy shall prepare invoices to City based on such daily reports. City shall also deliver written notice to Shell Energy of any Customers which are no longer part of the City's CCA program or which are no longer to be served by Shell Energy.

9. **INTEGRATION OF CITY FACILITIES.**

9.1 City may independently gain control of or enter into contractual arrangements with respect to specific electric supply or demand-side resources procured from other third parties or independently owned or controlled by City ("City Facilities"), including HHWP Generation and HHWP Energy Bank Withdrawals, and Shell shall incorporate these resources into the portfolio to serve the Customers in accordance with this Section 9.

9.1.1 [Integration of Energy, Resource Adequacy Capacity and Ancillary Services. At the sole discretion of City, Shell Energy shall integrate into the portfolio of resources to serve Customers any and all Energy designated by the City from City Facilities, and shall credit City for the actual value received by Shell Energy from CAISO for the Energy, Resource Adequacy Capacity and Ancillary Services from such City Facilities. Except for Energy from HHWP Generation transferred by means of the HHWP Logical Meter, Energy and Ancillary Services from City Facilities shall be scheduled by Inter-Scheduling Coordinator Trades between the scheduling coordinator for the relevant City Facilities and Shell Energy. Shell Energy shall incorporate Energy from HHWP Generation via the use of an HHWP Logical Meter pursuant to procedures established between HHWP and the CAISO. Resource Adequacy Capacity from City Facilities shall be incorporated into the City's capacity portfolio via procedures established between City and Shell Energy, consistent with the CAISO Tariff. Shell Energy shall include the Energy from HHWP Generation and HHWP Energy Bank Withdrawals in its calculation of the proportion of Carbon Neutral Energy, in accordance with Section 1.3. Shell Energy shall not charge City for incorporating City Facilities into the City resource portfolio, other than as set forth in Subsections 9.1.2 and 9.1.3 if applicable, and to pass through CAISO Charges associated with the Inter-Scheduling Coordinator Trades. If City requests Shell Energy to be the scheduling coordinator for City Facilities, Shell Energy shall provide such services only upon the mutual agreement by the Parties of the terms and conditions (including any service fee) for such services. **under review by Shell Energy]**

9.1.2 Integration of Renewable Energy, Resource Adequacy Capacity and Energy that Displaces a Fixed Price Product. If such integration displaces a fixed price Product to be sold by Shell Energy under this Confirmation (a "Fixed Price Product Displacement") and provided that Shell Energy is made whole pursuant to Subsection 9.1.3, Shell Energy shall, at the City's sole discretion, integrate into the portfolio of resources to serve Customers any and all Renewable Energy, Resources Adequacy Capacity, and Energy designated by the City from City Facilities.

9.1.3 Fixed Price Product Displacement Process. City shall provide Shell Energy not less than sixty (60) days written notice that Energy, Resource Adequacy Capacity and Renewable Energy will be available pursuant to a Fixed Price Product Displacement. Within ten (10) Business Days of receipt of such notice, Shell Energy shall notify the City in writing of the costs, determined in accordance with this Subsection 9.1.3, that Shell Energy expects to incur in connection with the proposed Fixed Price Product Displacement. Shell Energy shall calculate a price adjustment reflecting all reasonable and actual documented costs Shell Energy incurs in connection with the Fixed Price Product Displacement, including reimbursement from City for any costs associated with hedging and other fees, costs, and losses directly incurred by Shell Energy in reducing the Energy, Resource Adequacy Capacity and Renewable Energy otherwise provided to City at fixed prices pursuant to this Confirmation, such costs to be offset by any revenues or gains of Shell Energy realized thereby. Shell Energy agrees to use commercially reasonable efforts to minimize such costs to City. Upon receipt of such written cost determination, the City shall have the right (but not the obligation) to direct Shell Energy in writing within [ ] Business Days to undertake the proposed Fixed Price

Product Displacement at the price set forth in Shell Energy's notice of cost determination, unless the Parties agree in writing on another price.

9.2 In the event that City Facilities are expected to become operational or effective during the term of this Confirmation, the Parties shall work in good faith to amend the underlying credit agreements in place between Shell Energy and City so that amounts paid by the City's Customers to PG&E and then into the Secured Account discussed in the Security Agreement shall be apportioned as security between the Parties based on the quantity of Energy, Resource Adequacy Capacity, Ancillary Services and Renewable Energy delivered by City to its Customers from the City Facilities as compared with the Energy, Resource Adequacy Capacity, Ancillary Services and Renewable Energy delivered by Shell Energy pursuant to this Confirmation.

IN WITNESS WHEREOF, this Confirmation has been duly executed.

[CITY SIGNATURE BLOCK]

_____
Name:
Title:

Date:

SHELL ENERGY NORTH AMERICA (US), L.P.

_____
Name:
Title:

Date:

EXHIBIT XX

Scheduling Coordinator Services

1. **Shell Energy's Obligations:**

1. Shell Energy shall remain a Scheduling Coordinator in good standing with the CAISO throughout the term of the Confirmation, to which this Exhibit XX is attached (the Confirmation).
2. Shell Energy shall be the Scheduling Coordinator (1) for the Customers and (2) unless otherwise stated in the Confirmation, for all Products purchased by the City pursuant to the Confirmation. Shell Energy shall perform all the duties and functions of a Scheduling Coordinator for the Customers and Products sold by Shell Energy pursuant to the Confirmation, as described in the CAISO Tariff, protocols and business practice manuals, and in accordance with applicable terms of the Confirmation and the Energy Agreement.
3. Shell Energy shall cooperate with the City as necessary to support transition of Resource Adequacy obligations between PG&E and City.
4. Shell Energy shall establish and maintain a separate Scheduling Coordinator ID (SCID) for CleanPowerSF and shall use that SCID exclusively for CleanPowerSF transactions.
5. Shell Energy shall use commercially reasonable efforts to review the accuracy of all CAISO invoices for the CleanPowerSF SCID in a timely manner. In the event Shell Energy believes that any CAISO charge or CAISO sanction is incorrect and disputable under the CAISO Tariff, or upon notice by the City of a good faith potential dispute of a CAISO charge or CAISO sanction payable by the City, Shell Energy shall timely dispute any such CAISO charge or CAISO sanction in accordance with the procedures set forth under the CAISO Tariff. The City shall cooperate with Shell Energy as necessary. Shell Energy shall notify the City prior to participating in a CAISO dispute resolution process associated with any dispute of a CAISO charge or a CAISO sanction payable by the City. Upon written agreement by the City to proceed with the dispute resolution process, the City shall indemnify Shell Energy for all reasonable costs, including attorney's fees, associated with Shell Energy's participation therein, conditioned on Shell's compliance with its obligations under this Agreement. To the extent the City may independently gain control or enter into contractual obligations with respect to specific electric supply or demand-side resources procured from other third parties or independently owned or controlled by City, pursuant to Section 9 of the Confirmation, Shell Energy shall incorporate the Energy, Resource Adequacy Capacity, Ancillary Services and Renewable Energy associated with those facilities into the CleanPowerSF resource portfolio by means of Inter-Scheduling Coordinator Trades and by other means as described in the Confirmation.
6. The Parties' responsibilities for coordinating with each other, including the provision of information required by Shell Energy to perform its role as Scheduling Coordinator, are set forth below.
7. Shell Energy shall not charge a fee for providing Scheduling Coordinator ("SC") services, other than to pass through to City a one-time set up fee of [AMOUNT] to be paid to the CAISO that allows Shell Energy to provide Scheduling Coordinator services on behalf of City. Shell Energy shall include this charge in the next invoice it submits to the City after receipt by Shell Energy from the CAISO of the invoice setting forth this charge.

2. **Forecasting**.

(a) Short Term Forecasting. Shell Energy shall be responsible for preparing and submitting short-term load forecasts of Energy and Capacity (less than one year) as the City's Scheduling Coordinator. The Parties shall mutually agree from time to time on the assumptions and models to be included in the short-term and long-term forecasts prepared hereunder. City shall provide settlement quality meter data, resource data and load data as reasonably requested by Shell Energy to prepare the forecasts. Shell Energy shall not be liable for any costs or losses incurred by or charged to City as a result of Shell Energy's forecasting obligations so long as Shell Energy has performed its obligations in accordance

with prudent industry practices. In the event an administrative agency requests clarification of forecasts provided by Shell Energy hereunder or otherwise requires City to substantiate such forecasts, Shell Energy shall in good faith assist City in responding to the administrative agency's request and assist City in defending the reasonableness of such forecasts (such assistance shall exclude payment of any costs or expenses incurred by City in responding to such inquiries).

(b) Long Term Forecasting. City shall prepare appropriate long-term load forecasts for Energy and Capacity for one year and greater, and Shell Energy will assist and coordinate with City in its preparation of such long-term load forecasts. City shall submit such long-term load forecasts as required by the CPUC, California Energy Commission, the CAISO or any other applicable regulatory body, including those required of a CCA (including all updates and revisions, the "Long-Term Forecast") and promptly provide Shell Energy with a copy thereof, provided that every ninety (90) days City shall provide Shell Energy with either a new Long-Term Forecast or a statement that no changes to the most recent Long-Term Forecast have occurred. Shell Energy shall have the right to request clarification regarding any change made to the Long-Term Forecast.

3. **Regulatory Reporting**. Shell Energy shall submit to the CAISO schedules, meter data reports, and any other reports and data the CAISO Tariff requires a Scheduling Coordinator to provide to the CAISO with respect to the Customers.

4. **Adjustment Bids for Congestion Management.** Shell Energy shall submit Adjustment Bids to the CAISO on behalf of City in accordance with the CAISO Tariff to the extent that City has provided Shell Energy with prior written bidding instructions therefor.

5. **Tagging and Checkout**. Shell Energy shall be responsible for tagging and checkout of all transactions on a daily basis, as required.

6. **Shell Energy Excused**. Shell Energy shall be excused from performing its obligations under this Exhibit XX to the extent that any failure by City to perform any of its obligations hereunder delays or interferes with Shell Energy performing its obligations under this Exhibit XX.

7. **City's Obligations.**

(a) Information for Scheduling. City acknowledges that Shell Energy will be communicating information that Shell Energy receives from City to the CAISO. City agrees that it will indemnify and hold harmless Shell Energy with respect to any fines or penalties that may be assessed against Shell Energy by the CAISO or FERC for inaccurate information that City reported to Shell Energy in writing (including electronic communications).

(b) Meter Data. At least thirty (30) days before Shell Energy must commence delivering a Product pursuant to the Confirmation the City shall, upon Shell Energy's written request, reasonably demonstrate its ability to perform, or have performed by a third party on City's behalf, all metering requirements necessary for Shell Energy to comply with the requirements of the CAISO Tariff in connection with providing Scheduling Coordinator services. City shall actively intervene with third parties, as necessary and appropriate, on Shell Energy's behalf to ensure that Shell Energy has all reasonable access to relevant meters, associated assets and facilities and meter data as is necessary for Shell Energy to comply with the requirements of the CAISO Tariff. City or its contractor shall submit to the CAISO any meter data required by the CAISO related to City's schedules consistent with the CAISO's Settlement and Billing Protocol and Metering Protocol. City shall comply with the CAISO's annual meter data quality audit.

(c) Contact List. City shall provide Shell Energy with a 24-hour emergency contact list.

Comment [JS2]: Notice appendix in master agreement with all different kinds of contacts.

(d) Information. City shall timely provide any information as reasonably required by Shell Energy to perform the SC Services. Shell Energy shall timely provide any information related to the SC Services as reasonably required by City to perform its functions as a CCA.

8. **Obligations Several / Relationship**. The duties, obligations and liabilities of the Parties are intended to be several and not joint or collective. Nothing contained in this Exhibit XX shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation or liability on or with regard to either Party. Each Party shall be individually and severally liable for its own obligations under this Exhibit XX. The relationship of Shell Energy and City hereunder is that of independent contractor and not that of agent, representative, partner or joint venture. No fiduciary duty or relationship shall exist between the Parties with respect to Shell Energy's performance of the Scheduling Coordinator services.

9. **Authorized Representatives**. Each Party shall designate in writing one or more persons as its authorized representative(s) to act on its behalf in carrying out the provisions of this Exhibit XX. The Parties shall be bound by the written communications, directions, requests, decisions and other actions taken by their respective authorized representative.

10. **No Dedication of Facilities**. Neither the services performed by Shell Energy under this Exhibit XX nor either Party's actions or inactions under this Exhibit XX shall constitute or be construed as a dedication of the systems or assets, or any portion thereof, of either Party to the public or to the other Party.

11. **Control.** City agrees, upon request of Shell Energy, to submit a letter of concurrence in support of any affirmative statement by Shell Energy that this contractual arrangement does not make Shell Energy a generation owner or a generator operator for any generation owned or operated by the City for purposes of compliance with the reliability standards of the North American Electric Reliability Corporation.

Comment [JS3]: Review and ensure there are no overlaps or inconsistencies with Master Agreement.

NON-BINDING DRAFT; Subject to further review by the City Attorney. Final approval is contingent on review of all documents in final form, approval by respective bodies and execution.

SECURITY AGREEMENT

This security agreement (this "Security Agreement") is dated as of _____ _____(the "Execution Date") and is given by the City and County of San Francisco (the "City"), in favor of Shell Energy North America (US), L.P. ("Shell Energy").

RECITALS

A. The City and Shell Energy have entered into that certain Energy Purchase and Sale Agreement (as the same may be amended, restated, modified or supplemented from time to time, the "Energy Agreement") dated _____, 20_____ pursuant to which Shell Energy has agreed to sell electricity and related physical products to the City.

B. It is a requirement of the Energy Agreement that the City execute this Security Agreement.

C. The City has agreed to grant to Shell Energy a security interest in certain of its property as provided herein.

D. For the purposes of the Code, the City shall be deemed to be a 'debtor' and Shell Energy shall be deemed to be a 'secured party' hereunder.

AGREEMENT

For and in consideration of the promises and the agreements contained in this Security Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Definitions. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them as set forth in **Appendix A** attached to and made a part of this Security Agreement.

2. Grant of Security Interest. The City hereby grants to Shell Energy a first priority security interest in, general lien upon, and right of set-off against, the Collateral to secure the Obligations. Notwithstanding the foregoing, to the extent that any cash proceeds or monies deposited in the Secured Account are transferred to the City Operating Account pursuant to Section 7.3(c) of the Energy Agreement, the security interest and lien on such cash proceeds or monies shall be extinguished.

3. Other Actions. Further to insure the attachment, perfection and first priority of, and the ability of Shell Energy to enforce Shell Energy's security interest in the Collateral, the City agrees, in each case at the City's expense, to take the following actions with respect to the Collateral and without limitation on the City's other obligations contained in this Security Agreement:

   3.1. Accounts.

      3.1.1 Secured Account. Simultaneous with the execution and delivery of this Security Agreement, the City shall establish a Secured Account with a Qualified Institution (the Secured Account Bank) in the name of "Shell Energy North America (US), L.P. as Pledgee of the City and County of San Francisco" and shall deposit the Reserve Amount into the Secured Account. The Secured Account shall be assigned the federal tax identification number of the City. Prior to the allocation and/or disbursement of funds as set forth in Section 7.3 of the

Energy Agreement, all amounts in the Secured Account shall remain an asset of the City, subject to the lien and security interest granted to Shell Energy pursuant to and subject to all of the terms and conditions of the Blocked Account Agreement and this Security Agreement. Subject to the provisions of Section 7.3, the Secured Account is subject to the sole dominion, control and discretion of Shell Energy until the earlier of the Discharge Date or a Shell Event of Default. Until such time, neither the City nor any person or entity claiming on behalf of or through the City shall have any right or authority, whether express or implied, to make use of, withdraw or transfer any funds or to give instructions with respect to disbursement of the Secured Account other than Shell Energy. Until such time, Shell Energy shall be entitled to exercise any and all rights in respect of or in connection with the Secured Account including, without limitation, (i) the right to specify the amount of payments to be made to the Shell Energy Account and the City Operating Account from the Secured Account, (ii) the right to specify when such payments are to be made out of the Secured Account and (iii) the right to withdraw funds for the payment of Obligations which are due and payable from the Secured Account; provided, however, that each such exercise of rights by Shell Energy must comply with the terms of this Security Agreement and the other Transaction Agreements.

3.1.2 Resignation / Secured Account Bank No Longer a Qualified Institution. In the event of the resignation or removal of Secured Account Bank as the secured account agent or if the Secured Account Bank is no longer a Qualified Institution, the City and Shell Energy agree to mutually select an alternative secured account bank that is a Qualified Institution to fulfill the responsibilities of Secured Account Bank and execute a subsequent Blocked Account Agreement. In the event that an alternative secured account bank cannot be agreed upon between the City and Shell Energy, then the parties shall use their commercially reasonable efforts to cause the current Secured Account Bank to take all reasonable action necessary to facilitate the transfer of the respective obligations, duties and rights of the Secured Account Bank to a replacement Secured Account Bank as designated by the City in writing. Any bank or association into which Secured Account Bank may be merged or converted or with which it may be consolidated shall be considered the Secured Account Bank under the Blocked Account Agreement without further action provided such resulting bank is a Qualified Institution.

4. Representations and Warranties Concerning the City's Legal Status. The City has delivered to Shell Energy a certificate signed by the City and entitled "Perfection Certificate" (the "Perfection Certificate"), a draft of which is attached hereto as **Appendix B**. The City represents and warrants to Shell Energy that as of the time this Security Agreement becomes effective :

4.1. The City's exact legal name is that indicated on the Perfection Certificate and on the signature page hereof;

4.2. The City is an organization of the type, and is organized in the jurisdiction set forth in the Perfection Certificate;

4.3. The Perfection Certificate accurately sets forth the City's organizational identification number or accurately states that the City has none;

4.4. The Perfection Certificate accurately sets forth the correct contact information for the City;

4.5. All other information set forth on the Perfection Certificate pertaining to the City is accurate and complete; and

4.6. There has been no material change in any of the information since the date on which the City signed the Perfection Certificate.

5. Representations and Warranties Concerning Collateral. The City further represents and warrants to Shell Energy as of the time this Security Agreement becomes effective as follows:

5.1. Except for the security interests granted to Shell Energy in this Security Agreement and the Blocked Account Agreement, the City owns good and marketable title to the Collateral free and clear of all Liens, and neither the Collateral nor any interest in the Collateral has been transferred to any other party. Except as otherwise provided for herein, the City has full right, power and authority to grant a first-priority security interest in the Collateral to Shell Energy in the manner provided in this Security Agreement, free and clear of any other Liens, adverse claims and options and without the consent of any other person or entity or if consent is required, such consent has been obtained. Except as otherwise provided herein, no other Lien, adverse claim or option has been created by the City or is known by the City to exist with respect to any Collateral. Except as otherwise provided herein, the security interest granted is a first lien security interest.

5.2. The City has obtained the written consent, if required by any applicable contract, regulation, rule, ordinance or federal, state or local law or statute, for the assignment of the Collateral to Shell Energy.

5.3. All other information set forth on the Perfection Certificate pertaining to the Collateral is accurate and complete.

5.4. There has been no change in any of such information since the date on which the City signed the Perfection Certificate.

6. Covenants Concerning Collateral and Assets. The City further covenants with Shell Energy that while this Security Agreement remains in effect:

6.1. The City is and shall be the owner of or have other transferable rights in the Collateral free from any right or claim of any other person or any Lien, security interest or other encumbrance and except for Liens, security interests or other encumbrances that are subordinate to the interests of Shell Energy, and the City shall defend the same against all claims and demands of all persons at any time claiming the same or any interest therein adverse to Shell Energy. The City shall not pledge, mortgage or create, or suffer to exist any right of any person in or claim by any person to the Collateral, or any security interest, Lien or other encumbrance in the Collateral in favor of any person other than Shell Energy; nor permit any person, other than Shell Energy to file any financing statement or obtain a security interest in the Collateral. Notwithstanding the foregoing, the City may take any of the actions described in the preceding sentence so long as all rights and interests thereby created are subordinate to the rights and interests of Shell Energy.

6.2. The City will not sell or otherwise dispose of, or offer to sell or otherwise dispose of, the Collateral or any interest therein except for interests that are subordinate to the interests of Shell Energy.

7. Events of Default and Remedies.

7.1. Event of Default. An "Event of Default" has the meaning assigned to such term in the Energy Agreement and in addition, it shall be an Event of Default upon (a) a party's failure to comply with any of the provisions of this Security Agreement and such failure is not remedied within (3) Business Days after written notice thereof has been given to the other party, (b) except as otherwise provided herein, the City's pledge, hypothecation, collateral assignment or granting of any Lien on any of the Collateral that establishes rights or interests in the Collateral that are not subordinate to the rights and interests of Shell Energy, or (c) any representation or warranty made by a party in this Security Agreement is false or misleading in any material respect when made.

7.2. Remedies upon City Event of Default. Upon the occurrence and continuation of an Event of Default by the City (a "City Event of Default"), Shell Energy shall have the rights and remedies of a secured party under the Code. Shell Energy may following and during the continuance of a City Event of Default demand, sue for, collect or make any settlement or compromise that it deems desirable with respect to the Collateral. All rights and remedies of Shell Energy with respect to the Obligations or the Collateral may be exercised by Shell Energy, shall be cumulative and may be exercised singularly, alternatively, successively or concurrently at such time or at such times as Shell Energy deems expedient.

7.3. Remedies upon Shell Event of Default. Upon the occurrence and continuation of an Event of Default by Shell Energy (a "Shell Event of Default"), all rights, remedies and privileges of Shell Energy under the Transaction Agreements shall be immediately suspended. Shell Energy hereby agrees and acknowledges that it shall promptly execute any and all agreements, instruments and other documents reasonably necessary to effectuate the suspension. Immediately upon such suspension, dominion over, control of, and entitlement to exercise any and all rights in respect of or in connection with the Secured Account shall be vested in a neutral trustee who shall ensure that any disbursements from the Secured Account comply with the provisions of this Security Agreement and the other Transaction Agreements. Shell Energy hereby agrees and acknowledges that it shall promptly execute any and all agreements, instruments and other documents reasonably necessary to effectuate such vesting of such authority and control in the neutral trustee. In the event that a Shell Event of Default results in the termination of the Energy Agreement, Shell Energy agrees to further execute promptly any and all agreements, instruments and other documents reasonably necessary to effectuate the termination of any rights, remedies and privileges in favor of Shell Energy under the Transaction Agreements, including this Security Agreement.

8. Preservation of Collateral.

8.1. Shell Energy's Obligations and Duties. Shell Energy shall not have any obligation or liability under any Customer contract or agreement by reason of or arising out of this Security Agreement or the receipt by Shell Energy of any payment relating to any of the Collateral, nor shall Shell Energy be obligated in any manner to perform any of

the obligations of the City under or pursuant to any such contract or agreement, to make inquiry as to the nature or sufficiency of any payment received by Shell Energy in respect of the Collateral or as to the sufficiency of any performance by any party under any such contract or agreement, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to Shell Energy or to which Shell Energy may be entitled at any time or times. Shell Energy's sole duty with respect to the custody, safe keeping and physical preservation of the Collateral in its possession shall be to deal with such Collateral in the same manner as Shell Energy deals with similar property for its own account and to dispose of such Collateral as set forth herein and in the Transaction Agreements.

9. Deposits. Regardless of the adequacy of the Collateral as security for the Obligations, any deposits or other sums at any time credited by or due from Shell Energy to the City may at any time be applied to or set off against any of the Obligations.

10. Waivers. Neither the City nor Shell Energy shall be deemed to have waived any of its rights and remedies in respect of the Obligations or the Collateral unless such waiver shall be made in writing and signed by the applicable party. No delay or omission on the part of either party to this Security Agreement in exercising any right or remedy shall operate as a waiver of such right or remedy or any other right or remedy. A waiver on any occasion shall not be construed as a bar to or a waiver of any right or remedy on any future occasion.

11. Suretyship Waivers by the City. The City hereby waives demand, notice, protest, notice of acceptance of this Security Agreement, notice of loans made, credit extended, collateral received or delivered or other action taken in reliance hereon and all other demands and notices of any description except as provided for in this Security Agreement. Shell Energy shall have no duty as to the collection of the Collateral or any income therefrom. The City further waives any and all suretyship defenses.

12. Proceeds of Dispositions; Expenses. After deducting expenses paid pursuant to Section 5.5 of the Energy Agreement, the residue of any proceeds of collection or sale or other disposition of Collateral shall, to the extent actually received in cash, be applied to the payment of Obligations in such order or preference as specified in the Transaction Agreements or, if not so specified, as Shell Energy may determine in its sole discretion, provided allowances and provisions are made for any Obligations not then due. Upon the final payment and satisfaction in full of all of the Obligations and after making any payments required under the Code, any excess shall be returned promptly to the City.

13. Notices. All notices hereunder shall be delivered in accordance with Section 11.8 of the Energy Agreement.

14. Governing Law; Consent to Jurisdiction.

THIS SECURITY AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH PARTY CONSENTS TO THE EXCLUSIVE JURISDICTION OF THE FEDERAL COURTS IN SAN FRANCISCO, CALIFORNIA HAVING SUBJECT MATTER JURISDICTION ARISING UNDER THIS AGREEMENT. IF THE FEDERAL COURTS IN SAN

FRANCISCO, CALIFORNIA WILL NOT ACCEPT JURISDICTION OVER DISPUTES ARISING OUT OF THIS SECURITY AGREEMENT, THEN THE PARTIES SHALL CONSENT TO THE JURISDICTION OF THE STATE COURTS IN SAN FRANCISCO, CALIFORNIA.

15. Special Damages. **EXCEPT AS PROHIBITED BY LAW, EACH PARTY WAIVES ANY RIGHT WHICH IT MAY HAVE TO CLAIM OR RECOVER ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OR ANY DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES.**

16. No Immunity Defense. If and to the fullest extent permitted by law, the City agrees that it will not assert the defense of sovereign immunity with respect to the enforcement of the City's obligations under this Agreement, provided that nothing in this subsection shall prevent the City from asserting any other defenses it may have in law or in equity.

17. Continuing Agreement. This is a continuing security agreement and the grant of a security interest under this Security Agreement shall remain in full force and effect and all the rights, powers and remedies of Shell Energy hereunder shall continue to exist until the Discharge Date. Furthermore, it is contemplated by the parties that there may be times when no Obligations are owing; but notwithstanding such occurrences, this Security Agreement shall remain valid and shall be in full force and effect as to subsequent Obligations until the Discharge Date provided Shell Energy is not in default.

18. Miscellaneous. The headings of each section of this Security Agreement are for convenience only and shall not define or limit the provisions thereof. This Security Agreement and all rights and obligations hereunder shall be binding upon the each party and its respective successors and assigns and shall inure to the benefit of each party and its respective successors and assigns. Neither the City nor Shell Energy may assign this Security Agreement without the prior written consent of the other party. If any term of this Security Agreement shall be held to be invalid, illegal or unenforceable, the validity of all of the other terms shall in no way be affected and this Security Agreement shall be construed and enforceable as if such invalid, illegal or unenforceable term had not be included herein. This Security Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

19. Interpretation and Construction. In interpreting and construing this Security Agreement, the following principles shall be followed:

    (A) examples shall not be construed to limit, expressly or by implication, the matter they illustrate;

    (B) the terms "herein," "hereof," "hereby," and "hereunder," or other similar terms, refer to this Security Agreement as a whole and not only to the particular article, section or other subdivision in which any such terms may be employed;

    (C) references to sections and other subdivisions refer to the sections and other subdivisions of this Security Agreement;

    (D) the word "includes" and its syntactical variants mean "includes, but is not limited to" and corresponding syntactical variant expressions and the term "and/or" shall mean "or"; whenever this Security Agreement refers to a number of days, such number shall refer to calendar days unless Business Days are specified;

(E) the plural shall be deemed to include the singular, and vice versa;

(F) each exhibit, annex, attachment, and schedule to this Security Agreement is a part of this Security Agreement, but if there is any conflict or inconsistency between the main body of this Security Agreement and any exhibit, annex, attachment, or schedule, the provisions of the main body of this Security Agreement shall prevail; and

(G) references to 'dollars' or 'US$' shall mean the lawful currency of the United States of America.

IN WITNESS WHEREOF, intending to be legally bound, the City and Shell Energy have caused this Security Agreement to be executed as of the date first written above.

***

CITY SIGNATURE BLOCK

BY:_____

NAME:_____

TITLE:_____

SHELL ENERGY NORTH AMERICA (US), L.P.

BY:_____

NAME:_____

TITLE:_____

APPENDIX A
TO SECURITY AGREEMENT
DEFINITIONS

"Blocked Account Agreement" means that certain Blocked Account Control Agreement among Shell Energy, the City and the Secured Account Bank dated the same date hereof, as the same may be amended, restated, modified or supplemented from time to time.

"Business Day" shall have the meaning set forth in the Energy Agreement.

"City Event of Default" has the meaning set forth in Section 7.2 of this Security Agreement.

"City Operating Account" means a bank account established in the name of the City, as designated by the City in writing, for the receipt of the sums payable to the City under the Transaction Agreements.

"Code" means the Uniform Commercial Code as currently in effect in the State of California and as may be amended from time to time.

"Collateral" means the assets and rights of the City in the Secured Account, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof. Notwithstanding the foregoing, to the extent that any cash proceeds or monies deposited in the Secured Account are transferred to the City Operating Account pursuant to Section 7.2(c) of the Energy Agreement, the amounts so transferred shall not be Collateral.

"Customers" has the meaning ascribed to it in the Energy Agreement.

"Discharge Date" means the date on which either: (1) (a) all outstanding Obligations under the Transaction Agreements have been fully paid; and (b) the Transaction Agreements have terminated and there are no continuing obligations by the City under any Transaction Agreements (other than for any provisions which are intended to survive the termination of the Transaction Agreements), or (2) the City terminates the Energy Agreement or this Security Agreement as a result of a Shell Energy Event of Default or either Party terminates the Energy Agreement pursuant to Sections 2.1, 2.3 or 3.5 of the Energy Agreement.

"Energy Agreement" has the meaning ascribed to it in the Recitals.

"Event of Default" has the meaning set forth in Section 6.1 of the Energy Agreement.

"Lien" means any mortgage, pledge, security interest, encumbrance, lien, claim or charge of any kind, whether or not filed, recorded or otherwise perfected under applicable law.

"Obligations" means all of the obligations and liabilities of the City to Shell Energy whether direct or indirect, joint or several, absolute or contingent, due or to become due, now existing or hereinafter arising under or in respect of one or more of the Transaction Agreements (as may be amended, modified, renewed or restated from time to time) including, without limitation, all fees, purchases, mark-to-market exposure, commitments for reimbursement, indemnifications, interest, damages and early termination payments, if any. The term "Obligations" also includes the repayment of (a) any amounts that Shell Energy may reasonably advance or spend for the maintenance or preservation of the Collateral and (b) any other expenditure that Shell Energy may make under the provisions of this Security Agreement.

"Perfection Certificate" has the meaning as set forth in Section 4.

"Qualified Institution" has the meaning set forth in the Energy Agreement.

"Reserve Amount" shall mean two million, five hundred thousand dollars ($2,500,000) deposited by the City into the Secured Account pursuant to the Energy Agreement..

"Secured Account" means the deposit account, whether now existing or hereafter created, that is designated, maintained and under the control of Shell Energy or is pledged to Shell Energy which has been established pursuant to the provisions this Security Agreement.

"Secured Account Bank" means a Qualified Institution designated in accordance with Section 3.1.1 of this Security Agreement.

"Shell Energy" has the meaning ascribed to it in the preface.

"Shell Energy Account" means a bank account established in the name of Shell Energy for the receipt of the sums owing to Shell Energy under the Transaction Agreements.

"Shell Event of Default" has the meaning set forth in Section 7.3 of this Security Agreement.

"Transaction Agreements" means the Energy Agreement (including any Confirmation entered into thereto), the Blocked Account Agreement, and this Security Agreement.

APPENDIX B

TO SECURITY AGREEMENT

PERFECTION CERTIFICATE

The undersigned officer of the City and County of San Francisco, _____, hereby certifies, with reference to that certain Security Agreement dated as of _____, 20____ (terms used herein shall have the same meaning as set forth in the Security Agreement) between the City and Shell Energy North America (US), L.P., a Delaware limited partnership ("Shell Energy"), to Shell Energy as follows:

1. Name. The exact legal name of the City as that name appears on its constituting documents as may have been amended on or prior to the date hereof is as follows:

2. Other Identifying Factors.

   a. The following is the mailing address of the City for purposes of this Security Agreement:

   b. The following is the type of organization of the City:

   c. The following is the jurisdiction of the City's organization:

   d. The following is the City's state issued organization number [state "None" if the state does not issue such a number]

   Insert Organization Number or type in None if applicable

   e. The following is the City's federal employer identification number.

Insert Federal EIN

****

I hereby certify that this Perfection Certificate is true and complete.

CITY SIGNATURE BLOCK

_____

Name:

Title:

Date:

Comment [JS1]: Under review.