



City of Grand Island

Tuesday, March 08, 2011

Council Session

Item G7

#2011-53 - Approving Revised Laredo Ridge Power Sales Agreement

Staff Contact: Gary R. Mader

Council Agenda Memo

From: Gary R. Mader, Utilities Director
Jason Eley, Interim City Attorney

Meeting: March 8, 2011

Subject: Restated and Amended Power Sales Agreement for
Laredo Ridge Wind Farm

Item #'s: G-7

Presenter(s): Gary R. Mader, Utilities Director

Background

On December 7, 2010, Grand Island City Council approved the Laredo Ridge Wind Farm Power Sales Agreement (PSA) with Nebraska Public Power District (NPPD). This agreement allows Grand Island to receive 1.25% of the power generated at Laredo Ridge Wind Farm located near Petersburg, Nebraska. Other participants of this wind farm are Lincoln Electric Systems (LES), Municipal Energy Agency of Nebraska (MEAN) and NPPD. After Grand Island's approval in December, changes were made to the PSA on behalf of LES and MEAN. It is NPPD's desire to keep the PSAs with each utility identical. Attached for reference are both the redline of the amended document and the final Restated and Amended Power Sales Agreement.

Discussion

The Restated and Amended PSA was reviewed by City Utilities and the Legal Department and determined to have no significant differences from the original PSA. The changes include several clarifications and the inclusion of additional provisions regarding reimbursed of project development costs in the event of sales agreement termination. The changes provide better financial protection to the participants in the event of termination.

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve

2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

City Administration recommends that the Council approve the Restated and Amended Power Sales Agreement with NPPD for Grand Island's share of the Laredo Ridge Wind Farm.

Sample Motion

Move to approve the Restated and Amended Power Sales Agreement with NPPD.

POWER SALES AGREEMENT

Between

NEBRASKA PUBLIC POWER DISTRICT

And

THE CITY GRAND ISLAND, NEBRASKA

For a

WIND ENERGY SHARE

From The

LAREDO RIDGE WIND, LLC, PLANT

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POWER SALES AGREEMENT

Between

NEBRASKA PUBLIC POWER DISTRICT

And

THE CITY OF GRAND ISLAND, NEBRASKA

For a

WIND ENERGY SHARE

From The

LAREDO RIDGE WIND, LLC, PLANT

This POWER SALES AGREEMENT ("Agreement") made this ____ day of _____, 2010, by and between NEBRASKA PUBLIC POWER DISTRICT, a public corporation and political subdivision of the State of Nebraska (hereinafter "NPPD") and the CITY OF GRAND ISLAND, NEBRASKA, a municipal corporation and political subdivision of the State of Nebraska (hereinafter "City").

WITNESSETH:

WHEREAS, NPPD is authorized by the State of Nebraska to engage in the generation, transmission, ~~sale~~ and distribution of electricity; and

WHEREAS, NPPD has a Power Purchase Agreement (as defined herein) with Laredo Ridge Wind, LLC, to purchase one hundred percent (100%) of the output of the LRW Plant (as hereinafter defined); and

WHEREAS, NPPD desires to sell Purchased Power generated at the LRW Plant (as hereinafter defined); and

WHEREAS, City desires to enter into an agreement with NPPD to buy Purchased Power (as hereinafter defined) generated at the LRW Plant (as hereinafter defined) in accordance with the provisions of this Agreement.

NOW, THEREFORE, in consideration of the premises, the mutual promises and agreements set forth herein and other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the Parties do hereby agree as follows:

SECTION 1 DEFINITIONS

In addition to the initially capitalized terms and phrases defined in the above recitals, and those set forth in the Schedules attached to this Agreement, the following initially capitalized terms and phrases as and when used in this Agreement shall have the respective meaning set forth below:

- 1.1 "Bankruptcy Proceeding" means, with respect to a Party, that such Party (i) makes any general assignment or any general arrangement for the benefit of creditors, (ii) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such a petition involuntarily filed against it and such petition is not withdrawn or dismissed within thirty (30) Days after such filing, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) is unable (or admits in writing its inability) generally to pay its debts as they fall due, (v) is dissolved (other than pursuant to a consolidation, acquisition, amalgamation or merger), (vi) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, acquisition, amalgamation or merger), (vii) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for all or substantially all of its assets, (viii) has a secured party take possession of all or substantially all of its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within thirty (30) Days thereafter, (ix) causes or is subject to any event with respect to which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (viii) (inclusive); or (x) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

- 1.2 "Business Day" means a day on which the Federal Reserve Member Banks in Nebraska are open for business; and a Business Day shall open at 8:00 A.M. and close at 5:00 P.M. local time in Omaha, Nebraska.
- 1.3 "Capacity" means the same as "capability" for electric power supply, and refers to the maximum electric generation, less losses to the interconnection and energy used by the LRW Plant, that the LRW Plant can be expected to supply to the electric transmission system under specified conditions for a given time interval. The Capacity of generating equipment is generally expressed in megawatts.
- 1.4 "Commercial Operation Date" shall have the meaning specified in the Power Purchase Agreement (as hereinafter defined).
- 1.5 "Commercially Reasonable" or "Commercially Reasonable Efforts" means, with respect to any action required to be made, attempted or taken by a Party under this Agreement, such efforts as a reasonable prudent business Person would undertake for the protection of its own interest under the conditions affecting such action, including without limitation, the amount of notice of the need to take such action, and the duration and type of action.
- 1.6 "Compensable Curtailment" shall have the meaning specified in Section 5.5.2.
- 1.7 "Confidential Information" means information about the real, personal and intellectual properties, finances, operations, development strategies, business plans and other business information of each Party, which is designated as "Confidential" in accordance with Section 17. Confidential information, when disclosed in written, machine readable, or other tangible form by one Party to the other Party, shall be clearly marked as "Confidential." Information which is disclosed orally and is promptly followed by a written summary of the oral disclosure which identifies the material as "Confidential" shall be treated as Confidential Information and used only according to the terms of Section 17.
- 1.8 "Contract Year" shall have the meaning specified in the Power Purchase Agreement (as hereinafter defined).
- 1.9 "Day" means a calendar day.

- 1.10 "Delivered Energy" means that portion of the MWh generated by the LRW Plant and delivered by NPPD to City at the Delivery Point.
- 1.11 "Delivery Point" shall have the meaning specified in Section 8.1.
- 1.12 "Due Date" shall have the meaning specified in Section 6.1.
- 1.13 "Effective Date" shall have the meaning specified in Section 18.10.
- 1.14 "Environmental Attributes" means any and all credits, benefits, emissions reductions, environmental air quality credits, and emissions reduction credits, offsets, and allowances, howsoever described or entitled, resulting from the avoidance of the emission of any gas, chemical, or other substance attributable to the generation of the Delivered Energy, but specifically excluding the Production Tax Credits (PTCs). Environmental Attributes include, but shall not be limited to, those attributes that are created or recognized by regulations, statutes, or other action by a Governmental Authority, and include, but shall not be limited to, those attributes that can be used to 1) claim responsibility for the reduction of emissions and/or pollutants, 2) claim ownership of emission and/or pollutant reduction rights, 3) claim reduction or avoidance of emissions or pollutants, and 4) claim compliance with a renewable energy standard or renewable portfolio standard. Emissions and pollutants as referred to above include, but are not limited to, acid rain precursors, carbon dioxide, carbon monoxide, chlorinated hydrocarbons, greenhouse gases, mercury, metals, methane, nitrogen oxides, nitrogen-oxygen compounds, ozone precursors, particulate matter, sulfur dioxide, toxic air pollutants, other carbon and sulfur compounds, and similar or dissimilar pollutants, emissions, or contaminants of air, water or soil. Environmental Attributes shall be based on Delivered Energy.
- 1.15 "Event of Default" or "Default" means either an City or an NPPD Default, all as specified in Section 12.
- 1.16 "Governmental Authority" means any municipal, local, state, regional or federal administrative, legal, judicial or executive agency, court, commission, department or other such entity of competent jurisdiction, but excluding the Parties and any

agency, commission, department or other such entity acting in its capacity as lender or guarantor to the Parties.

- 1.17 "Guaranteed Price" means the year-by-year price expressed in dollars per MWh, based upon the date of generation, as set forth in Section 5.3 of the Power Purchase Agreement.
- 1.18 "Late Payment Rate" shall have the meaning specified in Section 6.2.
- 1.19 "Law" means any law, code, statute, regulation, writ, decree, rule, ordinance, resolution, judgment, injunction, order or other legal or regulatory requirement of a Governmental Authority having jurisdiction over the matter in question, which is valid and applicable to the matter in question (i) at the time of the execution of this Agreement or (ii) any time thereafter during the Term.
- 1.20 "Legal Proceeding" means any suit, proceeding, judgment, ruling or order by or before any Governmental Authority.
- 1.21 "LRW Plant" means the generating units and facilities located on the Site utilized for the generation of wind-powered energy, said plant located near the Village of Petersburg, Boone County, Nebraska, and currently owned by Laredo Ridge Wind, LLC, a Delaware limited liability company.
- 1.22 "Month" means a calendar month, commencing at the beginning of the first Day of such calendar month. "Monthly" has a meaning correlative to that of "Month".
- 1.23 "MW" means, in the singular context, one megawatt, and in the plural context, megawatts.
- 1.24 "MWh" means, in the singular context, one megawatt hour, and in the plural context, megawatt hours.
- 1.25 "Party" or "Parties" means either NPPD or City, or both.
- 1.26 "Person" means any individual, corporation, partnership, joint venture, trust, unincorporated organization, Governmental Authority or other entity, including the Parties.

- 1.27 "Power Purchase Agreement" means the Power Purchase Agreement Between Nebraska Public Power District and Laredo Ridge Wind, LLC, effective February 5, 2010, together with any later amendments, assignments or transfers.
- 1.28 "Prime Rate" means for any Day, the per annum rate of interest announced by the Wall Street Journal Midwest Edition in the Money Rates Section as its "prime" rate for commercial loans, effective for such Day (or if not published on such Day, on the most recent preceding Day on which published). If not available from the Wall Street Journal, an alternate will be agreed to.
- 1.29 "Production Tax Credits" or "PTCs" means tax credits applicable to electricity produced from certain renewable resources pursuant to 26 U.S.C. § 45, which tax credits provide a federal income tax credit based on electricity production from any portion of the LRW Plant.
- 1.30 "Prudent Utility Practice" means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry prior to such time, or any of the practices, methods and acts, which in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired results at the lowest reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts generally acceptable in the region in light of the circumstances.
- 1.31 "Purchased Power" means City's one and one-quarter percent (1.25%) share, in any given hour, of the total of, as defined in the Power Purchase Agreement, 1) Capacity, 2) Delivered Energy, and 3) Environmental Attributes from the LRW Plant which NPPD purchases pursuant to the Power Purchase Agreement.
- 1.32 "Scheduling Procedures" shall have the meaning specified in Appendix B attached hereto.
- 1.33 "Site" means the parcels of real property on which the LRW Plant will be constructed and located, including any easements, rights of way, surface use

agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the LRW Plant and LRW's interconnection facilities.

- 1.34 "SPP" refers to the Southwest Power Pool, Inc. "SPP Agreement" means the membership agreement entered into by NPPD with SPP, effective April 1, 2009, as amended. NPPD is a member and party to such Agreement. Should NPPD withdraw from the SPP or any of ~~SPP's~~ functions be replaced by a successor entity or function, the requirements of such successor entity or function shall apply to this Agreement.

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- 1.35 "Term" shall have the meaning specified in Section 3.
- 1.36 "Test Energy" shall have the meaning specified in Section 4.2.

SECTION 2 REPRESENTATIONS, WARRANTIES AND COVENANTS

- 2.1 **Representations, Warranties and Covenants of NPPD.** NPPD hereby makes the following representations, warranties and covenants to City as of the Effective Date:
- 2.1.1 NPPD is a public corporation and political subdivision of the State of Nebraska duly organized, validly existing and in good standing under the Laws of the State of Nebraska, and has the legal power and authority to conduct its business and to enter into this Agreement and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.
- 2.1.2 The execution, delivery and performance by NPPD of this Agreement have been duly authorized by all necessary action.
- 2.1.3 This Agreement constitutes the legal, valid and binding obligation of NPPD, enforceable in accordance with its terms.

- 2.1.4 There is no pending, or to the knowledge of NPPD, threatened action or proceeding affecting NPPD before any Governmental Authority which purports to affect the legality, validity or enforceability of this Agreement as in effect on the date hereof.
- 2.1.5 There are no approvals, authorizations, consents, or other action required by any Governmental Authority necessary to authorize NPPD's execution and delivery of this Agreement.
- 2.1.6 The execution and performance of this Agreement does not conflict with or constitute a breach or default under any contract or agreement of any kind to which NPPD is a party or any judgment, order, statute, or regulation that is applicable to NPPD.
- 2.2 **Representations, Warranties and Covenants of City.** City hereby makes the following representations, warranties and covenants to NPPD as of the Effective Date:
- 2.2.1 City is a municipal corporation and political subdivision of the State of Nebraska duly organized, validly existing and in good standing under the Laws of the State of Nebraska, and has the legal power and authority to conduct its business and to enter into this Agreement and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.
- 2.2.2 City is a governmental entity and is tax exempt under the Internal Revenue Code and ~~the~~ applicable regulations promulgated thereunder. Deleted: any other
- 2.2.3 The execution, delivery and performance by City of this Agreement have been duly authorized by all necessary action.
- 2.2.4 This Agreement constitutes the legal, valid and binding obligation of City, enforceable in accordance with its terms.
- 2.2.5 There is no pending or, to the knowledge of City, threatened action or proceeding affecting City before any Governmental Authority which

purports to affect the legality, validity or enforceability of this Agreement as in effect on the date hereof.

- 2.2.6 The execution and performance of this Agreement does not conflict with or constitute a breach or default under any contract or agreement of any kind to which City is a party or any judgment, order, statute, or regulation that is applicable to City.
- 2.2.7 There are no approvals, authorizations, consents, or other action required by any Governmental Authority necessary to authorize Soller's execution and delivery of this Agreement.

SECTION 3 TERM OF AGREEMENT

3.1 **Term.** This Agreement shall become effective on the Effective Date and, unless terminated pursuant to item (ii), (iii), (iv) or (v) below, shall remain in effect for a period of twenty (20) years following the Commercial Operation Date of the Plant (the "Term"); provided:

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- (i) In no event shall the Term exceed the term of the Power Purchase Agreement, and
- (ii) In the event NPPD exercises its option under the Power Purchase Agreement to purchase the LRW Plant after Contract Year 10, NPPD shall have the right, in its sole discretion, to terminate this Agreement with six (6) Months prior written notice to City, and the Parties will enter into good faith negotiations at that time to enter into a new power sales agreement for a wind energy share from the LRW Plant, if so desired by the Parties. If the Parties are unable to enter into a new power sales agreement, NPPD agrees to reimburse City for unrealized benefits of Capital Costs and Wind Site Costs described in Appendix D which City has already paid NPPD under Section 5.7, using a factor of 0.417 percent for each Month remaining in the Term on the date of termination, and
- (iii) In the event of a proposed amendment to the Power Purchase Agreement, NPPD shall provide to City, prior to signing of the amendment

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Redline Identifying changes to be proposed by Amendment 1

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by NPPD, a copy of said amendment for review and submittal of comments to NPPD. NPPD in its sole discretion may provide a voluntary response to any City comments on the amendment. City shall have the right to terminate this Agreement by giving written notice to NPPD within thirty (30) Days of receiving a copy of the amendment. In the event of such termination, NPPD agrees to reimburse City for unrealized benefits of Capital Costs and Wind Site Costs described in Appendix D which City has already paid NPPD under Section 5.7, using a factor of 0.417 percent for each Month remaining in the Term on the date of termination.

Deleted: substation costs

- (iv) In the event the SPP transmission service request study indicates that network transmission upgrades are required that will result in assigned direct incremental annual cost to City which is greater than twenty-five thousand dollars (\$25,000), City shall have the right to terminate this Agreement by giving written notice to NPPD within thirty (30) days of receiving the final transmission service request study results. In the event of such termination, NPPD agrees to reimburse City for unrealized benefits of Capital Costs and Wind Site Costs described in Appendix D which City has already paid NPPD under Section 5.7, using a factor of 0.417 percent (0.417%) for each Month remaining in the Term on the date of termination.

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- (v) In the event of termination by City for cause as described in Section 12, NPPD agrees to reimburse City for unrealized benefits of Capital Costs and Wind Site Costs described in Appendix D which City has already paid NPPD under Section 5.7, using a factor of 0.417 percent (0.417%) for each Month remaining in the Term on the date of termination.

3.2 Survivability. Applicable provisions of this Agreement shall continue in effect (i) after termination to the extent necessary to provide for final billings and adjustments, and (ii) as provided herein.

3.3 Contingency. This Agreement and obligations hereunder are contingent upon the Power Purchase Agreement being in full force and effect as to NPPD.

SECTION 4 PURCHASED POWER AND TEST ENERGY

- 4.1 Sale of Purchased Power.** Pursuant to the provisions of the Power Purchase Agreement, attached hereto and incorporated herein as Appendix A, NPPD has agreed to buy Purchased Power produced by or attributable to the LRW Plant during the term of the Power Purchase Agreement. NPPD immediately will provide City with written notice of the Commercial Operation Date when the same has been communicated to NPPD by Laredo Ridge Wind, LLC.
- 4.2 Test Energy.** Prior to Commercial Operation Date, any and all wind energy that is produced by the LRW Plant and delivered to NPPD ("Test Energy") shall be purchased by NPPD from Laredo Ridge Wind, LLC, pursuant to the terms of the Power Purchase Agreement, and such Test Energy shall not be sold to City under the terms of this Agreement. On and after the Commercial Operation Date, NPPD will sell to City and City will purchase from NPPD Purchased Power at the Guaranteed Price, pursuant to the terms and conditions of this Agreement, all as more specifically set forth in Section 5.

Deleted: NPPD anticipates a Commercial Operation Date for the LRW Plant on or about January 1, 2011.

SECTION 5 SALE AND PURCHASE OBLIGATION

- 5.1 Purchase Obligation.** City's obligation to buy Purchased Power from NPPD shall commence on the Commercial Operation Date. For any Purchased Power purchased by City from NPPD pursuant to this Agreement, NPPD shall utilize the invoicing procedures set forth in Section 6.
- 5.2 Sale and Purchase**
- 5.2.1** NPPD shall sell Purchased Power to City during the Term and deliver the associated Delivered Energy during the Term, subject to the terms of this Agreement. City shall purchase Purchased Power during the Term and accept delivery of all the Delivered Energy at the Delivery Point, subject to the terms of this Agreement. NPPD shall not sell or contract to sell any Capacity, Delivered Energy or Environmental Attributes associated with the Purchased Power to any Person other than City for the Term.

- 5.2.2 City, in its capacity as the purchaser under this Agreement, shall not be obligated to pay for any Purchased Power on any basis other than the amount of Delivered Energy that NPPD delivers at the Delivery Point from the LRW Plant, except as provided in Section 5.5 and Section 5.7.
- 5.2.3 For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, NPPD hereby sells, transfers and conveys to City, its successors and assigns, all of NPPD's right, title and interest in and to all Environmental Attributes that now exist or are hereafter created or recognized as being associated with the Purchased Power. The Parties intend that this transfer of Environmental Attributes, and City's right with respect to such Environmental Attributes, shall be immediate, absolute and unconditional. City's rights to the Environmental Attributes will terminate upon the cancellation or other termination of this Agreement prior to the expiration of the Term, but shall not be affected by the fact that City is for any other reason not receiving the Purchased Power of the LRW Plant at any time or times. NPPD agrees that it will provide to City one or more bills of sale, or other documentation that City might from time to time request, to help City establish or evidence City's absolute and unconditional right, title and interest in and to the Environmental Attributes, and NPPD further acknowledges and agrees that this Agreement may be used by City to establish or evidence City's absolute and unconditional right, title and interest.
- 5.2.4 City shall be responsible for scheduling Delivered Energy deliveries at the Delivery Point, in accordance with the provisions of Section 9, and shall be responsible for all transmission line losses, transmission and ancillary service arrangements and costs required to deliver such energy beyond the Delivery Point. NPPD shall cooperate with City in connection with scheduling and provide City with information available to NPPD, such as, but not limited to, site meteorological, generation and turbine availability data, to enable City to schedule such Delivered Energy. Deleted: reasonably
- 5.3 **Guaranteed Price.** During the Term, City shall pay NPPD the Guaranteed Price set forth in Section 5.3 of the Power Purchase Agreement for each applicable Contract Year.

5.4 **Environmental Attributes.** NPPD shall present to City an attestation form in the form set forth in Appendix C or such other form agreeable between the Parties as proper and appropriate for the particular Environmental Attributes, with each invoice designating the quantity of Environmental Attributes associated with the relevant invoice period. In the event that City determines that it requires amendment or modification to the form of attestation to be received from NPPD with future invoices, NPPD agrees to use commercially reasonable efforts to amend or modify the form of attestation it provides to City, in order to accommodate City's needs. NPPD agrees to provide certification for one hundred percent (100%) of the Environmental Attributes on forms that are Green-e® eligible, and such other documentation as may be reasonably requested by City from time to time in order to realize the benefits of the Environmental Attributes. NPPD represents and warrants it has and at all times will have exclusive right to sell the Environmental Attributes that exist under current Laws called for in this Agreement, and if there are changes in Laws after the Effective Date, NPPD shall take all actions within its rights and control to establish and maintain its exclusive rights to sell and transfer such Environmental Attributes to City, and NPPD further declares that the Environmental Attributes have not been sold or otherwise transferred to a third party. NPPD shall not sell, market, or otherwise transfer Environmental Attributes to a third party. NPPD's full and exclusive ownership rights to the Environmental Attributes described herein are not being disputed; and the Delivered Energy that was generated with the Environmental Attributes was not and will not be separately sold, marketed or otherwise represented as renewable energy by NPPD and was not used to meet any federal, state or local renewable energy requirement, renewable energy procurement, renewable portfolio standard, or other renewable energy mandate by NPPD.

5.5 **Title, Risk of Loss, Seller's Benefits and Compensable Curtailments.**

5.5.1 As between the Parties, NPPD shall own and control the Purchased Power up to and until delivery and receipt at the Delivery Point and City shall own and control such Purchased Power from and after delivery and receipt at the Delivery Point. Title and risk of loss related to the Purchased Power shall transfer from NPPD to City at the Delivery Point.

- 5.5.2 In the event of a Compensable Curtailment, as provided for in Sections 5.7.3, 5.7.4 and 5.7.5 of the Power Purchase Agreement, City shall be obligated to pay NPPD an amount equal to one and one-quarter percent (1.25%) of NPPD's obligations.
- 5.5.3 NPPD shall invoice City for amounts due as a result of a Compensable Curtailment together with its regular Monthly invoice for the applicable Month.
- 5.6 **No Dedication of Resources.** The sale by NPPD to City of Purchased Power under this Agreement shall not constitute a sale, lease, transfer, dedication or conveyance of any type of an ownership interest in or to the LRW Plant and Site.
- 5.7 **Developmental and Administrative Costs**
- 5.7.1 **Prior to the Effective Date.** Prior to the Effective Date, NPPD has incurred costs associated with the development of the Power Purchase Agreement, as identified in Appendix D. NPPD will invoice City for one and one-quarter percent (1.25%) of such administrative costs incurred prior to the Effective Date and City shall make payment to NPPD in accordance with Section 6.1.
- 5.7.2 **After the Effective Date.** NPPD will continue to expend administrative and operational costs, including, for example, but not limited to wind forecasting services, transmission system studies and facilities to meet reliability requirements, and other costs related to this Agreement and the Power Purchase Agreement, as well as attorneys' fees related to the performance and management of the Power Purchase Agreement. NPPD will invoice City for normal administrative and operational costs at a flat rate of thirty (30) cents/MWh, and City shall make payment to NPPD in accordance with Section 6.1. Should unanticipated expenditures in compliance with Prudent Utility Practice occur, NPPD reserves the right to invoice City actual pro-rata charges as incurred on a calendar year basis, and City shall make payment to NPPD in accordance with Section 6.1. Should NPPD bill for unanticipated expenditures in compliance with Prudent Utility Practice on an actual pro-rata basis, NPPD will provide supporting documentation of costs incurred and billed. As soon as

reasonably practicable after Commercial Operation Date, NPPD will invoice City for one and one-quarter percent (1.25%) of such identified costs incurred by NPPD, and City shall make payment to NPPD in accordance with Section 6.1. Provided and except, however, that City shall not be invoiced under this Agreement and shall not be liable for any due diligence costs, attorneys' fees or other costs incurred by NPPD related to Section 10.4 of the Power Purchase Agreement.

SECTION 6 PAYMENTS AND BILLING

- 6.1 Payment.** City's payment to NPPD for Purchased Power, Compensable Curtailments, operational, developmental and administrative costs identified in Section 5.7 shall be made by electronic transfer of funds by the "Due Date", which is fifteen (15) Days after the invoice is received by City, as set forth in Section 6.2. City shall make payments to a bank account as designated from time to time by NPPD. If such Due Date falls on a non-Business Day, such Due Date shall be the next Business Day. City shall be entitled to conclusively presume, without any liability whatsoever, that the payment information furnished by NPPD (including name, financial institution, account numbers, payee, etc.) is accurate.
- 6.2 Billing.** NPPD shall read the meter at the Delivery Point at the end of each Month of the Term and shall create an invoice for Purchased Power based upon the meter data for Delivered Energy and the Guaranteed Price and City's share of other applicable charges for which NPPD is obligated under the Power Purchase Agreement. NPPD shall send the Monthly invoice to the Assistant Utilities Director at the Phelps Control Center or an individual designated by the Assistant Utilities Director. If the amount due is not paid on or before the Due Date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual interest rate equal to the Prime Rate plus 200 basis points, but in no event shall such interest exceed the maximum interest rate permitted by Law (the "Late Payment Rate"). If the Due Date occurs on a Day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

- 6.3 **Billing Disputes.** Either Party may dispute invoiced amounts, but shall pay to the other Party at least the undisputed portion of invoiced amounts on or before the invoice Due Date. Section 7 shall apply to any billing dispute. When the billing dispute is resolved, the Party owing shall pay the amount owed within five (5) Business Days of the date of such resolution, with late payment interest charges calculated on the amount owed at the Late Payment Rate. The late payment interest shall begin to accrue on the next Business Day after the Due Date.

SECTION 7

DISPUTE RESOLUTION AND STATUTE OF LIMITATIONS

- 7.1 **Dispute Resolution.** In the event of a dispute under this Agreement, the following shall occur:
- 7.1.1 All questions of fact, and any and all disputes with references thereto, arising out of the performance of this Agreement, or changes therein, or work in connection therewith, shall initially be submitted to NPPD for decision.
- 7.1.2 In the event that City disagrees with NPPD's decision, a senior executive of NPPD and a senior executive of City shall immediately confer, discuss and review NPPD's decision.
- 7.1.3 In the event that the meeting referred to in Section 7.1.2 fails to resolve the dispute between the Parties, NPPD's decision shall be conclusive on the Parties hereto, unless thereafter determined by a Governmental Authority to be unsupported by Law or substantial evidence. In that regard, City may pursue all remedies available at Law or in equity, specifically excluding termination of this Agreement.

Pending final decision of any dispute hereunder, City shall proceed with its obligations and performance in accordance with the written decision of NPPD. No arbitration will be allowed under this Agreement.

- 7.2 **Limitation on Time Period for Claims.** Any claim against NPPD for a billing adjustment or for any other claim shall be limited to the twenty-four (24) Months

immediately preceding the date such claim or error is raised by City whether or not such error or claim was discoverable. NPPD shall retain records and accounts relating to the LRW Plant for a period of at least twenty-four (24) Months.

SECTION 8 DELIVERY POINT AND TRANSMISSION

- 8.1 Delivery Point.** The Delivery Point for Purchased Power purchased by City from NPPD under this Agreement shall be at the point where the LRW Plant and interconnection facilities connect to the NPPD transmission system at NPPD's Petersburg North 115 kV substation, as the same is further described in Exhibit B of the Power Purchase Agreement. Title to Purchased Power shall pass from NPPD to City at the Delivery Point. Upon receipt from NPPD, City shall be in exclusive control of the Purchased Power at and from the Delivery Point.
- 8.2 Transmission.** City shall be solely responsible for providing, at its sole cost and expense, transmission of the Purchased Power from the Delivery Point and any associated ancillary services. Such transmission and ancillary service(s) shall be provided by SPP under the appropriate rates, terms and conditions included in the transmission rate schedule currently in effect for SPP, as it may be superseded from time to time; provided, however, if SPP is not the provider for all such ancillary services under the SPP transmission rate schedule, City shall self-supply the ancillary services which are not provided by SPP (if City has the ability to do so) or obtain them from a provider other than SPP. City shall have the right, in whatever form such right may exist, to review transmission and ancillary service rates, terms and conditions, and any proposed revisions to the same, as may be imposed upon NPPD by its transmission service provider, if applicable. NPPD will recognize and honor arrangements completed by City for transmission services to facilitate delivery of Purchased Power; provided, however, if a Governmental Authority or any regional transmission authority does not approve or limits City's transmission path from the Delivery Point to City, City shall not be entitled to receive Purchased Power for which it does not have a transmission path; further provided that NPPD may to the extent legally and technically feasible attempt to make non-firm power available to City at the Delivery Point so that City receives full Purchased Power. Delivered Energy for which City does

not have firm or non-firm transmission may, at City's option, be sold to NPPD at a price determined by mutual agreement between the Parties.

- 8.3 Termination of Transmission.** NPPD has made or intends to make a request to SPP on behalf of the City for firm transmission. If the LRW Plant is decommissioned during the Term of this Agreement, NPPD will request that such transmission request be terminated.

SECTION 9 SCHEDULING

- 9.1 Scheduling Procedures.** All deliveries of power to City shall be in accordance with written procedures determined by NPPD, in its sole discretion (the "Scheduling Procedures"), attached hereto as Appendix B, which may be amended from time to time by NPPD upon thirty (30) Days notice, unless shorter notice is necessary due to extenuating circumstances. The Scheduling Procedures shall provide for adaptation of such schedules for day-to-day operational requirements. The amount of City Delivered Energy shall not exceed City's Purchased Power.
- 9.2 Determination of City Delivered Energy.** The calculation of the City Delivered Energy will be determined by NPPD after accounting for any changes in scheduling. The basis for such determination will be maintained by NPPD in accordance with NPPD's regular record retention policy, and may be inspected by City upon advance notice.
- 9.3 Schedules and Final Schedules.** City recognizes that City Delivered Energy may be zero at times, for example, when the wind is not sufficient to generate electricity or when the LRW Plant is consuming more station power than generating or due to other losses between the individual generation units and the Delivery Point. Final schedules will be determined after the fact in accordance with the Scheduling Procedures of Appendix B.
- 9.4 Wind Integration Rate.** City shall pay to NPPD a wind integration rate under this Agreement, until such time as said wind integration rate is replaced by a rate or fee contained in NPPD's T-2 Rate Schedule, the SPP tariff, or other applicable rate schedule or tariff for transmission services, to compensate NPPD for wind

integration. The wind integration rate under this Agreement shall be determined by NPPD, in its sole discretion, and shall initially be \$4.00/MWh. NPPD reserves the right to make modifications to or replace such wind integration rate, rate schedule or tariff at its sole discretion. NPPD anticipates that it will adopt a replacement wind integration rate schedule following the completion of the NPA NREL/DOE funded Wind Integration Study, to replace the initial wind integration rate of \$4.00/MWh. In the event such NPPD T-2 replacement wind integration rate is different than \$4.00/MWh, NPPD will perform a true-up calculation using the replacement rate and City shall pay any additional amount owed, not to exceed \$6.00/MWh, if said NPPD T-2 replacement rate is greater than \$4.00/MWh, and NPPD shall refund any overpayment by City, not less than \$2.00/MWh, if the replacement wind integration rate is less than \$4.00/MWh, but NPPD shall not refund for difference exceeding a reduction from \$4.00/MWh to \$2.00/MWh.

SECTION 10 METERING

- 10.1 **Meter Readings.** Purchased Power delivered hereunder shall be metered ~~at the Delivery Point~~. All meters shall be read by NPPD.

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- 10.2 **Meter Testing.** All metering equipment shall be provided and maintained by NPPD. NPPD shall make or cause to be made special meter tests from time to time. The reading of any meter which shall have been disclosed by test to be inaccurate shall be corrected for the period the inaccuracy is known, or lacking knowledge or agreement, a period of ninety (90) Days from the date of discovery of such inaccuracy or malfunction in accordance with the percentage of inaccuracy found by such test. If any meter shall fail to register for any period, NPPD shall determine the amount of power furnished during such period, and NPPD shall adjust the billing statement for such period. NPPD shall also provide written notification to City of any event of meter inaccuracy and describe and provide details of the determination of the amount of energy supplied. All billing disputes shall be resolved in accordance with Section 7.

- 10.3 **Meter Records.** Meter readings and testing records shall be maintained in accordance with NPPD's regular record retention policy, and may be inspected by City with two (2) Business Days notice.

- 10.4 Access.** Authorized representatives of City shall at all reasonable times, and with reasonable prior notice, and while accompanied by NPPD representatives, have access to the LRW Plant and NPPD's Petersburg North 115 kV substation to witness equipment tests and perform all inspections, as may be appropriate to determine whether NPPD is in compliance with this Agreement. While there, such representatives of City shall observe such safety procedures as may be required by NPPD and the LRW Plant and shall conduct themselves in a manner that will not interfere with the operation of the LRW Plant or the operation of NPPD's transmission facilities.

SECTION 11 ASSIGNMENTS AND TRANSFERS

11.1 Permitted Transactions

11.1.1 Except as provided herein, neither Party shall assign or transfer this Agreement or any of its rights or obligations under this Agreement to any Person whether in a single transaction or series of transactions, unless such assignment or transfer is expressly approved in writing by the other Party.

11.1.2 No assignment or transfer of this Agreement shall relieve a Party of its obligations hereunder, unless provided in the written approval of the transaction.

- 11.2 Specific Performance.** Each Party acknowledges and agrees that the failure or threatened failure to comply with the terms of this Section 11 may cause irreparable injury to the other Party, which cannot properly or adequately be compensated by the mere payment of money. The Parties agree, therefore, that in the event of a breach or threatened breach of this Section 11, in addition to any other remedies that may be available, the non-breaching Party shall have the right to obtain from any competent court a decree enjoining such breach or threatened breach of this Section 11 or providing that the terms of this Section 11 be specifically enforced.

**SECTION 12
EVENTS OF DEFAULT**

12.1 Events of Default by City. The following shall each constitute an Event of Default by City:

12.1.1 After the Commercial Operation Date, City refuses to purchase Delivered Energy for either thirty (30) consecutive Days or sixty (60) nonconsecutive Days in any three hundred and sixty-five (365) Day period for any reason other than a condition of Force Majeure.

12.1.2 City fails to make any undisputed payment due under this Agreement within ten (10) Days after such payment is due and fails to cure such Default within twenty (20) Days after written notice from NPPD.

12.1.3 City substantially breaches any other material obligation under this Agreement, and fails to cure such breach within thirty (30) Days after written notification by NPPD of the breach; provided, however, that in the case of an Event of Default described above by City, failure to complete the cure of such Default or breach within the thirty (30) Day period after NPPD notice shall not constitute an Event of Default if the breach is not capable of being cured within thirty (30) Days and City begins the cure within the thirty (30) Day period and uses Commercially Reasonable Efforts to cure the Default or breach within sixty (60) Days (as extended for a Force Majeure event).

12.2 Events of Default by NPPD. The following shall each constitute an Event of Default by NPPD:

12.2.1 NPPD fails to make any undisputed payment due under this Agreement within ten (10) Days after such payment is due and fails to cure such Default within twenty (20) Days of the written notice from City.

12.2.2 NPPD substantially breaches any other material obligation under this Agreement and fails to cure such breach within thirty (30) Days after written notification by City of the breach; provided, however, that in the case of an Event of Default described above by NPPD, failure to complete

the cure of such Default or breach within the thirty (30) Day period after City notice shall not constitute an Event of Default if the breach is not capable of being cured within thirty (30) Days and NPPD begins the cure within the thirty (30) Day period and uses Commercially Reasonable Efforts to cure the Default or breach within sixty (60) Days (as extended for a Force Majeure event).

12.3 Termination for Cause. If any Event of Default as defined in Section 12.1 or 12.2 has occurred, the non-defaulting Party may provide written notice to the defaulting Party specifying the basis for its belief that such event has occurred, and that the Agreement may be terminated unless the Event of Default is cured within thirty (30) Days of the written notice of intent to terminate or such longer cure period as the Parties may agree or is provided in Section 12.1.3 and Section 12.2.2. If the Event of Default has not been fully cured within the thirty (30) Day cure period, or such longer cure period as the Parties might have agreed or is provided in Section 12.1.3 and Section 12.2.2, then the non-defaulting Party may thereafter terminate this Agreement within ninety (90) days of written notice of the Event of Default, as its sole remedy. Notwithstanding the previous sentence, however, if money is owed the non-defaulting Party by the defaulting Party for events, occurrences or obligations occurring or accruing before the termination, the non-defaulting Party shall be entitled to recover the money that is owed.

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12.4 Remedy. If either Party provides a notice of termination to the other under this Section 12, all provisions of this Agreement, and all rights and obligations of the Parties hereunder, will continue in full force and effect from and after the date of the notice of termination until the effective date of termination, including any right, remedy or liability resulting from nonperformance or other breach of the Agreement that occurs prior to the effective date of termination. Except as may be provided in Section 12.3 and subject to Section 3.1 obligations of NPPD, if either Party terminates for cause, then such non-defaulting Party shall have no further obligations under this Agreement to the defaulting Party from and after the date of such termination. The rights to terminate set out in this Section 12 are exclusive to any other right or remedy provided under this Agreement, or now or hereafter existing at Law or in equity, and the exercise of said right shall be deemed as a waiver or relinquishment by the terminating Party of any of its other rights or remedies to recover damages for any breach of this Agreement or for any unperformed balance.

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12.5 Force Majeure

12.5.1 The term "Force Majeure" as used herein shall mean any cause or causes not reasonably within the control and without the fault or negligence of the affected Party which wholly or partly prevents the performance of any of its obligations under this Agreement, including, without limitation by enumeration, acts of God, acts of the public enemy, acts of terrorism or threats thereof (or actions to prevent the same), blockades, strikes or differences with workmen, civil disturbances, fires, explosions, storms, floods, landslides, washouts, labor and material shortages, boycotts, breakdowns of or damage to equipment or facilities and actions to prevent the same, interruptions to supply or delays in transportation, embargoes, inability to obtain or renew a necessary license, permit or approval, acts of military authorities, acts of local, state or federal agencies or regulatory bodies, court actions, bankruptcy court actions and restraints.

12.5.2 If an event defined as Force Majeure occurs, and the affected Party is unable to carry out any of its obligations under this Agreement, then upon the affected Party giving written notice to the other Party of such Force Majeure, the affected Party's obligations shall be suspended from and after the date of the Force Majeure specified in the notice to the extent made necessary by such Force Majeure and during its continuance. The notice shall specify in detail (to the extent known) the nature of the Force Majeure, the obligations which the affected Party is unable to perform or furnish due to Force Majeure, and the affected Party's best estimate of the probable duration of the Force Majeure. The affected Party shall use Commercially Reasonable Efforts to eliminate and cure such Force Majeure insofar as possible and with a minimum of delay, and to resume full performance of its obligations.

SECTION 13 WAIVERS

13.1 Waivers. Any waiver at any time by either Party of its rights with respect to any Default under this Agreement, or with respect to any other matter arising in

connection with this Agreement, shall not be deemed a waiver with respect to any other Default or matter.

**SECTION 14
NOTICES**

- 14.1 Notices.** Any notice or demand under or required by this Agreement shall be in writing and shall be deemed properly given when (i) mailed by United States registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

To NPPD: Nebraska Public Power District
Attention: Energy Manager
2060 W. Platte River Dr.
P.O. Box 1000
Doniphan, Nebraska 68832-1000
Fax: (402) 845-5224

Copy to: Nebraska Public Power District
Attention: Contracts Manager
1414-15th Street
P.O. Box 499
Columbus, NE 68602-0499
Fax: (402) 563-5466

Nebraska Public Power District
Attention: Office of the General Counsel
1414-15th Street
P.O. Box 499
Columbus, NE 68602-0499
Fax: (402) 563-5837

To City: City of Grand Island
Attention: Assistant Utilities Director - PCC
700 E. Bischeld Street
Grand Island, NE 68801

Fax: (308) 385-5449

(ii) when sent by telefax or e-mail, provided such telefax or e-mail is confirmed by United States registered or certified mail, postage prepaid, return receipt requested, (iii) when sent by overnight courier to the address provided in clause (i), (iv) such other method as agreed to by the Parties in writing, or (v) to such other address as may be designated in writing by the Parties.

SECTION 15 SUCCESSORS AND ASSIGNS

15.1 Binding Effect

15.1.1 All rights and obligations under this Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of the respective Parties. Any assignment made in violation of Section 11 shall be void and of no force or effect as against the non-consenting Party.

15.1.2 No sale, assignment, transfer or other disposition permitted by this Agreement shall affect, release or discharge either Party from its rights or obligations under this Agreement, except as may be expressly provided by this Agreement.

15.2 Receiver or Trustee in Bankruptcy. The Parties intend that the obligations of City under this Agreement shall not be affected by a Bankruptcy Proceeding or a receiver, a trustee in bankruptcy, or an indenture trustee taking charge of the assets or business of NPPD, and that such receiver, trustee or indenture trustee may exercise all of the rights of, and make all of the determinations provided to be made in this Agreement.

SECTION 16 INDEMNIFICATION AND LIMITATION OF LIABILITY

16.1 Indemnity

16.1.1 City expressly agrees to indemnify, hold harmless and defend NPPD against any and all claims, liability, costs or expenses (including

reasonable attorneys' fees and expenses) for loss, damage or injury to Persons or property directly connected with or growing out of, the transmission or distribution of Purchased Power after the Delivery Point, unless such loss, damage or injury is the result of bad faith, negligence, or reckless or willful misconduct of or attributable to NPPD.

16.1.2 NPPD expressly agrees to indemnify, hold harmless and defend City against any and all claims, liability, costs or expenses (including reasonable attorneys' fees and expenses) for loss, damage or injury to Persons or property directly connected with or growing out of, the generation, transmission, or distribution of Purchased Power up to the Delivery Point, unless such loss, damage or injury is the result of bad faith, negligence, or reckless or willful misconduct of or attributable to City.

16.2 No Liability to Third Parties. Nothing herein shall create, or be interpreted as creating any standard of care with reference to, or any duty or liability to any Person not a Party.

16.3 No Consequential Damages. To the fullest extent permitted by Law and notwithstanding anything to the contrary herein, in no event shall either Party be liable to the other for punitive, indirect, exemplary, consequential, or incidental damages, including, without limitation, claims of customers of the indemnified Party arising in connection with this Agreement.

SECTION 17 CONFIDENTIAL INFORMATION

17.1 Use of Confidential Information. During the course of this Agreement, the Parties may disclose to each other certain Confidential Information, by either oral or written communications. To constitute Confidential Information for purposes of this Agreement, the same shall be clearly so designated (if oral) or conspicuously so marked (if tangible) by the disclosing Party. Notwithstanding any prior nondisclosure agreement, the Parties hereby deem Section 5 of Appendix A to constitute Confidential Information and otherwise not be subject to public disclosure, but the Agreement otherwise is not Confidential Information. These disclosures have been or will be made upon the basis of the confidential

relationship between the Parties, and unless specifically authorized in writing by the other, the Parties will:

17.1.1 Use such Confidential Information solely for purposes contemplated by this Agreement; and

17.1.2 Promptly return to each other, upon request, any and all tangible material concerning such Confidential Information, including all copies and notes, or destroy the same and provide the other Party with a written statement that such destruction has occurred; provided that a Party may retain a copy with its general counsel to show compliance with this section. Under no circumstances shall any Confidential Information or copy thereof be retained, except with the express written approval of the owner of such Confidential Information.

17.2 Nondisclosure

17.2.1 Each Party agrees that it will use reasonable care to prevent unauthorized disclosure of Confidential Information. Neither Party will make any copies of Confidential Information that is in written or other tangible form except for use by authorized Persons with a need to know in connection with this Agreement (including contractors and subcontractors), and all Persons having access to Confidential Information shall agree to comply with the terms of this Agreement.

17.2.2 Each Party agrees not to distribute, disclose or disseminate Confidential Information in any way to anyone, except Persons who have such need to know (including contractors and subcontractors), or use Confidential Information for its own purpose. Each Party agrees that its disclosure of Confidential Information to a Person who has a need to know shall be limited to only so much of the Confidential Information as is necessary for that Person to perform his/her function in connection with the Confidential Information.

17.3 Exceptions. The obligations imposed in this Section 17 shall not apply to Confidential Information:

- 17.3.1 Which becomes available to the public through no wrongful act of the receiving Party;
- 17.3.2 Which may be published or otherwise made available to the public prior to the date hereof;
- 17.3.3 Which is received from a third party without restriction known to the receiving Party and without breach of this Agreement;
- 17.3.4 Which is independently developed by the receiving Party;
- 17.3.5 Which is disclosed to a director, officer, employee, agent, or legal counsel of a Party, or to a Party's outside accountants, auditors, rating agencies, financial advisors, legal counsel, actual or potential lenders, underwriters, or the legal counsel or advisors of any thereof; or
- 17.3.6 Which must be disclosed pursuant to any Law (including, but not limited to, the Open Meetings Act, Neb. Rev. Stat. § 84-1407 et seq., and the Nebraska public records Laws, Neb. Rev. Stat. § 84-712 et seq.). If disclosure is requested or demanded as to Confidential Information pursuant to any Law, the Party receiving the request or demand shall provide the owner of such Confidential Information with prompt notice to enable the owner to seek protective legal remedies, and the receiving Party shall reasonably cooperate in connection therewith.

SECTION 18

MISCELLANEOUS

- 18.1 Audit.** The Parties shall maintain such books, records and accounts as are required for the performance of this Agreement, beginning with the Commercial Operation Date. Each Party, upon making a written request to the other Party, and at its sole expense, shall have the right to examine such books, records and accounts of the other Party to permit audits or confirmation of compliance with the provisions of this Agreement, subject to Section 7.2. Such examinations shall occur at mutually agreed times, during normal working hours of the Parties.

Redline identifying changes to be proposed by Amendment 1

2-2-2011/rab

18.2 Amendments. This Agreement may be amended by agreement between NPPD and City, but no such amendment to this Agreement shall be effective unless it is in writing and executed by both Parties. Prior to the effective date of any amendment to the Agreement between NPPD and City regarding the purchase of energy from the LRW Plant, NPPD shall provide written notice of such amendment(s) to LES and MEAN. Prior to the effective date of any amendment between NPPD and LES and/or NPPD and MEAN regarding the purchase of energy from the LRW Plant, NPPD shall provide written notice of such amendment(s) to City. City shall have thirty (30) Days to determine whether such amendments will have an adverse material effect on City and to terminate for cause under Section 12.3.

Deleted: Written notice of amendments to the Agreement regarding the purchase of energy from LRW shall be sent by NPPD to LES and MEAN prior to the effective date of any amendment

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18.3 Approvals. Any approval required under this Agreement shall be given in writing and notice of such approval shall be required before any action is taken.

18.4 Entire Agreement. This Agreement constitutes the entire agreement between the Parties relating to the subject matter contemplated by this Agreement and supersedes all prior agreements, whether oral or written.

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18.4.1 Appendices A, B, C and D attached hereto are made a part of this Agreement as though fully set out verbatim herein.

18.5 Counterparts. This Agreement may be executed in multiple counterparts to be construed as one.

18.6 Severability. If any part, term or provision of this Agreement is held by a Governmental Authority to be unenforceable, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular part, term, or provision held to be unenforceable, and a new provision shall be deemed to be substituted in lieu of the provision so severed which new provision shall, to the extent possible, accomplish the intent of the Parties hereto as evidenced by the provision so severed.

18.7 Governing Law. This Agreement shall be governed by, and construed in accordance with, the Laws of the State of Nebraska without regard to conflict of Law principles.

18.8 Jurisdiction. In the event any Party to this Agreement commences a Legal Proceeding in connection with or relating to this Agreement, the Parties hereby:

18.8.1 Agree under all circumstances absolutely and irrevocably to institute any Legal Proceeding in a court of competent jurisdiction located within the State of Nebraska, whether a state or federal court; and

18.8.2 Agree that in the event of any Legal Proceeding, the Parties will consent and submit to the personal jurisdiction of such court of competent jurisdiction located in Nebraska.

18.9 No Third-Party Beneficiaries. NPPD and City agree that no other Person is an intended third-party beneficiary of this Agreement, except as may be provided in a separate instrument executed by both NPPD and City.

18.10 Effective Date. The "Effective Date" of this Agreement shall be the date when the Agreement is signed by both Parties.

18.11 Rules of Construction

18.11.1 The descriptive headings of the various articles, sections and subsections of this Agreement have been inserted for convenience of reference only and shall not be construed as to define, expand, or restrict the rights and obligations of the Parties.

18.11.2 Wherever the term "including" is used in this Agreement, such term shall not be construed as limiting the generality of any statement, clause, phrase or term.

18.11.3 The terms defined in this Agreement shall include the plural as well as the singular and the singular as well as the plural.

18.11.4 Whenever a statute, code or regulation is used in this Agreement, such term shall also include all successor statutes, codes and regulations.

Redline identifying changes to be proposed by Amendment 1

2-2-2011/rab

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives on the day and year first above written.

ATTEST:

NEBRASKA PUBLIC POWER DISTRICT

By: _____ By: _____

Printed Name: _____ Printed Name: _____

Title: _____ Title: _____

ATTEST:

CITY OF GRAND ISLAND, NEBRASKA

By: _____ By: _____

Printed Name: _____ Printed Name: _____

Title: _____ Title: _____

Redline identifying changes to be proposed by Amendment 1

2-2-2011/rab

APPENDIX A

POWER PURCHASE AGREEMENT

BETWEEN

NPPD AND LAREDO RIDGE WIND, LLC

APPENDIX B

SCHEDULING PROCEDURES

Purpose

The purpose of this document is to provide policies, procedures, and guidelines to establish common expectations and a common understanding of coordinated operation among NPPD and City.

Scheduling of Energy

1. **Scheduling.** NPPD will provide energy real time from the LRW Plant. Energy schedules will normally be a pro-rata share of the output of the LRW Plant, except as otherwise provided in the Agreement. All schedules will be in whole MWh per hour and will account for hours with negative production.
2. **Tagging and Transmission Service.** City is responsible for ensuring that all NERC Tags and Transmission Reservations are completed and approved consistent with the timing requirements of NERC and the Transmission Provider. For purposes of NERC Tags and OASIS requests, the source Control Area shall be "NPPD", and the POR shall be "NPPD's Petersburg North 115 kV substation." The source PSE shall be "NPPD."
3. **Transmission Loading Relief (TLR).** During TLR, schedules will be adjusted consistent with the adjusted NERC Tag.
4. **Testing.** It is recognized that the LRW Plant will require testing from time to time. These tests will include, but not be limited to, maintenance (calibration of controls, etc.). During these test periods, City must take delivery of its 1.25% share of the energy produced. NPPD will make reasonable efforts to inform City of scheduled testing activities. NPPD will make available hourly production data for accreditation purposes should City so desire.
5. **Emergencies.** If the LRW Plant trips off line or is suddenly forced out of service for any reason NPPD shall communicate the same to City as soon as reasonably practicable.

6. **Communications.** NPPD shall make best efforts to inform City as soon as practicable of any significant change in the status of the LRW Plant, such as impending derates or outages.

Redline identifying changes to be proposed by Amendment 1

2-2-2011/rab

APPENDIX C

FORM OF ATTESTATION OF ENVIRONMENTAL ATTRIBUTES

Form of Attestation of Environmental Attributes

Nebraska Public Power District

Renewable Energy Credit [Environmental Attributes] Attestation and Transfer

NPPD ("Seller") hereby sells, transfers and delivers to the City of Grand Island, Nebraska ("City"), the Renewable Energy Credits ("RECs") [Environmental Attributes] described below associated with the Purchased Power generated (as such Purchased Power is defined in the Power Sales Agreement [the "Agreement"], dated _____, 2010, between City and Seller). Seller hereby attests and certifies that such Purchased Power was delivered to the City transmission system on or about the date identified and that Seller holds good and merchantable title to the RECs [Environmental Attributes] identified below.

Facility name and location: Laredo Ridge Wind Energy Facility, near Petersburg,
Nebraska
Energy Source: Wind
Capacity (MW): 79.9 MW
Operational Date: _____, [2010]

Wind Generator Identification Number: DOE EIA # _____

| <u>Dates</u> | <u>MWh generated</u> |
|--------------|----------------------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

Seller further attests, warrants, and represents as follows:

- i) The information provided herein is true and correct;
- ii) Seller holds good and merchantable title to the RECs [Environmental Attributes] identified for sale herein and that the sale to City is its one and only sale of the above identified RECs [and the associated Environmental Attributes] referenced herein;
- iii) The Laredo Ridge Wind Energy Facility generated and delivered to the NPPD transmission system the Purchased Power in the amount indicated as undifferentiated energy;
- iv) Each of the RECs [Environmental Attributes] associated with the generation of the Purchased Power has been generated and sold from the Laredo Ridge Wind Energy Facility on or about the date specified above; and
- v) The foregoing RECs [Environmental Attributes] and associated RECs [Environmental Attributes] are transferred free and clear of any liens or security interests.

Pursuant to this **Renewable Energy Credit [Environmental Attributes] Attestation and Transfer**, Seller transfers to City all of Seller's right, title, and interest in and to the RECs [Environmental Attributes] associated with the generation of the Purchased Power.

Nebraska Public Power District

By: _____

Name: _____

Title: _____

Date: _____

APPENDIX D

DEVELOPMENTAL AND ADMINISTRATIVE COSTS

Capital Costs

| | |
|---|-------------|
| Network upgrades, including new Petersburg North Substation and relay upgrades at Neligh and Albion Substations | \$2,710,000 |
|---|-------------|

Project Development Costs, Including:

| | |
|---------------------------------------|------------|
| RFP Development/Evaluation | |
| Transmission Cluster Study | |
| PPA and GIA Development & Negotiation | |
| Legal Costs | \$ 273,899 |

Wind Site Costs (1)

| | |
|--|-------------|
| Allocated costs for wind site selection, wind monitoring, landowner agreements and NPPD labor associated with sites. | \$1,710,731 |
|--|-------------|

| | |
|------------------------------------|---------------------------|
| Total Costs to be Allocated | <u>\$4,694,630</u> |
|------------------------------------|---------------------------|

- (1) During the Term of this Agreement, should NPPD determine that one or more of the sites is surplus to NPPD, and NPPD is able to recover expenditures through the assignment or transfer of one or more such sites, NPPD will provide a credit to the Parties based on each of their pro rata shares.

Costs recovered by NPPD prior to Commercial Operation Date will be credited to the initial development costs. If costs are recovered by NPPD in subsequent years, a notice with a description of recovered costs during a Contract Year shall be provided to the Parties at the end of the Contract Year. The next monthly billing for each Party following the notice will be credited with a Party's pro rata share of recovered costs.

If, at the expiration or termination (except for termination for cause due to Default by City) of the Power Sales Agreement, NPPD has retained one or more of the sites, and NPPD decides to keep the site(s), NPPD, ~~and~~ the Parties, will select an appraiser to advise NPPD on the value to NPPD ~~and the Parties~~ of the remaining site(s).

Deleted: , in consultation with

After the expiration or termination of the Power Purchase Agreement, NPPD will refund to the Parties their proportionate share of recovered expenditures for the previous year, as well as the pro rata share of the value to NPPD of sites retained by NPPD, if any.

RESOLUTION 2011-53

WHEREAS, Grand Island is a participant in the Laredo Ridge Wind Farm Power Sales Agreement (PSA) with the Nebraska Public Power District (NPPD); and

WHEREAS, the original Agreement was approved by Council at the December 7, 2010 Council meeting; and

WHEREAS, the parties wish to restate and amend the original Power Sales Agreement; and

WHEREAS, the City Utilities Department and the Legal Department have reviewed the Restated and Amended Power Sales Agreement for Laredo Ridge Wind Farm, and have determined the restated agreement includes appropriate modifications and clarifications.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Mayor is hereby authorized, on behalf of the City, to execute the Restated and Amended Power Sales Agreement for Laredo Ridge Wind Farm between the City of Grand Island and Nebraska Public Power District.

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Adopted by the City Council of the City of Grand Island, Nebraska, March 8, 2011

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk