



AGENDA

REGULAR MEETING OF THE BOARD OF DIRECTORS

February 22, 2021 — 9:00 A.M.

Board of Directors

Pat Dwyer—Division 2
President

Lori Anzini—Division 4
Vice President

George Osborne—Division 1
Director

Brian K. Veerkamp—Division 3
Director

Alan Day—Division 5
Director

Executive Staff

Jim Abercrombie
General Manager

Brian D. Poulsen, Jr.
General Counsel

Jennifer Sullivan
Clerk to the Board

Jesse Saich
Communications

Brian Mueller
Engineering

Mark Price
Finance

Jose Perez
Human Resources

Tim Ranstrom
Information Technology

Dan Corcoran
Operations

PUBLIC COMMENT: Anyone wishing to comment about items not on the Agenda may do so during the public comment period. Those wishing to comment about items on the Agenda may do so when that item is heard and when the Board calls for public comment. Public comments are limited to five minutes per person.

PUBLIC RECORDS DISTRIBUTED LESS THAN 72 HOURS BEFORE A MEETING: Any writing that is a public record and is distributed to all or a majority of the Board of Directors less than 72 hours before a meeting shall be available for immediate public inspection in the office of the Clerk to the Board at the address shown above. Public records distributed during the meeting shall be made available at the meeting.

AMERICANS WITH DISABILITIES ACT: In accordance with the Americans with Disabilities Act (ADA) and California law, it is the policy of El Dorado Irrigation District to offer its public programs, services, and meetings in a manner that is readily accessible to everyone, including individuals with disabilities. If you are a person with a disability and require information or materials in an appropriate alternative format; or if you require any other accommodation for this meeting, please contact the EID ADA coordinator at 530-642-4045 or email at adacoordinator@eid.org at least 72 hours prior to the meeting. Advance notification within this guideline will enable the District to make reasonable accommodations to ensure accessibility.

Please take notice, as a result of the COVID-19 pandemic, California Governor Gavin Newsom issued Executive Order (EO) N-29-20, which waives certain requirements of the Ralph M. Brown Act (Brown Act) in order to prevent gatherings and slow the spread of COVID-19. Specifically, EO N-29-20 waives the requirements that local public agencies (1) notice each teleconference location from which a board member will participate, (2) make each teleconference location accessible to the public, (3) allow the public to address the agency from each teleconference location, (4) post the agenda at each teleconference location, and (5) ensure that a quorum of the board participate in locations within the boundary of the agency. EO N-29-20 requires local public agencies that conduct public meetings telephonically to allow members of the public to observe and address the meeting telephonically or otherwise electronically.

Because indoor public gatherings remain restricted under the Governor's Executive Orders, regular Board Meetings will continue to be closed to in-person attendance by the public and conducted virtually for the time being. In accordance with EO N-29-20, the public may participate in the District's Board meeting by teleconference or web conference via the instructions provided below. Members of the public who participate in the meeting via teleconference or web conference will be given the opportunity to speak and address the Board, and their comments will be included in the audio recording of the meeting. The meeting materials will be available for download from the District's website at www.eid.org.

PUBLIC PARTICIPATION INSTRUCTIONS

Instructions to join the Board Meeting by telephone only

No accompanying computer or mobile device required. This option will allow participants to listen to Board meeting audio and address the Board during public comment periods by pressing *9 on the telephone keypad.

Dial **1.669.900.6833** and enter Meeting ID **945 6360 8941** when prompted.

Instructions to join the Board Meeting from your computer or mobile device

Click the following join link or copy and paste into your browser <https://zoom.us/j/94563608941>.

If the device being used *is* equipped with a microphone and speaker, participants may view the presentation live and listen to Board meeting audio. You may address the Board during public comment periods by clicking on the "raise a hand" button.

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CALL TO ORDER

Roll Call
Pledge of Allegiance
Moment of Silence

ADOPT AGENDA

COMMUNICATIONS

General Manager's Employee Recognition

PUBLIC COMMENT

COMMUNICATIONS

General Manager

Brief reports on District activities or items of interest to the public, including activities or developments that occur after the agenda is posted.

Clerk to the Board

Board of Directors

Brief reports on community activities, meetings, conferences and seminars attended by the Directors of interest to the District and the public.

APPROVE CONSENT CALENDAR

Action on items pulled from the Consent Calendar

CONSENT CALENDAR

1. Clerk to the Board (Sullivan)

Consider approving the minutes of the February 8, 2021 regular meeting of the Board of Directors.

Option 1: Approve as submitted.

Option 2: Take other action as directed by the Board.

Option 3: Take no action.

Recommended Action: Option 1.

2. Office of the General Manager (Abercrombie)

Consider ratifying Resolution No. 2020-006 to maintain an emergency declaration regarding the COVID-19 pandemic.

Option 1: Ratify Resolution No. 2020-006 to maintain emergency declaration.

Option 2: Take other action as directed by the Board.

Option 3: Take no action.

Recommended Action: Option 1 (*four-fifths vote required*).

3. Operations

Consider authorizing additional funding in the amount of \$10,000 for capitalized labor, \$25,000 for utility services and \$5,000 for materials associated with the FERC C51.1 and 51.2 RM Caples Auxiliary Dam and Boat Launch Project, Project No. 10007.

Option 1: Authorize additional funding in the amount of \$10,000 for capitalized labor, \$25,000 for utility services and \$5,000 for materials associated with the FERC C51.1 and 51.2 RM Caples Auxiliary Dam and Boat Launch Project, Project No. 10007.

Option 2: Take other action as directed by the Board.

Option 3: Take no action.

Recommended Action: Option 1.

4. Engineering

Consider authorizing additional funding in the amount of \$20,000 for capitalized labor associated with the Reservoir A Water Treatment Plant Programmable Logic Controller Replacement Project, Project No. 19033, and \$10,000 for equipment rental and \$15,000 for capitalized labor associated with the El Dorado Main #2 Isolation Valve Project, Project No. 20047.

Option 1: Authorize additional funding in the amount of \$20,000 for capitalized labor associated with the Reservoir A Water Treatment Plant Programmable Logic Controller Replacement Project, Project No. 19033, and \$10,000 for equipment rental and \$15,000 for capitalized labor associated with the El Dorado Main #2 Isolation Valve Project, Project No. 20047.

Option 2: Take other action as directed by the Board.

Option 3: Take no action.

Recommended Action: Option 1.

END OF CONSENT CALENDAR

PUBLIC HEARING – 9:00 A.M.

5. Office of the General Counsel / Office of the General Manager (Leeper/Abercrombie)

Consider proposed amendments to Board Policy 3060 regarding the General Manager's contracting and funding authority.

Option 1: Adopt proposed amendments to Board Policy 3060 regarding the General Manger's contracting and funding authority.

Option 2: Take other action as directed by the Board.

Option 3: Take no action.

Recommended Action: Option 1.

ACTION ITEMS

6. Finance (Pasquarello)

Consider ratifying EID General Warrant Registers for the periods ending February 2 and February 9, 2021, and Employee Expense Reimbursements for these periods.

Option 1: Ratify the EID General Warrant Register as submitted to comply with Section 24600 of the Water Code of the State of California. Receive and file Employee Expense Reimbursements.

Option 2: Take other action as directed by the Board.

Option 3: Take no action.

Recommended Action: Option 1.

7. Engineering (Mueller)

Consider authorizing the General Manager to negotiate and execute a Power Purchase Agreement with Pioneer Community Energy for the sale of electricity produced from the El Dorado Powerhouse, Federal Energy Regulatory Commission Project No. 184.

Option 1: Authorize the General Manager to negotiate and execute a Power Purchase Agreement with Pioneer Community Energy for the sale of electricity produced from the El Dorado Powerhouse, Federal Energy Regulatory Commission Project No. 184.

Option 2: Take other action as directed by the Board.

Option 3: Take no action.

Recommended Action: Option 1.

REVIEW OF ASSIGNMENTS

ADJOURNMENT

TENTATIVELY SCHEDULED ITEMS FOR FUTURE MEETINGS

Engineering

- Silver Springs Parkway Manhole Replacement CIP funding, Consent, March 8
- Resolution to dissolve the Cosumnes, American, Bear, Yuba (CABY) Joint Powers Authority, Consent, March 8 (Mueller)

Finance

- Uniform services and facilities products contract, Consent, March 8 (Deakyne)

Operations

- El Dorado Hills Wastewater Treatment Plant acetic acid supply, Consent, March 8 (Smith)
- El Dorado Hills Wastewater Treatment Plant biofilter rehabilitation for odor control, Action, March 8 (Smith)

EL DORADO IRRIGATION DISTRICT

February 22, 2021

General Manager Communications

Awards and Recognitions

- a) The District would like to recognize Camp 5 staff members Tilde Diaz, Steve Laguna, and Ryan Rodriguez for their recent efforts to maintain the Crawford Ditch system, which was recognized and appreciated by District customer Robert Noriega. In his email, Mr. Noriega wrote “I wanted to state that over the past 3 years the service and support via the smooth running and cleanup of the Ditch water was exceptional. There was no interruption in water flow due to blockage and I actually saw workers inspecting and performing cleanup. I sincerely hope this level of exceptional service and cleanup continues and my thanks to the person in charge and the workers who have done a great job.” Thank you Tilde, Steve, and Ryan for your efforts in embodying the District’s Guiding Principle of Excellent Customer Service. Outstanding work and recognition well-earned!

- b) The District received an email from Andrew Hinkley, EID customer in appreciation of Joe Wicks. While Joe was performing a re-read of the meter at the Hinkley resident due to high usage, he noticed the meter was continuously turning which may indicate a leak. Joe promptly notified the customer to avoid possible water waste and increase in the customer’s bill. Great job, Joe!

- c) EID receives ACWA/JPIA “President’s Special Recognition Award” for its Workers’ Compensation Program – Summary by Daniel Newsom

Staff Reports and Updates

- a) Recent Florida Water Treatment Plant Cyberattack – Summary by Tim Ranstrom

General Manager Communications

February 22, 2021

EID receives ACWA/JPIA “President’s Special Recognition Award” for its Workers’ Compensation Program

Each year at the Association of Water Agencies (ACWA) fall conference, ACWA Joint Powers Insurance Authority (JPIA) recognizes member agencies who have achieved certain milestones in their liability, property, and workers compensation programs. Recognition is awarded to member agencies who accomplish a Loss Ratio of 20% or less in these programs.

According to JPIA’s Workers Compensation Loss Ratio Report, the District achieved a loss ratio of 10.7% during the report period. Loss Ratios in the report fluctuate greatly depending on losses sustained and other factors; the average agency’s loss ratio is 32.4%.

As a result, the District was recognized and received the “President’s Special Recognition Award” for achieving a low ratio of “Paid Claims and Case Reserves” to “Deposit Premiums” for a three-year period, 2016-2019, as of September 30, 2020.

This special recognition is yet another positive indicator of EID’s continuing efforts to contain operating costs District-wide and in particular with regard to future workers’ compensation premiums.

We acknowledge with pride all District employees who continue to be vigilant and work with a safety sensitive mindset. It is clear that safety awareness and proactive safety programs yield great results. It is with immense satisfaction that the District accepts this award and looks forward to another great and safe year as we enter 2021.

President's Special Recognition Award

*The President of the
ACWA JPIA
hereby gives Special Recognition to*

El Dorado Irrigation District

*for achieving a low ratio of "Paid Claims and Case Reserves" to "Deposit Premiums"
in the Workers' Compensation Program for the period 07/01/2016 - 06/30/2019
announced at the Board of Directors' Meeting in a Virtual Meeting.*

E. G. "Jerry" Gladbach

E. G. "Jerry" Gladbach, President



December 15, 2020

General Manager Communications

February 22, 2021

Recent Florida Water Treatment Plant Cyberattack

As you may have seen or heard in media reports, a cyberattack recently occurred on a Florida water system using remote access capabilities of the utility's process control system. District staff is aware of this attack and want to assure the Board, our customers and community that EID has a robust multi-layered system in place that protects against potential hackers from entering our system and that EID's water is safe and secure. In addition, security measures are in place that will alert staff to potentially unsafe changes to its treatment processes. District staff continue to monitor this event and anticipate more information will follow the Federal investigation now underway.



MINUTES REGULAR MEETING OF THE BOARD OF DIRECTORS

February 8, 2021 — 9:00 A.M.

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President

Lori Anzini—Division 4
Vice President

George Osborne—Division 1
Director

Brian K. Veerkamp—Division 3
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Alan Day—Division 5
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Jennifer Sullivan
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Jesse Saich
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Brian Mueller
Engineering

Mark Price
Finance

Jose Perez
Human Resources

Tim Ranstrom
Information Technology

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CALL TO ORDER

President Dwyer called the meeting to order at 9:00 A.M.

Roll Call Board

Present: Directors Osborne, Dwyer, Veerkamp, Anzini and Day. All Directors participated via video conference.

Staff

Present: General Manager Abercrombie, General Counsel Poulsen and Board Clerk Sullivan

Pledge of Allegiance and Moment of Silence

President Dwyer led the Pledge of Allegiance and a Moment of Silence for all those suffering from the impacts of COVID-19.

ADOPT AGENDA

ACTION: Agenda was adopted.

MOTION PASSED

Ayes: Directors Osborne, Veerkamp, Dwyer, Anzini and Day

COMMUNICATIONS

Awards and Recognitions

None

PUBLIC COMMENT

None

COMMUNICATIONS

General Manager

a) Long-term Weather Forecast and 2021 Water Supplies – Summary by Dan Corcoran

Clerk to the Board

None

Board of Directors

Director Veerkamp commented on the El Dorado County Board of Supervisors upcoming consideration of the Diamond Springs Parkway project.

APPROVE CONSENT CALENDAR

ACTION: Consent Calendar was approved.

MOTION PASSED

Ayes: Directors Anzini, Day, Osborne, Dwyer and Veerkamp

CONSENT CALENDAR

1. Clerk to the Board (Sullivan)

Consider approving the minutes of the January 25, 2021 regular meeting of the Board of Directors.

ACTION: Option 1: Approved as submitted.

MOTION PASSED

Ayes: Directors Anzini, Day, Osborne, Dwyer and Veerkamp

2. Office of the General Manager (Abercrombie)

Consider ratifying Resolution No. 2020-006 to maintain an emergency declaration regarding the COVID-19 pandemic.

ACTION: Option 1: Ratified Resolution No. 2020-006 to maintain emergency declaration.

MOTION PASSED

Ayes: Directors Anzini, Day, Osborne, Dwyer and Veerkamp

3. Operations (Peterson)

Consider awarding two tasks under the 2020-2022 on-call contract to California Laboratory Services in the not-to-exceed amounts of \$95,553 and \$81,368 for 2021 wastewater analytical testing services for the El Dorado Hills and Deer Creek Wastewater Treatment Plants.

ACTION: Option 1: Awarded two tasks under the 2020-2022 on-call contract to California Laboratory Services in the not-to-exceed amounts of \$95,553 and \$81,368 for 2021 wastewater analytical testing services for the El Dorado Hills and Deer Creek Wastewater Treatment Plants.

MOTION PASSED

Ayes: Directors Anzini, Day, Osborne, Dwyer and Veerkamp

4. Finance (Pasquarello)

Consider receiving and filing the District's Investment Report for the quarter ending December 31, 2020.

ACTION: Option 1: Received and filed the District's Investment Report for the quarter ending December 31, 2020.

MOTION PASSED

Ayes: Directors Anzini, Day, Osborne, Dwyer and Veerkamp

5. Board of Directors / Clerk to the Board (Dwyer/Sullivan)

Consider supporting the nomination and appointment of Director Brian K. Veerkamp to serve as an El Dorado Local Agency Formation Commissioner.

ACTION: Option 1: Supported the nomination and appointment of Director Brian K. Veerkamp to serve as an El Dorado Local Agency Formation Commissioner.

MOTION PASSED

Ayes: Directors Anzini, Day, Osborne, Dwyer and Veerkamp

END OF CONSENT CALENDAR

INFORMATION ITEM

6. Operations (Gibson/Odzakovic)

Project 184 Annual Outage Activities.

ACTION: None – Information only.

7. Engineering (Dawson)

Capital Improvement Plan Project Completion Summary.

ACTION: None – Information only.

8. Communications / Engineering (Saich/Dawson)

Communication and Outreach on District projects.

ACTION: None – Information only.

9. Information Technology (Ranstrom)

Hansen Core Software Upgrade.

ACTION: None – Information only.

ACTION ITEMS

10. Finance (Pasquarello)

Consider ratifying EID General Warrant Registers for the periods ending January 19 and January 26, 2021, and Employee Expense Reimbursements for these periods.

Director Veerkamp recused himself from the deliberations and vote on this Item.

ACTION: Option 1: Ratified the EID General Warrant Register as submitted to comply with Section 24600 of the Water Code of the State of California. Received and filed Employee Expense Reimbursements.

MOTION PASSED

Ayes: Directors Day, Anzini, Osborne and Dwyer

11. Operations (Russell)

Consider authorizing additional funding of \$1,200,000 for capitalized labor, \$570,000 for asphalt patch paving, \$300,000 for materials and supplies, and \$40,000 for backfill compaction testing for a total funding request of \$2,110,000 for the Water Service Line Replacement Project, Project No. 21002.

ACTION: Option 1: Authorized additional funding of \$1,200,000 for capitalized labor, \$570,000 for asphalt patch paving, \$300,000 for materials and supplies, and \$40,000 for backfill compaction testing for a total funding request of \$2,110,000 for the Water Service Line Replacement Project, Project No. 21002.

MOTION PASSED

Ayes: Directors Anzini, Veerkamp, Osborne, Dwyer and Day

12. Engineering (Brink)

Consider adopting the Water Supply Assessment for the Creekside Village Specific Plan.

ACTION: Option 1: Adopted the Water Supply Assessment for the Creekside Village Specific Plan.

MOTION PASSED

Ayes: Directors Day, Veerkamp, Osborne, Dwyer and Anzini

13. Office of the General Counsel / Office of the General Manager (Poulsen/Abercrombie)

Consider directing staff to agendize a public hearing to adopt proposed amendments to Board Policy 3060 regarding the General Manager's contracting authority.

ACTION: Option 1: Directed staff to agendize a public hearing to adopt proposed amendments to Board Policy 3060 regarding the General Manager's contracting authority.

MOTION PASSED

Ayes: Directors Day, Anzini, Osborne, Dwyer and Veerkamp

CLOSED SESSION

A. Conference with General Counsel — Anticipated Litigation (Poulsen)

Government Code Sections 54956.9(d)(4)

(one potential case against the California State Water Resources Control Board regarding the Sacramento/San Joaquin River Bay Delta Water Quality Control Plan Update)

ACTION: The Board, on a unanamous vote moved by Director Veerkamp and seconded by Director Osborne, authorized the General Manager to sign a common interest agreement for coordinated participation in Bay Delta Water Quality Control Plan Amendments and approved funding up to \$56,000 for the cost share component of the agreement.

B. Conference with Real Property Negotiators

Government Code Sections 54956.8

Property: District water rights (including pre-1914, licensed and permitted, and contract-based rights (Central Valley Project Water Service Contract No. 14-06-200-1357A-LTR1; Warren Act Contract No. 06-WC-20-3315))

District negotiators: General Manager, General Counsel, Director of Operations

Under negotiation: price and terms of payment for purchase

Negotiating parties: any interested party

ACTION: The Board met and conferred with its property negotiators on a proposed sale and provided direction but took no reportable action.

REVIEW OF ASSIGNMENTS

Director Osborne requested that staff present information on the District’s Federal Energy Regulatory Commission (FERC) Project 184 lake level requirements at an upcoming Board meeting.

ADJOURNMENT

President Dwyer adjourned the meeting at 1:18 P.M.

Roger “Pat” Dwyer
Board President
EL DORADO IRRIGATION DISTRICT

ATTEST

Jennifer Sullivan
Clerk to the Board
EL DORADO IRRIGATION DISTRICT

Approved: _____

EL DORADO IRRIGATION DISTRICT

SUBJECT: Consider ratifying Resolution No. 2020-006 to maintain an emergency declaration regarding the COVID-19 pandemic.

PREVIOUS BOARD ACTION

March 23, 2020 – Board declared an emergency under applicable provisions of law and Board Policy as a result of the COVID-19 pandemic and authorized the General Manager to take all actions necessary and appropriate in response to the emergency.

April 27, May 11, May 26, June 8, June 22, July 13, August 10, August 24, September 14, October 13, October 26, November 9, December 14, 2020, January 11, January 25 and February 8, 2021 – Board ratified Resolution 2020-006 to maintain the emergency declaration.

BOARD POLICIES (BP), ADMINISTRATIVE REGULATIONS (AR) AND BOARD AUTHORITY

BP 2050 Administrative Leeway in the Absence of Policy

BP 3060 Contracts and Procurement

Public Contract Code sections 1102, 20567 and 22050 et. seq.

Public Resources Code section 21080(b) and California Environmental Quality Act (“CEQA”) Guidelines section 15269

Government Code section 54956.5

Governor Newsom’s Executive Orders N-25-20 and N-29-20

SUMMARY OF ISSUE

COVID-19 has become a global pandemic. Governments at all levels including federal, state, and local have declared a state of emergency. This action is to ratify Board Resolution No. 2020-006 which declares an emergency and authorizes the General Manager to take necessary and appropriate action in response. The General Manager will provide periodic updates to the Board on the District’s response to COVID-19 during his General Manager’s report.

BACKGROUND/DISCUSSION

On March 4, 2020, Governor Newsom declared a state of emergency as a result of the COVID-19 pandemic. On March 12, 2020, El Dorado County declared a public health emergency. The following day, March 13, the then-President of the United States declared a national emergency.

The District performs a critical health and safety function for our customers—the supply of safe drinking water and wastewater services. It is imperative that the District continue to provide those critical functions during this emergency.

In order to ensure that the District is able to meet both the anticipated and unanticipated challenges that it is likely to face, the General Manager must have maximum flexibility in his ability to respond. District Board Policy 2050 authorizes the District’s General Manager to act “in emergency situations where no Board Policies or Administrative Regulations exist.” District Board Policy 3060, delegates to the General Manager authority to approve any and all contracts necessary to abate an emergency after first informing the President of the Board of Directors and scheduling an emergency meeting of the Board of Directors at the earliest possible opportunity.

Various provisions of law, including provisions in the Public Contracting Code, Public Resources Code, and Government Code govern aspects of the District's operations during declared emergencies.

In addition to declarations of emergency described above, Governor Gavin Newsom issued an executive order on March 12, 2020, relaxing some of the requirements of the Brown Act related to public meetings of local public agencies. The purpose of the executive order is to ensure social distance and reduce the risk of spreading the COVID-19 virus. On March 17, Governor Newsom issued a new Executive Order, N-29-20, which further relaxed certain provisions of the Brown Act with regard to conducting public meetings.

As a result of these orders, and in order to (1) protect the health and safety of District staff and the public, and (2) comply with restrictions imposed by State and Local health officials, the General Manager has periodically closed District facilities to the public, including the headquarters facility. Because indoor public gatherings remain restricted under the direction of State and local health officials, regular Board Meetings will continue to be closed to in-person attendance by the public and conducted virtually for the time being. Consistent with the Governor's Executive Order, the public may observe and participate in all public Board meetings by teleconference or other electronic means, and each Board meeting agenda provides instructions for how to participate.

BOARD OPTIONS

Option 1: Ratify Resolution No. 2020-006 to maintain emergency declaration.

Option 2: Take other action as directed by the Board.

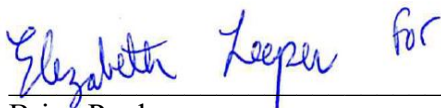
Option 3: Take no action.

RECOMMENDATION

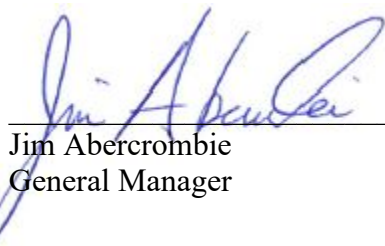
Option 1 (*four-fifths vote required*).

ATTACHMENTS

Attachment A: Resolution No. 2020-006



Brian Poulsen
General Counsel



Jim Abercrombie
General Manager

**RESOLUTION OF THE BOARD OF DIRECTORS OF
EL DORADO IRRIGATION DISTRICT
DECLARING AN EMERGENCY**

1
2
3 WHEREAS, EL DORADO IRRIGATION DISTRICT (District) has encountered an emergency
4 with regard to the COVID-19 pandemic, which requires prompt action to prevent or mitigate
5 impairment to life, health, safety, property, and/or essential public services; and

6 WHEREAS, Government Code section 54956.5(a)(1) defines “emergency” as “a work
7 stoppage, crippling activity, or other activity that severely impairs public health, safety, or both, as
8 determined by a majority of the members of the legislative body;” and

9 WHEREAS, Government Code section 54956.5(a)(2) defines “dire emergency” as “a crippling
10 disaster, mass destruction, terrorist act, or threatened terrorist activity that poses peril so
11 immediate and significant that requiring a legislative body to provide one-hour notice before holding
12 an emergency meeting may endanger the public health, safety, or both, as determined by a majority
13 of the members of the legislative body;” and

14 WHEREAS, Public Contract Code section 1102 defines “emergency” as “a sudden, unexpected
15 occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate
16 the loss or impairment of life, health, property, or essential public services,” and

17 WHEREAS, California Environmental Quality Act (CEQA) Guidelines section 15359 defines
18 “emergency” as “a sudden, unexpected occurrence, involving a clear and imminent danger, demanding
19 immediate action to prevent or mitigate loss of, or damage to life, health, property, or essential public
20 services;” and

21 WHEREAS, Government Code section 54956.5(b)(1) and (2) authorize legislative bodies to
22 hold emergency meetings in the case of an emergency or dire emergency involving matters upon which
23 prompt action is necessary due to the disruption or threatened disruption of public facilities; and

24 WHEREAS, District Board Policy 2050 authorizes the District’s General Manager to act “in
25 emergency situations where no Board Policies or Administrative Regulations exist;” and

26 WHEREAS, Public Contract Code sections 22050(a)(1) and 20567 authorize irrigation districts
27 to let contracts without notice for bids in case of an emergency; and

WHEREAS, Public Contract Code section 22050(b)(1) authorizes the Board of Directors, by a
four-fifths (4/5ths) vote, to delegate to the General Manager the authority to order any action
pursuant to paragraph (1) of subdivision (a) of Public Contract Code section 22050; and

1 WHEREAS, District Board Policy 3060, delegates to the General Manager authority to approve
2 any and all contracts necessary to abate an emergency after first informing the President of the Board
3 of Directors and scheduling an emergency meeting of the Board of Directors at the earliest possible
4 opportunity; and

5 WHEREAS, Public Resources Code section 21080(b)(2) exempts from CEQA emergency
6 repairs to public service facilities necessary to maintain services; and

7 WHEREAS, Public Resources Code section 21080(b)(4) and CEQA Guidelines section 15269(c)
8 exempt from CEQA specific actions necessary to prevent or mitigate an emergency from CEQA;

9 NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED by the Board of Directors of
10 the El Dorado Irrigation District (Board) as follows:

- 11 1. The Board finds and declares that an emergency situation exists within the meaning of the
12 enactments marked below:

13 Public Contract Code section 1102;

14 CEQA Guidelines section 15359;

15 Public Contract Code section 20567;

16 District Board Policy 3060;

17 Public Contract Code section 22050(a)(1);

18 Public Resources Code section 21080(b)(2);

19 Public Resources Code section 21080(b)(4) and CEQA Guidelines section 15269(c);

- 20 2. The foregoing findings and declarations are based upon written, oral, and visual evidence,
21 including both facts and professional opinions, presented to the Board at the hearing of this
22 Resolution and upon the Minutes of the meeting at which this Resolution was adopted.
- 23 3. The Board hereby ratifies all actions taken by the District General Manager and his
24 designees, prior to the adoption of this Resolution, which the General Manager and his
25 designees reasonably deemed necessary to respond to the emergency declared herein.
- 26 4. The Board hereby delegates, authorizes, and directs the District General Manager and his
27 designees to take all further actions reasonably deemed necessary to respond to the
emergency declared herein. The General Manager or his designees shall report to and seek
ratification of the Board of Directors for each action taken in excess of their normal
authority, at the first regular Board of Directors meeting held after each such action.

1 5. This Resolution shall take effect immediately upon adoption. Subject to the ratification
2 required by Public Contract Code sections 22050(b)(3), (c)(1), and (c)(2), and by Board
3 Policy 3060, this Resolution shall remain in full force an effect until rescinded by a
4 subsequent Resolution of the Board of Directors.

5 The foregoing Resolution was introduced at a regular meeting of the Board of Directors of the
6 EL DORADO IRRIGATION DISTRICT, held on the 23rd day of March 2020, by Director Osborne
7 who moved its adoption. The motion was seconded by Director Raffety and a poll vote taken which
8 stood as follows:

9 AYES: Directors Osborne, Raffety, Dwyer, Anzini and Day

10 NOES:

11 ABSENT:

12 ABSTAIN:

13 The motion having a majority of votes "Aye", the resolution was declared to have been
14 adopted, and it was so ordered.

George Osborne, President
Board of Directors
EL DORADO IRRIGATION DISTRICT

16 ATTEST:

Jennifer Sullivan
Clerk to the Board
EL DORADO IRRIGATION DISTRICT

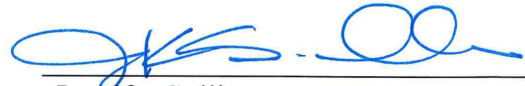
21 (SEAL)

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1 I, the undersigned, Clerk to the Board of the EL DORADO IRRIGATION DISTRICT
2 hereby certify that the foregoing resolution is a full, true and correct copy of a Resolution of the
3 Board of Directors of the EL DORADO IRRIGATION DISTRICT entered into and adopted at a
4 regular meeting of the Board of Directors held on the 23rd day of March 2020.



Jennifer Sullivan
Clerk to the Board
EL DORADO IRRIGATION DISTRICT

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EL DORADO IRRIGATION DISTRICT

SUBJECT: Consider authorizing additional funding in the amount of \$10,000 for capitalized labor, \$25,000 for utility services and \$5,000 for materials associated with the FERC C51.1 and 51.2 RM Caples Auxiliary Dam and Boat Launch Project, Project No. 10007.

PREVIOUS BOARD ACTION

October 26, 2020 – Board adopted the 2021-2025 Capital Improvement Plan (CIP), subject to available funding.

BOARD POLICIES (BP), ADMINISTRATIVE REGULATIONS (AR) AND BOARD AUTHORITY

BP 3010 Budget

SUMMARY OF ISSUE

Board approval is required to authorize CIP funding prior to staff proceeding with work on the projects.

BACKGROUND/DISCUSSION

The CIP project identified in Table 1 requires immediate funding. The expenditures to date, amount of new funding requested and the funding source are listed.

**Table 1
CIP Funding Request**

	Project Name and Number	2021-2025 CIP Plan¹	Funded to Date	Actual Costs to date²	Amount Requested	Funding Source
1.	FERC C51.1 and 51.2 RM Caples Auxiliary Dam and Boat Launch 10007	\$444,247	\$254,000	\$252,869	\$40,000	100% Water rates
	TOTAL FUNDING REQUEST				\$40,000	

¹ Includes all existing costs plus any expected costs in the 5-year CIP.

² Actual costs include encumbrances.

The following section contains a brief breakdown and description of the project in the table.

CIP Funding Request

Project No.	10007	Board Date	02/22/2021
Project Name	FERC C51.2 RM Caples Boat Launch		
Project Manager	Greg Hawkins		

Budget Status	\$	%
Funded to Date	\$ 254,000	--
Spent to Date (including encumbrances)	\$ 252,869	100%
Current Remaining	\$ 1,131	0%

Funding Request Breakdown	\$
Utility Services	\$ 25,000
Capitalized labor	\$ 10,000
Materials	\$ 5,000
Total	\$ 40,000

Funding Source
100% Water rates

Description
<p>Required by the FERC License, Settlement Agreement, and the USFS 4(e) Condition 51, which, in part, requires the District to provide funding for the following activities:</p> <ol style="list-style-type: none"> 1. The licensee shall be responsible for the following services at the Caples Lake Auxiliary Dam Parking Area: a) routine cleaning, repair, and up keep of all constructed features, b) toilet pumping, c) trash removal/litter pick up at the site, d) signboards, and e) vegetation management. 2. The licensee shall be responsible for operating and servicing the Caples Lake boat launching ramp, associated parking lot, and other public facilities constructed at this site for the term of the license. The licensee shall also be responsible for management of signboards. The USFS shall be responsible for providing the information for the signboards to USFS standards. <p>Funding under this CIP is required to pay for utility services (toilet pumping, garbage removal, water hauling, phone, and oil interceptor pumping), capitalized labor, and materials necessary to operate the Caples Lake Auxiliary Dam parking area and Caples Lake Boat Launch incurred during the 2021 recreation season.</p> <p>This funding request is for capitalized labor to facilitate project bidding in March 2021. Construction contract award and engineering support and inspection services are scheduled to be considered by the Board in April 2021.</p>

BOARD OPTIONS

Option 1: Authorize additional funding in the amount of \$10,000 for capitalized labor, \$25,000 for utility services and \$5,000 for materials associated with the FERC C51.1 and 51.2 RM Caples Auxiliary Dam and Boat Launch Project, Project No. 10007.

Option 2: Take other action as directed by the Board.


Option 3: Take no action.

RECOMMENDATION

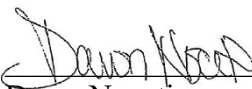
Option 1

ATTACHMENTS

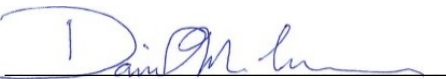
Attachment A: CIP Summary



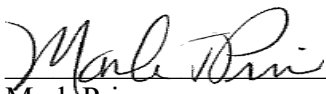
Greg Hawkins
Parks and Recreation Manager



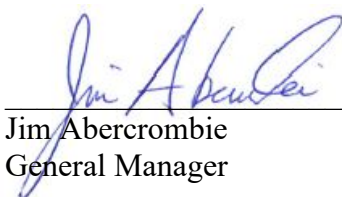
Dawn Noceti
Accountant



Dan Corcoran
Operations Director



Mark Price
Finance Director



Jim Abercrombie
General Manager

2021

CAPITAL IMPROVEMENT PLAN Program:

FERC

Project Number: 10007
Project Name: FERC C51.1 and 51.2 RM Caples Auxiliary Dam and Boat Launch
Project Category: Regulatory Requirements
Priority: 1 **PM:** Hawkins **Board Approval:** 10/26/20

Project Description:

Required by the FERC License, Settlement Agreement, and the USFS 4(e) Condition 51, which, in part, requires the District to provide funding for the following activities:

1. The licensee shall be responsible for one-half the of the following maintenance at the Caples Lake Auxiliary Dam Parking Area: a) routine cleaning, repair, and maintenance of all constructed features, b) toilet pumping, c) trash removal/litter pick up at the site, d) maintenance of the signboards, and e) vegetation management.

2. The licensee shall be responsible for operating and maintaining the boat launching ramp, associated parking lot, and other public facilities constructed at this site for the term of the license. The licensee shall also be responsible for maintenance of signboards. The USFS shall be responsible for maintaining the information on those signboards to USFS standards.

Funding under this CIP is required to pay for services, capitalized labor, and materials necessary for operations and maintenance activities at the Caples Lake Auxiliary Dam parking area and at the Caples Lake Boat Launch.

Basis for Priority:

EID would not be able to comply with the FERC License, Settlement Agreement and USFS 4(e) Condition requirements.

Project Financial Summary:

Funded to Date:	\$ 249,000	Expenditures through end of year:	\$ 244,247
Spent to Date:	\$ 219,247	2021 - 2025 Planned Expenditures:	\$ 200,000
Cash flow through end of year:	\$ 25,000	Total Project Estimate:	\$ 444,247
Project Balance	\$ 4,753	Additional Funding Required	\$ 195,247

Description of Work	Estimated Annual Expenditures					Total
	2021	2022	2023	2024	2025	
Services	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$ 125,000
Staff time	\$ 10,000	\$ 10,000	\$ 10,000	\$ 10,000	\$ 10,000	\$ 50,000
Materials	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 25,000
Construction						\$ -
TOTAL	\$ 40,000	\$ 40,000	\$ 40,000	\$ 40,000	\$ 40,000	\$ 200,000

Estimated Funding Sources	Percentage	2021	Amount
Water Rates	100%		\$35,247
			\$0
			\$0
Total	100%		\$35,247

Funding Comments:

EL DORADO IRRIGATION DISTRICT

SUBJECT: Consider authorizing additional funding in the amount of \$20,000 for capitalized labor associated with the Reservoir A Water Treatment Plant Programmable Logic Controller Replacement Project, Project No. 19033, and \$10,000 for equipment rental and \$15,000 for capitalized labor associated with the El Dorado Main #2 Isolation Valve Project, Project No. 20047.

PREVIOUS BOARD ACTION

October 26, 2020 – Board adopted the 2021-2025 Capital Improvement Plan (CIP), subject to available funding.

January 11, 2021 – Board approved additional funding associated with the El Dorado Main #2 Camino Heights Isolation Valve Project, Project No. 20047.

BOARD POLICIES (BP), ADMINISTRATIVE REGULATIONS (AR) AND BOARD AUTHORITY

BP 3010 Budget

SUMMARY OF ISSUE

Board approval is required to authorize CIP funding prior to staff proceeding with work on the projects.

BACKGROUND/DISCUSSION

Staff requests funding for the CIP projects identified in Table 1. The expenditures to date, amount of new funding requested, and the funding source are listed.

**Table 1
CIP Funding Request**

	Project Name and Number	2021-2025 CIP Plan ¹	Funded to Date	Actual Costs to date ²	Amount Requested	Funding Source
1.	Reservoir A Water Treatment Plant Programmable Logic Controller Replacement Project 19033	\$942,133	\$97,990	\$88,288	\$20,000	100% Water FCCs
2.	El Dorado Main #2 Isolation Valve 20047	\$0 ³	\$171,000	\$88,722	\$25,000	100% Water Rates
	TOTAL FUNDING REQUEST				\$45,000	

¹ Includes all existing costs plus any expected costs in the 5-year CIP.

² Actual costs include encumbrances.

³ The project was not included in the 2021 – 2025 CIP as the project was not identified prior to development of the CIP.

The following section contains a brief breakdown and description of the projects in the table.

CIP Funding Request

Project No.	19033	Board Date	02/22/2021
Project Name	Reservoir A Water Treatment Plant Programmable Logic Controller Replacement		
Project Manager	Carrington		

Budget Status	\$	%
Funded to date	\$ 97,990	--
Spent to date	\$ 88,288	90%
Current Remaining	\$ 9,702	10%

Funding Request Breakdown	\$
Capitalized Labor	\$ 20,000
Total	\$ 20,000

Funding Source
100% Water FCCs

Description
<p>The Reservoir A Water Treatment Plant receives and treats water from Jenkinson Lake. The Programmable Logic Controller (PLC) Replacement Project entails the full replacement and integration of seven PLCs at the plant. All existing PLCs exceed the 15-year useful life, have become unreliable, and are in need of replacement.</p> <p>This funding request is for capitalized labor to facilitate project bidding in March 2021. Construction contract award and engineering support and inspection services are scheduled to be considered by the Board in April 2021.</p>

CIP Funding Request

Project No.	20047	Board Date	02/22/2021
Project Name	El Dorado Main #2 Isolation Valve		
Project Manager	Delongchamp		

Budget Status	\$	%
Funded to date	\$ 171,000	--
Spent to date	\$ 88,722	52%
Current Remaining	\$ 82,278	48%

Funding Request Breakdown	\$
Equipment Rental	\$ 10,000
Capitalized Labor	\$ 15,000
Total	\$ 25,000

Funding Source
100% Water Rates

Description
<p>This project will install a new 36" butterfly valve on El Dorado Main #2 in Camino. This valve, to be installed by District crews, will provide needed ability to isolate portions of El Dorado Main #2, and will also provide system reliability during the construction of the Camino Safety Project as well as future leaks by allowing for smaller shutdowns that affect fewer customers.</p> <p>This funding request is for capitalized labor and equipment rental costs associated with the installation of the valve. The installation was delayed due to weather events. The equipment rental will provide for an additional 2-week rental for an excavator as well as a small dozer. The project site conditions have changed due to the weather and a small dozer will more efficiently perform the work than the loader that the District owns. With the changed site conditions, it will take additional time to install the valve than previously planned and additional capitalized labor costs are needed.</p>

BOARD OPTIONS

Option 1: Authorize additional funding in the amount of \$20,000 for capitalized labor associated with the Reservoir A Water Treatment Plant Programmable Logic Controller Replacement Project, Project No. 19033, and \$10,000 for equipment rental and \$15,000 for capitalized labor associated with the El Dorado Main #2 Isolation Valve Project, Project No. 20047.

Option 2: Take other action as directed by the Board.

Option 3: Take no action.

RECOMMENDATION

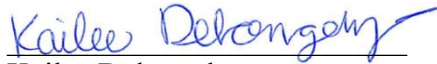
Option 1

ATTACHMENTS

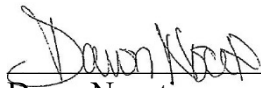
Attachment A: CIP Summary



Liz Carrington
Senior Civil Engineer



Kailee Delongchamp
Associate Engineer



Dawn Noceti
Accountant



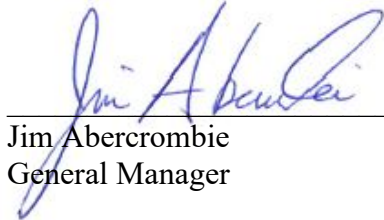
Elizabeth Dawson
Engineering Manager



Brian Mueller
Engineering Director



Mark Price
Finance Director



Jim Abercrombie
General Manager

2021

CAPITAL IMPROVEMENT PLAN Program:

Water

Project Number: 19033
Project Name: Reservoir A WTP PLC Replacement
Project Category: Reliability & Service Level Improvements
Priority: 2 **PM:** Carrington **Board Approval:** 10/26/20

Project Description:

The project involves replacing 7 antiquated, end of life cycle programmable logic controllers (PLC) at the Reservoir A water treatment plant. These PLC units have exceeded 15 years beyond the end of life cycle. The PLCs control all the processes at the facility.

Basis for Priority:

The PLC units have been experiencing component failure due to age and condition. The complete failure of the PLC poses a great risk of interrupting service to our customers. New parts are not available and operating system is no longer supported.

Project Financial Summary:

Funded to Date:	\$ 97,990	Expenditures through end of year:	\$ 92,133
Spent to Date:	\$ 67,133	2021 - 2025 Planned Expenditures:	\$ 850,000
Cash flow through end of year:	\$ 25,000	Total Project Estimate:	\$ 942,133
Project Balance	\$ 5,857	Additional Funding Required	\$ 844,143

Description of Work	Estimated Annual Expenditures					Total
	2021	2022	2023	2024	2025	
Capitalized Labor	\$ 50,000	\$ 50,000				\$ 100,000
Res A Construction	\$ 250,000	\$ 500,000				\$ 750,000
TOTAL	\$ 300,000	\$ 550,000	\$ -	\$ -	\$ -	\$ 850,000

Funding Sources	Percentage	2021	Amount
Water FCCs	100%	\$	300,000
			\$0
			\$0
Total	100%		\$300,000

Funding Comments:

EL DORADO IRRIGATION DISTRICT

SUBJECT: Consider proposed amendments to Board Policy 3060 regarding the General Manager's contracting and funding authority.

PREVIOUS BOARD ACTION

November 25, 1991 – Board adopted a Purchasing Policies and Procedures Manual.

July 19, 1999 – Board revised the Purchasing Policies and Procedures Manual, raising the General Manager's authority to approve purchases and contracts from \$25,000 to \$50,000.

September 11, 2006 – After a public hearing, the Board adopted the Board Policy 3000 series, and associated Administrative Regulations, governing District business operations. These Board Policies and Administrative Regulations superseded the Purchasing Policies and Procedures Manual. The Administrative Regulation maintained the General Manager's initial contract approval authority at \$50,000, but added authority to approve construction contract change orders up to \$100,000.

August 13, 2012 – Board revised Board Policy 3060 to establish within the Board Policies the General Manager's current contract approval authority of \$50,000 and construction contract change order approval authority of \$100,000.

February 8, 2021 – Board directed staff to agendize a public hearing to adopt proposed amendments to Board Policy 3060 regarding the General Manager's contracting authority.

BOARD POLICIES (BP), ADMINISTRATIVE REGULATIONS (AR) AND BOARD AUTHORITY

BP 3060 Contracts and Procurement

SUMMARY OF ISSUE

The General Manager's initial contract approval authority is presently \$50,000. This authority has not changed since 1999. To increase staff efficiency, staff recommends that the Board consider increasing the General Manager's approval authority to \$100,000, by revising BP 3060.

BACKGROUND/DISCUSSION

This agenda summary describes (1) General Manager's contract approval authority, (2) how the allocation of contract approvals between the Board and General Manager would change by raising the General Manager's approval authority, (3) examples of the kinds of contracts the Board approved in 2019 and 2020 that the General Manager might approve with an increase in approval authority; (4) staff's recommendation regarding potential changes to BP 3060.

1. *General Manager's Contract Approval Authority*

BP 3060 provides general direction to staff on contracting and procurements. It authorizes the General Manager to approve contracts of values less than, or equal to \$50,000 and construction contract change orders of up to and including \$100,000. This threshold for Board approval of contracts has existed at the District since 1999. The \$50,000 limit, when adjusted by the engineers cost index since 1999, would equate to approximately \$100,000.

Currently, BP 3060 does not specifically describe the General Manager’s authority to approve funding for the Capital Improvement Plan (CIP). District staff has historically interpreted the \$50,000 approval authority contained in BP 3060 as applicable to CIP funding, and therefore, the Board approves CIP funding greater than \$50,000. This is consistent with Board Policy 3010, which provides that the Board shall “approve funding for the Capital Improvement Plan on an as-required basis.”

In relevant part, BP 3060 provides:

The Board of Directors hereby delegates to the General Manager the authority to approve contracts and procurements with values of up to and including \$50,000, and construction contract change orders of up to and including \$100,000. Except during emergencies, the Board of Directors shall approve all contracts or procurements with values greater than \$50,000, and construction contract change orders with values greater than \$100,000.

For each of the contract approvals subject to Board approval, staff must prepare an Agenda Item Summary for inclusion in the Board packet corresponding to the Board meeting at which the Board will consider the item. Staff also prepares and delivers a presentation to the Board on each individual contract award. Additionally, staff must coordinate bid solicitations that will likely require Board approval to take into account available Board meeting dates. These administrative tasks can be time-consuming and can complicate or delay some contract awards.

2. How the Allocation of Contract Approvals Between the Board And General Manager Would Change By Raising the General Manager’s Approval Authority

Under the existing BP 3060, the General Manager has authority to approve construction contract change orders up to and including \$100,000. Given that authority level, staff has concluded it would be appropriate to revise BP 3060 to provide the General Manager with a consistent approval authority of up to \$100,000, by increasing the General Manager’s initial contract and change order approval authority to that level.

The following demonstrates how such a change would affect the number and scope of contracts and change orders approved by the Board. In 2019, for example, the Board approved 71 contract items, worth a total of \$19,265,248¹. Of those 71 contract items, 31 were valued between \$50,000 and \$100,000, for a combined total of \$1,974,424. Consequently, if the Board increased the General Manager’s contract approval authority to \$100,000 rather than \$50,000, the Board would have approved 40 contract items worth a combined amount of \$17,290,914 in 2019. In this scenario, about 44% of the contract item awards would have been delegated to the General Manager, but the Board would have retained direct decision-making authority over 90% of the dollars spent. The following table illustrates this:

¹ The number of contracts approved by the Board and total amount of such contracts were derived by reviewing the Minutes for each Board meeting in 2019. The total amount includes only the contract amount approved, and does not include additional funding for staff time or other miscellaneous matters. The “contract items” include initial contracts, as well as contract amendments for change orders.

2019	Current	Modified	
	Board of Directors	General Manager	Board of Directors
Approval Authority	Over \$50K	\$50K > \$100K	Over \$100K
# Awards	71	31	40
\$ Awarded	\$19,265,248	\$1,974,424	\$17,290,914
Avg. \$ Award	\$271,342	\$65,814	\$421,730
% of Awards		44%	56%
% of \$ Awards		10%	90%

Additionally, in 2020, the Board approved 98 contract items, worth a total of \$89,175,376². Of those 98 contract items, 30 were valued between \$50,000 and \$100,000, for a combined total of \$2,031,731. Consequently, if the Board increased the General Manager’s contract approval authority to \$100,000 rather than \$50,000, the Board would have approved 68 contract items worth a combined amount of \$87,143,645 in 2020. In this scenario, about 31% of the contract item awards would have been delegated to the General Manager, but the Board would have retained direct decision-making authority over 98% of the dollars spent. The following table illustrates this:

2020	Current	Modified	
	Board of Directors	General Manager	Board of Directors
Approval Authority	Over \$50K	\$50K > \$100K	Over \$100K
# Awards	98	30	68
\$ Awarded	\$89,175,376	\$2,031,731	\$87,143,645
Avg. \$ Award	\$909,953	\$67,724	\$1,281,524
% of Awards		31%	69%
% of \$ Awards		2%	98%

3. *Examples of Contract Items Approved by the Board in 2019 and 2020*

Examples of the 31 contract items the Board approved in 2019 that fall within the \$50,000 to \$100,000 range include the following:

- A \$54,000 contract to C&M Backflow Testing and Repair, Inc. for annual inspections of residential recycled water dual-plumbed lots for 2019.
- A \$56,025 contract to Landmark Environmental, Inc. for Registered Professional Forester services.
- A \$59,341 contract to Doug Veerkamp General Engineering Inc. for construction of traffic safety measures related to the El Dorado Hills Boulevard roadway and intersection rehabilitation.
- A \$67,697 contract to California Laboratory Services for 2020 treated drinking and source water monitoring analytical testing services.
- A \$4,294 contract amendment to Iconix Waterworks for waterline materials for the EDM #1 and EDM #2 Intertie, Project No. 19007.01.

² The number of contracts approved by the Board and total amount of such contracts were derived by reviewing the Minutes for each Board meeting in 2020. The total amount includes only the contract amount approved, and does not include additional funding for staff time or other miscellaneous matters. The “contracts” include initial contracts, as well as contract amendments for change orders.

Examples of the 30 contract items the Board approved in 2020 that fall within the \$50,000 to \$100,000 range include the following:

- A \$84,000 contract to Blain Stumpf Trucking for water treatment plant residual solids removal services.
- A \$54,901 contract to GEI Consultants for biological and water quality monitoring services.
- A \$65,801 contract to Flo-Line Technology, Inc. for purchase of two wastewater pumps.
- A \$69,210 contract to Tully and Young Comprehensive Water Planning for preparation of the 2020 Urban Water Management Plan.
- A \$62,040 contract amendment to Markit! Forestry Management for the mastication of piled vegetation for the Vegetation Management Project, Grant13.01 and Grant14.01.

4. Staff's Recommendation Regarding Potential Changes to Board Policy 3060

As demonstrated above, many of the contract items that the Board approved in 2019 and 2020 were within the \$50,000 to \$100,000 range, but cumulatively these items represent only a small percentage of the total dollars authorized by the Board for contract items. Therefore, by increasing the General Manager's delegated authority to a consistent \$100,000 maximum for contract items, the Board will retain direct decision-making authority over the vast majority of dollars spent on contracting. In addition, as described above, historically staff has applied the General Manager's approval authority under BP 3060 to CIP funding approvals. After presenting the information item to the Board on February 8th regarding potential amendments to BP 3060, staff identified that BP 3060 could be further clarified by including reference to CIP funding approval authority. To ensure that the General Manager has a consistent \$100,000 approval authority for contract items and CIP funding, staff recommends that BP 3060 be revised to state that the General Manager's approval authority includes CIP funding of up to \$100,000. These changes in General Manager authority will result in increased staff efficiency and streamlining of contracts, procurement, and CIP funding, by reducing the number of contract and funding items that require preparation of Board agenda item summaries and coordination with Board dates. The recommended changes to BP 3060 are identified in Attachment A.

BOARD OPTIONS

Option 1: Adopt proposed amendments to Board Policy 3060 regarding the General Manger's contracting and funding authority.

Option 2: Take other action as directed by the Board.

Option 3: Take no action.

RECOMMENDATION

Option 1

ATTACHMENTS

Attachment A: Proposed amendments to Board Policy 3060

Elizabeth Leeper

Elizabeth Leeper
Senior Deputy General Counsel

Elizabeth Leeper for

Brian Poulsen
General Counsel

Jim Abercrombie

Jim Abercrombie
General Manager

Proposed Amendments to Board Policy 3060

BP 3060 Contracts and Procurement

Adopted: September 11, 2006

Supersedes: Purchasing Policies and Procedures Manual adopted 11/25/91, revised 2/27/95,
revised 7/19/99

Revised: August 13, 2012

The District shall adopt procurement and contracting procedures by administrative regulations. Such procedures shall be designed to provide a fair, open, and competitive process that avoids conflicts of interest, collusion, and favoritism.

Prior to approving a contract or procurement with any outside entity, the District shall first obtain bids when required by law or when beneficial to the District. If bids are not required by law and the General Manager does not opt to use the bidding process, goods and services shall be at the lowest price consistent with desired quality or which is in the best interests of the District.

The Board of Directors hereby delegates to the General Manager the authority to approve contracts and procurements **and change orders** with values of up to and including **\$100,000**. ~~\$50,000, and construction contract change orders of up to and including \$100,000.~~ **The Board of Directors also delegates to the General Manager, consistent with BP 3010, the authority to approve funding for the Capital Improvement Plan with values of up to and including \$100,000.** Except during emergencies, the Board of Directors shall approve all contracts or procurements **or change orders** with values greater than **\$100,000**. ~~\$50,000, and construction contract change orders with values greater than \$100,000.~~

In the event of an emergency requiring immediate contract or procurement action, the General Manager is hereby authorized to approve any and all contracts necessary to abate the emergency after first informing the President of the Board of Directors and scheduling an emergency meeting of the Board of Directors at the earliest possible opportunity. The General Manager shall bring any and all contracts or procurements with values exceeding the levels set forth above, but approved during an emergency, to the Board of Directors for ratification at the first meeting of the Board immediately following the emergency



BOARD POLICY 3060 CONTRACTS AND PROCUREMENT

FEBRUARY 22, 2021
PUBLIC HEARING

SUMMARY OF ISSUE

- Revise Board Policy (BP) 3060 to increase General Manager's (GM) contract and Capital Improvement Plan (CIP) funding approval authority
- The GM's initial contract approval authority is presently \$50,000
- Staff applies the \$50,000 GM approval authority to CIP funding as well
- Staff recommends the Board consider increasing the GM's approval authority to \$100,000

BACKGROUND / DISCUSSION

- BP 3060: “The Board of Directors hereby delegates to the General Manager the authority to approve contracts and procurements with values of up to and including \$50,000, and construction contract change orders of up to and including \$100,000.”
- \$50,000 limit has existed since 1999
 - The \$50,000 limit, when adjusted by the engineers cost index since 1999, would equate to approximately \$100,000

PROPOSED CHANGE IN APPROVAL AUTHORITY

- BP 3060 provides the GM authority to approve *construction* contract change orders up to and including \$100,000
- Staff concludes it would be appropriate to increase the GM's initial contract and change order, as well as CIP funding, approval authority up to and including \$100,000
 - Provides the GM with a consistent approval authority

DEMONSTRATION OF CHANGE IN APPROVAL AUTHORITY

2019

- In 2019, the Board approved 71 contract items totaling \$19,265,248
 - 31 of the contract items were between \$50,000 and \$100,000 totaling \$1,974,424
- If the Board increased the GM's contract approval authority to \$100,000, the Board would have approved 40 contract items totaling \$17,290,914
 - About **44%** of the contract item awards would have been delegated to the GM
 - The Board would have retained direct decision-making authority over **90%** of the dollars spent

2019	Current	Modified	
	Board of Directors	General Manager	Board of Directors
Approval Authority	Over \$50K	\$50K > \$100K	Over \$100K
# Awards	71	31	40
\$ Awarded	\$19,265,248	\$1,974,424	\$17,290,914
Avg. \$ Award	\$271,342	\$65,814	\$421,730
% of Awards		44%	56%
% of \$ Awards		10%	90%

The number of contracts approved by the Board and total amount of such contracts were derived by reviewing the Minutes for each Board meeting in 2019. The total amount includes only the contract amount approved, and does not include additional funding for staff time or other miscellaneous matters. The “contract items” include initial contracts, as well as contract amendments for change orders. **5**

DEMONSTRATION OF CHANGE IN APPROVAL AUTHORITY

2020

2020	Current	Modified	
	Board of Directors	General Manager	Board of Directors
Approval Authority	Over \$50K	\$50K > \$100K	Over \$100K
# Awards	98	30	68
\$ Awarded	\$89,175,376	\$2,031,731	\$87,143,645
Avg. \$ Award	\$909,953	\$67,724	\$1,281,524
% of Awards		31%	69%
% of \$ Awards		2%	98%

- In 2020, the Board approved 98 contract items totaling \$89,175,376
 - 30 of the contract items were between \$50,000 and \$100,000 totaling \$2,031,731
- If the Board increased the GM's contract approval authority to \$100,000, the Board would have approved 68 contract items totaling \$87,143,645
 - 31% of the contract item awards would have been delegated to the GM
 - The Board would have retained direct decision-making authority over **98%** of the dollars spent

The number of contracts approved by the Board and total amount of such contracts were derived by reviewing the Minutes for each Board meeting in 2020. The total amount includes only the contract amount approved, and does not include additional funding for staff time or other miscellaneous matters. The "contract items" include initial contracts, as well as contract amendments for change orders. **6**

EXAMPLES OF APPROVED CONTRACT ITEMS

2019

- Examples of the 31 contract items the Board approved in 2019 within the \$50,000 to \$100,000 range:
 - \$54,000 - C&M Backflow Testing and Repair, Inc. for annual inspections of residential recycled water dual-plumbed lots for 2019
 - \$56,025 - Landmark Environmental, Inc. for Registered Professional Forester services
 - \$59,341 - Doug Veerkamp General Engineering Inc. for construction of traffic safety measures related to the El Dorado Hills Boulevard roadway and intersection rehabilitation
 - \$67,697 - California Laboratory Services for 2020 treated drinking and source water monitoring analytical testing services
 - \$4,294 - Iconix Waterworks for waterline materials for the EDM #1 and EDM #2 Intertie, Project No. 19007.01 (contract amendment)

EXAMPLES OF APPROVED CONTRACT ITEMS

2020

- Examples of the 30 contract items the Board approved in 2020 within the \$50,000 to \$100,000 range:
 - \$84,000 - Blain Stumpf Trucking for water treatment plant residual solids removal services
 - \$54,901 - GEI Consultants for biological and water quality monitoring services
 - \$65,801 - Flo-Line Technology, Inc. for purchase of two wastewater pumps
 - \$69,210 - Tully and Young Comprehensive Water Planning for preparation of the 2020 Urban Water Management Plan
 - \$62,040 - Markit! Forestry Management for the mastication of piled vegetation

STAFF RECOMMENDS CHANGES TO BP 3060

- Staff recommends that the Board increase the General Manager's initial contracting authority and CIP funding authority to \$100,000
- The Board will retain direct decision-making authority over the majority of dollars spent
- Increasing GM authority will result in:
 - Streamlining of contracts and procurement
 - Increased staff efficiency
 - For each of the contract approvals subject to Board approval, staff must:
 - Coordinate bid solicitations that will likely require Board approval with available Board meeting dates
 - Prepare an Agenda Item Summary and deliver a presentation to the Board
 - These administrative tasks can be time-consuming and can complicate or delay some contract awards

PROPOSED AMENDMENTS TO BP 3060

The District shall adopt procurement and contracting procedures by administrative regulations. Such procedures shall be designed to provide a fair, open, and competitive process that avoids conflicts of interest, collusion, and favoritism.

Prior to approving a contract or procurement with any outside entity, the District shall first obtain bids when required by law or when beneficial to the District. If bids are not required by law and the General Manager does not opt to use the bidding process, goods and services shall be at the lowest price consistent with desired quality or which is in the best interests of the District.

The Board of Directors hereby delegates to the General Manager the authority to approve contracts and procurements and change orders with values of up to and including ~~\$100,000. \$50,000, and construction contract change orders of up to and including \$100,000.~~ The Board of Directors also delegates to the General Manager, consistent with BP 3010, the authority to approve funding for the Capital Improvement Plan with values of up to and including \$100,000. Except during emergencies, the Board of Directors shall approve all contracts or procurements or change orders with values greater than ~~\$100,000. \$50,000, and construction contract change orders with values greater than \$100,000.~~

In the event of an emergency requiring immediate contract or procurement action, the General Manager is hereby authorized to approve any and all contracts necessary to abate the emergency after first informing the President of the Board of Directors and scheduling an emergency meeting of the Board of Directors at the earliest possible opportunity. The General Manager shall bring any and all contracts or procurements with values exceeding the levels set forth above, but approved during an emergency, to the Board of Directors for ratification at the first meeting of the Board immediately following the emergency.

BOARD ACTION

- Option 1: Adopt proposed amendments to Board Policy 3060 regarding the General Manager's contracting and funding authority.
- Option 2: Take other action as directed by the Board.
- Option 3: Take no action.

STAFF RECOMMENDATION

- Option 1



QUESTIONS?

EL DORADO IRRIGATION DISTRICT

SUBJECT: Consider ratifying EID General Warrant Registers for the periods ending February 2 and February 9, 2021, and Employee Expense Reimbursements for these periods.

PREVIOUS BOARD ACTION

The Board ratifies the District’s General Warrant Registers at each regular meeting of the Board.

BOARD POLICIES (BP), ADMINISTRATIVE REGULATIONS (AR) AND BOARD AUTHORITY

Section 24600 of the Water Code provides that no claim shall be paid unless allowed by the Board.

SUMMARY OF ISSUE

District staff notifies the Board of proposed payments via email and requests ratification of the warrant registers at the subsequent regular meeting of the Board. Copies of the Warrant Registers are sent to the Board on the Friday preceding the Warrant Register’s date. If no comment or request to withhold payment is received from any Director prior to the following Tuesday morning, the warrants are mailed out and formal ratification of said warrants is agendized on the next regular Board agenda.

BACKGROUND/DISCUSSION

Current Warrant Register Information

Warrants are prepared by Accounts Payable; reviewed and approved by the Finance Manager, the Director of Finance and the General Manager or their designee.

Register Date	Check Numbers	Amount
February 2, 2021	686965 – 687112	\$2,908,398.41
February 9, 2021	687113 – 687267	\$4,152,162.57

Current Board and Employee Expense Reimbursements

Board Expenses and Reimbursements have been reviewed and approved by the Finance Manager and General Manager prior to the warrants being released. These expenses and reimbursements are for activities performed in the interest of the District in accordance with Board Policy 12065 and Resolution No. 2007-059.

Additional information regarding Board and employee expense reimbursements is available for copying or public inspection at District headquarters in compliance with Government Code Section 53065.5.

BOARD OPTIONS

Option 1: Ratify the EID General Warrant Register as submitted to comply with Section 24600 of the Water Code of the State of California. Receive and file Employee Expense Reimbursements.

Option 2: Take other action as directed by the Board.

Option 3: Take no action.

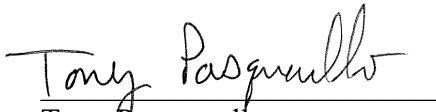
RECOMMENDATION

Option 1

ATTACHMENTS

Attachment A: Executive Summaries

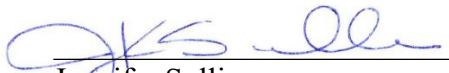
Attachment B: Employee Expense Reimbursements totaling \$100 or more




Tony Pasquarello
Finance Manager



Mark Price
Finance Director



Jennifer Sullivan
Clerk to the Board



Jim Abercrombie
General Manager

Executive Summary for February 2, 2021 -- \$2,908,398.41:

This summary highlights significant disbursements made by major business activity:

Development Services (Fund 105)

- \$5,220—Domenichelli and Associates, Inc. for construction inspection services

General District Operations (Fund 110)

- \$64,532—Association of California Water Agencies/JPIA for fourth quarter 2020 workers compensation insurance
- \$88,514—Doug Veerkamp General Engineering, Inc. for release of retention held on projects:
 - >Project #18007.01 – Pony Express Waterline Replacement (\$15,968)
 - >Project #18018.01 – Easy Street Waterline (\$72,546)
- \$4,321—Life Insurance Company of North America for January 2021 life insurance premiums
- \$9,500—Reeb Government Relations, LLC for February 2021 retainer
- \$3,000—University of Kansas for digital content strategy course fees

Engineering Operations (Fund 210) none to report

Water Operations (Fund 310)

- \$3,040—Carsten Tree Service for tree removal service
- \$4,677—CLS Labs for regulatory lab testing
- \$3,066—Desert Diamond Industries, LLC for saw blades
- \$14,987—MCS Inspection for reservoir coating inspections
- \$3,664—Olin Chlor Alkali Products for sodium hypochlorite at Reservoir A

Wastewater Operations (Fund 410)

- \$14,481—CLS Labs for regulatory lab testing
- \$5,376—County of Sacramento for grit hauling and disposal
- \$40,541—Denali Water Solutions, LLC for sludge hauling and disposal at EDHWWTP and DCWWTP
- \$14,871—Univar Solutions USA, Inc. for sodium hydroxide and acetic acid at EDHWWTP
- \$4,243—Watson-Marlow, Inc. for pump repair parts

Recycled Water Operations (Fund 510) none to report

Hydroelectric Operations (Fund 610) none to report

Recreation Operations (Fund 710) none to report

Capital Improvement Projects (Construction Funds 140, 340, 440, 540, 640 and 740)

- \$12,295—Carollo Engineers, Inc. for assessment services:
 - >Project #16008.01 – South Pointe Lift Station Upgrade (\$6,126)
 - >Project #STUDY03.01 – Flume Assessment – Reservoir 1 (\$2,030)
 - >Project #STUDY03.02 – Flume Assessment – Reservoir A (\$2,029)
 - >Project #STUDY03.03 – Flume Assessment – EDHWTP (\$2,029)
 - >Project #STUDY03.04 – Flume Assessment – Strawberry Water Treatment Plant (\$81)
- \$3,857—CFM-SF, Inc. for a flowmeter– Strawberry Self Cleaning Screens (Project #19019.01)
- \$248,201—Doug Veerkamp General Engineering, Inc. for construction services (\$261,264). Retention held \$13,063
 - >Project #18007.01 – Pony Express Waterline Replacement (\$9,523)
 - >Project #18018.01 – Easy Street Waterline (\$67,206)
 - >Project #18027.01 – El Dorado Lift Pipeline Replacement (\$184,535)
- \$3,509—EN2 Resources, Inc. for consulting services – FERC:C44 Noxious Weed Implementation (Project #08025H.01)
- \$93,206—Express Sewer & Drain, Inc. for construction services (\$98,112) – Wastewater Collection System Pipeline (Project #17020.01). Retention held \$4,906
- \$18,237—GEI Consultants, Inc. for engineering services:
 - >Project #15024.01 – Folsom Lake Intake Improvement (\$13,296)
 - >Project #19031.01 – Silver Lake Dam Rehabilitation (\$4,941)
- \$2,080,023—Granite Construction Company for construction services (\$2,189,498) – Folsom Lake Intake Improvement (Project #15024.01). Retention held \$109,475
- \$5,763—Kleinfelder, Inc. for consulting services – FERC:C37.8 Water Temperature Monitoring (Project #06021H.01)
- \$10,231—Macauley Construction, Inc. for lift station encroachment paving – Town Center Lift Station Paving (Project #20048.01)
- \$27,561—MCK Americas, Inc. for construction management services – Main Ditch-Forebay to Reservoir 1 (Project #11032.01)
- \$15,526—TCB Industrial, Inc. for generator bearing rehabilitation – Powerhouse Generator 1 Bearing (Project #20036.01)
- \$3,510—Tully & Young, Inc. for water hydrology support services – Permit 21112 Change in Point of Diversion (Project #16003.01)
- \$20,000—Westin Technology Solutions, LLC for consulting services – Hansen 7 Software Replacement (Project #18055.01)

Executive Summary for February 9, 2021 -- \$4,152,162.57:

This summary highlights significant disbursements made by major business activity:

General District Operations (Fund 110)

- \$16,034—Aqua Metric Sales Company for warehouse inventory
- \$5,830—Backflow Distributors, Inc. for warehouse inventory
- \$3,599—Holden Sheetmetal Restoration for vehicle body repairs
- \$11,083—Hunt & Sons, Inc. for card lock fuel, motor oil, and fuel deliveries at various locations
- \$3,903—Isolved Benefit Services for 2021 COBRA notice renewal
- \$4,397—Key2life Janitorial for January janitorial service
- \$4,251—Life Insurance Company of North America for February 2021 life insurance premiums
- \$17,846—PG&E for electric service

Engineering Operations (Fund 210) none to report

Water Operations (Fund 310)

- \$294,912—Advanced Industrial Services, Inc. for Reservoirs 2 and 2A recoating (\$310,434). Retention held \$15,522
- \$22,401—Macauley Construction, Inc. for asphalt patch paving
- \$11,132—Pace Supply Corporation for hydrant couplings and asphalt repair compound
- \$78,267—PG&E for electric service
- \$4,173—Youngdahl Consulting Group, Inc. for geotechnical services

Wastewater Operations (Fund 410)

- \$178,169—PG&E for electric service
- \$8,203—Solenis, LLC for flocculant at EDHWWTP

Recycled Water Operations (Fund 510)

- \$14,683—PG&E for electric service
- \$4,142—Univar Solutions USA, Inc. for sodium hydroxide at EDHWWTP

Hydroelectric Operations (Fund 610)

- \$6,664—California Service Tool, Inc. for a pipe bender tool
- \$5,050—Congruitive for annual software maintenance
- \$3,472—North Machine Shop for drain valve re-facing service
- \$15,910—Pan-Pacific Supply Company for pilot valve repairs
- \$12,224—PG&E for electric service

Recreation Operations (Fund 710) none to report

Capital Improvement Projects (Construction Funds 140, 340, 440, 540, 640 and 740)

- \$83,030—Big Valley Electric for construction services (\$87,400) – El Dorado Main #2 Intertie Air Release Valve Upgrade Project (Project #20035.01). Retention held \$4,370
- \$228,505—Doug Veerkamp General Engineering, Inc. for construction services (\$240,532) – El Dorado Lift Pipeline Replacement (Project #18027.01). Retention held \$12,027
- \$56,521—Downtown Ford Sales for a fleet vehicle – 2020 Vehicle Replacement Program (Project #20024.01)
- \$127,706—GHD, Inc. for engineering and design services:
 - >Project #20038.01 – Hydro General Bridge Design (\$5,491)
 - >Project #STUDY11.01 – 2020 Canal Release Point Study (\$10,352)
 - >Project #16022.01 – Flume 38-40 Canal Conversion (\$111,863)
- \$2,784,436—Granite Construction Company for construction services (\$2,930,985) – Folsom Lake Intake Improvement (Project #15024.01). Retention held \$146,549
- \$45,542—Macauley Construction, Inc. for lift station encroachment paving – Water Service Line Replacement (Project #21002.01)
- \$12,250—TCB Industrial, Inc. for generator bearing rehabilitation – Powerhouse Generator 1 Bearing (Project #20036.01)
- \$4,852—Wunchel & Sons, Inc. for construction services – Pleasant Oak Main Pressure Reducing Station #1 Valve Replacement (Project #19042.01)
- \$4,219—Youngdahl Consulting Group, Inc. for geotechnical services – El Dorado Lift Pipeline Replacement (Project #18027.01)

EL DORADO IRRIGATION DISTRICT

SUBJECT: Consider authorizing the General Manager to negotiate and execute a Power Purchase Agreement with Pioneer Community Energy for the sale of electricity produced from the El Dorado Powerhouse, Federal Energy Regulatory Commission Project No. 184.

PREVIOUS BOARD ACTION

April 7, 2003 – Board authorized the General Manager to enter into standard regulated contracts and to procure certifications necessary to sell power from Project 184.

September 15, 2003 – Board action was taken through a resolution authorizing execution of agreements for hydroelectric power production.

January 25, 2010 – Board authorized the General Manager to negotiate and execute a Power Purchase Agreement with Pacific Gas and Electric Company for the sale of electricity produced from the El Dorado Powerhouse, Federal Energy Regulatory Commission Project No. 184.

BOARD POLICIES (BP), ADMINISTRATIVE REGULATIONS (AR) AND BOARD AUTHORITY

BP 8010

AR 8011

SUMMARY OF ISSUE

Since 2010, the District has maintained a Power Purchase Agreement (PPA) with Pacific Gas and Electric (PG&E) for the sale of electricity from the El Dorado Powerhouse. Both PG&E and the District have performed well under this agreement; however, the agreement expires in May 2021 and PG&E has signaled no interest in renewing the agreement with competitive terms. Therefore, a new agreement with a new buyer is needed.

Staff's ongoing approach to power contracting continues to be guided by the goals of optimizing power generation income while prioritizing drinking water supplies and minimizing financial risks to the District.

BACKGROUND/DISCUSSION

The 20.9 megawatt (MW) El Dorado Powerhouse is state-certified as a source of renewable, "green" energy. Staff, with the assistance of our consultant Zanjero, has analyzed Project 184 operations and energy optimization strategies, including the recently enlarged Forebay reservoir.

In preparation for expiration of the current PPA, over the last several months staff have engaged in outreach and discussions with several potential buyers of Project 184 energy, including the current buyer, PG&E. Unfortunately, PG&E has declined interest in renewing the current contract with competitive terms. After receiving several indicative term sheets from potential buyers and subsequent discussions and evaluation, staff believes that a proposed PPA with Pioneer Community Energy best represents the District's strategic interests at this time. Therefore, staff recommends execution of a PPA with Pioneer Community Energy provided that staff successfully negotiate final terms and conditions appropriately protective of the District.

Staff anticipates the PPA would be modeled from the Edison Electric Institute’s Master Purchase and Sale Agreement (Attachment A) with modifications appropriate to the specific interests of both parties and project conditions. Aspects subject to negotiation and modification include unit pricing, scheduling, contract duration, terms related to the hydroelectric asset characteristics, and other legal matters.

Staff’s goal is to ensure a successful transition to a new agreement with Pioneer Community Energy upon expiration of the existing PPA with PG&E on May 16, 2021. Therefore, staff is requesting that the Board authorize the General Manager to negotiate and execute a PPA with Pioneer Community Energy.

BOARD OPTIONS

Option 1: Authorize the General Manager to negotiate and execute a Power Purchase Agreement with Pioneer Community Energy for the sale of electricity produced from the El Dorado Powerhouse, Federal Energy Regulatory Commission Project No. 184.

Option 2: Take other action as directed by the Board.

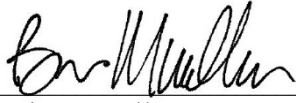
Option 3: Take no action.

RECOMMENDATION

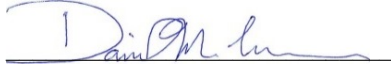
Option 1

ATTACHMENTS

Attachment A: Master Purchase and Sale Agreement template



Brian Mueller
Engineering Director



Dan Corcoran
Operations Director



Mark Price
Finance Director



Brian Poulsen
General Counsel



Jim Abercrombie
General Manager

Master Power Purchase & Sale Agreement



Version 2.1 (modified 4/25/00)

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MASTER POWER PURCHASE AND SALES AGREEMENT

TABLE OF CONTENTS

COVER SHEET.....	1
GENERAL TERMS AND CONDITIONS	6
ARTICLE ONE: GENERAL DEFINITIONS	6
ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS.....	11
2.1 Transactions	11
2.2 Governing Terms	11
2.3 Confirmation.....	11
2.4 Additional Confirmation Terms.....	12
2.5 Recording.....	12
ARTICLE THREE: OBLIGATIONS AND DELIVERIES	12
3.1 Seller’s and Buyer’s Obligations	12
3.2 Transmission and Scheduling	12
3.3 Force Majeure	13
ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE	13
4.1 Seller Failure	13
4.2 Buyer Failure	13
ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES.....	13
5.1 Events of Default	13
5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts.....	15
5.3 Net Out of Settlement Amounts.....	15
5.4 Notice of Payment of Termination Payment	15
5.5 Disputes With Respect to Termination Payment.....	15
5.6 Closeout Setoffs.....	16
5.7 Suspension of Performance.....	16
ARTICLE SIX: PAYMENT AND NETTING	16
6.1 Billing Period.....	16
6.2 Timeliness of Payment.....	17
6.3 Disputes and Adjustments of Invoices.....	17
6.4 Netting of Payments.....	17
6.5 Payment Obligation Absent Netting	17
6.6 Security	18
6.7 Payment for Options	18
6.8 Transaction Netting.....	18

ARTICLE SEVEN: LIMITATIONS.....	18
7.1 Limitation of Remedies, Liability and Damages	18
ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS	19
8.1 Party A Credit Protection.....	19
8.2 Party B Credit Protection.....	21
8.3 Grant of Security Interest/Remedies.....	22
ARTICLE NINE: GOVERNMENTAL CHARGES.....	23
9.1 Cooperation.....	23
9.2 Governmental Charges.....	23
ARTICLE TEN: MISCELLANEOUS	23
10.1 Term of Master Agreement.....	23
10.2 Representations and Warranties.....	23
10.3 Title and Risk of Loss	25
10.4 Indemnity	25
10.5 Assignment	25
10.6 Governing Law	25
10.7 Notices	26
10.8 General.....	26
10.9 Audit	26
10.10 Forward Contract	27
10.11 Confidentiality	27
SCHEDULE M: GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEMS	28
SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS.....	32
EXHIBIT A: CONFIRMATION LETTER.....	39

MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This *Master Power Purchase and Sale Agreement* (“*Master Agreement*”) is made as of the following date: _____ (“Effective Date”). The *Master Agreement*, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the “Agreement.” The Parties to this *Master Agreement* are the following:

Name (“_____” or “Party A”)
All Notices:
Street: _____
City: _____ Zip: _____
Attn: Contract Administration
Phone: _____
Facsimile: _____
Duns: _____
Federal Tax ID Number: _____

Invoices:
Attn: _____
Phone: _____
Facsimile: _____

Scheduling:
Attn: _____
Phone: _____
Facsimile: _____

Payments:
Attn: _____
Phone: _____
Facsimile: _____

Wire Transfer:
BNK: _____
ABA: _____
ACCT: _____

Credit and Collections:
Attn: _____
Phone: _____
Facsimile: _____

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

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

Invoices:
Attn: _____
Phone: _____
Facsimile: _____

Scheduling:
Attn: _____
Phone: _____
Facsimile: _____

Payments:
Attn: _____
Phone: _____
Facsimile: _____

Wire Transfer:
BNK: _____
ABA: _____
ACCT: _____

Credit and Collections:
Attn: _____
Phone: _____
Facsimile: _____

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

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

Party A Tariff Tariff _____ Dated _____ Docket Number _____

Party B Tariff Tariff _____ Dated _____ Docket Number _____

Article Two

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

Article Four

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

Article Five

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

5.6 Closeout Setoff

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

 - Option C (No Setoff)
-

Article 8

Credit and Collateral Requirements 8.1 Party A Credit Protection:
(a) Financial Information:
 Option A
 Option B Specify: _____
 Option C Specify: _____
(b) Credit Assurances:
 Not Applicable
 Applicable
(c) Collateral Threshold:
 Not Applicable
 Applicable

If applicable, complete the following:

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

Party B Independent Amount: \$ _____

Party B Rounding Amount: \$ _____

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

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

- Other:
Specify: _____

(e) Guarantor for Party B: _____

Guarantee Amount: _____

8.2 Party B Credit Protection:

(a) Financial Information:

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

(b) Credit Assurances:

- Not Applicable
- Applicable

(c) Collateral Threshold:

- Not Applicable
- Applicable

If applicable, complete the following:

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

Party A Independent Amount: \$ _____

Party A Rounding Amount: \$ _____

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

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

(e) Guarantor for Party A: _____
Guarantee Amount: _____

Article 10

Confidentiality

Confidentiality Applicable If not checked, inapplicable.

Schedule M

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

Other Changes

Specify, if any: _____

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

Party A Name

Party B Name

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

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

GENERAL TERMS AND CONDITIONS

ARTICLE ONE: GENERAL DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.32 “Non-Defaulting Party” has the meaning set forth in Section 5.2.

1.33 “Offsetting Transactions” mean any two or more outstanding Transactions, having the same or overlapping Delivery Period(s), Delivery Point and payment date, where under one or more of such Transactions, one Party is the Seller, and under the other such Transaction(s), the same Party is the Buyer.

1.34 “Option” means the right but not the obligation to purchase or sell a Product as specified in a Transaction.

1.35 “Option Buyer” means the Party specified in a Transaction as the purchaser of an option, as defined in Schedule P.

1.36 “Option Seller” means the Party specified in a Transaction as the seller of an option , as defined in Schedule P.

1.37 “Party A Collateral Threshold” means the collateral threshold, if any, set forth in the Cover Sheet for Party A.

1.38 “Party B Collateral Threshold” means the collateral threshold, if any, set forth in the Cover Sheet for Party B.

1.39 “Party A Independent Amount” means the amount , if any, set forth in the Cover Sheet for Party A.

1.40 “Party B Independent Amount” means the amount , if any, set forth in the Cover Sheet for Party B.

1.41 “Party A Rounding Amount” means the amount, if any, set forth in the Cover Sheet for Party A.

1.42 “Party B Rounding Amount” means the amount, if any, set forth in the Cover Sheet for Party B.

1.43 “Party A Tariff” means the tariff, if any, specified in the Cover Sheet for Party A.

1.44 “Party B Tariff” means the tariff, if any, specified in the Cover Sheet for Party B.

1.45 “Performance Assurance” means collateral in the form of either cash, Letter(s) of Credit, or other security acceptable to the Requesting Party.

1.46 “Potential Event of Default” means an event which, with notice or passage of time or both, would constitute an Event of Default.

1.47 “Product” means electric capacity, energy or other product(s) related thereto as specified in a Transaction by reference to a Product listed in Schedule P hereto or as otherwise specified by the Parties in the Transaction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS

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

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

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

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

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

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

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

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

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

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

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

ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE

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

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

ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES

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

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

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

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

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

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

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

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

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

5.6 Closeout Setoffs.

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

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

Option C: Neither Option A nor B shall apply.

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

ARTICLE SIX: PAYMENT AND NETTING

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

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

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

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

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

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

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

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

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

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

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

ARTICLE SEVEN: LIMITATIONS

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

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

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE NINE: GOVERNMENTAL CHARGES

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

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

ARTICLE TEN: MISCELLANEOUS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SCHEDULE M

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

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

“Act” means _____.¹

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

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

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

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

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

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

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

positions in good standing in accordance with the Act and other applicable law, (iii) entry into and performance of this Master Agreement by Governmental Entity or Public Power System are for a proper public purpose within the meaning of the Act and all other relevant constitutional, organic or other governing documents and applicable law, (iv) the term of this Master Agreement does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and applicable law, (v) the Public Power System's obligations to make payments hereunder are unsubordinated obligations and such payments are (a) operating and maintenance costs (or similar designation) which enjoy first priority of payment at all times under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law or (b) otherwise not subject to any prior claim under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law and are available without limitation or deduction to satisfy all Governmental Entity or Public Power System' obligations hereunder and under each Transaction or (c) are to be made solely from a Special Fund, (vi) entry into and performance of this Master Agreement and each Transaction by the Governmental Entity or Public Power System will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any obligation of Governmental Entity or Public Power System otherwise entitled to such exclusion, and (vii) obligations to make payments hereunder do not constitute any kind of indebtedness of Governmental Entity or Public Power System or create any kind of lien on, or security interest in, any property or revenues of Governmental Entity or Public Power System which, in either case, is proscribed by any provision of the Act or any other relevant constitutional, organic or other governing documents and applicable law, any order or judgment of any court or other agency of government applicable to it or its assets, or any contractual restriction binding on or affecting it or any of its assets.

D. The Parties agree to add the following sections to Article Three:

Section 3.4 Public Power System's Deliveries. On the Effective Date and as a condition to the obligations of the other Party under this Agreement, Governmental Entity or Public Power System shall provide the other Party hereto (i) certified copies of all ordinances, resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery and performance by Governmental Entity or Public Power System of this Master Agreement and (ii) an opinion of counsel for Governmental Entity or Public Power System, in form and substance reasonably satisfactory to the Other Party, regarding the validity, binding effect and enforceability of this Master Agreement against Governmental Entity or Public Power System in

respect of the Act and all other relevant constitutional organic or other governing documents and applicable law.

Section 3.5 No Immunity Claim. Governmental Entity or Public Power System warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (a) suit, (b) jurisdiction of court (including a court located outside the jurisdiction of its organization), (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment.

E. If the appropriate box is checked on the Cover Sheet, as an alternative to selecting one of the options under Section 8.3, the Parties agree to add the following section to Article Three:

Section 3.6 Governmental Entity or Public Power System Security. With respect to each Transaction, Governmental Entity or Public Power System shall either (i) have created and set aside a Special Fund or (ii) upon execution of this Master Agreement and prior to the commencement of each subsequent fiscal year of Governmental Entity or Public Power System during any Delivery Period, have obtained all necessary budgetary approvals and certifications for payment of all of its obligations under this Master Agreement for such fiscal year; any breach of this provision shall be deemed to have arisen during a fiscal period of Governmental Entity or Public Power System for which budgetary approval or certification of its obligations under this Master Agreement is in effect and, notwithstanding anything to the contrary in Article Four, an Early Termination Date shall automatically and without further notice occur hereunder as of such date wherein Governmental Entity or Public Power System shall be treated as the Defaulting Party. Governmental Entity or Public Power System shall have allocated to the Special Fund or its general funds a revenue base that is adequate to cover Public Power System's payment obligations hereunder throughout the entire Delivery Period.

F. If the appropriate box is checked on the Cover Sheet, the Parties agree to add the following section to Article Eight:

Section 8.4 Governmental Security. As security for payment and performance of Public Power System's obligations hereunder, Public Power System hereby pledges, sets over, assigns and grants to the other Party a security interest in all of Public Power System's right, title and interest in and to [specify collateral].

G. The Parties agree to add the following sentence at the end of Section 10.6 - Governing Law:

NOTWITHSTANDING THE FOREGOING, IN RESPECT OF THE APPLICABILITY OF THE ACT AS HEREIN PROVIDED, THE LAWS OF THE STATE OF _____² SHALL APPLY.

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

SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS

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

“Capacity” has the meaning specified in the Transaction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Transmission.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This confirmation letter shall confirm the Transaction agreed to on _____, _____
between _____ (“Party A”) and _____ (“Party B”)
regarding the sale/purchase of the Product under the terms and conditions as follows:

Seller: _____

Buyer: _____

Product:

- Into _____, Seller’s Daily Choice
- Firm (LD)
- Firm (No Force Majeure)
- System Firm
(Specify System: _____)
- Unit Firm
(Specify Unit(s): _____)
- Other _____
- Transmission Contingency (If not marked, no transmission contingency)
 - FT-Contract Path Contingency Seller Buyer
 - FT-Delivery Point Contingency Seller Buyer
 - Transmission Contingent Seller Buyer
 - Other transmission contingency
(Specify: _____)

Contract Quantity: _____

Delivery Point: _____

Contract Price: _____

Energy Price: _____

Other Charges: _____

Delivery Period: _____
Special Conditions: _____
Scheduling: _____
Option Buyer: _____
Option Seller: _____
Type of Option: _____
Strike Price: _____
Premium: _____
Exercise Period: _____

This confirmation letter is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated _____ (the "Master Agreement") between Party A and Party B, and constitutes part of and is subject to the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

[Party A]

[Party B]

Name: _____
Title: _____
Phone No: _____
Fax: _____

Name: _____
Title: _____
Phone No: _____
Fax: _____



EL DORADO POWERHOUSE,
FEDERAL ENERGY REGULATORY COMMISSION
PROJECT NO. 184 POWER PURCHASE AGREEMENT

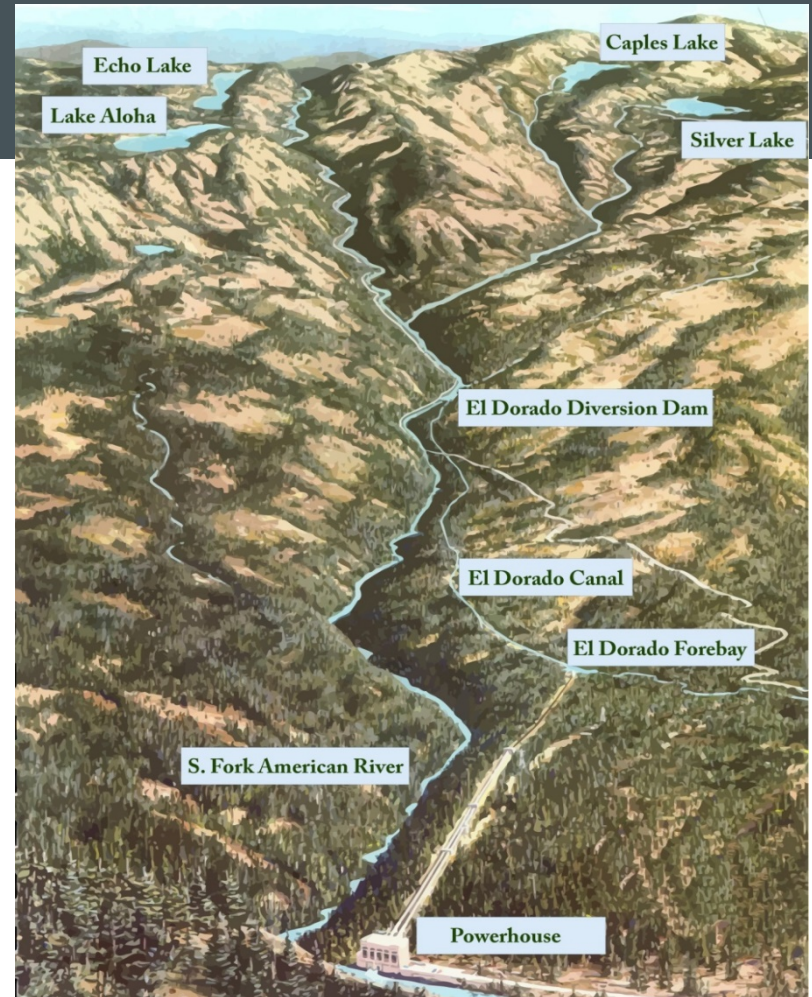
FEBRUARY 22, 2021

SUMMARY OF ISSUE

- The District has an existing Power Purchase Agreement (PPA) with PG&E for power sales from the El Dorado Powerhouse, Federal Energy Regulatory Commission Project No. 184 (Project 184)
 - PPA with PG&E expires in May 2021
- Staff's approach to power contracting is guided by the goals of:
 - Optimizing power generation income
 - Prioritizing drinking water supplies
 - Minimizing financial risks to the District
- Staff recommends developing a new PPA with Pioneer Community Energy for purchasing Project 184 energy

PROJECT 184 FACILITIES OVERVIEW

- South Fork American River
- Four storage reservoirs
- Kyburz diversion dam
- 22.3-mile long El Dorado Canal
- Forebay 3797 ft elevation
 - Increased storage to 550 AF
- El Dorado Powerhouse 1880 ft elevation



PROJECT 184 POWERHOUSE OVERVIEW

- 2 – 10 megawatt (MW) hydropower units, 20.9 MW total at full flow
- Diversion canal source flow controlled
- Generation matches run of river available flow
- Renewables Portfolio Standard (RPS) certified
- 100% carbon free
- Forebay provides ability for daily shaping/shifting

AVERAGE GENERATION BY WATER YEAR TYPE

Month	Ave Year, MWh	Wet Year, MWh	Dry Year, MWh
OCT	0	0	0
NOV	0	0	0
DEC	300	6,100	1,500
JAN	8,000	13,600	2,000
FEB	10,600	9,800	7,800
MAR	13,800	9,400	12,700
APR	13,200	12,000	12,700
MAY	12,600	12,100	11,800
JUN	10,000	11,300	5,900
JUL	3,800	12,000	700
AUG	6,900	11,900	4,800
SEP	7,400	11,300	3,000
TOTAL:	86,500	109,500	63,000

5

BACKGROUND / DISCUSSION

- District staff engaged in outreach and discussions with potential buyers
 - Described Project 184 power generation capabilities
 - Increased ability to shape timing of power generation
 - Potential buyers provided indicative term sheets for further negotiations
- Staff recommends continued negotiations and execution of a new PPA with Pioneer Community Energy
- PPA will require some negotiations to include:
 - Unit pricing, term length, scheduling, etc.

BOARD ACTION

- Option 1: Authorize the General Manager to negotiate and execute a Power Purchase Agreement with Pioneer Community Energy for the sale of electricity produced from the El Dorado Powerhouse, Federal Energy Regulatory Commission Project No. 184.
- Option 2: Take other action as directed by the Board.
- Option 3: Take no action.

RECOMMENDATION

- Option 1



QUESTIONS?