Unified Port
of San Diego

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August 21, 2006

Bill Pfanner
Project Manager
California Energy Commission
System Assessment and Facility Siting Division
1516 Ninth Street, MS 15
Sacramento, CA 95814-5512

Dear Mr. Pfanner:

Pursuant to your request I am forwarding copies of the following documents:

- *Asset Sale Agreement* with San Diego Gas & Electric Company as Seller and San Diego Unified Port District as Buyer, dated December 11, 1998
- *Environmental Remediation Agreement* between San Diego Unified Port District and Duke Energy South Bay, LLC, dated April 23, 1999

If the District can be of further assistance, please do not hesitate to call me at (619) 686-7217.

Sincerely,

Randa Coniglio/tw

Randa J. Coniglio
Area Real Estate Manager

RJC/tw
Enclosures

ENVIRONMENTAL REMEDIATION AGREEMENT

between

SAN DIEGO UNIFIED PORT DISTRICT

and

DUKE ENERGY SOUTH BAY, LLC

Dated as of April 23 **1999**

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ENVIRONMENTAL REMEDIATION AGREEMENT

THIS ENVIRONMENTAL REMEDIATION AGREEMENT (this "**Agreement**"), dated as of April 22, 1999 (the "**Effective Date**"), is entered into by and between the San Diego Unified Port District, a California public corporation (the "**Port District**"), and Duke Energy South Bay, LLC, a Delaware limited liability company ("**Duke**")

RECITALS

A. Pursuant to the terms and conditions of that certain Asset Sale Agreement dated December 11, 1998 between San Diego Gas & Electric Company ("**SDG&E**") and the Port District (the "**Asset Sale Agreement**") and related agreements referenced therein (the "**Related Agreements**"), SDG&E has agreed to transfer to the Port District, and the Port District has agreed to acquire, certain real and personal property assets relating to SDG&E's South Bay Power Plant located in Chula Vista, California, and certain additional real and personal property assets located near or adjacent thereto (the "**Assets**");

B. Pursuant to the terms and conditions of that certain Lease Agreement dated the same date as this Agreement between the Port District and Duke (the "**Lease**" or "**Lease Agreement**") and related agreements referenced therein (the "**Lease Related Agreements**"), Duke will operate the South Bay Power Plant and certain of the other Assets for the term of the Lease and thereafter decommission the South Bay Power Plant and certain of the other Assets;

C. Pursuant to the terms and conditions of the Asset Sale Agreement, SDG&E and the Port District have allocated between SDG&E and the Port District environmental remediation obligations relative to the Assets; and

D. The Port District and Duke desire to allocate as between themselves certain environmental remediation obligations relative to the Assets which have not been assumed by SDG&E pursuant to the Asset Sale Agreement.

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth herein and for other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

ARTICLE ONE
DEFINITIONS AND INTERPRETATION

1.1 **Definitions**. Initially-capitalized terms used in this Agreement without other definition shall have the meanings specified below, unless the context requires otherwise.

(a) "**Duke's Environmental Obligations**" has the meaning given in Section 3.1 of this Agreement.

(b) "**Environmental Law**" means any applicable federal, state, regional, or local statutes, regulations, ordinances, codes, permits, orders, or published decisions relating to: (i) air emissions, hazardous materials, storage, use and release to the environment of hazardous or toxic substances, generation, treatment, storage, and disposal of hazardous wastes, wastewater discharges and similar environmental matters; or (ii) the impact of the matters described in the preceding clause upon human health or the environment, including the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601 et seq.), the Hazardous Materials Transportation Act (49 U S.C. § 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.), the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136 et. seq.), the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Toxic Substances Control Act (15 U.S C. § 2601 et seq.), the Oil Pollution Act (33 U.S.C. § 2701 et seq.), the Occupational Safety and Health Act (29 U.S.C. § 651 et seq), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 et seq.), the Porter-Cologne Water Quality Control Act (Cal. Wat. Code § 13000 et seq.), the Safe Drinking Water and Toxic Enforcement Act of 1986 (Cal. Health & Safety Code § 25249.5 et seq.), the Hazardous Substance Account Act (Cal. Health & Safety Code § 25300 et seq.), the Hazardous Waste Control Act (Cal. Health & Safety Code § 25100 et seq.), and the California Clean Air Act (Cal. Health & Safety Code § 39000 et seq.).

(c) "**Existing Soils Contamination**" has the meaning given in Section 1.1(**f**) of the Asset Sale Agreement.

(d) "**Governmental Body**" means any federal, state, regional, local, or other government; any governmental, regulatory or administrative agency, commission, body or other authority having jurisdiction to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power affecting the Remediation Parcels; and any court or governmental tribunal; but does not include the Port District or any of its respective successors in interest or any owner of the Remediation Parcels (if otherwise a Governmental Body).

(e) "**Hazardous Materials**" means any chemicals, materials, substances, or items in any form, whether solid, liquid, gaseous, semisolid, or any combination thereof, whether waste materials, raw materials, chemicals, finished products, by-products, or any other materials or articles, which because of their physical, chemical, or other characteristics may pose a risk of endangering human health or safety or of degrading the environment and are regulated under any Environmental Law.

(f) "**Industrial Standards**" means those cleanup levels which any applicable Governmental Body requires for adequate remediation of a property used for industrial uses

(g) "**Leased Lands**" means, collectively, South Bay Site, the Water Parcels, National City Terminal Property, and the Pipeline Corridor

(h) "**LNG Site**" has the meaning set out in Section 1.1(n) of the Asset Sale Agreement.

(i) "**National City Terminal Property**" has the meaning set out in Section 1.1(p) of the Asset Sale Agreement.

(j) "**New Soils Contamination**" means the actual presence of Hazardous Materials in the environment of Duke's Remediation Parcels as well as any migration thereof to the extent that such Hazardous Materials are proven to have come to be present in such Remediation Parcels during the term of the Lease. New Soils Contamination does not include (a) Existing Soils Contamination, (b) contamination below levels which would require remediation under applicable Environmental Law in effect as of the commencement of the Lease (which includes any determination by a Governmental Body that remediation is not required or further required) for the continued use of such property for industrial uses, or (c) any Remediated Environmental Condition.

(k) "**Person**" means an individual, partnership, joint venture, corporation, limited liability company, trust, association or unincorporated organization, or any Governmental Body.

(l) "**Pipeline Corridor**" has the meaning set out in Section 1.1(r) of the Asset Sale Agreement.

(m) "**Remediated Environmental Condition**" means that for Remediation Measures for which Duke is responsible pursuant to Article 3 of this Agreement, the required Remediation Measures have been completed as described in Section 3.8.

(n) "**Remediation Measures**" means (i) any investigation, assessment, monitoring, clean up, containment, remediation, mitigation, use restriction, removal, storage, disposal and/or treatment of Hazardous Materials in the environment, including the preparation and implementation of any work plans and the obtaining of licenses and permits with respect thereto, and (ii) any response to, or preparation for, any inquiry, order, hearing or other proceeding by or before any Governmental Body with respect to any of Duke's Environmental Obligations. Duke shall endeavor to coordinate all such Remediation Measures, to the extent appropriate, with the Port District respecting the Port District's Environmental Obligations under the Asset Sale Agreement, including the development of a mutually agreeable remediation schedule and work plan and the entering into of any agreements or arrangements with respect to the standards of such Remediation Measures, all in accordance with Schedule 1.1 attached to the Asset Sale Agreement, provided, however, that Duke shall not be obligated to enter into any agreements or arrangements arising out of any such coordination efforts if such agreements or arrangements are unsatisfactory in the reasonable discretion of Duke.

(o) "**Remediation Parcels**" means collectively the South Bay Site, the National City Terminal Property, the Pipeline Corridor and the Water Parcels. When any of the sites defined hereunder as Remediation Parcels has been remediated by completion of the Remediation Measures set out in Section 3.2 to 3.6, then such parcel is no longer a Remediation Parcel for purposes of this Agreement.

(p) "**SDG&E's Environmental Obligations**" means those covenants, agreements and exclusions as defined in Section 1.1(w) of the Asset Sale Agreement.

(q) "**South Bay Power Plant**" (or the "**Plant**") means the Power block, the tank forms, those related fixtures, equipment and improvements associated with generation of electronic power, and the real property directly beneath such facilities, located on the South Bay Site

(r) "**South Bay Site**" has the meaning set out in Section 1.1(z) of the Asset Sale Agreement.

(s) "**Third Party**" means any Person that is not a party to this Agreement.

(t) "**Third Party Claims**" means a claim by a Third Party against either the Port District or Duke.

(u) "**Transmission Property**" has the meaning set out in Section 1.1bb of the Asset Sale Agreement.

(v) "**Water Parcels**" means those assets described in Section 2.1(b) and Schedule 2.1(b) of the Asset Sale Agreement.

1.2 **Construction of Terms**. As used in this Agreement, the terms "herein," "herewith" and "hereof" are references to this Agreement, taken as a whole, the term "includes" or "including" shall mean "including, without limitation," and references to a "Section", "subsection", "clause", "Exhibit", "Appendix" or "Schedule" shall mean a Section, subsection, clause, Exhibit, Appendix or Schedule of this Agreement, as the case may be, unless in any such case the context requires otherwise. All references to a given agreement, instrument or other document shall be a reference to that agreement, instrument or other document as modified, amended, supplemented and restated through the date as of which such reference is made, and reference to a law, regulation or ordinance includes any amendment or modification thereof. A reference to a Person includes its successors and permitted assigns. The singular shall include the plural and the masculine shall include the feminine, and vice versa.

ARTICLE TWO
REPRESENTATIONS AND WARRANTIES OF THE PARTIES

2.1 **The Port District**. The Port District hereby represents and warrants to Duke, as of the date hereof, as follows:

2.1.1 **Organization and Corporate Power.** The Port District is a public corporation duly incorporated and validly existing under the laws of, and is authorized to exercise its corporate powers, rights and privileges and is in good standing in, the State of California and has full corporate power to carry on its business as presently conducted and

to own or lease and operate its properties and assets now owned or leased and operated by it and to perform the transactions on its part contemplated by this Agreement.

2.1.2 **Authority and Enforceability.** The execution, delivery and performance of this Agreement have been duly and effectively authorized by the governing body of the Port District. No other corporate act or proceeding on the part of the Port District or its board of commissioners is necessary to authorize this Agreement. This Agreement has been duly executed and delivered by the Port District, and this Agreement constitutes a valid and binding obligation of the Port District, enforceable against the Port District in accordance with its terms, except as it may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights generally and that the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding may be brought.

2.1.3 **Approvals.** The execution, delivery and performance by the Port District of this Agreement do not require the authorization, consent or approval of any Person that is not a Governmental Body of such a nature that the failure to obtain the same would have a material adverse effect on the South Bay Power Plant substantially as it has heretofore been operated.

2.2 **Duke.** Duke hereby represents and warrants to the Port District, as of the date hereof, as follows:

2.2.1 **Organization and Corporate Power.** Duke is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and is qualified to do business in California and in all other jurisdictions in which the nature of the business conducted by it makes such qualification necessary and where failure so to qualify would have a material adverse effect on its financial condition, operations, prospects or business or its ability to perform its obligations under this Agreement. Duke has full power to carry on its business as presently conducted and to own or lease and operate its properties and assets now owned or leased and operated by it.

2.2.2 **Authority and Enforceability.** The execution, delivery and performance of this Agreement have been duly and effectively authorized by the governing body of Duke. No other act or proceeding on the part of Duke, its directors or shareholders is necessary to authorize this Agreement. This Agreement has been duly executed and delivered by Duke, and this Agreement constitutes a valid and binding obligation of Duke, enforceable against Duke, in accordance with its terms, except as it may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights generally and that the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding may be brought.

2.2.3 **Approvals.** The execution, delivery and performance by Duke of this Agreement do not require the authorization, consent or approval of any Person which is not a Governmental Body.

ARTICLE THREE
ENVIRONMENTAL OBLIGATIONS OF DUKE

3.1 **Generally.**

The following shall constitute Duke's Environmental Obligations:

(i) Payment of any fine, penalty, levy or assessment imposed on Duke or the Port District by any Governmental Body with respect to Duke's occupancy of the Leased Lands or operation of the South Bay Power Plant during the term of the Lease.

(ii) Responsibility for the offsite transport, treatment, storage or disposal of Hazardous Materials on or from the Remediation Parcels during the term of the Lease with the exception of such transport, treatment, storage or disposal required to be performed by SDG&E under the terms of the Asset Sale Agreement.

(iii) Responsibility for performing Remediation Measures to Industrial Standards or as required by Environmental Law in response to the presence of Hazardous Materials in the environment adjacent to or offsite from the Remediation Parcels to the extent it can be proved that such presence is a result of Duke's operation of the Remediation Parcels during the term of the Lease.

(iv) Responsibility for any claim arising from the existence of electromagnetic fields in or around or about the South Bay Power Plant to the extent it can be proved that such existence is a result of Duke's operations of the South Bay Power Plant during the term of the Lease.

(v) Responsibility for Remediation Measures as set forth in, and subject to the provisions and conditions of, Sections 3.2 through 3.6.

(vi) Responsibility for Third Party Claims arising from New Soils Contamination.

(vii) Responsibility for the defense of any claim relating to natural resources damages allegedly arising from Duke's operation of the South Bay Power Plant or the occupancy of the Leased Lands, and the payment of such claims to the extent proven.

Provided that Duke's Environmental Obligations do not include any obligations or liabilities to the extent they arise from or are related to:

(viii) Existing Soils Contamination.

(ix) SDG&E's Environmental Obligations .

(x) Any increase in the scope, duration, costs or burdens of any Remediation Measures required by any Governmental Body or Third Party resulting from the imposition of any remediation standard different from the standard that is or would have been applicable to Duke as of the time of remediation.

(xii) The development of any of the Remediation Parcels, or any portion thereof, for a use other than industrial use, including Remediation Measures which would not be necessary but for such development and/or use.

3.2. **Remediation of South Bay Site.**

(i) Duke shall be responsible for the cost and performance of Remediation Measures to Industrial Standards for New Soils Contamination at the South Bay Site to the extent that such Remediation Measures are required under Environmental Law by a written order, notice or directive of any Governmental Body. Duke shall also be responsible for the cost and performance of Remediation Measures to Industrial Standards for New Soils Contamination at the South Bay Site upon decommissioning of the South Bay Power Plant pursuant to the terms and conditions of the Lease. In addition, Duke may, but need not, undertake such other Remediation Measures, if any, as it reasonably determines are required under Environmental Law or which it otherwise reasonably believes are appropriate. Duke shall also be responsible upon decommissioning of the South Bay Power Plant for the cost and performance of Remediation Measures to Industrial Standards of Hazardous Materials at the South Bay Site beneath the powerhouse and the aboveground storage tanks at the south tank farm identified on Schedule 1.1(s) of the Asset Sale Agreement. Notwithstanding the foregoing, Duke shall have no obligation to undertake Remediation Measures in respect of conditions that are excluded from Duke's Environmental Obligations by the provisions of Section 3.1 (viii) through Section 3.1(xii).

(ii) For that real property identified on Schedule 1.1(s) of the Asset Sale Agreement, other than the land beneath the powerhouse, the above ground storage tanks at the south tank farm identified on Schedule 1.1(s) of the Asset Sale Agreement and the Switchyard, Duke shall be responsible for the cost and performance of Remediation Measures to Industrial Standards of Hazardous Materials up to a limit of one million dollars ($1,000,000) less the costs incurred or to be incurred on the Transmission Property pursuant to Section 3.6 of this Agreement. No portion of the aforementioned one million dollars ($1,000,000) shall include site investigation costs.

3.3 **Remediation of National City Terminal Property and Pipeline Corridor.**

Duke shall be responsible for the cost and performance of Remediation Measures to Industrial Standards for New Soils Contamination on the National City Terminal Property and the Pipeline Corridor to the extent that such Remediation Measures are required under Environmental Law by a written order, notice or directive of any Governmental Body. Duke shall also be responsible for the cost and performance of Remediation Measures to Industrial Standards for

New Soils Contamination on the National City Terminal Property and the Pipeline Corridor upon decommissioning of such parcels.

3.4 **Remediation of LNG Site.**

Duke shall be responsible for the cost and performance of Remediation Measures to Industrial Standards of Hazardous Materials on the LNG Site. Duke and the Port District shall, within 30 days after Closing, meet and confer to develop a protocol and timeline whereunder Duke shall perform an environmental investigation of the LNG Site and subsequently perform the Remediation Measures provided for in this Section. Notwithstanding any provision to the contrary, Duke shall not be responsible for Remediation Measures for Hazardous Materials which are proven to be present on the LNG Site due to the acts or omissions of Third Parties after the Closing.

3.5 **Remediation of Water Parcels.**

Duke shall be responsible for the cost and performance of Remediation Measures for New Soils Contamination on the Water Parcels to the standards set forth in the Water Parcel leases described in Schedule 2.1(b) of the Asset Sale Agreement to the extent that such Remediation Measures are required under Environmental Law by a written order, notice or directive of any Governmental Body. In addition, Duke shall be responsible for the cost and performance of Remediation Measures for New Soils Contamination on the Water Parcels to the standards set forth in the Water Parcel permits described in Schedule 2.1(b) of the Asset Sale Agreement upon decommissioning of the South Bay Power Plant.

3.6. **Remediation of Transmission Property.**

Duke shall be responsible for the cost and performance of Remediation Measures to Industrial Standards of Hazardous Materials on the Transmission Property if the Port District actually acquires the Transmission Property pursuant to the terms of the Real Property Contribution Agreement between SDG&E and the Port District and/or pursuant to the Asset Sale Agreement. In no event shall Duke be required to expend more than one million dollars ($1,000,000) on Remediation Measures, exclusive of site investigation costs, on the Transmission Property and those portions of the South Bay Site referenced in section 3.2(ii). Notwithstanding any provision to the contrary, Duke shall not be responsible for Remediation Measures for Hazardous Materials which are proven to be present on the Transmission Property due to acts or omissions of Third Parties after the Closing.

3.7. **Term of Duke's Environmental Obligations.**

Duke's Environmental Obligations described in this Article 3 will terminate and be of no effect after the second anniversary of the decomissioning of the South Bay Power Plant except as to New Soils Contamination which has been proven to have been present on the Remediation Parcels on or before the second anniversary of the decommissioning of the South Bay Power Plant

3.8 **Remediated Environmental Conditions.**

With respect to any Remediation Measure undertaken by Duke pursuant to this Agreement, Duke shall be deemed to have discharged such undertaking and its obligations with respect thereto, and the environmental condition which was the occasion of such Remediation Measure shall be deemed a "Remediated Environmental Condition," whenever Duke has performed such Remediation Measure and it has either received written notice from the applicable Governmental Body or Bodies that no further material Remediation Measures are then required with respect to the contamination in question or, if such Governmental Body or Bodies have not responded within six months to Duke's request for such written notice, whenever Duke has reasonably and in good faith determined that no further material Remediation Measures are required. Alternatively, if the Remediation Measure was not required by a written order, notice or directive of a Governmental Body, after the substantial completion of any Remediation Measures, Duke will provide to the Port District evidence that completion of the Remediation Measures has been achieved with respect to the environmental condition. If Duke and the Port District cannot agree that completion of Remediation Measures has been achieved as to a Remediation Measure not required by a Governmental Body, then the matter shall be submitted to dispute resolution as provided for in Section 13.9 of the Asset Sale Agreement.

3.9. **Disclaimer and Indemnities.**

(i) Other than as specifically set out in this Agreement, Duke shall have no obligations or liabilities for environmental conditions on or around the South Bay Power Plant or the Remediation Parcels. The Port District, in consideration of Duke's assumption of Duke's Environmental Obligations set out above, indemnifies and holds Duke harmless from any claims, demands or suits by any Governmental Body or Third Party arising from or in any way related to environmental conditions at the South Bay Power Plant or the Remediation Parcels other than those conditions which constitute Duke's Environmental Obligations under this Agreement.

(ii) Duke, in consideration of the Port District's obligations under this Agreement, indemnifies and holds the Port District harmless from any claims, demands or suits by any Governmental Body or Third Party arising from or related to Duke's obligations under this Agreement.

3.10. **Performance of Work.**

The performance of Duke's Environmental Obligations are subject to the following:

3.10.1 Duke reserves the exclusive right to negotiate and enter into agreements with any person or Governmental Body regarding the nature, technical remediation approach, scope, clean-up objectives or any other aspect of any Remediation Measures undertaken by Duke. However, the Port District may negotiate with such person or Governmental Body regarding New Soils Contamination or Duke's Environmental Obligations if such negotiation is required by law or reasonably necessary to protect the public health and safety. The Port District may retain technical consultants,

at the Port District's sole cost and expense, to advise the Port District on the Remediation Measures.

3.10.2 Duke agrees that, prior to proposing any work plan for Remediation Measures to a Governmental Body with jurisdiction over the Remediation Parcels under any Environmental Law, Duke will consult in good faith with the Port District regarding the nature, technical remediation approach, scope, and clean-up objectives of any Remediation Measures and the placement of and the location of Duke's remediation and testing equipment.

3.10.3 As part of any work plan submitted to a Governmental Body, Duke may propose reasonable institutional controls or land use controls, or both, to the extent such controls are reasonably necessary to Duke's compliance, within the terms of this Agreement, with any order, notice or directive issued by a Governmental Body. Duke will consult with the Port District's Environmental Services Department at least 30 days before making such proposal or request for such institutional controls or land use controls. If the Port District requests reasonable modifications of such proposed controls, Duke shall make reasonable efforts to modify such controls to the extent Duke can do so without materially expanding its obligations under the terms of this Agreement.

3.10.4 Subject to the extent of Duke's Environmental Obligations, Duke will not propose to a Governmental Body, having jurisdiction pursuant to Environmental Law, a method for completing the Remediation Measures (including the use of any institutional controls or land use controls) that: (a) is materially inconsistent with the then-current use of the Remediation Parcels or any planned expansion or repowering of the Plant or other plan for use or development of the Remediation Parcels that has been disclosed in writing by the Port District to Duke during the consultation described above, or in any event before Duke provides the Port District with a copy of the final work plan; or (b) will materially decrease the economic value of any of the Remediation Parcels.

3.10.5 Nothing contained in this Section 3.10 shall be construed as limiting or modifying the Port District's obligations hereunder.

3.10.6 If Duke is undertaking the Remediation Measures under the supervision of a Governmental Body with jurisdiction over the Remediation Parcels under Environmental Law, Duke will use reasonable efforts to obtain written evidence of such Governmental Body's approval of such work plan and, if and when obtained, will provide the Port District with such evidence.

3.10.7 Duke will inform the Port District orally at least five business days in advance of all material Remediation Measures to be taken on the Remediation Parcels, which notice may be in the form of a periodic schedule of activities. No notice will be required for any Remediation Measures taken in connection with an emergency affecting Remediation Measures work. Duke will comply with any requirements applicable to Duke with respect to its Remediation Measures on the Remediation Parcels to notify a

Governmental Body with jurisdiction over the emergency and will notify the Port District of actions taken in connection therewith as soon as reasonably practicable.

3.10.8 The Port District understands that the Remediation Measures may temporarily interfere with the use of the Remediation Parcels. Subject to the extent of Duke's Environmental Obligations, Duke will, to the extent reasonably practicable and consistent with sound remediation practices, undertake Remediation Measures in a manner that will not unreasonably disrupt operations on the Remediation Parcels and is not materially inconsistent with any expansion or repowering of the Plant or other plan for the use or development of the property disclosed in writing by the Port District to Duke before Duke consulted with the Port District regarding the Remediation Measures work plan. All Remediation Measures work will be done in a good and workmanlike manner and in substantial compliance with Environmental Law.

3.10.9 After the completion of any Remediation Measures, Duke will make commercially reasonable efforts to restore the surface to a condition substantially similar to that existing at the time immediately prior to any such Remediation Measures, provided that no person other than Duke has taken actions at the Remediation Parcels so as to make such restoration impracticable or not commercially reasonable under the circumstances.

3.10.10 Duke shall indemnify, defend and protect the Remediation Parcels, the Port District and any applicable lender from the imposition of any lien of contractors and subcontractors performing work in connection with the Remediation Measures.

3.10.11 Duke shall be responsible for, and indemnify, defend and protect the Port District and any applicable lender against, any property damage or personal injury incurred by the Port District or any other Person as a result of New Soils Contamination or Remediation Measures conducted by or under the auspices of Duke.

3.10.12 Duke shall, in connection with carrying out such Remediation Measures, comply with applicable law, including laws relating to worker safety.

3.10.13 Duke shall permit the Port District to have one or more representatives present to observe physical work conducted at the Remediation Parcels in the course of carrying out such Remediation Measures, and provide the Port District with reasonable access to and copies of records concerning the performance of such physical work.

3.10.14 Duke will assign to the Port District any interest which Duke may have in any recovery, settlement, judgment or claim for payment or reimbursement by any Person of costs incurred by the Port District in connection with any environmental remediation activities undertaken by the Port District.

ARTICLE FOUR
COVENANTS OF THE PORT DISTRICT

With respect to Duke's rights and obligations in respect of Remediation Measures, the Port District agrees as follows:

4.1 To the extent applicable, the Port District grants to Duke a non-exclusive license for the purpose of conducting Remediation Measures of environmental conditions in, on, under over, and in the vicinity of the Remediation Parcels, subject to the terms and conditions of this Agreement. The Port District agrees to: (A) cooperate with Duke's Remediation Measures; (B) assist Duke in obtaining access to the Remediation Parcels; (C) use commercially reasonable efforts to obtain access to offsite property for Duke if necessary for the implementation of the Remediation Measures; and (D) to the extent consistent with Environmental Law and the protection of human health, support Duke in its negotiations with any Governmental Body with respect to the Remediation Measures so long as Duke is in material compliance with its obligations under this Article.

4.2 The Port District acknowledges that Duke will have sole responsibility for undertaking the Remediation Measures for which Duke is responsible; and, therefore, the Port District will not initiate or permit the initiation of any such Remediation Measures or submit, or cause to be submitted, orally or in writing, any information or comments to any Governmental Body concerning Remediation Measures (other than documents or information routinely and customarily submitted to such Governmental Body or submissions made in connection with the Port District's applications for permits and approvals required to implement a plan of improvement of the Plant, expansion, repowering, development or dismantling, decommissioning or removal of power generation units or oil tanks or other equipment as described in this Section) without the prior written consent of Duke, unless in the reasonable judgment of the Port District such actions are required by law or to protect the health and safety of the public. The Port District will notify Duke as soon as reasonably possible of any information received by the Port District from any Person other than Duke regarding the presence or suspected presence of Hazardous Materials that the Port District believes to be a Duke Remediation Obligation.

4.3 The Port District will not relocate, disturb or interfere with, or permit the relocation, disturbance, or interference with, the equipment used by Duke for any Remediation Measures without obtaining Duke's prior written consent unless such actions are required by law or to protect the health and safety of the public. Upon written request from the Port District, Duke will within a reasonable period of time relocate such equipment to accommodate the Port District's operations, to the extent such relocation can be accomplished without materially delaying or disrupting the Remediation Measures.

4.4 The Port District will notify Duke at least 10 business days in advance, and will consult in good faith with Duke, before commencing any planned material extraction, excavation or removal of any soil or groundwater or both at the Remediation Parcels in an area that Duke has disclosed to the Port District to be affected by contamination, or commencing any other action that could materially disrupt or disturb such soil or groundwater or both in such area of the Remediation Parcels.

4.5 If the Port District undertakes any activities permitted under this Article affecting soil or groundwater or both at the Remediation Parcels (including any decommissioning, dismantling, or development activities, or any extraction, excavation or removal of any soil or groundwater or both at the Remediation Parcels), or undertakes any interactions with Governmental Bodies with jurisdiction over the Remediation Parcels under Environmental Law, the Port District will undertake such activities and interactions in a manner designed to avoid, to the extent reasonably practicable and reasonably consistent with achieving the Port District's development goals, the following: (a) increasing the risk that a Governmental Body would require Remediation Measures relating to any soils contamination; (b) increasing the cost of any such Remediation Measures; (c) increasing the risk of human exposure to Hazardous Materials; or (d) increasing the risks that a Third Party Claim with respect to any soils contamination or the Remediation Measures thereof, could arise.

4.6 Furthermore, in undertaking any such activities affecting soil or groundwater or both at the Remediation Parcels, the Port District shall (a) comply with all applicable Environmental Law; (b) adhere to prudent engineering practices and procedures; and (c) exercise due care in connection with any disruption, disturbance or excavation of soil or groundwater or both known to be contaminated with any Hazardous Materials and the handling, removal and disposal of any such contaminated soil or groundwater or both.

4.7 If the Port District undertakes any activities under this Article affecting soil or groundwater or both at the Remediation Parcels, and such activities affect a soils contamination, Duke will only be responsible for such condition to the extent set forth in Article 3 and will discharge the obligations set forth therein. If and to the extent that Duke is not responsible for such condition under this Agreement, the Port District shall bear all costs and expenses associated with its activities, including the costs and expenses associated with the removal, management and disposal of any soil or groundwater or both, even if such soil or groundwater or both have been affected by Hazardous Materials.

4.8 If the Port District disturbs, or performs Remediation Measures activities relating to any Remediated Environmental Condition necessary for development, improvement or expansion of operations at the Remediation Parcels, the Port District shall bear all costs and expenses associated with, and shall obtain all consents and approvals from Governmental Bodies necessary for, any such disturbance and Remediation Measures activities, and shall reimburse Duke for any losses, damages, costs or expenses incurred by Duke in connection with such activities and disturbance of Remediated Environmental Conditions.

4.9 The Port District shall reimburse Duke for any reasonable losses, damages, costs or expenses arising from: (a) the relocation at the Port District's request of the equipment used by Duke in performing Duke's Environmental Obligation or any Remediated Environmental Conditions subject to long-term Remediation Measures, including any increased costs or expenses reasonably incurred in conducting such Remediation Measures; and (b) exacerbation of an environmental condition due to the Port District's negligence or willful misconduct. The Port District will reimburse Duke for the losses, damages, costs and expenses for which the Port District is responsible hereunder within 30 days after the Port District's receipt of documentation of Duke's incurrence of such losses, damages, costs and expenses.

4.10 The Port District will assign to Duke any interest which the Port District may have in any recovery, settlement, judgment or claim for payment or reimbursement by any Person of: (A) costs incurred by Duke in connection with any of Duke's Environmental Obligations, Remediated Environmental Conditions (to the extent further Remediation Measures work are required from Duke with respect to such Remediated Environmental Conditions) or the Remediation Measures thereof; or (B) costs incurred by Duke in connection with any indemnification by Duke of the Port District, in each case up to the amount expended by Duke or which Duke is obligated to pay under this Agreement.

4.11 If and to the extent that the Port District develops any Remediation Parcel for any use(s) other than industrial use, the Port District shall release, indemnify, defend and hold harmless Duke from and against all damages, claims, losses, liabilities (including liabilities under Environmental Law) and expenses, including reasonable legal, accounting and other expenses, which arise out of or relate to any such development or use(s)

4.12 The Port District shall provide Duke and its representatives and agents with reasonable access to environmental and other relevant records (other than those which are privileged) respecting the Remediation Parcels as reasonably necessary for the purpose of carrying out such Remediation Measures and will provide Duke with copies of all material correspondence and communications with Governmental Bodies about New Soils Contamination and Remediation Measures or otherwise pertaining to Duke's Environmental Obligations.

4.13 The Port District will not submit, or cause to be submitted, to any Governmental Body any information or comments concerning any Remediation Obligation of Duke or Remediation Measures undertaken by Duke except for information submitted to Governmental Bodies as required by law or as necessary to protect the health and safety of the public.

4.14 The Port District will consult with Duke in good faith prior to extracting, excavating or removing any soil or groundwater at the Remediation Parcels or otherwise disturbing or disrupting the same and will otherwise make reasonable efforts to avoid taking any action, and will take reasonable steps to cause others to avoid taking any action, that will increase or accelerate any of Duke's Environmental Obligations hereunder including with respect to Remediation Measures, it being understood, however, that nothing herein shall prohibit the Port District from engaging in any expansion or repowering of the Plant.

4.15 Until such time as Duke provides to the Port District evidence that Duke has completed its Remediation Measures with respect to an environmental condition, Duke and the Port District will, upon the written request of the other Party, provide to the requesting party copies of all material reports, correspondence, notices and communications regarding any soils contamination or the Remediation Measures thereof sent to or received from any Governmental Body with jurisdiction under Environmental Law over such Remediation Measures.

ARTICLE FIVE
PROPRIETARY & CONFIDENTIAL INFORMATION

5.1 **Non-Disclosure Obligation.** Neither party shall disclose to third parties any confidential or proprietary information regarding the other party's business affairs, finances, technology, processes, plans or installations, marketing information, know-how, or other information that is received from the other party pursuant to this Agreement or the parties' relationship prior thereto and that is clearly marked "confidential", without the express written consent of the other party, which consent shall not be unreasonably withheld. In addition, except as reasonably required by either party for financing the acquisition of the South Bay Power Plant, or as reasonably required by either party for performing its obligations hereunder, both parties shall at all times use their reasonable efforts to keep all information regarding the terms and conditions of this Agreement confidential. Each party shall protect the confidential information of the other party from unauthorized use or disclosure by using at least the same degree of care, but no less than a reasonable degree of care, used to protect its own confidential information. Each party agrees to limit access to the confidential information of the other party to those of its representatives and agents who have a need to know.

5.2 **Exceptions.** This Article 5 shall not apply to information which (i) was previously known to the other party free of any obligation to keep it confidential, (ii) is or becomes publicly available, by other than unauthorized disclosure by a party, its representatives or agents, (iii) is independently developed by the applicable party without violation of this Agreement, or (iv) either party is compelled to disclose pursuant to a request made under applicable law or pursuant to an order of a court of competent jurisdiction binding upon such party; provided however that such party shall have exercised its reasonable efforts to oppose such disclosure and to condition it upon an appropriate protective order; and provided further that such party shall have first provided the other party notice in writing of the request for such order, at the earliest opportunity, to permit the other party to protect its rights and interests in such confidential information.

5.3 **Notice of Unauthorized Use or Disclosure etc.** Each party shall notify the other party immediately upon discovery of any unauthorized use or disclosure of confidential information of the other party, and will cooperate with the other party to regain possession of the applicable confidential information and prevent its further unauthorized use or disclosure Nothing contained in this Article 5 shall be construed as granting or conferring any rights upon the parties, by license or otherwise, in any confidential information of the other party, except the right to review and use such confidential information in connection with performance under this Agreement.

5 4 **Term of Obligation.** The confidentiality obligations of the parties pursuant to this Article 5 shall survive the expiration or other termination of this Agreement for a period of two (2) years. Upon such expiration or other termination, each party shall promptly return to the other party, upon request, any confidential information of the other party supplied in documentary form.

5.5 **Publicity.** Except as required by law or securities disclosure requirements, neither party shall issue any public statement or news releases concerning this Agreement or the

transactions that are the subject hereof unless it first obtains the written consent of the other party to the form and content of such statement, which consent shall not be unreasonably withheld, and each party shall respond as soon as possible to the other party's request for consent to a proposed public statement. Full consideration and representation as to the respective roles and contributions of each of the parties shall be given in any such public statement on news release.

ARTICLE SIX
NOTICES

6.1 **Writing.** Any notice, invoice, demand, offer or other written instrument required or permitted to be given pursuant to this Agreement (unless expressly permitted to be sent electronically) shall be in writing signed by the party giving such notice and shall, to the extent reasonably practicable, be sent by telefax, and if not reasonably practicable to send by telefax, then by hand delivery, overnight courier, or registered mail, to the other party at the address set forth below:

If delivered to Duke:

Duke Capital Corporation
1105 North Market Street, Suite 1300
Wilmington, Delaware 19801
Attention: Richard J. Osborne

with a copy to:

Duke Capital Corporation, Mail Code PB05E
Post Office Box 1244
Charlotte, North Carolina 28201-1244
Attention: Robert S. Lilien, Secretary

If delivered to the Port District:

San Diego Unified Port District
3165 Pacific Highway
P.O. Box 488 (92112)
San Diego, CA 92101
Attention: Executive Director
Fax:

with copies to:

John J. Lormon, Esq.
Procopio Cory Hargreaves & Savitch LLP
530 B Street, Suite 2100

San Diego, CA 92101
Fax:

San Diego Unified Port District
3165 Pacific Highway
P.O. Box 488 (92112)
San Diego, CA 92101
Attention: Port Attorney
Fax:

Each party shall have the right to change the place to which notice shall be sent or delivered or to specify one additional address to which copies of notices may be sent, in either case by similar notice sent or delivered in like manner to the other party.

6.2 **Timing of Receipt.** Without limiting any other means by which a party may be able to prove that a notice has been received by the other party, a notice shall be deemed to be duly received:

(a) If delivered by hand, overnight courier or telegram, the date when left at the address of the recipient;

(b) If sent by registered mail, the date of the return receipt; or

(c) If sent by telefax, upon receipt by the sender of an acknowledgment or transmission report generated by the machine from which the telefax was sent indicating that the telefax was sent in its entirety to the recipient's telefax number.

In any case hereunder in which a party is required or permitted to respond to a notice from the other party within a specified period, such period shall run from the date on which the notice was deemed received as above provided, and the response shall be considered to be timely given if given as above provided by the last day of such period.

ARTICLE SEVEN
MISCELLANEOUS

7.1 **Entire Agreement and Amendments.** This Agreement, including the exhibits attached hereto, sets forth the full and complete understanding of the parties relating to the subject matter hereof as of the date of this Agreement, and supersedes any and all negotiations, agreements, understandings and representations made or dated prior thereto with respect to such subject matter. No change, amendment or modification of this Agreement shall be valid or binding upon the parties unless such change, amendment or modification shall be in writing and duly executed by both parties.

7.2 **Joint Effort.** Preparation of this Agreement has been a joint effort of the parties and the resulting document shall not be construed more severely against one of the parties than against the other.

7.3 **Captions.** The captions contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provision contained herein.

7.4 **Severability.** The invalidity of one or more phrases, sentences, clauses, Sections or Articles contained in this Agreement shall not affect the validity of the remaining portions of the Agreement so long as the material purposes of this Agreement can be determined and effectuated.

7.5 **No Waiver.** Any failure of either party to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time during the pendency of this Agreement shall in no way affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such party thereafter to enforce any and each of such provisions.

7.6 **Applicable Law.** This Agreement shall be governed by, construed and enforced in accordance with the Laws of the State of California, exclusive of conflicts of laws provisions.

7.7 **Counterparts.** This Agreement may be signed in any number of counterparts and each counterpart shall represent a fully executed original as if signed by both parties.

7.8 **Further Assurances.** Each party agrees to execute and deliver all further instruments and documents, and take all further action not inconsistent with the provisions of this Agreement that may be reasonably necessary to complete performance of the parties' obligations hereunder and to effectuate the purposes and intent of this Agreement. Without limiting the generality of the foregoing, the Port District agrees to communicate and cooperate with Duke following the Effective Date with respect to any ongoing matters or performance under the Asset Sale Agreement which affects Duke's rights or obligations under this Agreement or the Lease. and the Port District agrees to take such actions and measures with regard to SDG&E and others as may be reasonably requested by Duke to facilitate its performance hereunder and under the Lease.

7.9 **Consents Not Unreasonably Withheld.** Except as expressly provided herein, wherever the consent or approval of any party is required under this Agreement, such consent or approval shall not be unreasonably withheld or delayed.

7.10 **Independent Contractor, etc.** The parties shall each be independent contractors with respect to the performance of this Agreement, and neither party, nor its employees, contractors, agents or representatives shall be deemed to be the servants, employees, agents or representatives of the other party in any respect. Nothing contained in this Agreement shall be construed as constituting a joint venture, partnership or other association between Duke and the

Port District, and neither party shall be authorized to act on behalf of or to bind the other party or to make any representation about or on behalf of such other party

7.11 **Third Parties.** Except as otherwise expressly provided in this Agreement with respect to indemnified persons, nothing in this Agreement shall be construed to create any duty to, standard of care with respect to, or any liability to any person who is not a party to this Agreement.

7.12 **Expenses.** Each party shall pay all of its own costs and expenses incurred in connection with the negotiation and execution of this Agreement and the other agreements contemplated herein.

7.13 **Waiver of Consequential Damages.** In no event shall either party or its respective officers, directors, partners, shareholders, agents or employees be liable to the other party hereunder for special, indirect, consequential, punitive or exemplary damages of any nature or kind whatsoever, including loss of profits or revenue, lost business opportunity, lost contracts or loss of use, and Duke hereby releases the Port District therefrom, and the Port District hereby releases Duke therefrom. The parties intend that the waivers and disclaimers of liability, releases from liability, limitations of liability, and exclusive remedy provisions expressed in this Agreement shall apply, whether in contract, tort or otherwise, even in the event of the fault, negligence (in whole or in part), strict liability or breach of contract of the party released or whose liability is waived, disclaimed, limited or fixed by such exclusive remedy provision, and shall extend to such party's affiliates and contractors, and to its and their partners, shareholders, directors, officers, employees and agents. The parties also intend and agree that such provisions shall continue in full force and effect notwithstanding the expiration or earlier termination of the Agreement.

AGREEMENT EXECUTION

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date by their duly authorized representatives as follows:

APPROVED AS TO FORM AND LEGALITY
BY PORT ATTORNEY

By: _____
Name: David R. Chapman
Its: Port Attorney

San Diego Unified Port District, a public corporation organized and existing as a port district pursuant to Appendix 1 of the Harbors and Navigation Code of the State of California

By: _____
Name: Wayne Lindquist
Its: Deputy Executive Director

Duke Energy South Bay, LLC,
a Delaware limited liability company

By: _____
Name: Bradley K. Porlier
Its: Vice President

AGREEMENT EXECUTION

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date by their duly authorized representatives as follows:

APPROVED AS TO FORM AND
LEGALITY
BY PORT ATTORNEY

By: _____
Name:
Its:

San Diego Unified Port District, a public corporation organized and existing as a port district pursuant to Appendix 1 of the Harbors and Navigation Code of the State of California

By: _____
Name:
Its:

Duke Energy South Bay, LLC,
a Delaware limited liability company

By: _____
Name: Bradley K. Porlier
Its: Vice President

(751)

Document No. 38353

Filed APR 03 2001
SD UNIFIED PORT DISTRICT Clerk's Office

ASSET SALE AGREEMENT

(South Bay Power Plant)

******

SAN DIEGO GAS & ELECTRIC COMPANY

As Seller

AND

SAN DIEGO UNIFIED PORT DISTRICT

As Buyer

Dated: December 11, 1998

SOUTH BAY

LA_DOCS\265203 9

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ASSET SALE AGREEMENT

THIS ASSET SALE AGREEMENT (this "Agreement") is made and entered into as of the 11th day of December, 1998, by and between SAN DIEGO GAS & ELECTRIC COMPANY, a California corporation ("Seller"), and SAN DIEGO UNIFIED PORT DISTRICT, a public entity organized and existing as a port district pursuant to Appendix I of the Harbors and Navigation Code ("Buyer"), with reference to the following facts:

A. Seller is a public utility engaged in the business of generating, transmitting and distributing natural gas and electric energy and in connection therewith owns and operates the South Bay Power Plant, located at 990 Bay Boulevard, Chula Vista, California 91911 (the "Plant").

B. The California State Legislature has appropriated funds to assist local governmental entities in acquiring bayside fossil-fueled electric generation facilities to mitigate environmental and community issues.

C. Buyer proposes that the closure and decommissioning of the Plant would serve the public interest by mitigating air, water and other environmental, health and safety, and community impacts associated with the Plant.

D. Buyer has indicated its intention to attempt to condemn the Plant if an acceptable arrangement for Buyer's acquisition of the Plant cannot otherwise be reached with Seller.

E. Buyer and Lessee (as defined herein) have entered into that certain Cooperation Agreement, dated as of December 11, 1998, pursuant to which Buyer will lease to Lessee certain portions of the South Bay Site and the Plant and Lessee will operate the Plant, subject to the expiration of the O&M Agreement (as defined herein).

F. Buyer desires to purchase from Seller, and Seller desires to sell to Buyer, certain of the Assets (as defined herein) upon the terms and subject to the conditions of this Agreement, and Seller desires to make, and Buyer desires to accept, a charitable contribution to Buyer of certain real property included in the Assets, pursuant to the Real Property Contribution Agreement (as defined herein) (the "Transactions").

NOW, THEREFORE, in consideration of the foregoing recitals and the agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

ARTICLE 1.

Definitions

1.1. Certain Defined Terms

For purposes of this Agreement, the following terms shall have the following meanings:

(a) "Affiliate": Of a specified Person shall mean any corporation, partnership, sole proprietorship or other Person which directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with the Person specified. The term "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person.

(b) "Appraised Value": Means (i) the appraised value of the Assets on the Closing Date less (ii) the Purchase Price.

(c) "Auction": Means the procedures employed by Seller through which the Plant was offered for sale to competing bidders.

(d) "Business Day": Means a day on which banking institutions in the State of California are required to be open.

(e) "Environmental Law": Means any applicable federal, state, regional, or local statutes, regulations, ordinances, codes, permits, orders, or published decisions relating to: (i) air emissions, hazardous materials, storage, use and release to the environment of hazardous or toxic substances, generation, treatment, storage, and disposal of hazardous wastes, wastewater discharges and similar environmental matters; or (ii) the impact of the matters described in the preceding clause upon human health or the environment, including the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. § 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), the Oil Pollution Act (33 U.S.C. § 2701 et seq.), the Occupational Safety and Health Act (29 U.S.C. § 651 et seq.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 et seq.), the Porter-Cologne Water Quality Control Act (Cal. Wat. Code § 13000 et seq.), the Safe Drinking Water and Toxic Enforcement Act of 1986 (Cal. Health & Safety Code § 25249.5 et seq.), the Hazardous Substance Account Act (Cal. Health & Safety Code § 25300 et seq.), the Hazardous Waste Control Act (Cal. Health & Safety Code § 25100 et seq.), and the California Clean Air Act (Cal. Health & Safety Code § 39000 et seq.).

(f) "Existing Soils Contamination": Shall mean the actual presence prior to the Closing of Hazardous Materials in the soil or groundwater of the Remediation Parcels, as well as any migration thereof, if (i) Seller, as of Closing, has Knowledge of such

presence of such Hazardous Materials, it being agreed that Seller has Knowledge of matters disclosed in the Phase I and Phase II environmental assessments referred to in Section 3.7 and of matters otherwise disclosed in Schedule 3 7, (ii) such presence of such Hazardous Materials prior to the Closing is demonstrated through the tests or investigations that Buyer is entitled to make under Section 6.4(d), or (iii) on or before the fifteenth anniversary of the Closing such Hazardous Materials are proven by clear and convincing evidence to have been present in such soil or groundwater prior to the Closing. Existing Soils Contamination does not include (a) the presence of Hazardous Materials arising from the normal application of pesticides, fungicides, or other agricultural products, (b) contamination below levels which would require remediation under applicable Environmental Law in effect as of the Closing (which includes any determination by a Governmental Body that remediation is not required or not further required) for the continued use of such property for industrial uses, or (c) any Remediated Environmental Condition.

(g) "Governmental Body": Means any federal, state, regional, local, or other government; any governmental, regulatory or administrative agency, commission, body or other authority having jurisdiction to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power affecting the Assets; and any court or governmental tribunal; but does not include Buyer, Lessee or any of their respective successors in interest or any owner or operator of the Assets (if otherwise a Governmental Body).

(h) "Hazardous Materials": Means any chemicals, materials, substances, or items in any form, whether solid, liquid, gaseous, semisolid, or any combination thereof, whether waste materials, raw materials, chemicals, finished products, by-products, or any other materials or articles, which because of their physical, chemical, or other characteristics may pose a risk of endangering human health or safety or of degrading the environment and are regulated under any Environmental Law.

(i) "ISO": Means the Independent System Operator described in Article 3 of Chapter 2.3 of Part 1 of Division 1 of the California Public Utilities Code.

(j) "Knowledge": Of a party shall mean the extent of the actual knowledge of any Person who serves as of the Closing as a duly elected officer of such party and, with respect to Seller's knowledge about the Plant and the assets and liabilities related thereto, shall also include the extent of the actual knowledge of the Persons, if any, listed on Schedule 1.1(j) as well as the Persons who, as of the date hereof and/or as of the Closing, serve as the plant manager of the Plant or the regional manager with responsibility for the Plant, without any implication of verification or investigation concerning such knowledge.

(k) "Laws": Shall mean all, court decisions, case law, statutes, rules, regulations, ordinances, orders, and codes of Governmental Bodies.

(l) "Lessee": Means Duke Power South Bay, LLC.

(m) "Licenses": Shall mean registrations, licenses, permits, authorizations and other consents or approvals or entitlements issued by any Governmental Bodies.

(n) "LNG Site": Means the approximately 33-acre site of a former liquefied natural gas facility located adjacent to the Plant, all as more particularly described on Exhibit A.

(o) "Must-Run Agreement": Shall have the meaning assigned to such term in the Three Party Agreement.

(p) "NCT Site": Means the National City Terminal site, as more particularly described in Schedule 2.1(b), Number 1.

(q) "Person": Means any individual, corporation (including any non-profit corporation), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, labor union, or other entity or Governmental Body.

(r) "Pipeline Corridor": Means the pipeline equipment and associated real property, all as more particularly described in Exhibit A, Parcel 4 of the ECA.

(s) "Plant Decommissioning Costs": Means any cost arising out of or in connection with (i) decontamination, demolition, dismantlement or removal of any of the Assets, including any portion of the Plant which is not required to be undertaken under any Environmental Law (including as a result of action by a Governmental Body in connection with the administration of Environmental Law) at Closing, or (ii) the clean-up of the real property identified in Schedule 1.1(s). The clean-up of the real property identified in Schedule 1.1(s) includes the remediation of soil and groundwater contamination that originates within, or, is confined to the Assets on such real property, that cannot reasonably be remediated without demolishing, dismantling or removing a portion of the Assets located on such real property. Notwithstanding anything to the contrary herein, each of the above ground fuel oil storage tanks located in the Plant's north tank farm, specifically identified as Tanks 4, 5, and 6 in Schedule 1.1(s), that (a) have not been operated by or on behalf of Buyer after Closing, except for maintenance and inspections as hereinafter required and such testing as may be required by any Governmental Body, (b) have been at all times after the Closing Date properly maintained and inspected pursuant to applicable Environmental Law, and (c) have been fully decommissioned by or on behalf of Buyer within two years after Closing, shall be removed from Schedule 1.1(s). The real property beneath each tank removed from Schedule 1.1(s) pursuant to the preceding sentence shall become a part of the Remediation Parcels, and the presence of any Hazardous Materials in the soil or groundwater thereon shall constitute Existing Soils Contamination, provided such presence (x) did not arise from the normal application of pesticides, fungicides or other agricultural products, (y) exceeds levels that would require remediation under applicable Environmental Law in effect as of the Closing Date for the continued use of the property for industrial uses, and (z) did not result from Releases occurring during the decommissioning of any such tank. With respect to the decommissioning of Tanks 4, 5 and 6, decommissioning shall mean the

completion of decontamination, demolition, dismantlement and removal of the tank, any remaining contents, and all related construction materials (including any structural or foundation materials and any underlying and imported sand or other base material used in the construction process as the same may be saturated with petroleum product to inhibit corrosion) in accordance with applicable Environmental Law.

(t) "Release": Means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant), but excludes (a) any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons, (b) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine, and (c) the normal application of fertilizer, fungicides, or other agricultural products. Release also includes the migration of Hazardous Materials into, under, on, through, or in the air, soil, subsurface strata, surface water, groundwater, drinking water supply, any sediments associated with any water bodies, or any other environmental medium, regardless of where such migration originates.

(u) "Remediation Measures": Means (i) any investigation, assessment, monitoring, clean up, containment, remediation, mitigation, use restrictions, removal, storage, disposal and/or treatment of Existing Soils Contamination, including the preparation and implementation of any work plans and the obtaining of Licenses with respect thereto, and (ii) any response to, or preparation for, any inquiry, order, hearing or other proceeding by or before any Governmental Body with respect to any Existing Soils Contamination. Notwithstanding anything to the contrary herein, with respect to any Remediation Measures undertaken by Seller pursuant to the terms of this Agreement, Seller shall endeavor to coordinate all such Remediation Measures with Buyer, including the development of a mutually agreeable remediation schedule and work plan and the entering into of any agreements or arrangements with respect to the standards of such Remediation Measures, all in accordance with Schedule 1.1(u); provided, however, that neither Seller nor Buyer shall be obligated to enter into any agreements or arrangements arising out of any such coordination efforts if such agreements or arrangements are unsatisfactory in the reasonable discretion of such objecting party.

(v) "Remediation Parcels": Means the South Bay Site and the NCT Site, or any portion thereof. Notwithstanding anything to the contrary herein, Seller shall not be obligated to remediate the Remediation Parcels for uses of the property other than industrial uses.

(w) "Seller's Environmental Obligations" means:

(i) Any fine, penalty, levy or assessment imposed upon Seller and/or Buyer by any Governmental Body with respect to Seller's operation of the Plant prior to the Closing;

(ii) The offsite transport, treatment, storage or disposal, prior to the Closing, of Hazardous Materials from the Remediation Parcels;

(iii) The Release of Hazardous Materials from the Plant or the Remediation Parcels prior to the Closing into the atmosphere or any water course or body of water not included in the Remediation Parcels, or the Release prior to Closing of Hazardous Materials from the pipeline equipment located within the Pipeline Corridor or from its operation, or the existence prior to the Closing of electromagnetic fields in or around or about the location of the Remediation Parcels;

(iv) The obligations of Seller for Remediation Measures in respect of Existing Soils Contamination as set forth in, and subject to the provisions and conditions of, Section 6.4; and

(v) Any Third Party Claims arising out of Existing Soils Contamination that are Excluded Liabilities under Section 2.4(e);

Provided that Seller's Environmental Obligations do not include any obligations or liabilities to the extent that they arise from or are related to:

(vi) The existence of Hazardous Materials used as construction materials in, on or otherwise affixed to structures or improvements included in the Assets, including asbestos, urea formaldehyde foam insulation and lead or other metal based paint or coatings;

(vii) The Release of Hazardous Materials in, on, or under the Remediation Parcels, or the underlying groundwater, after the Closing (other than the migration of Hazardous Materials actually present in the soil and/or groundwater prior to the Closing, subject to Section 1.1(w)(viii) below);

(viii) Any soils or groundwater contamination, exacerbation of Existing Soils Contamination, or any increase in the scope, duration, costs or burdens of any Remediation Measures required by any Governmental Body or third party, including the imposition of any remediation standard with respect to Existing Soils Contamination that is different from the standard that is or would have been applicable to Seller as of Closing, arising out of or in any way connected with the acts or omissions after the Closing of Persons other than Seller and its Affiliates;

(ix) Plant Decommissioning Costs; or

(x) The development of the Remediation Parcels for a use other than industrial use, including Remediation Measures in respect of Existing Soils Contamination which would not be necessary but for such development and/or use.

(x) "Remediated Environmental Condition": Means that for any Existing Soils Contamination, the required Remediation Measures have been completed as described in Section 6.4(a).

(y) "South Bay Land": Means, collectively, the South Bay Site, the LNG Site and the Transmission Property.

(z) "South Bay Site": Means the approximately 115-acre site on which the Plant is located, all as more particularly described on Exhibit B.

(aa) "Three Party Agreement": Means the Three Party Agreement, dated as of the date hereof, among Seller, Buyer and Lessee.

(bb) "Transmission Property": Means the approximately 16-acre site located immediately north of the Plant between J Street and the center-line of F Street in Chula Vista, California, all as more particularly described on Exhibit C.

1.2. Index of Other Defined Terms

In addition to those terms defined above, the following terms shall have the respective meanings given thereto in the Sections indicated below:

Defined Term	Section
ADA	2.3(c)
Adjustment Sections	2.9
Agreement	Preamble
Allocation Schedule	2.6(b)
Approvals	8.4
Approved Receipt Date	10.1
Assets	2.1
Assigned Contracts	2.1(f)
Assumed Contracts	2.3(a)
Assumed Liabilities	2.3
Buyer	Preamble
Capital Expenditures	2.6(c)(i)
Charter Documents	3.3
Claim Notice	12.6

Defined Term	Section
Closing	10.1
Closing Date	10.1
CPUC	3.4(b)
Deductible Amount	12.3(b)(i)(B)
Deposit	2.6(a)
DOJ	3.4(b)
Easements	2.1(c)
ECA	2.5(d)
Electric Substation Site	5.3
Equipment	2.1(d)
Escrow Agent	10.2
Excluded Assets	2.2
Excluded Liabilities	2.4
Facilities Services Agreement	2.5(a)
FERC	3.4(b)
HSR Act	3 3
Indemnitee	12.5
Indemnitor	12.5(a)
Independent Engineer Report	3 9
Intercompany Transactions	2.2(m)(i)
Inventory Report	2.6(c)(ii)
Leased Real Property	2.1(b)
Letter of Credit	2.6(a)
Losses	12.3(a)
Map Act Exemption	5.2
Material Adverse Effect	3.3
Operating Data	3.12
O&M Agreement	2.5(b)

Defined Term	Section
Original Closing Date	2.9
Owned Real Property	2.1(a)
Panel	2.9
Permitted Encumbrances	3.8
Plant	Recitals
Prepayments	2.1(j)
Purchase Price	2.6(a)
Real Property Leases	2.l(b)
Related Agreements	2.5
Scheduled Closing Date	10.1
Seller	Preamble
Substation Property Deed	5.3(a)
Supplies	2.l(e)
Termination Date	11.l(d)
Third Party Claims	12.5(a)
Title Insurer	8.6
Title Policies	8.6
Transactions	Recitals
Transmission Property Deed	5.2

1.3. Certain Interpretive Matters

In this Agreement, unless the context otherwise requires, the singular shall include the plural, the masculine shall include the feminine and neuter, and vice versa. The terms "includes" and "including" shall not be limiting whether or not followed by the words "without limitation." References to a Section, Article, Exhibit or Schedule shall mean a Section, Article, Exhibit or Schedule of this Agreement, and reference to a given agreement or instrument shall be a reference to that agreement or instrument as modified, amended, supplemented and restated through the date as of which such reference is made. References to Laws shall be deemed references to such Laws as they may be amended from time to time. This Agreement and any documents or instruments delivered pursuant hereto shall be construed without regard to the identity of the person who drafted the various provisions of the same. Each and every provision of this Agreement and such other documents and instruments shall be construed as though the parties

participated equally in the drafting of the same. Consequently, the parties acknowledge and agree that any rule of construction that a document is to be construed against the drafting party shall not be applicable either to this Agreement or such other documents and instruments.

ARTICLE 2.

BASIC TRANSACTIONS

2.1. Purchased Assets

On the terms and subject to the conditions contained in this Agreement, at the Closing Buyer shall purchase, and Seller shall sell or contribute, as the case may be, or otherwise convey, assign, transfer and deliver to Buyer the following assets that (except to the extent otherwise noted) are used in and necessary for the conduct of the operations of the Plant (the "Assets"), but excluding all Excluded Assets (as defined in Section 2.2):

(a) Pursuant to the Real Property Contribution Agreement, all of Seller's right, title and interest in and to the South Bay Land. Pursuant to this Agreement, all of Seller's right, title and interest in and to all buildings, fixtures and improvements located on the LNG Site and the South Bay Site (including all construction work in progress).

(b) All of Seller's right, title and interest, as lessee or sublessee, in and to the leasehold estates and the related lease or sublease agreements (the "Real Property Leases") respecting land, buildings, fixtures and real property improvements (whether owned or leased) (the "Leased Real Property") identified in Schedule 2.1(b), if any, together with all construction work in progress in respect of same.

(c) All of Seller's rights, privileges and easements appurtenant to its ownership of the South Bay Land or its lease of the Leased Real Property as well as the right, by way of license, easement or the like, to locate certain identified Equipment to be sold hereunder, such as unit circuit breakers, on real property being retained by Seller, all as shown or described more specifically on Schedule 2.1(b) or Schedule 2.1(c) (the "Easements").

(d) All of Seller's right, title and interest in and to fixed or mobile machinery and equipment, as well as similar items of tangible personal property, including vehicle refueling tanks, pumps, pipelines, fittings, trucks, tractors, trailers and other vehicles, tools, furniture and revenue metering equipment (including revenue metering equipment installed in contemplation of the Transactions) (collectively "Equipment") that (i) are not by their nature consumed in the ordinary course of business such that they constitute "Supplies" (as defined below), (ii) are used, owned or leased by Seller as of the Closing Date, (iii) are used in and necessary for the conduct of the operations of the Plant, and (iv) in the ordinary course of Seller's business either (A) are permanently located at the Plant for use primarily at the Plant (including Assets temporarily offsite for repair or other purposes), or (B) have historically been part of Seller's centralized or regional maintenance operations for a number of facilities, including the Plant, and have been

allocated by Seller to the Plant for purposes of its divestiture. All such items of Equipment (other than furnishings or office equipment) are generally identified on Schedule 2.1(d).

(e) All of Seller's right, title and interest in and to inventories of spare parts intended to be consumed in the ordinary course of business, maintenance, shop and office supplies, and other similar items of tangible personal property on hand at the Plant as of the Closing and intended to be consumed in the ordinary course of business, as well as fuel supplies, if any, on hand and stored at the Plant as of the Closing and intended as feedstock from which to generate electrical power in the ordinary course of operation ("Supplies").

(f) All of Seller's right, title and interest in and to all written contracts and agreements specifically and exclusively relating to the Plant to which Seller is a party at the Closing (the "Assigned Contracts") including the agreements identified on Schedule 2.1(f), which contains a list of the agreements (i) pursuant to which Seller paid or received $5,000 or more during its last fiscal year or expects to pay or receive $5,000 or more during its current fiscal year, and (ii) that have a binding remaining term of at least one year which cannot be canceled by Seller without penalty on notice of 90 days or less. The Assigned Contracts shall also include construction contracts relating to construction work in progress at the Plant; equipment leases (whether operating or capital leases) and installment purchase contracts; contracts or arrangements binding on the Plant which restrict the nature of the business activities in which the Plant may engage; and leases as lessor or sublessor; and oral contracts if, but only if, the same are identified on Schedule 2.1(f).

(g) All of Seller's right, title and interest in and to all of the Licenses listed in Schedule 2.1(g); provided that such Licenses shall be included within the Assets only to the extent they relate exclusively to the Assets and are lawfully transferable to Buyer.

(h) All of Seller's right, title and interest in and to all of the books, records, plans, drawings, instruction manuals, engineering and consulting reports (including those concerning year 2000 compliance) and similar items located at the Plant and which relate exclusively to the Plant and the Assets, and other procedural manuals of Seller related primarily to the operation of the Plant, subject to the rights of Seller to make copies of and make non exclusive use of the same and except to the extent such materials are subject to confidentiality or non disclosure agreements in favor of third parties whose consent to transfer is not obtained.

(i) All of Seller's right, title and interest, if any, in and to unexpired warranties as of the Closing that are transferable to Buyer which Seller has received from third parties which relate specifically to the Assets, including warranties set forth in any equipment purchase agreement, construction agreement, lease agreement, consulting agreement or agreement for architectural or engineering services, it being understood that nothing in this paragraph shall be construed as a representation by Seller that any such unexpired warranty remains enforceable.

(j) All of Seller's right, title and interest in and to advance payments, prepayments, prepaid expenses, deposits and the like (i) made by Seller on its behalf in the ordinary course of business specifically with respect to the Assets prior to the Closing, (ii) which exist as of such Closing, and (iii) with respect to which Buyer will receive the benefit after the Closing (collectively, "Prepayments"), which Prepayments are listed by category and approximate amount in Schedule 2.1(j) as of the close of the most recent fiscal quarter ended at least one month prior to the date of this Agreement. Nothing in this Section 2.1(j) shall be construed so as to limit Buyer's and Seller's rights and obligations under Section 10.3.

(k) All of Seller's right, title and interest in and to those air pollution control credits related to the Plant which are identified by Plant on Schedule 2.l(k) as included in the Assets.

(l) All of Seller's right, title and interest in and to the additional real property identified on Schedule 2.1(l), if any, which real property may not currently be used in or necessary for the current operation of the Plant but is so located, or is otherwise so related to the Plant, as to make its conveyance together with the Plant, in the judgment of Seller, appropriate or convenient, together with all buildings, fixtures and improvements located thereon (including all construction work in progress), and all rights, privileges, permits and easements appurtenant thereto.

(m) All of Seller's right, title and interest in and to the right to receive mail and other communications addressed to Seller or any of its Affiliates insofar as such mail or other communication relates exclusively to the ownership or operation of the Assets or to the Assumed Liabilities after the Closing.

(n) All of Seller's right, title and interest in and to those miscellaneous and sundry assets identified by category on Schedule 2.1(n), if any, which assets are ancillary to the ownership and operation of the Assets and the Plant and customarily utilized in connection therewith but not otherwise enumerated above.

2.2. Excluded Assets

The Assets shall not include any of the assets, properties, rights, Licenses, or contracts of Seller not specifically enumerated in Section 2.1 above, all such other assets, properties, rights, Licenses, and contracts collectively constituting "Excluded Assets," including the following specifically enumerated Excluded Assets:

(a) ***[reserved]***

(b) Subject to the further provisions of the Facilities Services Agreement, all property (personal or fixtures) underlying, comprising or constituting a part of any of the transmission equipment and switchyard facilities located on the South Bay Land (but not step up transformers or unit circuit breaker controls), and used primarily in connection with the transmission (including transmission services), as opposed to the generation, of

electrical power (whether or not regarded as a "transmission" or "generation" asset for regulatory purposes), as shown and/or noted or described on Schedule 2.1(b), Schedule 2.1(c), Schedule 2.1(d) or Schedule 2.2(b). To the extent such equipment or facilities are fixtures, such fixtures shall be severed from the land pursuant to a severance deed or other similar instrument in accordance with Section 10.1(a).

(c) Subject to the further provisions of the Facilities Services Agreement, the fixtures, equipment and other personal property located on the South Bay Land comprising or constituting a part of the proprietary or specialized communications systems used by Seller to communicate between and among its facilities and/or to transmit voltage and other control data and information utilized in Seller's transmission and distribution systems, including any portion of such assets or system leased or licensed to third parties, together with the right, by way of license, easement or otherwise to retain such property on the real property being transferred to Buyer pursuant to the Real Property Contribution Agreement, all as shown and/or noted or described on Schedule 2.1(b), Schedule 2.1(c), Schedule 2.1(d) or Schedule 2.2(c).

(d) Claims, causes in action, rights of recovery, rights of set off, rights to refunds and similar rights in favor of Seller of any kind relating to or arising out of the period prior to Closing, including, but not limited to, any refund related to real estate taxes paid prior to the Closing, whether such refund is received as a payment or as a credit against future real estate taxes.

(e) Subject to the provisions of Section 2.7, all privileged or proprietary (to Seller) materials, documents, information, media, methods and processes owned by or licensed to Seller and any and all rights to use same, including intangible assets of an intellectual property nature such as trademarks, service marks and trade names (whether or not registered), computer software that is proprietary to Seller, or the use of which under the pertinent license therefor is limited to operation by Seller or its Affiliates or on equipment owned by Seller or its Affiliates, all promotional or marketing materials (including all marketing computer software), and any and all trade names under which Seller or the Plant prior to Closing has done business or offered programs, and all abbreviations and variations thereof.

(f) Any and all personnel and employment records of or related to the operation of the Plant or otherwise related to Seller's personnel, whether or not maintained at or by the Plant.

(g) The rights of Seller under any insurance policy, except to the extent such policy insures for occurrences that are included in the Assumed Liabilities (it being understood, however, that Seller will have no obligation to take any action under any such policy to seek any recovery except at the reasonable request, and at the sole expense, of Buyer or to continue any such policies in force except to the extent expressly set forth herein).

(h) Seller's rights to receive mail and other communications relating to any of the Excluded Assets or Excluded Liabilities; all of which mail and other communications shall be promptly forwarded by Buyer to Seller.

(i) Subject to the provisions of Section 2.7. any and all rights respecting computer and data processing hardware or firmware that is proprietary to Seller and any computer and data processing hardware or firmware, whether or not located at the Plant, that is part of a computer system the central processing unit of which is not located at the Plant.

(j) Seller's right, title and interest in and to certain additional real property, other than as identified on Schedules 2.1(b), 2.1(c), 2.1(l) or 2.1(n), that is not currently used in or necessary for the current conduct of the Plant but adjacent or related to the Plant, together with all buildings, fixtures, improvements located thereon (including all construction work in progress), and all rights, privileges, permits and easements appurtenant thereto, including, but for purposes of clarification only, the real property identified on Schedule 2.2(j).

(k) Except as provided in Section 2.1(e), any inventories of natural gas and inventories of any other fuel intended as a feedstock from which to generate electrical power, and all contracts and rights in contracts related to the supply, transport, development, exploration, acquisition or other exploitation of the same, except to the extent of separate arrangements, if any, that may be entered into between and at the option of both Seller and Buyer and mutually approved by them to facilitate the transition of the Plant to Buyer's ownership.

(l) Except for the Prepayments, Supplies and items of petty cash that may be on hand at the Plant as of the time of Closing, all assets constituting working capital, whether cash, cash equivalents, securities, rights to payment, rights to refunds and other current assets and similar rights.

(m) Any and all of Seller's rights arising under:

(i) Any contract respecting an intercompany transaction between Seller, on the one hand, and Seller's Affiliate, on the other hand, whether or not such transaction relates to the provision of goods and services, tax sharing arrangements, payment arrangements, intercompany charges or balances, or the like ("Intercompany Transactions");

(ii) Employment contracts, if any;

(iii) Collective bargaining agreements (it being understood, however, that nothing herein is intended to affect Buyer's obligations, if any, under the National Labor Relations Act);

(iv) Contracts related to the purchase or sale of electric power, other than the Must-Run Agreement; and

(v) Any and all data and information pertaining to customers of Seller or its Affiliates, whether or not located at the Plant.

(n) Miscellaneous and sundry assets if any, identified by category on Schedule 2.2(n), which assets may have been utilized by Seller in the ownership and operation of the Plant but which are not intended to be included in the Assets and which are not otherwise enumerated above.

Seller may remove at any time or from time to time, up to 90 days following the Closing, any and all of the Excluded Assets from the Plant and shall be deemed to have an easement sufficient to accomplish removal (at Seller's expense, but without charge by Buyer for storage), provided that Seller shall do so in a manner that does not unduly or unnecessarily disrupt Buyer's normal business activities at the Plant, and provided further that Excluded Assets may be retained at the Plant solely pursuant to the O&M Agreement, the Facilities Services Agreement, the ECA and other easements, licenses or similar arrangements retained by Seller and described above or otherwise in the Schedules to this Agreement.

2.3. Assumed Liabilities

Subject to the terms and conditions set forth in this Agreement, Buyer shall assume and pay, discharge and perform as and when due, only the following obligations and liabilities of Seller (the "Assumed Liabilities"):

(a) All liabilities and obligations of Seller which pertain to or are to be paid or performed during the period following the Closing Date (except to the extent that, but for the breach of Seller, such liabilities and obligations would have been paid or performed prior to the Closing Date), and which arise under any contract, License, agreement, arrangement, understanding or undertaking included in the Assets, including the Real Property Leases and the Assigned Contracts, and any other obligation or liability of Seller or any Affiliate of Seller (including those related to letters of credit and performance bonds) which is in the nature of a guaranty of the foregoing to the extent that such liabilities and obligations are enumerated in Schedule 2.3(a) (together, the "Assumed Contracts"); provided, however, that with respect to any Real Property Leases under which Buyer is the lessor, no assumption by Buyer under this Section 2.3(a) shall relieve Seller of any liability or obligation under any such Real Property Lease arising or accruing prior to the Closing Date.

(b) All liabilities and obligations of Seller under open purchase orders pertaining to the Plant included in the Assets that were entered into by Seller in the ordinary course of business with respect to operation of the Plant on or prior to the Closing and which provide for the delivery of goods or services subsequent to the Closing Date, except to the extent such purchase orders are listed as Excluded Assets on Schedule 2.2(n).

(c) Without limiting Seller's representations and warranties contained in Article 3 or Buyer's rights under Article 12 for a breach thereof, any and all liabilities and

obligations respecting any changes or improvements needed to the Plant, if any, for them to be in material compliance following the Closing with respect to safety, building, fire, land use, access (including the Americans With Disabilities Act ("ADA")) or similar Laws respecting the physical condition of the Plant.

(d) Without limiting Seller's representations and warranties contained in Article 3 or Buyer's rights under Article 12 for a breach thereof, and except for the Excluded Liabilities specifically listed in Section 2.4 (including those described in Section 2.4(k)), any and all liabilities, claims, and expenses (including those arising under Environmental Law, common law or otherwise) in any way arising out of or related to or associated with the ownership, possession, use or operation of the Assets or any business conducted therewith or therefrom after the Closing, subject to Seller's continuing obligations under the provisions of the O&M Agreement and the Facilities Services Agreement.

(e) Such miscellaneous and sundry liabilities, identified by category on Schedule 2.3(e), if any, which liabilities are ancillary to the ownership and operation of the Assets and the Plant but are not otherwise enumerated above.

2.4. Excluded Liabilities

The parties agree that liabilities and obligations of Seller not described in Section 2.3 as Assumed Liabilities are not part of the Assumed Liabilities, and Buyer shall not assume or become obligated with respect to any other obligation or liability of Seller or any Affiliate of Seller (collectively, "Excluded Liabilities"), including the liabilities and obligations described in this Section, all of which shall remain the sole responsibility of, and be discharged and performed as and when due by, Seller. In particular, Buyer shall not assume and shall have no liability or obligation with respect to any of the following liabilities or obligations of Seller as the same may exist at the Closing:

(a) Liabilities associated with or arising from the Excluded Assets and the ownership, operation and conduct of any business by Seller or its successors in interest in connection therewith or therefrom, and liabilities associated with or arising from Seller's obligations under the Related Agreements.

(b) Subject to Section 5.1 respecting certain expenses incurred in connection with the Transactions, any of Seller's or its Affiliates' liabilities or obligations (including any liabilities or obligations under any tax sharing agreements) with respect to franchise taxes and with respect to foreign, federal, state or local taxes imposed upon or measured, in whole or in part, by the income for any period of Seller or any member of a combined or consolidated group of companies of which Seller is, or was at any time, a part, or with respect to interest, penalties or additions to any of such taxes, and any income, franchise, tax recapture, transfer tax, sales tax or use tax that may arise upon consummation of the Transactions contemplated by this Agreement and be due or payable by Seller, it being understood that Buyer shall not be deemed to be Seller's transferee with respect to any such tax liability.

(c) Liabilities or obligations of Seller or its Affiliates arising from the breach by Seller prior to the Closing Date of any term, covenant, or provision of any of the Assumed Contracts.

(d) Liabilities or obligations of Seller in respect of any Assets which would be included in the Assets but for the provisions of Section 2.8, unless Buyer is provided with the benefits thereunder as contemplated by such Section.

(e) Liabilities of Seller for Third Party Claims (as defined in Section 12.5(a)) where the injury or damage involved occurred prior to the Closing (whether or not any such Third Party Claim was made after the Closing), provided that Third Party Claims (other than those relating to personal injury or death) related to Existing Soil Contamination or to Remediation Measures shall be subject to the further provisions of Section 6.4.

(f) Subject to Section 2.8, liabilities of Seller incurred in connection with Seller's obtaining any consent, authorization or approval necessary for it to sell, convey, assign, transfer or deliver the Assets to Buyer hereunder.

(g) Any liability of Seller representing indebtedness for money borrowed or the deferred portion of the purchase price for any tangible Assets (and any refinancing thereof) acquired on or before the Closing Date. With respect to any such indebtedness or obligation not so assumed by Buyer that constitutes a lien or encumbrance upon any Asset, Seller agrees that on or prior to the Closing it will either pay or discharge such indebtedness or obligation in full or otherwise cause such lien or encumbrance to be removed from the Asset, so that such Asset is sold, conveyed, assigned, transferred and delivered to Buyer at the Closing free and clear of such lien or encumbrance.

(h) Amounts due from Seller arising from Intercompany Transactions.

(i) Any liabilities to employees of Seller for pre Closing activities, or arising under any collective bargaining agreement, or pension, benefit or welfare plan of Seller (it being understood, however, that nothing herein is intended to affect Buyer's obligations, if any, under the National Labor Relations Act).

(j) Liabilities which would be Assumed Liabilities but for other express provisions of this Agreement providing for their retention by Seller and such other liabilities and obligations, if any, which would otherwise be Assumed Liabilities but which are identified on Schedule 2.4(j).

(k) Any and all liabilities arising out of or related to Seller's Environmental Obligations.

2.5. Related Agreements

Upon the execution of this Agreement, the parties will enter into the following agreements or take the following actions (the "Related Agreements"):

(a) Facilities Services Agreement. Seller and Buyer shall enter into the Facilities Service Agreement attached as Exhibit D with respect to the Plant (the "Facilities Services Agreement").

(b) Operation and Maintenance Agreement. Seller and Buyer shall enter into an Operation and Maintenance Agreement with respect to the Plant, attached as Exhibit E (the "O&M Agreement").

(c) Real Property Contribution Agreement. Seller and Buyer shall enter into the Real Property Contribution Agreement, attached as Exhibit F with respect to the donation by Seller of the South Bay Land.

(d) Quit Claim Deed, Easement Reservation and Covenant Agreement. Seller and Buyer shall enter into an Quit Claim Deed, Easement Reservation and Covenant Agreement with respect to the Plant, attached as Exhibit G (the "ECA"), pursuant to which each Party will grant to the other Party certain reciprocal easements over the South Bay Land and the real property interests retained by Seller, as the case may be, to facilitate the use, maintenance, operation and access by each Party to the Assets.

2.6. Purchase Price

(a) Consideration.

(i) The purchase price shall be U.S. $110,000,000, subject to such adjustments, if any, as may occur pursuant to this Section 2.6 and pursuant to Sections 2.8, 2.9, 8.5, 8.6, 8.8 and 10.3 or other provisions of this Agreement (the "Purchase Price").

(ii) Upon execution of this Agreement, Buyer shall deliver to Seller a cash deposit (the "Deposit"), or an irrevocable letter of credit (the "Letter of Credit") which meets each of the following requirements and is in form and substance approved by Seller in its reasonably exercised discretion: (A) is issued by a bank having an office in San Diego, California; (B) names Seller as the beneficiary; (C) has an expiration date no earlier than one year from the date of this Agreement; and (D) may be drawn in full by Seller upon Seller's delivery to the issuing bank of Seller's certification that Seller is entitled to do so pursuant to Section 2.6(a), in an amount equal to the lesser of $5,000,000 or five percent of the Purchase Price.

(iii) At the Closing, (A) Buyer shall pay to Seller the Purchase Price, less the amount of any Deposit, in cash by wire transfer of immediately available funds in U.S. dollars to such account as specified in writing by Seller to Buyer not later than the second Business Day prior to the Closing Date, and (B) if Buyer shall have delivered to Seller the Letter of Credit, Seller shall return to Buyer the original Letter of Credit.

(iv) The Deposit shall be refundable or the original Letter of Credit shall be returned to Buyer (as applicable) upon termination of this Agreement unless the Agreement terminates because of Buyer's fraudulent act, material default or material breach as set forth in Section 11.1(c), in which case the Deposit shall secure Seller's damages and Seller may apply the Deposit (and, if applicable, draw upon the Letter of Credit and apply the amounts so drawn) to, but only to the extent of, Seller's damages. The Deposit shall bear interest at the rate set forth in Section 2.6(c)(iv) and the interest shall be treated as principal for purposes of application toward the Purchase Price. In the event Seller applies the Deposit or draws upon the Letter of Credit in accordance with this Section 2.6(a)(iv), Seller shall return to Buyer within 30 days of applying such amounts to Seller's damages the excess portion, if any, of the Deposit or the Letter of Credit (as applicable) not otherwise applied to Seller's damages.

(v) Neither the Deposit nor the Letter of Credit is intended to constitute liquidated damages, and nothing in this Agreement shall be construed as limiting or waiving Seller's remedies, whether at law (including the right to seek recovery for Seller's damages in excess of the Deposit or Letter of Credit) or in equity, in the event this Agreement is terminated or in the event of a breach by Buyer of its obligations hereunder.

(b) Purchase Price Allocation. No later than 10 Business Days prior to the Closing, Buyer and Seller shall mutually agree to allocate the Purchase Price among the Assets in accordance with Schedule 2.6(b) (the "Allocation Schedule"). Seller and Buyer shall allocate the Purchase Price in accordance with the Allocation Schedule and shall be bound by such allocations for all purposes, shall account for and report the purchases and sales contemplated hereby for all purposes (including financial, accounting, and federal and state tax purposes) in accordance with such allocations, and shall not take any position (whether in financial statements, tax returns, or tax audits, or otherwise), which is inconsistent with such allocations without the prior consent of the other party, except to the extent, if any, required by applicable Law or generally accepted accounting principles.

(c) Certain Post Closing Adjustments. The Purchase Price shall be subject to the following post Closing adjustments, but only if such adjustments, in the aggregate, will result in a change in the Purchase Price of $250,000 or more:

(i) The Purchase Price shall be increased by the amount expended by Seller between the date hereof and the Closing Date for capital additions to or replacements of the Assets and other expenditures or repairs on the Assets that would be capitalized by Seller in accordance with its normal capitalization policies (together "Capital Expenditures"), which Capital Expenditures either appear on Schedule 2.6(c)(i) or, subject to the provisions of Section 6.3(f), are otherwise deemed reasonably necessary by Seller for the continued operation or maintenance of the Plant and the Assets or for compliance with Law, provided that such Capital Expenditures shall not include Remediation Measures in respect of Existing Soils

Contamination or spare parts, materials and supplies customarily tracked by Seller on its regularly prepared Inventory Report referred to in clause (ii) below.

(ii) The Purchase Price shall be further increased or decreased, as the case may be, by the increase or decrease between the current carrying value as of the dates set forth in Schedule 2.6(c)(ii) of the fuel oil inventory, spare parts, materials and supplies that would have been included in the Assets had the Closing occurred on such dates, as indicated by Seller's regularly prepared Inventory Report (the "Inventory Report") attached as Schedule 2.6(c)(ii) and the carrying value as of the Closing Date of the fuel oil inventory, spare parts, materials and supplies included in an Inventory Report prepared as of such date in accordance with the provisions set forth in clause (iii) below.

(iii) In order to implement the foregoing, Seller shall cause to be prepared and shall provide Buyer, as soon as possible after the Closing Date and in no event later than 60 days thereafter, with a schedule setting forth Seller's Capital Expenditures between the date hereof and the Closing Date, in reasonable detail so as to permit Buyer to be able to determine the extent to which such Capital Expenditures are or are not listed on Schedule 2.6(c)(i), and shall further provide Buyer with a revised Schedule 2.6(c)(ii) calculated as of the Closing (or the nearest month end preceding the Closing Date if a mid month preparation of the Inventory Report is impracticable or otherwise burdensome). Such Closing Date Inventory Report shall be prepared consistently with the method of preparation used by Seller and on the same basis as Schedule 2.6(c)(ii) attached, it being acknowledged that no physical inventory need be taken, that the measurement of the change in each section of the Inventory Report between the respective dates set forth in Schedule 2.6(c)(ii) and the Closing Date, in accordance with Seller's customary accounting practices with respect thereto, is intended merely to provide a reasonable estimate of changes in the levels of spare parts, materials and supplies between such dates rather than a definitive listing of actual inventory levels as of the date of Schedule 2.6(c)(ii) or as of the Closing, and that, absent manifest error or fraud, such change in the Inventory Report shall be conclusive as between the parties for purposes of the adjustment to the Purchase Price contemplated by clause (ii) above.

(iv) Buyer shall have 30 days to review and make inquiry concerning such schedules delivered by Seller after the Closing Date. If an adjustment to the amount of the Purchase Price is required by this Section 2.6(c), then the applicable payment or refund shall be made within 10 days following the expiration of such 30-day period by wire transfer of immediately available funds, together with interest thereon for the number of days from and including the Closing Date to such settlement date (but excluding such settlement date) at the rate per annum equal to the prime rate of interest during such period as such rate is published in the Western Edition of the Wall Street Journal, computed on the basis of actual days elapsed over a 365 day year.

(v) Any dispute concerning the amount of the adjustment required by this Section 2.6(c) shall be resolved pursuant to Section 2.9.

2.7. License of Non Transferred Intangible Assets

Although trade names of Seller are Excluded Assets, such names appear on certain of the Assets, such as certain fixtures and Equipment, and on supplies, materials, stationery and similar consumable items which will be on hand at the Plant at the Closing. Notwithstanding that such names are Excluded Assets, Buyer shall be entitled to use such consumable items for a period of three months following the Closing and shall have up to six months following the Closing to remove such names from fixed Assets, provided that Buyer shall not send correspondence or other materials to third parties on any stationery that contains a trade name or trademark of Seller or any Affiliate of Seller. Seller hereby grants to Buyer the irrevocable, fully paid up, royalty free, transferable, non exclusive right and license to use, solely in connection with the operation of the Plant, such proprietary computer software of Seller located at the Plant that is presently used at the Plant's location exclusively in connection with the operation of the Plant and that is an Excluded Asset under Sections 2.2(e) or (o), except for such computer software that is designed to be part of a networked computer system providing data processing capabilities or services beyond the particular Plant in question and provided that in no event shall Buyer or any successor have access under such license to Seller's own computer networks. The licenses contained in this Section 2.7 may, at Seller's option, be made the subject of a separate agreement between the parties.

2.8. No Assignment If Breach

Notwithstanding anything contained in this Agreement to the contrary, this Agreement shall not constitute an agreement to assign any Asset, or assume any Assumed Liability, if the attempted assignment or assumption of the same, as a result of the absence of the consent or authorization of a third party or failure of a right of first refusal notice period to expire, would constitute a breach or default under any agreement, encumbrance or commitment, would violate any Law or would in any way adversely affect the rights, or increase the obligations, of Buyer or Seller with respect thereto. If any such consent or authorization is not obtained, or if an attempted assignment or assumption would be ineffective or would adversely affect the rights or increase the obligations of Seller or Buyer, with respect to any such agreement, encumbrance or commitment, so that Buyer would not, in fact, receive all such rights, or assume the obligations, of Seller with respect thereto as they exist prior to such attempted assignment or assumption, then Seller and Buyer shall enter into such reasonable cooperative arrangements as may be reasonably acceptable to both Buyer and Seller (including sublease, agency, management, indemnity or payment arrangements and enforcement at the cost and for the benefit of Buyer of any and all rights of Seller against an involved third party) to provide for or impose upon Buyer the benefits of such Asset or the obligations of such Assumed Liability, as the case may be, and any transfer or assignment to Buyer by Seller of any such Asset, or any assumption by Buyer of any such Assumed Liability, which shall require such consent or authorization of a third party that is not obtained, shall be made subject to such consent or authorization being obtained. If the parties cannot agree on any such arrangement, or any such arrangement would not be reasonably practicable, to provide Buyer with materially all the benefits of such Asset or materially all the

obligations of such Assumed Liability, then such Asset or Assumed Liability, as the case may be, shall be excluded from the Transactions and shall be deemed to be an Excluded Asset or an Excluded Liability, as the case may be, and Buyer and Seller shall negotiate in good faith an equitable adjustment in the Purchase Price, or resolve any disagreement respecting such adjustment in accordance with the procedures of Section 2.9.

2.9. Procedures for Certain Purchase Price Adjustments

If circumstances exist that result in any disagreement in respect of adjustments to the Purchase Price or that otherwise require the parties to negotiate in good faith equitable adjustments to the Purchase Price pursuant to the provisions of Section 2.6(c) (respecting certain post-Closing adjustments), Section 2.8 (respecting absence of consents), Section 8.5 (respecting restraints upon transfer), Section 8.6 (respecting the condition of title to interests in real property) or Section 8.8 (respecting casualty losses or condemnation) (Sections 2.6, 2.8, 8.5, 8.6, 8.8, and this Section 2.9 being collectively referred to as the "Adjustment Sections"), then and in any of such events, such negotiations, and the resolution of disagreements, shall be conducted in accordance with the provisions of this Section 2.9. Subject to the last sentence of this Section 2.9, the parties shall negotiate such equitable adjustments in the Purchase Price in good faith prior to the Closing Date (as may be extended by mutual agreement of the parties), provided that any adjustment in the Purchase Price shall be consistent with the Allocation Schedule (if such schedule has been previously agreed upon). If the parties are unable to agree upon an adjustment by the fifth Business Day prior to the Closing Date, then such Closing Date (the "Original Closing Date") (and the Termination Date, if necessary) shall be extended to the fifth Business Day following completion of the procedure described in this Section 2.9 and the determination of the pertinent adjustment or, if longer, the fifth Business Day following any further regulatory approvals which may be necessary (but not more than 45 Business Days in the aggregate), to provide for the opportunity to resolve such disagreement pursuant to the provisions of this Section 2.9. On the day the Closing would have occurred but for the absence of agreement between the parties, each party shall designate an individual (who may not be a present or former officer, director, partner or employee of either party or of any present investment banking firm, accounting firm, law firm or attorney of or for either party or any of the party's Affiliates) to mediate such disagreement, and advise the other party in writing of the identity of such individual, which advice shall be accompanied by a list of up to 10 suggested neutral individuals to serve as a third mediator. The mediators originally designated by each party shall promptly confer about the selection of a third mediator from such lists, and within five Business Days following the Original Closing Date (or Termination Date, as the case may be), the originally designated mediators shall agree upon and (subject to availability) select the third mediator from the lists submitted by the parties or otherwise, provided that if the originally designated mediators cannot agree upon a third mediator by such date, the third mediator shall be a retired judge designated by Judicial and Arbitration Mediation Services, Inc., located in San Diego, California. The three mediators so selected are herein referred to as the "Panel." Within seven Business Days following the Original Closing Date or, if later, within three Business Days following the designation of the third mediator, each party shall submit to the Panel in writing, its proposed equitable adjustments in the Purchase Price. Such proposals shall be materially in accordance with the last proposals made by such party to the other party during the course of the aforementioned good faith negotiations between the parties. The parties shall additionally submit such memoranda, arguments, briefs and

evidence in support of their respective positions, and in accordance with such procedures, as a majority of the Panel may determine. Within five Business Days following the due date of such submissions, as to each adjustment of the Purchase Price about which there is disagreement, the Panel shall, by majority vote, select the proposed adjustment of the Purchase Price proposed by one of the parties, it being agreed that the Panel shall have no authority to alter any such proposal in any way. Such determination by the Panel shall be final and binding between the parties as to such adjustments of the Purchase Price and shall not be subject to further challenge by the parties pursuant to Section 13.9 hereof or otherwise. Thereafter, the parties shall, subject to the terms and conditions of this Agreement and the receipt of any further regulatory approvals that may become necessary as a result of such adjustments, consummate the Transactions on the basis of such adjustments at a mutually agreeable time and place or places, in accordance with and subject to the provisions of Article 10, which shall be no later than the fifth Business Day following the determination of such adjustments (and receipt of any necessary regulatory approvals therefor) or such later date as the parties may agree upon. Subject to the foregoing, the Panel may determine the issues in dispute following such procedures, consistent with the language of this Agreement, as it deems appropriate to the circumstances and with reference to the amounts in issue, but in any event consistent with the Allocation Schedule to the extent applicable. No particular procedures are intended to be imposed upon the Panel, it being the desire of the parties that any such disagreement shall be resolved as expeditiously and inexpensively as reasonably practicable. No member of the Panel shall have any liability to the parties in connection with service on the Panel, and the parties shall provide such indemnities to the members of the Panel as they shall request. In respect of equitable adjustments to the Purchase Price pursuant to the provisions of Section 2.6(c), the parties shall negotiate such equitable adjustments and conduct any resulting dispute resolution in the manner contemplated by and consistent with Section 2.6(c) and this Section 2.9.

2.10. ***[Reserved]***

2.11. Charitable Contribution

(a) The Contribution. Upon the satisfaction of the terms and conditions set forth in this Agreement by each of Buyer and Seller, at the Closing Seller shall make a charitable contribution to Buyer. The amount of any such charitable contribution shall be equal to the Appraised Value and the determination of the Appraised Value by the appraiser or appraisers shall be final, conclusive and binding upon Buyer.

(b) Appraisal. The appraisal of the Assets and the determination of the Appraised Value shall be performed and made by a duly qualified, independent and reputable appraiser or appraisers selected by Seller in its sole and reasonable discretion, provided that Seller shall meet and consult with Buyer in good faith concerning the selection of such appraiser or appraisers. The selection of the appraiser or appraisers and the commencement of the appraisal shall commence as soon as reasonably practicable after the Closing. All analyses, appearances, presentations, memoranda, arguments, opinions and proposals made or submitted to any appraiser in connection with the determination of the Appraised Value shall be made by Seller, it being the intent that the parties will consult and cooperate with one another, and consider in good faith the

views of one another, in connection with any such analysis, appearance, presentation, memorandum, argument, opinion and proposal; provided that in the event of a disagreement concerning any such analysis, appearance, presentation, memorandum, brief, argument, opinion or proposal to any appraiser, the determinations of Seller shall be controlling.

ARTICLE 3.

Representations and Warranties of Seller

Seller hereby represents and warrants to Buyer, as of the date hereof, as follows, except as set forth in Schedules numbered in relation to the Sections set forth below.

3.1. Organization and Corporate Power

Seller is a corporation duly incorporated and validly existing under the Laws of, and is authorized to exercise its corporate powers, rights and privileges and is in good standing in, the State of California and has full corporate power to carry on its business as presently conducted and to own or lease and operate its properties and assets now owned or leased and operated by it and to perform the transactions on its part contemplated by this Agreement and all other agreements contemplated hereby.

3.2. Authority and Enforceability

The execution, delivery and performance of this Agreement and all other agreements contemplated hereby and the consummation of the transactions contemplated hereby and thereby have been duly and effectively authorized by the board of directors of Seller; no other corporate act or proceeding on the part of Seller, its board of directors or its shareholders is necessary to authorize this Agreement, any such other agreement or the transactions contemplated hereby and thereby. This Agreement has been, and each of the other agreements contemplated hereby will, as of the Closing, have been, duly executed and delivered by Seller, and this Agreement constitutes, and each such other agreement when executed and delivered will constitute, a valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as it may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Laws now or hereafter in effect relating to creditors' rights generally and that the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding may be brought.

3.3. No Breach or Conflict

Subject to the provisions of Sections 3.4(a) and 3.4(b) below regarding private party and governmental consents, and except for compliance with the requirements of the Hart Scott Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), and any regulatory or licensing Laws applicable to the businesses and assets represented by the Assets, the execution, delivery and performance by Seller of this Agreement and the Related Agreements do not: (a) conflict with or result in a breach of any of the provisions of the Articles of Incorporation or Bylaws or similar charter documents (the "Charter Documents") of Seller; (b) contravene any

Law or cause the suspension or revocation of any License presently in effect, which affects or binds Seller or any of its properties, except where such contravention, suspension or revocation will not have a Material Adverse Effect (as defined below) on the Assets and will not affect the validity or enforceability of this Agreement and the Related Agreements or the validity of the Transactions contemplated hereby and thereby; or (c) conflict with or result in a breach of or default (with or without notice or lapse of time or both) under any material agreement or instrument to which Seller is a party or by which it or any of its properties may be affected or bound, the effect of which conflict, breach, or default, either individually or in the aggregate, would be a Material Adverse Effect on the Assets. As used herein, a "Material Adverse Effect": (x) when used with respect to the Assets, means a quantifiable material adverse economic effect on the Assets and on the operation thereof, taken as a whole; (y) when used with respect to any portion of the Assets (including the Plant), means a quantifiable material adverse economic effect on such portion of the Assets and on the operation thereof, taken as a whole; and (z) when used with respect to an entity, such as Seller or Buyer, means a quantifiable material adverse economic effect on the business, condition (financial or otherwise) and results of operations of such entity taken as a whole (including any subsidiaries of such entity) or on the ability of such entity to consummate the Transactions.

3.4. Approvals

(a) The execution, delivery and performance by Seller of this Agreement and the Related Agreements do not require the authorization, consent or approval of any Person that is not a Governmental Body of such a nature that the failure to obtain the same would have a Material Adverse Effect on the Assets or the Plant substantially as they have heretofore operated.

(b) The execution, delivery and performance by Seller of this Agreement and the Related Agreements do not require the authorization, consent, approval, certification, license or order of, or any filing with, any court or Governmental Body of such a nature that the failure to obtain the same would have a Material Adverse Effect on the Assets or the Plant, except for compliance with the HSR Act and approvals by the California Public Utilities Commission ("CPUC"), the United States Department of Justice (the "DOJ") and the Federal Energy Regulatory Commission ("FERC") necessary to consummate the Transactions and to permit Buyer to acquire the Assets, including the Plant and to generate electricity therefrom for sale, and as provided in Schedule 3.4(b).

3.5. Licenses

At the date hereof Seller possesses all Licenses necessary for its operation of the Plant at the locations and in the manner presently operated, other than those the absence of which would not have a Material Adverse Effect on the Assets or the Plant.

3.6. Compliance with Law

Except for the matters that are the subject of Sections 3.5 and 3.7 and the Schedules, if any, related thereto, to the best of Seller's Knowledge, it is in compliance in all material respects

with all pertinent Laws and Licenses related to the ownership and operation of the Assets, other than violations which would not, individually or in the aggregate, have a Material Adverse Effect on the ownership, use or operation of the Assets or on the ability of Seller to execute and deliver the Agreement and the Related Agreements and consummate the Transactions contemplated hereby and thereby.

3.7. Hazardous Substances

Except as set forth in Schedule 3.7, the Phase I and Phase II environmental site assessment reports prepared by Seller's outside environmental consultants and the other environmental documents made available for Buyer's inspection, or evidenced by the additional testing or investigations by Buyer, if any, pursuant to Section 6.4, to the best of Seller's Knowledge:

(a) There has not been a Release of Hazardous Material on or otherwise affecting the Remediation Parcels (other than Releases involving de minimis quantities of Hazardous Materials) that: (i) constitutes an unremedied material violation of any Environmental Law by Seller or by any third party if the effect of such violation by such third party imposes a current remediation obligation on the part of Seller; (ii) currently imposes any material release reporting obligations on Seller under any Environmental Law that have not been or are not being complied with; or (iii) currently imposes any material remediation clean up or obligations on Seller under any Environmental Law;

(b) Seller, during at least the last three years, has not had a material violation of the Environmental Law that governs the Plant;

(c) Seller has all material Licenses required under the Environmental Law for its operation of the Plant, is in compliance in all material respects with all such Licenses, and during the three year period preceding the date of the Agreement has not received any notice that: (i) any such existing License will be revoked; or (ii) any pending application for any new such License or renewal of any existing License will be denied;

(d) Seller has not received any currently outstanding written notice of any material proceedings, action, or other claim or liability arising under any Environmental Law (including notice of potentially responsible party status under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 et seq. or any state counterpart) from any Person or Governmental Body regarding the Remediation Parcels; and

(e) No portion of the Remediation Parcels contains or has ever contained any underground storage tank surface impoundment or similar device used for the management of wastewater, or other waste management unit dedicated to the disposal, treatment, or long term (greater than 90 days) storage of waste materials.

3.8. Title to Personal Property

Seller has good and defensible title, or valid and effective leasehold rights in the case of leased property, to all tangible personal property included in the Assets to be sold, conveyed,

assigned, transferred and delivered to Buyer by Seller, free and clear of all liens, charges, claims, pledges, security interests, equities and encumbrances of any nature whatsoever, except for those created or allowed to be suffered by Buyer and except for the following (individually and collectively, the "Permitted Encumbrances"): (i) the lien of current taxes not delinquent, (ii) the Assumed Liabilities, (iii) such consents, authorizations, approvals and licenses referred to in Sections 3.4(a) and 3.4(b), and (iv) liens, charges, claims, pledges, security interests, equities and encumbrances which will be discharged or released either prior to, or substantially simultaneously with, the Closing and other liens and possible minor matters that in the aggregate are not substantial in amount and do not materially detract from or interfere with the present or intended use of such property.

3.9. ***[Reserved]***

3.10. Contracts

Except for such matters which individually and in the aggregate do not have a Material Adverse Effect on the Assets, including the Plant, viewed in the aggregate, (a) there is no liability to any third party by reason of the default by Seller or any of its Affiliates under any Assumed Contract, (b) Seller has not received written or other notice that any Person intends to cancel or terminate any Assumed Contract, (c) all of the Assumed Contracts are in full force and effect, and (d) Seller has not granted any general power of attorney in respect of the Assets; provided that Seller makes no separate representation or warranty under this Section 3.10 respecting compliance with the provisions of any Assumed Contract related to compliance with Laws generally, Hazardous Materials, title to or condition of property, Licenses, environmental conditions, or Environmental Law, it being the intent of the parties that warranties respecting such matters shall be made exclusively under the provisions of Sections 3.5, 3.6, 3.7 and 3.8. Seller has previously made available for inspection by Buyer true and complete copies of all written Assumed Contracts except where the failure to so deliver a copy thereof will not have a Material Adverse Effect on Buyer.

3.11. Litigation

Except for (a) ordinary routine claims and litigation incidental to the businesses represented by the Plant (including actions for negligence, workers' compensation claims, so called "slip and fall" claims and the like), (b) governmental inspections and reviews customarily made of businesses such as those operated from the Plant, and (c) proceedings before regulatory authorities, there are no actions, suits, claims or proceedings pending, or to the best of the Knowledge of Seller, threatened against or affecting the Assets or relating to the operations of the Plant, at law or in equity, or before or by any Governmental Body.

3.12. ***[Reserved]***

3.13. Brokers

No broker, finder, or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with this Agreement or the Transactions contemplated hereby based

upon any agreements or arrangements or commitments, written or oral, made by or on behalf of Seller. Seller shall be solely responsible for the payment of any such fee or commission to any Person listed on Schedule 3.13 as an exception to the foregoing.

3.14. Assets Used in the Operation of the Plant

Subject to Seller's provision of materials and services pursuant to the O&M Agreement and the Facilities Services Agreement, and the transfer of certain of its real property rights pursuant to the Real Property Contribution Agreement, and its retention of equipment and property specifically delineated as Excluded Assets, there are no material assets or properties that are used in and necessary for the conduct of the operations of the Plant that are owned by Seller and which individually or in the aggregate are necessary for the operation of the Plant as currently operated by Seller that are not included in the Assets.

ARTICLE 4.

Representations and Warranties of Buyer

Buyer hereby represents, warrants and covenants to Seller, as of the date hereof, as follows, except as set forth in Schedules numbered in relation to the Sections set forth below.

4.1. Organization and Corporate Power

Buyer is a legal business entity duly formed and validly existing under the Laws of, and is authorized to exercise its powers, rights and privileges and is in good standing in, the State of California and has full power to carry on its business as presently conducted and to own or lease and operate its properties and assets now owned or leased and operated by it and to perform the transactions on its part contemplated by this Agreement and all other agreements contemplated hereby.

4.2. Authority and Enforceability

The execution, delivery and performance of this Agreement and the Related Agreements and the consummation of the transactions contemplated hereby and thereby have been duly and effectively authorized by the governing body of Buyer; no other act or proceeding on the part of Buyer or its commissioners is necessary to authorize this Agreement, any such Related Agreement or the transactions contemplated hereby and thereby. This Agreement has been, and each of the Related Agreements contemplated hereby will, as of the Closing, have been, duly executed and delivered by Buyer, and this Agreement constitutes, and each such Related Agreement when executed and delivered will constitute, a valid and binding obligation of Buyer, enforceable against Buyer, in accordance with its terms, except as it may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Laws now or hereafter in effect relating to creditors' rights generally and that the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding may be brought.

4.3. No Breach or Conflict

Subject to the provisions of Sections 4.4(a) and 4.4(b) below regarding private party and governmental consents, and except for compliance with the requirements of the HSR Act and any regulatory or licensing Laws applicable to the businesses and assets represented by the Assets, the execution, delivery and performance by Buyer of this Agreement and the Related Agreements do not: (a) conflict with or result in a breach of any of the provisions of the Charter Documents of Buyer; (b) contravene any Law or cause the suspension or revocation of any License presently in effect, which affects or binds Buyer or any of its material properties; or (c) conflict with or result in a breach of or default under any material agreement or instrument to which Buyer is a party or by which it or any of its properties may be affected or bound.

4.4. Approvals

(a) The execution, delivery and performance by Buyer of this Agreement and the Related Agreements do not require the authorization, consent or approval of any Person which is not a Governmental Body.

(b) The execution, delivery and performance by Buyer of this Agreement and the Related Agreements do not require the authorization, consent, approval, certification, license or order of, or any filing with, any court or Governmental Body (including Buyer in its capacity as a governmental authority), except for compliance with the HSR Act and approvals by the California State Lands Commission, the CPUC and the FERC necessary to consummate the Transactions and to permit Buyer to acquire the Assets, including the Plant and to permit Buyer or Lessee to generate electricity therefrom for sale.

4.5. Litigation

There are no actions, suits, claims or proceedings pending, or to the best of Buyer's Knowledge, threatened against Buyer likely to impair the consummation of the Transactions contemplated by this Agreement or otherwise material to the Transactions or to Buyer, and Buyer is not aware of facts likely to give rise to such litigation.

4.6. Brokers

No broker, finder, or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with this Agreement or the Transactions contemplated hereby based upon any agreements or arrangements or commitments, written or oral, made by or on behalf of Buyer.

4.7. Exculpation

Buyer agrees that except for the representations and warranties expressly set forth in this Agreement, the Assets are being sold on an "AS IS" basis and in "WITH ALL FAULTS" condition, and, without limiting the generality of the foregoing, SELLER MAKES NO WRITTEN OR ORAL REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE FITNESS, MERCHANTABILITY, OR SUITABILITY

OF THE ASSETS FOR ANY PARTICULAR PURPOSE OR THE OPERATION OF THE PLANT BY BUYER OR LESSEE.

4.8. Financing

Buyer currently intends to finance the purchase of the Assets, including the Plant by having (i) the California Maritime Authority issue bonds and (ii) the California Maritime Authority lend the proceeds of such bond issuance to Buyer. Buyer acknowledges that Section 8 and this Agreement do not provide for a financing contingency as a condition to Buyer's obligations to perform hereunder.

4.9. No Knowledge of Seller's Breach

Neither Buyer nor any of its Affiliates or representatives has Knowledge of any breach of any representation or warranty by Seller or of any other condition or circumstance that would excuse Buyer from its timely performance of its obligations hereunder. Buyer shall notify Seller as promptly as practicable if any such information comes to its attention prior to Closing.

4.10. Qualified for Licenses

To the best of Buyer's Knowledge, Buyer or Lessee is qualified to obtain any Licenses necessary for the operation by Buyer or Lessee of the Assets as of the Closing in the same manner as the Assets are presently operated by Seller.

4.11. Operational Qualifications

(a) Buyer has designated Lessee to (i) enter into a lease agreement, pursuant to which Lessee will obtain a leasehold interest with respect to the Plant, (ii) subject to the terms of the O&M Agreement, operate the Plant, and (iii) take an assignment of the Must-Run Agreement from Seller. Lessee has the qualifications, expertise, experience and ability necessary to operate the Plant in accordance with any and all requirements of the CPUC, the ISO, FERC or any other Governmental Body (including Buyer in its capacity as a governmental authority).

(b) Buyer has prior to the Closing delivered to Seller each agreement or document (and any and all amendments, supplements, modifications, or amendments and restatements thereto) relating to the designation and subject matter described in Section 4.11(a) above.

4.12. Intent to Decommission

(a) Buyer represents and warrants to Seller that Buyer intends to decontaminate, demolish, dismantle and otherwise decommission the Plant as soon as reasonably practicable (taking into account the obligations owing to the ISO after the Closing Date with respect to the Must-Run Agreement and the local reliability issues more particularly described therein and the terms and conditions of the lease agreement with Lessee).

(b) Buyer represents and warrants to Seller that it has taken no action or caused any action to be taken contrary and inconsistent with the representation and warranty set forth in clause (a) above, including entering into any arrangement to sell, lease or otherwise transfer the Plant or the Assets to any Person for the purpose of continued electric generation, other than the entering into of any agreements with Lessee as described in Section 4.11 regarding the operation of the Plant as an electrical generating facility from and including the Closing Date to the date upon which the Plant is decommissioned.

ARTICLE 5.

Covenants of Each Party

5.1 Expenses

Whether or not the Transactions contemplated hereby are consummated, except as otherwise provided in this Agreement, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such expenses. Notwithstanding the foregoing:

(a) All costs associated with obtaining preliminary title reports, title reports and title insurance (including any survey costs) shall be borne by Seller up to the costs that would have been incurred had the title policies been standard coverage policies of title insurance, and the remaining costs, if any, including costs for extended coverage and any endorsements shall be borne by Buyer. Further, premiums for title insurance related to the South Bay Land shall be borne by Buyer;

(b) All costs of the Phase I and Phase II environmental site assessments provided by Seller to Buyer, as described in Section 3.7, shall be borne by Seller, and any additional environmental assessments, including those authorized in Sections 6.1 and 6.4(d), shall be borne by Buyer;

(c) Costs associated with the report of Raytheon Engineers & Constructors, Inc., up to the scope of its initial engagement, shall be borne by Seller, and additional costs for services requested by Buyer, if any, shall be borne by Buyer;

(d) All escrow charges, appraisal fees, and charges of any neutral mediator appointed pursuant to Section 2.9 hereof, and related costs, shall be borne one-half by Buyer and one half by Seller (it being agreed that each party shall bear the costs of its own designated mediator under Section 2.9);

(e) Documentary transfer taxes will be borne by Seller, and recording costs and charges respecting real property will be borne one half by Buyer and one half by Seller;

(f) All fees and charges of Governmental Bodies (including Buyer in its capacity as a governmental authority) shall be borne by the party incurring the fee or

charge, except that all fees and charges of Governmental Bodies (including Buyer in its capacity as a governmental authority) in connection with the transfer, issuance, post-closing expiration, or authorization of any License shall be borne by Buyer;

(g) All liabilities or obligations for taxes in the nature of sales taxes incurred as a result of the sale of the Assets hereunder to Buyer shall be borne one half by Seller and one half by Buyer; and

(h) All fees, charges and costs of economists and other experts, if any, jointly retained by Buyer and Seller in connection with submissions made to any Governmental Body and advice in connection therewith respecting approval of the Transactions will be borne one half by Buyer and one half by Seller.

All such charges and expenses shall be promptly settled between the parties at the Closing or upon termination or expiration of further proceedings under this Agreement, or with respect to such charges and expenses not determined as of such time, as soon thereafter as is reasonably practicable.

5.2. Convenance of Transmission Property

(a) Subject to the Real Property Contribution Agreement and Section 5.2(b), each of Buyer and Seller agree and acknowledge that Seller shall convey the Transmission Property to Buyer pursuant to a quit claim deed (the "Transmission Property Deed"). Buyer and Seller agree and acknowledge that the granting clause of the Transmission Property Deed shall state that Seller is conveying the Transmission Property to Buyer in reliance on the exemptions contained in Section 66428 of the Government Code (the "Map Act Exemption"). Buyer agrees that the Map Act Exemption applies and shall not protest, hinder, challenge or otherwise interfere with or oppose Seller's reliance on the Map Act Exemption in respect of the conveyance of the Transmission Property.

(b) Nothing herein shall be construed as limiting or prohibiting Buyer from seeking either a lot line adjustment from the City of Chula Vista in respect of the Transmission Property, or a compliance certificate from the City of Chula Vista stating that the conveyance of the Transmission Property pursuant to the Transmission Property Deed complies with all applicable Laws. Seller agrees to cooperate with Buyer in preparing any materials, applications, or other documents required by the City of Chula Vista in connection with any such lot line adjustment or compliance certificate. As a matter of clarification, neither the lot line adjustment nor the certificate of compliance is a closing condition.

(c) Further, nothing herein shall be construed as limiting or prohibiting Buyer from seeking either a lot line adjustment from the City of Chula Vista in respect of the reconfiguration of certain parcels constituting the South Bay Site or the LNG Site, or a portion thereof, or a compliance certificate from the City of Chula Vista stating that the reconfiguration of any such parcels complies with all applicable Laws. Seller agrees to cooperate with Buyer in preparing any materials, applications, or other documents required by the City of Chula Vista in connection

with any such lot line adjustment or compliance certificate. As a matter of clarification, neither any lot line adjustment nor any certificate of compliance is a closing condition.

5.3. Conveyance of Electric Substation Site

(a) Subject to the Real Property Contribution Agreement and Section 5.3(c), each of Buyer and Seller agree and acknowledge that Seller shall convey the Electric Substation Site (as defined and described in Exhibit B of the ECA) to Buyer pursuant to a quit claim deed (the "Substation Property Deed"). Buyer and Seller agree and acknowledge that the granting clause of the Substation Property Deed shall state that Seller is conveying the Electric Substation Site to Buyer in reliance on the Map Act Exemption. Buyer agrees that the Map Act Exemption applies and shall not protest, hinder, challenge or otherwise interfere with or oppose Seller's reliance on the Map Act Exemption in respect of the conveyance of the Electric Substation Site.

(b) Nothing herein shall be construed as limiting or prohibiting Buyer from seeking either a lot line adjustment from the City of Chula Vista in respect of the Electric Substation Site, or a compliance certificate from the City of Chula Vista stating that the conveyance of the Electric Substation Site pursuant to the Substation Property Deed complies with all applicable Laws. Seller agrees to cooperate with Buyer in preparing any materials, applications, or other documents required by the City of Chula Vista in connection with any such lot line adjustment or compliance certificate. As a matter of clarification, neither the lot line adjustment nor the certificate of compliance is a closing condition.

ARTICLE 6.

Additional Covenants of Seller

Seller hereby additionally covenants, promises and agrees as follows:

6.1. Access

Subject to the restrictions set forth in the Three Party Agreement respecting confidentiality and provided that Buyer has complied with each and every provision thereof (including Buyer's obligations to cause Lessee to perform or refrain from performing certain actions), Seller shall afford Buyer, Lessee and their respective counsel, accountants, agents, consultants, lenders and other representatives of Buyer and Lessee, reasonable access, throughout the period from the date hereof to the Closing Date, to the Assets and the managerial personnel associated therewith and all the properties, books, contracts, commitments, and records included in the Assets which Seller has or to which it has access in order to facilitate transition planning. Such access shall be afforded to Buyer and Lessee after no less than 24 hours' prior notice, during normal business hours and only in such manner so as not to disturb or interfere with the normal operations of Seller. Seller's covenants under this Section are made with the understanding that Buyer and Lessee shall use all such information in compliance with all Laws. The foregoing notwithstanding, Buyer acknowledges and agrees that Buyer's and Lessee's access to the books and records of the

Assets shall not include access to, and Seller shall not have any obligation to deliver to Buyer or Lessee, any information concerning any alleged dispute or any pending litigation, investigation or proceeding involving Seller or its Affiliates that is protected by or subject to the attorney client privilege, or the disclosure of which is restricted by an agreement entered into in connection with such dispute, litigation, investigation or proceeding or an order entered by any court.

6.2. Updating

Seller shall notify Buyer of any changes or additions to any of Seller's Schedules to this Agreement with respect to the Plant or the Assets or Assumed Liabilities related thereto by the delivery of updates thereof, if any, as of a reasonably current date prior to the Closing not later than three Business Days prior to the Closing. No such updates made pursuant to this Section shall be deemed to cure any inaccuracy of any representation or warranty made in this Agreement as of the date hereof, unless Buyer specifically agrees thereto in writing, nor shall any such notification be considered to constitute or give rise to a waiver by Buyer of any condition set forth in this Agreement. Without limiting the generality of the foregoing, Seller shall notify Buyer reasonably promptly of the occurrence of (i) any material casualty, physical damage, destruction or physical loss respecting the Assets, or (ii) to the best of Seller's Knowledge, any material adverse change in the physical condition of the Plant, subject to ordinary wear and tear and routine maintenance, or (iii) to the best of Seller's Knowledge, any material change or addition to any fact or circumstance set forth in any of Seller's Schedules to this Agreement.

6.3. Conduct Pending Closing

Prior to consummation of the Transactions or the termination or expiration of this Agreement pursuant to its terms, unless Buyer shall otherwise consent in writing, which consent shall not be unreasonably withheld or delayed, and except for actions taken pursuant to Assumed Contracts, or which are required by Law or arise from or are related to the anticipated transfer of the Assets or the general restructuring of the electric utility industry, or as otherwise contemplated by this Agreement or disclosed in Schedule 6.3 or another Schedule to this Agreement, Seller shall:

(a) Operate and maintain the Assets only in the usual and ordinary course, materially consistent with practices followed prior to the execution of this Agreement, taking into account the requirements and dispatch instructions of the ISO;

(b) Except as required by their terms, not amend, terminate, renew, or renegotiate any existing material Assumed Contract or enter into any new Assumed Contract, except in the ordinary course of business and consistent with practices of the recent past, or default (or take or omit to take any action that, with or without the giving of notice or passage of time, would constitute a default) in any of its obligations under any such contracts;

(c) Not: (i) sell, lease, transfer or dispose of, or make any contract for the sale, lease, transfer or disposition of, any assets or properties which would be included in the Assets or in the South Bay Land, other than sales in the ordinary course of business

which would not individually, or in the aggregate, have a Material Adverse Effect upon the operations or value of the Assets, including the Plant; (ii) incur, assume, guaranty, or otherwise become liable in respect of any indebtedness for money borrowed which would result in Buyer assuming such liability hereunder after the Closing; (iii) delay the payment and discharge of any liability which, upon Closing, would be an Assumed Liability, because of the Transactions; or (iv) encumber or voluntarily subject to any lien any Asset or any of the assets and properties comprising the South Bay Land (except for Permitted Encumbrances);

(d) Maintain in force and effect the material property and liability insurance policies related to the Plant, the Assets and the South Bay Land;

(e) Not take any action which would cause any of Seller's representations and warranties set forth in Article 3 to be materially false as of the Closing;

(f) Not make Capital Expenditures, other than those contemplated on Schedule 2.6(c)(i), which would, pursuant to the provisions of Section 2.6(c), result in an upward adjustment of the Purchase Price pursuant to Section 2.6(c)(i) in excess of $1,000,000 in the aggregate, except for purchases under agreements in existence as of the date hereof that would constitute Assumed Liabilities as of such date, Capital Expenditures set forth on Schedule 2.6(c)(i), or Capital Expenditures otherwise approved in writing by Buyer; provided that nothing in this Section shall (i) obligate Seller to make expenditures other than in the ordinary course of business and consistent with practices of the recent past or to otherwise suffer any economic detriment, (ii) preclude Seller from paying, prepaying or otherwise satisfying any liability which, if outstanding as of the Closing Date, would be an Assumed Liability or an Excluded Liability, (iii) preclude Seller from incurring any liabilities or obligations to any third party in connection with obtaining such party's consent to any transaction contemplated by this Agreement or the Related Agreements provided such liabilities and obligations under this clause shall be Excluded Liabilities pursuant to Section 2.4(g) hereof if not approved in advance by Buyer (which approval shall not be unreasonably withheld or delayed), or (iv) preclude Seller from instituting or completing any program designed to promote compliance or comply with Laws, Licenses or other good business practices respecting the Plant.

6.4. Environmental Matters

(a) Remediation of Existing Soils Contamination. Seller shall remain responsible for the cost and performance of Remediation Measures for Existing Soils Contamination to the extent that such Remediation Measures are required under Environmental Law by a written order, notice or directive of any Governmental Body, or as otherwise set forth in Schedule 1.1(u). In addition, Seller may undertake such Remediation Measures as it reasonably determines are required under Environmental Law or which it otherwise reasonably believes are appropriate. Notwithstanding the foregoing, Seller shall have no obligation to undertake Remediation Measures in respect of environmental conditions that are excluded from Seller's Environmental Obligations by virtue of the provisions set forth in Section 1.1(w)(vi-ix). Seller shall not have any

responsibility for the cost or performance of Remediation Measures undertaken by Buyer, or any Affiliate of Buyer, except to the extent such costs are included in Losses (as defined in Section 12.3(a)) for which Buyer is entitled to indemnification under Article 12. With respect to any Remediation Measure undertaken by Seller pursuant to a written order, notice or directive of any Governmental Body, Seller shall be deemed to have discharged such undertaking and its obligations with respect thereto whenever it has performed such Remediation Measure and it has either received written notice from the pertinent Governmental Body or Bodies that no further material Remediation Measures are then required with respect to the Existing Soils Contamination in question or, if such Governmental Body or Bodies have not responded within six months to Seller's request for such written notice, whenever Seller has reasonably and in good faith determined that no further material Remediation Measures are required. With respect to any Remediation Measures undertaken by Seller pursuant to Schedule 1.1(u), Seller shall be deemed to have discharged such undertaking and its obligations with respect thereto whenever its has performed such Remediation Measure in accordance with the conditions and obligations set forth in Schedule 1.1(u).

(b) Performance of Work. The performance of Seller's Environmental Obligations are subject to the following:

(i) Seller reserves the exclusive right to negotiate and enter into agreements with any Person or Governmental Body regarding the nature, technical remediation approach, scope, clean-up objectives or any other aspect of any Remediation Measures undertaken by Seller. Buyer may retain technical consultants, at Buyer's sole cost and expense, to advise Buyer on the Remediation Measures.

(ii) Seller agrees that prior to proposing any work plan for Remediation Measures to a Governmental Body with jurisdiction over the Remediation Parcels under any Environmental Law, Seller will consult in good faith with Buyer regarding the nature, technical remediation approach, scope, and clean-up objectives of any Remediation Measures and the placement of and the location of Seller's remediation and testing equipment and give Buyer an opportunity to disclose in writing planned expansion or repowering of the Plant or any plan for use or development of the Remediation Parcels. Notwithstanding any other provision of this Agreement, if Buyer discloses or Seller otherwise learns of a development of the Remediation Parcels for a use other than industrial use, Seller shall have no obligation to perform any Remediation Measures unless and until Buyer provides Seller with reasonable assurances that Buyer can and will pay for all additional costs of the remediation to accommodate such other use.

Seller may propose as part of such work plan instruments imposing reasonable institutional controls (such as special requirements on how activities may be conducted at the Remediation Parcels to protect long-term Remediation Measures and Remediated Environmental Conditions and to prevent or reduce human exposure to Hazardous Materials) or land use controls (such as deed

restrictions and dedicated easements for placement and operation of Remediation equipment including groundwater pump and treatment facility wells and appurtenances), or both, be imposed on the Remediation Parcels. Seller will make such a proposal only if such institutional controls or land use controls are reasonably necessary to accomplish the method for achieving completion of the Remediation Measures proposed in such Remediation Measure work plan. Seller will consult with Buyer at least 30 days before making such proposal or request for such institutional controls or land use controls. If a Lender with a deed of trust, mortgage or other similar lien or encumbrance on the property requests reasonable modifications in such proposed institutional controls or land use controls as a condition of approving the imposition of such institutional controls or land use controls, and Buyer is required to obtain such approval under Buyer's agreements with such Lender, Seller shall make reasonable good faith efforts to modify such institutional controls or land use controls in order for Buyer to obtain such approval.

Subject to the extent of Seller's Environmental Obligations, Seller will not propose to a Governmental Body, having jurisdiction over the Existing Soils Contamination pursuant to Environmental Law, a method for completing the Remediation Measures (including the use of any institutional controls or land use controls) that: (A) is materially inconsistent with the then-current use of the Plant or any planned expansion or repowering of the Plant or other plan for use or development of the Remediation Parcels that has been disclosed in writing by Buyer to Seller during the consultation described above, or in any event before Seller provides Buyer with a copy of the final work plan; or (B) will materially decrease the economic value of the Plant.

Nothing contained in this Section shall be construed as limiting or modifying Buyer's obligations hereunder.

(iii) If Seller is undertaking the Remediation Measures under the supervision of a Governmental Body with jurisdiction over the Remediation Parcels under Environmental Law, Seller will use reasonable efforts to obtain written evidence of such Governmental Body's approval of such work plan and, if and when obtained, will provide Buyer with such evidence.

(iv) Seller will inform Buyer orally at least five business days in advance of all material Remediation Measures to be taken on the Remediation Parcels, which notice may be in the form of a periodic schedule of activities. No notice will be required for any Remediation Measures taken in connection with an emergency affecting Remediation Measures work. Seller will comply with any requirements applicable to Seller with respect to its Remediation Measures on the Remediation Parcels to notify a Governmental Body with jurisdiction over the emergency and will notify Buyer of actions taken in connection therewith as soon as reasonably practicable.

(v) Buyer understands that the Remediation Measures may interfere with the use of the Remediation Parcels after the Closing. Subject to the extent of Seller's Environmental Obligations, Seller will, to the extent reasonably practicable and consistent with sound remediation practices, undertake Remediation Measures in a manner that will not unreasonably disrupt operations on the Remediation Parcels and is not materially inconsistent with the then-current use of the Plant or any expansion or repowering of the Plant or other plan for the use or development of the property disclosed in writing by Buyer to Seller before Seller consulted with Buyer regarding the Remediation Measures work plan. All Remediation Measures work will be done in a good and workmanlike manner and in substantial compliance with Environmental Law.

(vi) After the completion of any Remediation Measures, Seller will make commercially reasonable efforts to restore the surface to a condition substantially similar to that existing at the time immediately prior to any such Remediation Measures, provided that no person other than Seller has taken actions at the Remediation Parcels so as to make such restoration impracticable or not commercially reasonable under the circumstances.

(vii) After the substantial completion of any Remediation Measures, Seller will provide to Buyer evidence that completion of the Remediation Measures have been achieved with respect to the Existing Soils Contamination, which will then be deemed to be a Remediated Environmental Condition.

(viii) Seller shall indemnify, defend and protect the Remediation Parcels in question, Buyer and any applicable lender from the imposition of any lien of contractors and subcontractors performing work in connection with the Remediation Measures.

(ix) Seller shall be responsible for, and indemnify, defend and protect Buyer and any applicable lender against, any property damage or personal injury incurred by Buyer or any other Person as a result of Remediation Measures conducted by or under the auspices of Seller.

(x) Seller shall, in connection with carrying out such Remediation Measures, comply with applicable Law, including Laws relating to worker safety.

(xi) Seller shall permit the Buyer to have one or more representatives present to observe physical work conducted at the Plant in the course of carrying out such Remediation Measures, and provide Buyer with reasonable access to and copies of records concerning the performance of such physical work.

(c) Buyer Covenants. With respect to Seller's rights and obligations in respect of Remediation Measures, Buyer agrees as follows:

(i) In addition to any other licenses or easements granted by Buyer or retained by Seller, Buyer grants to Seller a non-exclusive license for the purpose of conducting Remediation Measures of Existing Soils Contamination in, on, under over, and in the vicinity of the plant, subject to the terms and conditions of this Agreement. Buyer agrees to: (A) cooperate with Seller's Remediation Measures; (B) assist Seller in obtaining access to the Site; (C) it will comply, and will use commercially reasonable efforts to obtain access to offsite property for Seller if necessary for the implementation of the Remediation work; and (D) to the extent consistent with Environmental law and the protection of human health, support Seller in its negotiations with any Governmental Body with respect to the Remediation Measures so long as Seller is in material compliance with its obligations under this Section.

(ii) Buyer acknowledges that Seller will have sole responsibility for undertaking the Remediation Measures of Existing Soils Contamination; and, therefore, Buyer will not initiate or permit the initiation of any Remediation Measures of the Existing Soils Contamination or submit, or cause to be submitted, orally or in writing, any information or comments to any Governmental Body concerning Existing Soils Contamination or Remediation Measures thereof (other than documents or information routinely and customarily submitted to such Governmental Body or submissions made in connection with Buyer's applications for permits and approvals required to implement a plan of improvement of the Plant, expansion, repowering, development or dismantling, decommissioning or removal of power generation units or oil tanks or other equipment as described in this Section) without the prior written consent of Seller, unless in the reasonable judgment of Buyer such actions are required by Environmental Law or to protect the immediate health and safety of individuals in the vicinity of the Remediation Parcels. Buyer will notify Seller as soon as reasonably possible of any information received by Buyer from any Person other than Seller regarding the presence or suspected presence of Hazardous Materials that Buyer believes to be an Existing Soils Contamination.

(iii) Buyer will not relocate, disturb or interfere with, or permit the relocation, disturbance, or interference with, the equipment used by Seller for any Remediation Measures without obtaining Seller's prior written consent unless such actions are required by Environmental Law or to protect the immediate health and safety of individuals in the vicinity of the Remediation Parcels. Upon written request from Buyer, Seller will within a reasonable period of time relocate such equipment to accommodate Buyer's operations or any expansion or repowering of, or other development plan for, the Plant, to the extent such relocation can be accomplished without materially delaying or disrupting the Remediation Measures.

(iv) Buyer will notify Seller at least 10 business days in advance, and will consult in good faith with Seller, before commencing any planned material extraction, excavation or removal of any soil or groundwater or both at the Remediation Parcels in an area that Seller has disclosed to Buyer (including by

making the Phase I and Phase II Reports and other pertinent documents and reports available to Buyer) to be affected by Existing Soils Contamination, or commencing any other action that could materially disrupt or disturb such soil or groundwater or both in such area of the Remediation Parcels.

(A) If Buyer undertakes any activities permitted under this Section affecting soil or groundwater or both at the Remediation Parcels (including any decommissioning, dismantling, or development activities, or any extraction, excavation or removal of any soil or groundwater or both at the Remediation Parcels), or undertakes any interactions with Governmental Authorities with jurisdiction over the Remediation Parcels under Environmental Law permitted under this Section. Buyer will undertake such activities and interactions in a manner designed to avoid, to the extent reasonably practicable and reasonably consistent with achieving Buyer's development goals, the following: (a) increasing the risk that a Governmental Body would require Remediation Measures relating to any Existing Soils Contamination; (b) increasing the cost of any such Remediation Measures; (c) increasing the risk of human exposure to Hazardous Materials; or (d) increasing the risks that a Third-Party Claim with respect to an Existing Soils Contamination or the Remediation Measures thereof, could arise.

(B) Furthermore, in undertaking any such activities affecting soil or groundwater or both at the Remediation Parcels, Buyer shall (a) comply with all applicable Environmental Law; (b) adhere to prudent engineering practices and procedures; and (c) exercise due care in connection with any disruption, disturbance or excavation of soil or groundwater or both known to be contaminated with any Hazardous Materials and the handling, removal and disposal of any such contaminated soil or groundwater or both.

(C) If Buyer undertakes any activities under this Section affecting soil or groundwater or both at the Remediation Parcels, and such activities affect an Existing Soils Contamination, Seller will only be responsible for such condition to the extent set forth in Section 6.4(a) and will discharge the obligations set forth therein. If and to the extent that Seller is not responsible for such condition under this Agreement, Buyer shall bear all costs and expenses associated with its activities, including the costs and expenses associated with the removal, management and disposal of any soil or groundwater or both, even if such soil or groundwater or both have been affected by Hazardous Materials.

If Buyer disturbs, or performs Remediation Measures activities relating to any Remediated Environmental Condition necessary for development, improvement or expansion of operations at the Remediation Parcels, Buyer shall bear all costs and expenses associated with, and shall obtain all consents and approvals from Governmental Bodies necessary for, any such disturbance and Remediation Measures activities, and shall reimburse Seller for any losses, damages, costs or expenses incurred by Seller in connection with such Buyer activities and disturbance of Remediated Environmental Conditions.

Buyer shall reimburse Seller for any reasonable losses, damages, costs or expenses arising from: (a) the relocation at Buyer's request of the equipment used by Seller for the Remediation Measures of any Existing Soils Contamination or any Remediated Environmental Conditions subject to long-term Remediation Measures, including any increased costs or expenses reasonably incurred in conducting such Remediation Measures; and (b) exacerbation of an Existing Soils Contamination due to Buyer's negligence or willful misconduct or Buyer's activities under Section 6.4(c)(iv). Buyer will reimburse Seller for the losses, damages, costs and expenses for which Buyer is responsible hereunder within 30 days after Buyer's receipt of documentation of Seller's incurrence of such losses, damages, costs and expenses.

(v) Until such time as Seller provides to Buyer evidence that Seller has completed its Remediation Measures with respect to an Existing Soils Contamination, Seller and Buyer will, upon the written request of the other Party, provide to the requesting Party copies of all material reports, correspondence, notices and communications regarding any Existing Soils Contamination or the Remediation Measures thereof sent to or received from any Governmental Body with jurisdiction under Environmental Law over such Remediation Measures.

(vi) Buyer will assign to Seller any interest which Buyer may have in any recovery, settlement, judgment or claim for payment or reimbursement by any Person of: (A) costs incurred by Seller in connection with any Existing Soils Contamination, Remediated Environmental Conditions (to the extent further Remediation Measures work are required from Seller with respect to such Remediated Environmental Conditions) or the Remediation Measures thereof; or (B) costs incurred by Seller in connection with any indemnification by Seller of the Buyer, in each case up to the amount expended by Seller or which Seller is obligated to pay under this Agreement.

(vii) Buyer agrees that it will not develop the Remediation Parcels for use as a permanent or temporary lodging (including hotels, motels, and the like), hospital or other healthcare facility, school, day care center for children, park, playground or other recreational use unless and until Seller receives written confirmation from all appropriate, applicable, and relevant Governmental Bodies with jurisdiction over the Remediation Parcels under Environmental Law that all Hazardous Materials present at the Remediation Parcels have been remediated as required by any and all applicable Environmental Law, taking into account the desired use of such property. If the property is already being used for such purposes, Buyer may permit such existing use of the property to continue, but Buyer will not permit any new or expanded use of the property (including expanding the portion of the property so used) for such purposes without complying with the foregoing remediation requirements.

If and to the extent that Buyer develops the property for any use(s) other than fossil-fuel electric generation or a substantially similar industrial use, Buyer

shall release, indemnify, defend and hold harmless Seller from and against all damages, claims, losses, liabilities (including liabilities under Environmental Law) and expenses, including reasonable legal, accounting and other expenses, which arise out of or relate to any such development or use(s).

(viii) Subject to Buyer's obligations under this Section and subject to the restrictions set forth in future institutional controls and land use controls imposed on the Remediation Parcels pursuant to this Section, nothing contained herein precludes Buyer from undertaking the following activities:

(A) applying for governmental permits and approvals required to implement the Plant improvement, power plant expansion or any development plan, or dismantling, decommissioning or removal of power generation units or oil tanks or other equipment not needed for Buyer's operations, or making due diligence inquiries to Governmental Bodies in good faith in connection with the sale, lease or financing of the Remediation Parcels;

(B) undertaking routine operations and installations and repair of utilities, structures and equipment in the course of Buyer's ongoing operations or expansion of Buyer's ongoing operations;

(C) conducting or causing to be conducted environmental assessments or tests of the Remediation Parcels in connection with a proposed sale, lease or financing of the Remediation Parcels, or in connection with the commencement of development activities, each to the extent such assessment activity is customary and consistent with prudent utility practices. If such assessment discloses any Existing Soils Contamination, Buyer will promptly notify seller of such tact in writing and will provide Seller with a copy of such report unless such report is privileged or subject to a confidentiality agreement that prevents Buyer from providing the assessment to Seller; or

(D) decommissioning, dismantling or removing any improvements (including the oil storage tanks or power generating Plant existing on the Remediation Parcels) and developing the Remediation Parcels;

(ix) Buyer shall provide Seller and its representatives and agents with reasonable access to environmental and other relevant records (other than those which are privileged) respecting the Remediation Parcels as reasonably necessary for the purpose of carrying out such Remediation Measures and will provide Seller with copies of all material correspondence and communications with Governmental Bodies about Existing Soils Contamination and Remediation Measures or otherwise pertaining to Seller's Environmental Obligations;

(x) Buyer will not submit, or cause to be submitted, to any Governmental Body any information or comments concerning any Existing Soils

Contamination or Remediation Measures undertaken by Seller except for information submitted to Governmental Bodies as required by Law; and

(xi) Buyer will consult with Seller in good faith prior to extracting, excavating or removing any soil or groundwater at the Plant or otherwise disturbing or disrupting the same and will otherwise make reasonable efforts to avoid taking any action, and will take reasonable steps to cause others to avoid taking any action, that will increase or accelerate any of Seller's Environmental Obligations hereunder including with respect to Remediation Measures, it being understood, however, that nothing herein shall prohibit Buyer from engaging in any expansion or repowering of the Plant.

(d) Additional Buyer's Due Diligence. During the period from the date hereof to the earlier of the Closing Date or the date which is 90 days after the date hereof, Seller shall, (i) subject to the conditions of this paragraph (d), permit Buyer (or Lessee), if it shall so elect, to enter upon any and all of the Remediation Parcels for the purposes of inspecting same, making tests, taking samples and soil borings, and/or conducting groundwater studies and such other investigations all as are set forth on Schedule 6.4(d) in order to determine if there is any Existing Soils Contamination other than as indicated on Schedule 3.7 and (ii) to enter upon the Electric Substation Site for purposes of inspecting same, making tests, taking samples and soil borings and/or conducting ground water studies, provided that, within 10 days of the date hereof, Buyer provides written notice to Seller of Buyer's intent to undertake additional due diligence pursuant to this Paragraph and a written schedule for completing the due diligence prior to 90 days from the date hereof or the Closing, whichever is sooner. The schedule for completion shall include a reasonable time for Seller to review and comment on Buyer's scope of work and any written report generated as a result of Buyer's diligence prior to such scope of work and/or written report being finalized. The completion of Buyer's due diligence or any written report related thereto shall not be a condition precedent to Buyer's obligation to close. All such activity and testing shall be at Buyer's sole cost, and Buyer shall deliver to Seller promptly after it is prepared by or on behalf of Buyer, and in any event promptly upon Buyer's receipt, all drafts of any written report prepared by Buyer or its representatives or consultants regarding such activities and all reports of tests taken. If a final written report on such activities is prepared by an outside consultant utilized by Buyer and approved by Seller and such report is delivered to Seller prior to the Closing and indicates the existence of Existing Soils Contamination in connection with the Remediation Parcels not otherwise described on Schedule 3.7, then the additional Existing Soils Contamination reported therein shall be deemed to be a condition of which Seller has Knowledge for purposes of Section 1.1(e). Buyer agrees and acknowledges that neither its additional due diligence nor the results thereof affect or may be used to modify its responsibilities for Plant Decommissioning Costs as defined in Section 1.1(s) and Schedule 1.1(s). Notwithstanding the foregoing, Buyer's right to conduct such activities shall be subject to the following:

(i) Buyer shall retain a reputable environmental consulting firm for the purposes of conducting any such investigation, which firm shall be subject to

Seller's prior written approval, which will be granted or denied in Seller's sole discretion;

(ii) The activities of Buyer and its representatives and consultants under this paragraph shall not interfere with normal operation of or safety at the Remediation Parcels or the Electric Substation Site;

(iii) Buyer shall give Seller a sufficient opportunity to review and accept the scope of the proposed activities at the Remediation Parcels or the Electric Substation Site prior to the first such entry at the Remediation Parcels or the Electric Substation Site, and any written report prepared by Buyer related to its additional due diligence. Any acceptance by Seller hereunder of any workplan, report or other document shall not constitute acceptance by Seller of the conclusions or interpretations set forth therein, but shall only evidence Seller's acceptance of such document for purposes of preparing Schedule 6.4(d), and such acceptance may not be used (including as evidence in any subsequent dispute) for any other purpose;

(iv) Buyer shall notify Seller at least two Business Days prior to each entry on the Remediation Parcels or the Electric Substation Site to conduct such activities at the Plant;

(v) All activities undertaken in connection with such investigation shall fully comply with applicable Law, including Environmental Law (e.g., laws relating to worker safety and to proper disposal of samples taken and any soil or water generated in the process of taking the samples);

(vi) Seller shall be permitted to have one or more of its representatives present during all such investigations, and may take split samples, and copy the results of onsite testing and visual inspections, and shall have complete access to all samples taken, test results, and boring records;

(vii) In the event the Transactions are not consummated for any reason, Buyer shall, at its own cost, cause the property to be restored to substantially its condition prior to such investigative activities;

(viii) Buyer shall take all actions and implement all protections necessary to ensure that actions taken under this paragraph (d), and equipment, materials and substances generated, used or brought onto the Remediation Parcels and the Electric Substation Site pose no threat to the safety or health of individuals or the environment and cause no damage to the property of Seller or any other Person;

(ix) Buyer shall be responsible for, and shall defend, indemnify and hold Seller harmless from and against, any and losses Seller sustains or suffers by reason of any property damage or personal injury incurred by Seller or any other Person arising out of or in connection with Buyer's activities under this paragraph (d);

(x) Any written or recorded materials or information generated as part of or in connection with such activities of Buyer shall be deemed to be confidential information of Seller for purposes of Section 7.3 of the Three Party Agreement; and

(xi) On or before Buyer undertakes any activity at the Remediation Parcels or the Electric Substation Site pursuant to Section 6.4(d) and thereafter during the performance of such activity, Buyer shall provide Seller with current certificates of insurance, executed by a duly authorized representative of each insurer, as evidence of all insurance polices required under this Section 6.4(d)(xi). Said policies shall provide that they may not be canceled, material revised, or non-renewed without at least 30 days prior written notice being given to Seller. Insurance must be maintained without lapse in coverage during the performance of such activity. In the case of a covered occurrence, upon the reasonable request by Seller, Seller shall also be given copies of Buyer's policies of insurance.

(a) Additional Insured. Seller shall be named as an additional insured in the general liability and pollution liability policies. Such insurance polices shall provide a severability of interest or cross-liability clause.

(b) Primary Coverage. The required policies, and any of Buyer's policies providing coverage excess of the required polices, shall provide that the coverage is primary for all purposes and Buyer will not seek any contribution from any insurance or self-insurance maintained by Seller.

(c) Company Ratings. All required policies of insurance must be written by companies having an A. M. Best rating of "A-" or better, or equivalent.

(d) Deductible: Retentions. Buyer shall be solely responsible for any deductible or self-insured retention on insurance required hereunder.

(e) Required Insurance. At all times during this Agreement, Buyer shall provide and maintain, at its own expense, the following types of insurance:

(1) General Liability Insurance. Buyer shall maintain an occurrence from commercial general liability policy, or policies, including coverage for sudden and accidental pollution liability on land and on water, insuring against liability arising from bodily injury, property damage, personal and advertising injury, independent contractors liability, products and completed operations and contractual liability. Such coverage shall be in an amount of not less than $5,000,000.00 combined single limit per occurrence.

(2) Automobile Liability Insurance. In the event that automobiles are used in connection with Buyer's activities under Section 6.4(d),

Buyer shall maintain an automobile liability policy or policies insuring against liability of damages because of bodily injury, death, or damage to property, (including loss of use thereof), and occurring in any way related to the use, loading or unloading of any of Buyer's automobiles (including owned, hired and non-owned vehicles). Coverage shall be in an amount of not less than $1,000,000.00 each accident.

(3) Worker's Compensation Insurance. In accordance with the laws of the State or States in which work will be performed, Buyer shall maintain in force worker's compensation insurance for all of its employees in accordance with statutory requirements. If applicable, Buyer shall obtain U.S. Longshoremen's and Harbor Worker's compensation insurance, separately, or as an endorsement to worker's compensation insurance. Buyer shall also maintain employer's liability coverage in an amount of not less than $1,000,000.00 per accident and per employee for disease. In lieu of such insurance, Buyer may maintain a self-insurance program meeting the requirements of the State or States in which work will be performed along with the required employer's liability insurance.

(4) Professional and Pollution Liability Insurance. Buyer shall maintain professional and pollution liability insurance including sudden and accidental pollution in an amount of not less than $5,000,000.00 per occurrence.

(f) Waiver of Subrogation. Each policy of property, general liability and automobile (including automobile physical damage) insurance maintained by Buyer shall contain a waiver of subrogation in favor of Seller.

Insurance requirements set forth above do not in any way limit the amount or scope of liability of Buyer under this agreement. The amount listed indicate only the minimum amounts of insurance coverage Seller is willing to accept to help insure full performance of all terms and conditions of this agreement.

(xii) Buyer shall take all necessary precautions for the safety of its employees and Seller employees on the job site and prevent accidents or injury to all individuals on, about, or adjacent to the construction job site. In addition, Buyer shall erect and properly maintain at all times, as required by the conditions and progress of the activities, all necessary safeguards and warnings for the protection of its employees, Seller employees and the public.

(a) Buyer shall comply fully with all laws, orders, citations, rules, regulations, standards and statutes with respect to occupational health and safety, the handling and storage of Hazardous Materials, accident prevention, safety equipment and practices including the accident prevention and safety program of Seller. Buyer shall conduct inspections to determine that safe working conditions and equipment exist and accepts sole responsibility for providing a safe

place to work for its employees and for employees of its subcontractors and suppliers of material and equipment, for adequacy of and required use of all safety equipment and for full compliance with the aforesaid laws, orders, citations, rules, regulations, standards and statutes.

(b) Buyer shall furnish Seller with copies of all accident reports, promptly reporting any accident or injury to any of the employees. agents or servants of subcontractor used or utilized on the Services.

(c) Buyer agrees to employ labor in accordance with all applicable safety codes, including but not limited to federal, state, and local safety codes.

(d) At all times during the course of performing the activities under Section 6.4(d), Buyer shall perform the activities, including any necessary clean-up, so as to maintain the job site in a clean, safe and orderly condition. Upon completion of the activities, Buyer shall (1) clean all surfaces, fixtures, equipment and other items which may have been soiled by such activities; and (2) remove from the job site and legally dispose of all tools, equipment, machinery and other items incidental to Buyer's operations, including all Hazardous Materials. Buyer shall follow all directions of Seller in regard to clean-up both during the course of, and upon completion of, the activities, Seller shall be entitled to charge Buyer for any costs of clean-up if Buyer fails to clean-up the Remediation Parcels within 48 hours after demand by Seller.

ARTICLE 7.

Additional Covenants of Buyer

7.1. Waiver of Bulk Sales Law Compliance

Subject to the indemnification provisions of Section 12.3(a)(iii) hereof, Buyer hereby waives compliance by Seller with the requirements, if any, of Article 6 of the Uniform Commercial Code as in force in any state in which Assets are located and all other similar Laws applicable to bulk sales and transfers.

7.2. Resale Certificate

Buyer agrees to furnish to Seller any resale certificate or certificates or other similar documents reasonably requested by Seller to comply with pertinent sales and use tax laws.

7.3. Conduct Pending Closing

Prior to consummation of the Transactions contemplated hereby or the termination or expiration of this Agreement pursuant to its terms, unless Seller shall otherwise consent in writing, Buyer shall not take any action which would cause any of Buyer's representations and warranties set forth in Article 4 to be materially false as of the Closing.

7.4. Securities Offerings

Buyer hereby agrees to indemnify and hold harmless Seller and each of its Affiliates, in accordance with the provisions of Section 12.4(a)(ii), against any and all Losses, as incurred, arising out of the offer or sale by Buyer of securities, except to the extent that such Loss arises from any untrue statement or alleged untrue statement of a material fact contained in any such securities offering materials or prospectus used by Buyer or its representatives, or from the omission or alleged omission therefrom of a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, which untrue or alleged untrue statement or omission or alleged omission is made in reliance upon and in conformity with written information furnished to Buyer by Seller under a cover letter from Seller's counsel stating that such information is expressly for use in such offering materials or prospectus.

7.5. Notice of Plant Closure

Without in any way limiting Buyer's notice obligations under the O&M Agreement or the Facilities Services Agreement, Buyer shall provide Seller with 90 days' prior notice before shutting down the Plant or any material portion thereof (other than on a temporary basis) prior to the expiration of 90 days following the Closing.

7.6. Release

Except to the extent of Seller's obligations hereunder or under any Related Agreement, including its obligations under Section 6.4, under Article 12 and under Article 3, Buyer hereby waives its right to recover from Seller and forever releases and discharges Seller from any and all damages, claims, losses, liabilities, penalties, fines, liens, judgments, costs, or expenses whatsoever (including attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with the application of any Environmental Law to Seller's ownership, possession, use or operation of the Assets prior to the Closing. In this regard, Buyer expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR EXPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM MUST HAVE MATERIALLY AFFECTED THE SETTLEMENT WITH THE DEBTOR."

7.7. Future Generators

Buyer agrees that it shall not construct, develop or locate any gas or steam powered turbine(s), heat recovery steam generator(s), or electric generator(s) on that portion of the South Bay Site situated north of Telegraph Canyon Creek, as more fully identified in Exhibit H attached hereto. Such restriction shall be reflected in the grant deeds delivered by Seller hereunder as a "covenant running with the land" (as defined under California Civil Code § 1461 et seq.) and shall be binding upon Buyer and its successors and assigns and upon all future owners of the South Bay

Site. The City and Redevelopment Agency of Chula Vista shall be deemed beneficiaries of such covenant, with full right and authority to enforce same.

ARTICLE 8.

Buyer's Conditions to Closing

The obligations of Buyer to consummate the Transactions with respect to each Plant and the Assets and Assumed Liabilities related thereto shall be subject to fulfillment at or prior to the Closing of the following conditions, unless Buyer waives in writing such fulfillment:

8.1. Performance of Agreement

Seller shall have performed in all material respects its agreements and obligations contained in this Agreement required to be performed on or prior to the Closing.

8.2. Accuracy of Representations and Warranties

The representations and warranties of Seller set forth in Article 3 of this Agreement shall be true in all material respects as to the Plant or Assets in question and as of the date of this Agreement (unless the inaccuracy or inaccuracies which would otherwise result in a failure of this condition have been cured as of the Closing) and as of the Closing (as updated by the revising of Schedules contemplated by Section 6.2) as if made as of such time, provided that any such update shall not have disclosed any material adverse change in the physical condition, ownership, or transferability of the Assets.

8.3 Officers' Certificate

Buyer shall have received from Seller an officers' certificate, executed on Seller's behalf by its chief executive officer, president, chief financial officer or treasurer (in his or her capacity as such) dated the Closing Date and stating that the conditions in Sections 8.1 and 8.2 above have been met.

8.4. Approvals

(a) The waiting period under the HSR Act shall have expired or been terminated, and, subject to the provisions of Section 2.8, all approvals, consents, authorizations and waivers from Governmental Bodies (including Buyer in its capacity as a governmental authority) and all approvals, consents, authorizations and waivers from other third parties (collectively "Approvals") required for Buyer to operate the Plant materially in accordance with the manner in which it was operated by Seller prior to the Closing, shall have been obtained.

(b) Without limiting the generality of the foregoing, the CPUC shall have approved Seller's application to sell the Assets in accordance with the terms hereof

pursuant to Section 851 of the California Public Utilities Code, and Buyer shall have approved any modifications to this Agreement and to the Transactions required by the CPUC, any conditions to the effectuation of the Transactions required by the CPUC, and restrictions, if any, upon Buyer's ownership and operation of the Assets imposed by the CPUC, to the extent that such modifications, conditions and restrictions, if any, are not contemplated by this Agreement and the Related Agreements and would, individually or in the aggregate, result in a Material Adverse Effect upon Buyer or its ownership and operation of the Assets after the Closing, it being agreed that Buyer shall be deemed to have approved of such CPUC decision and any such modifications, conditions or restrictions contained therein that are not disapproved by Buyer in a notice to Seller given no later than five Business Days following such decision by the CPUC.

8.5. No Restraint

There shall be no:

(a) Injunction, restraining order or order of any nature issued by any court of competent jurisdiction or Governmental Body which directs that the Transactions contemplated hereby shall not be consummated as herein provided or compels or would compel Buyer to dispose of or discontinue, or materially restrict the operations of, the Plant or any significant portion of the Assets with respect thereto as a result of the consummation of the Transactions contemplated hereby;

(b) Suit, action or other proceeding by any Governmental Body pending or threatened (pursuant to a written notification), wherein such complainant seeks the restraint or prohibition of the consummation of the Transactions or seeks to compel, or such complainant's actions would compel, Buyer to dispose of or discontinue, or materially restrict the operations of, the Plant or any significant portion of the Assets with respect thereto as a result of the consummation of the Transactions contemplated hereby; or

(c) Action taken, or Law enacted, promulgated or deemed applicable to the Transactions by any Governmental Body which would render the purchase and sale of the Assets illegal or which would threaten the imposition of any material penalty or material economic detriment upon Buyer if such purchase and sale were consummated; provided that, the parties will use their reasonable efforts to litigate against, and to obtain the lifting of, any such injunction, restraining or other order, restraint, prohibition, action, suit, Law or penalty.

8.6. Title Insurance

Title to Assets comprised of interests in real property sold to Buyer hereunder or contributed to Buyer pursuant to the Real Property Contribution Agreement shall have been evidenced by the willingness of Stewart Title Company (or an Affiliate thereof) (the "Title Insurer") to issue at regular rates ALTA owner's, or lessee's, as the case may be, extended coverage policies of title insurance (1990 Form B) (the "Title Policies"), with the general survey

and creditors' rights exceptions removed, in amounts equal to the respective appraised value of such interests, showing title to such interests in such real property vested in Buyer subject to transfer of such interest to Buyer. Such Title Policies shall show title vested in Buyer subject to:

(a) A lien or liens to secure payment of real estate taxes not delinquent;

(b) Exceptions, including survey exceptions disclosed by the current standard ALTA Preliminary Title Reports, delivered to and approved by Buyer prior to the date hereof (as set forth on Schedule 8.6(b) and as indicated by Buyer's signature of approval appended to Schedule 8.6(b));

(c) Matters created by, or with the consent of, Buyer; and

(d) Other possible minor matters that in the aggregate are not substantial in amount and do not materially detract from or interfere with the present or intended use of such real property, including such minor matters as may be disclosed by surveys taken after the date hereof.

The willingness of the Title Insurer to issue the Title Policies shall be evidenced either by the issuance thereof at the Closing or by the Title Insurer's delivery of written commitments or binders, dated as of the Closing, to issue such Title Policies within a reasonable time after the Closing Date, subject to actual transfer of the real property in question. If the Title Insurer is unwilling to issue any such Title Policy, it shall be required to provide Buyer and Seller, in writing, notice setting forth the reason(s) for such unwillingness as soon as practicable. Seller shall have the right to seek to cure any defect which is the reason for such unwillingness, and to extend the Closing and the Termination Date, if necessary, for a period of up to 10 Business Days to provide to Seller the opportunity to cure. In the event that, despite Seller's efforts to cure, the Title Insurer remains unwilling to issue any such Title Policy on the Closing Date (as may be extended as provided herein), then, at the election of Buyer, and without affecting the other conditions of the parties to consummation of the Transactions, such real property interests not covered by such a Title Policy shall not be included in the Assets and shall be deemed to be Excluded Assets, and liabilities associated therewith that would otherwise be Assumed Liabilities shall be deemed to be Excluded Liabilities; and Buyer and Seller shall negotiate in good faith prior to the Closing Date an adjustment in the Purchase Price based on the Allocation Schedule. If the parties cannot agree upon such adjustment, then the disagreement shall be resolved in accordance with Section 2.9. Notwithstanding the foregoing, Buyer may accept such title to any such property interests as Seller may be able to convey, and such title insurance with respect to the same as the Title Insurer is willing to issue, in which case such interests shall be conveyed as part of the Assets without reduction of the Purchase Price or any credit or allowance against the same and without any other liability on the part of Seller.

8.7. Related Agreements

Seller shall have executed and delivered as of the Closing, each of the Related Agreements related to the Plant and Buyer shall have received from Seller an officers' certificate, in form and substance reasonably acceptable to Buyer, executed on Seller's behalf by its chief executive

officer, president, chief financial officer or treasurer (in his or her capacity as such) dated as of the Closing Date and certifying that each of the Related Agreements executed prior to the Closing are in full force and effect.

8.8. Casualty; Condemnation

(a) Casualty. If any part of the Assets related to the Plant is damaged or destroyed (whether by fire, theft, vandalism or other casualty) in whole or in part prior to the Closing, and the fair market value of such damage or destruction or the cost of repair of the Assets that were damaged, lost or destroyed is less than 15 percent of the aggregate Purchase Price, Seller shall, at its option, either (i) reduce the Purchase Price by the lesser of the fair market value of the Assets damaged or destroyed (such value to be determined as of the date immediately prior to such damage or destruction), or the estimated cost to repair or restore the same (any disagreement with respect thereto being resolved in accordance with Section 2.9), (ii) upon the Closing, transfer the proceeds or the rights to the proceeds of applicable insurance to Buyer, provided that the proceeds are obtainable without delay and are sufficient to fully restore the damaged Assets, or (iii) repair or restore such damaged or destroyed Assets and, at Seller's election, delay the Closing and the Termination Date for a reasonable time necessary to accomplish the same. If any part of the Assets related to the Plant are damaged or destroyed (whether by fire, theft, vandalism or other cause or casualty) in whole or in part prior to the Closing and the lesser of the fair market value of such Assets or the cost of repair is greater than 15 percent of the aggregate Purchase Price, then Buyer may elect either to (x) require Seller upon the Closing to transfer the proceeds (or the right to the proceeds) of applicable insurance to Buyer and Buyer may restore or repair the Assets, or (y) terminate this Agreement with respect to the damaged or destroyed Assets or Plant only, with a reduction in the Purchase Price determined in accordance with Section 2.9.

(b) Condemnation. From the date hereof until the Closing, in the event that any material portion of the Plant becomes subject to or is threatened with any condemnation or eminent domain proceedings, then Buyer, at its option, may, (i) if such condemnation, if successful, would not practically preclude the operation of the balance of the Plant for the purposes and to the extent for which the Plant as a whole was intended, elect to terminate this Agreement with respect only to that part which is condemned or threatened to be condemned with a reduction in the Purchase Price determined as provided in Section 8.8(a) above, or (ii) if such condemnation, if successful, would practically preclude the operation of the balance of the Plant for the purposes for which it is intended, elect to terminate this Agreement.

8.9. Opinion of Counsel

Buyer shall have received, on and as of the Closing Date, a customary closing opinion of in-house and/or outside counsel to Seller, substantially in the form attached as Exhibit I.

8.10. Receipt of Other Documents

Buyer shall have received the following:

(a) Certified copies of the resolutions of Seller's board of directors respecting this Agreement, the Related Agreements, the Three Party Agreement, and the Transactions;

(b) Certified copies of Seller's Charter Documents, together with a certificate of the corporate secretary of Seller that none of such documents have been amended;

(c) One or more certificates as to the incumbency of each officer of Seller who has signed this Agreement, any Related Agreement, the Three Party Agreement or any certificate, document or instrument delivered pursuant to this Agreement, any Related Agreement, or the Three Party Agreement;

(d) A good standing certificate for Seller from the Secretary of State of California, dated as of a date not earlier than 15 Business Days prior to the Closing Date;

(e) Copies of all current Licenses included in the Assets except to the extent such Licenses are identified on Schedule 3.5, and all third party and governmental consents, permits and authorizations that Seller has received in connection with the Agreement, the Related Agreements, the Third Party Agreement and the Transactions to occur at the Closing; and

(f) Certificates of non-foreign status in the form required by Section 1445 of the Internal Revenue Code duly executed by Seller.

8.11. Consummation of the Real Property Contribution Agreement

The contribution of the real property interests comprising the South Bay Land shall have been completed in accordance with the Real Property Contribution Agreement, unless such contribution has not been completed as a result of Buyer's refusal to consummate such transaction in breach of the Real Property Contribution Agreement.

8.12. Limitation on Adjustments

There shall not have been a net downward adjustment to the Purchase Price arising under the Adjustment Sections exceeding in the aggregate 30 percent of the aggregate Purchase Price, and there shall not have been any upward adjustments to the Purchase Price arising under this Agreement, except as provided under Sections 2.6(c), 6.3(f), 10.3 or Section 2.9 as related to adjustments made in accordance with Sections 2.6(c) or 6.3(f).

8.13. Impediment to Plant Operation

Regardless of the price adjustment that results from such exclusion, there shall not have been an exclusion pursuant to Section 2.8 of any Asset that otherwise would have been included

in the Assets, if the effect of such exclusion could reasonably be expected to have a Material Adverse Effect on Buyer's or Lessee's ability to operate the Plant.

8.14. Three Party Agreement

Seller shall not be in default under the Three Party Agreement.

ARTICLE 9.

Seller's Conditions to Closing

The obligations of Seller to consummate the Transactions with respect to the Plant and the Assets and Assumed Liabilities related thereto shall be subject to the fulfillment at or prior to the Closing of the following conditions, unless Seller waives in writing such fulfillment:

9.1. Performance of Agreement

Buyer shall have performed in all material respects its agreements and obligations contained in this Agreement required to be performed on or prior to the Closing.

9.2. Accuracy of Representations and Warranties

The representations and warranties of Buyer set forth in Article 4 of this Agreement shall be true in all material respects as of the date of this Agreement (unless the inaccuracy or inaccuracies which would otherwise result in a failure of this condition have been cured by the Closing) and as of the Closing as if made as of such time.

9.3. Officers' Certificate

Seller shall have received from Buyer an officers' certificate, executed on Buyer's behalf by its executive director (in his or her capacity as such) dated the Closing Date and stating that the conditions in Sections 9.1 and 9.2 above have been met.

9.4. Approvals

(a) The waiting period under the HSR Act shall have expired or been terminated, and, subject to the provisions of Section 2.8, all Approvals required for Seller to consummate the Transactions with respect to the Plant shall have been obtained; provided, however, that with respect to any Approval required by the California State Lands Commission, Seller shall be deemed to have satisfied the condition in this Section 9.4 upon the receipt of a letter or other document from the California State Lands Commission (or any staff member thereof) stating in effect that the California State Lands Commission does not object to the Transactions and that any required approvals by the California State Lands Commission will be processed in the ordinary course of business. Buyer and Seller agree that the receipt of a letter or other document of the nature described in the preceding sentence is sufficient for Seller to satisfy the conditions in this Section 9.4 with respect to Approvals required of the California State Lands Commission.

(b) Without limiting the obligations set forth in Section 9.4(a) above, the CPUC shall have approved Seller's application to sell the Assets in accordance with the terms hereof pursuant to Section 851 of the California Public Utilities Code and consistent with the provisions of California Assembly Bill 1656, and Seller shall have approved the ratemaking treatment of the Transactions and the effects of the Transactions ordered by the CPUC and the calculation and recovery of transition costs arising therefrom and related thereto. There shall additionally have been no material change in the regulations, policies, principles or terms of the restructuring of the California electrical utilities industry set forth in California Assembly Bill 1890 or in the CPUC's Policy Decision on Restructuring enunciated in D.95 12 063 dated December 20, 1995, as modified by D.96 01 009 dated January 10, 1996. Seller shall have additionally approved any material modifications to this Agreement and to the Transactions made or ordered by the CPUC, any material conditions to the effectuation of the Transactions required by the CPUC, and material restrictions, if any, upon Seller and its operations after the Closing required by the CPUC, it being agreed that Seller shall be deemed to have approved of any such modifications, conditions or restrictions that are not disapproved by Seller in a written notice to Buyer given no later than five Business Days following such decision by the CPUC.

(c) Without limiting the obligations set forth in Section 9.4(a) above, the DOJ shall have approved Seller's sale of the Plant on the terms and conditions set forth in this Agreement and the Related Agreements. In connection therewith, Seller shall have additionally approved any material modifications to this Agreement and to the Transactions made or ordered by the DOJ, any material conditions to the effectuation of the Transactions required by the DOJ, and material restrictions, if any, upon Seller and its operations after the Closing required by the DOJ, it being agreed that Seller shall be deemed to have approved of any such modifications, conditions or restrictions that are not disapproved by Seller in a written notice to Buyer given no later than five Business Days following such decision by the DOJ.

9.5. No Restraint

There shall be no:

(a) Injunction, restraining order or order of any nature issued by any court of competent jurisdiction or Governmental Body (including Buyer in its capacity as a governmental authority) which directs that the Transactions contemplated hereby shall not be consummated as herein provided;

(b) Suit, action or other proceeding by any Governmental Body (including Buyer in its capacity as a governmental authority) pending or threatened (pursuant to a written notification), wherein such complainant seeks the restraint or prohibition of the consummation of the Transactions or otherwise constrains consummation of the Transactions of the Assets on the terms contemplated herein; or

(c) Action taken, or Law enacted, promulgated or deemed applicable to the Transactions by any Governmental Body (including Buyer in its capacity as a governmental authority) which would render the purchase and sale of the Plant and related Assets illegal or which would threaten the imposition of any material penalty or material

economic detriment upon Seller if such Transactions were consummated; provided that, the parties will use their reasonable efforts to litigate against, and to obtain the lifting of, any such injunction, restraining or other order, restraint, prohibition, action, suit, law or penalty.

9.6. Related Agreements

(a) Buyer shall have executed and delivered as of the Closing, each of the Related Agreements related to the Plant; and

(b) Seller shall have received from Buyer an officers' certificate, in form and substance reasonably acceptable to Seller, executed on Buyer's behalf by its executive director (in his or her capacity as such) dated as of the Closing Date and certifying that each of the Related Agreements executed prior to the Closing are in full force and effect.

9.7. Opinion of Counsel

Seller shall have received, on and as of the Closing Date, a customary closing opinion of either in-house or outside counsel to Buyer, substantially in the form attached as Exhibit J.

9.8. Receipt of Other Documents

Seller shall have received the following:

(a) Certified copies of the resolutions of Buyer's board of commissioners respecting this Agreement, the Related Agreements, the Three Party Agreement and the Transactions;

(b) One or more certificates as to the incumbency of each officer of Buyer who has signed this Agreement, any Related Agreement, the Three Party Agreement or any certificate, document or instrument delivered pursuant to this Agreement, any Related Agreement, or the Three Party Agreement; and

(c) Copies of all current Licenses of Buyer relevant to operation of the Plant and all third party and governmental consents, permits and authorizations that Buyer has received in connection with this Agreement, the Related Agreements, the Three Party Agreement and the Transactions to occur at the Closing.

9.9. Limitation on Adjustments

There shall not have been a net downward adjustment to the Purchase Price arising under the Adjustment Sections exceeding in the aggregate 30 percent of the aggregate Purchase Price, and there shall not have been any upward adjustments to the Purchase Price arising under this Agreement, except as provided under Sections 2.6(c), 6.3(f), 10.3 or Section 2.9 or related to adjustments made in accordance with Sections 2.6(c) or 6.3(f).

9.10. Charitable Contribution Certificate

Seller shall have received, on and as of the Closing Date, a certificate, in the form attached hereto as Exhibit K, delivered by the executive director of Buyer certifying that Seller has not received any goods or services (other than such goods and services Seller is otherwise lawfully entitled to receive) in return for or in consideration of the charitable donation made by Seller to Buyer pursuant to this Agreement.

9.11. Intent to Decommission Certificate

Seller shall have received, on and as of the Closing Date, a certificate, in the form attached hereto as Exhibit L, executed and delivered on Buyer's behalf by its executive director (in his or her capacity as such), certifying that the representations and warranties set forth in Section 4.12 are true and correct in all material respects.

9.12. Receipt of Fairness Opinion

Seller shall have received a fairness opinion, in form and substance satisfactory to Seller, of Morgan Stanley Dean Witter & Co., subject to customary conditions and limitations.

9.13. Consummation of the Real Property Contribution Agreement

The contribution of the real property interests comprising the South Bay Land shall have been completed in accordance with the Real Property Contribution Agreement, unless such contribution has not been completed as a result of Seller's refusal to consummate such transaction in breach of the Real Property Contribution Agreement.

9.14. Three Party Agreement

Lessee shall have complied with all provisions of the Three Party Agreement with respect to the Must-Run Agreement and shall have made all closing deliveries required under the Three Party Agreement.

ARTICLE 10.

Closing

10.1. Closing

Subject to the terms and conditions hereof, the consummation of the Transactions (the "Closing") shall occur at the offices of Seller or a mutually agreeable place or places within 35 days after the date (the "Approval Receipt Date") all of the conditions in Section 8.4 and Section 9.4 hereof have been satisfied or waived, but in no event earlier than March 15, 1999 (the "Scheduled Closing Date") or at such other time as the parties may agree, but in no event later than the Termination Date; provided, however, Buyer shall have the right to adjust the date of the Closing to a date earlier than the Scheduled Closing Date, but not later than five Business Days after the Approval Receipt Date, upon not less than five Business Days prior written notice to

Seller. Seller acknowledges that Buyer has informed Seller of Buyer's intention to finance the acquisition of the Assets pursuant to the issuance of project revenue bonds, and that, subject to the provisions of this Section 10.1, the actual date of the Closing will need to be coordinated to occur concurrently with the closing of any such bond issuance. Seller and Buyer shall each keep the other party informed as to the status of the receipt of the Approvals described in Sections 8.4 and 9.4, and upon receipt of any such Approval, shall immediately notify the other party of such receipt. Nothing in this Section 10.1 shall be interpreted as constituting a financing closing contingency for Buyer. The date on which the Closing actually occurs is referred to herein as the "Closing Date." At the Closing and subject to the terms and conditions hereof, the following will occur:

(a) Deliveries by Seller. Concurrently with the deliveries set forth in Subsection (b) below, Seller shall deliver to Buyer such instruments of transfer and conveyance properly executed and acknowledged by Seller in customary form necessary to transfer to and vest in Buyer all of Seller's right, title and interest in and to the Assets or which may be required by the Title Insurer, including:

(i) Bills of sale and assignment in respect of the Assets;

(ii) Assignment and assumption agreements properly executed and acknowledged by Seller with respect to each Real Property Lease included in the Assets;

(iii) Instruments of transfer, sufficient to transfer personal property interests that are included in the Assets but not otherwise transferred by the bills of sale and assignment referred to in clause (i) above, properly executed and acknowledged in the form customarily used in commercial transactions in California;

(iv) Bills of sale and severance, severance deeds, or other instruments of transfer sufficient to transfer property interests in respect of fixtures that are included in the Assets;

(v) Assignment and assumption agreement properly executed and acknowledged by Seller with respect to the Must-Run Agreement; and

(vi) Possession of the Assets.

(b) Deliveries by Buyer. Concurrently with the deliveries set forth in Subsection (a) above and in all cases prior to 9:30 a.m., Pacific time, on the Closing Date, Buyer shall deliver to Seller the Purchase Price in immediately available funds, by way of wire transfer to an account or accounts designated by Seller, and such instruments of assumption properly executed and acknowledged by Buyer in customary form necessary for Buyer to assume the Assumed Liabilities, including:

(i) Assignment and assumption agreements properly executed and acknowledged by Buyer with respect to each Real Property Lease included in the Assets;

(ii) Assignment and assumption agreement properly executed and acknowledged by Lessee with respect to the Must-Run Agreement; and

(iii) An assumption agreement or assumption agreements in favor of Seller.

(c) Effect of Closing. Upon the completion of the deliveries in Subsection (a) and (b) above, all risks of loss arising from the Assets shall pass from Seller to Buyer. At that time, Owner's Scheduling Coordinator (as defined in the O&M Agreement) may submit bids in respect of the Plant to the ISO and/or the Power Exchange (as defined in the O&M Agreement) related to the provision of energy or ancillary services from and after 12:01 a.m., Pacific time, for the day immediately following the Closing Date. The Closing shall be effective for all other purposes as to the Plant (and the Assets and Assumed Liabilities related thereto), at 12.01 a.m., Pacific time, on the day immediately following the Closing Date.

10.2. Escrow

If either of the parties desires to consummate the Closing through an escrow, an escrow shall be opened with, and the escrow agent shall be, Stewart Title of California Inc., 7676 Hazard Center Drive, Seventh Floor, San Diego, CA 92108, Attn: Juliet Kerr Martinez, Vice President, Commercial Escrow Manager, or an Affiliate thereof (the "Escrow Agent"), by depositing a fully executed copy of this Agreement with Escrow Agent to serve as escrow instructions. This Agreement shall be considered the primary escrow instructions between the parties, but the parties shall execute such additional standard escrow instructions as Escrow Agent shall require in order to clarify the duties and responsibilities of Escrow Agent. In the event of any conflict between this Agreement and such additional standard escrow instructions, this Agreement shall prevail. If the Closing is to be consummated through the Escrow Agent, the parties shall deliver the funds, instruments of sale, assignment, conveyance and assumption called for by Section 10.1 to the Escrow Agent, and on the Closing Date, the Escrow Agent shall close the escrow by:

(a) Causing the deeds for the South Bay Land, the assignments of the Real Property Leases, and any other documents which the parties may mutually designate to be recorded in the official records of the appropriate counties in which the pertinent Assets are located;

(b) Delivering to Seller by wire transfer of immediately available funds, to any account or accounts designated by Seller, the amounts called for by Section 10.1; and

(c) Delivering to Buyer or Seller, as the case may be, the other instruments referred to in Section 10.1.

10.3. Prorations

Items of expense and income (if any) affecting the Assets and the Assumed Liabilities that are customarily pro-rated and not specifically addressed elsewhere in this Agreement, including real and personal property taxes, utility charges, charges arising under leases, insurance premiums, fees related to Licenses, and the like, shall be pro-rated between Seller and Buyer as of the Closing Date, with Seller liable to the extent such items relate to any time period up to but not including the Closing Date, and Buyer liable to the extent such items relate to periods on and after the Closing Date. In connection with any proration under this Section 10.3, in the event that actual figures are not available at the Closing Date, the proration shall be based upon the actual figures for the preceding year (or appropriate period) for which such figures are available and such amounts shall be reprorated upon request of either Seller or Buyer made within 60 days of the Closing Date. Seller and Buyer agree to furnish each other with such documents and other records as may be reasonably requested in order to confirm all adjustment and proration calculations made pursuant to this Section 10.3.

ARTICLE 11.

Termination

11.1. Termination

Any Transactions contemplated hereby that have not been consummated may be terminated:

(a) At any time, by mutual written consent of Seller and Buyer; or

(b) By either Buyer or Seller, as the case may be, upon 30 days' notice given any time after (i) the issuance of an order by the CPUC or the DOJ disapproving this Agreement and the consummation of the Transactions or otherwise approving of this Agreement or the Transactions in a manner that fails to meet the conditions of the terminating party set forth in Section 8.4 or 9.4, as the case may be, (ii) 120 days have elapsed from the filing after the date hereof of the application for the CPUC's approval of this Agreement and the Transactions contemplated hereby if, prior to the date such notice is given, the CPUC has not issued an order approving this Agreement and the Transactions on terms that meet the conditions of the terminating party set forth in Section 8.4 or 9.4. as the case may be, it being understood that such 120-day period shall not include any period after such order during which applications for rehearing or modification or judicial appeals or remedies are pending, (iii) 360 days have elapsed from the date hereof and the Transactions contemplated hereby if, prior to the date such notice is given, the DOJ has not approved this Agreement and the Transactions on terms that meet the conditions of the terminating party set forth in Section 9.4, it being understood that such 360-day period shall not include any period after such order during which applications for rehearing or modification or judicial appeals or remedies are pending, or (iv) February 28, 1999, if the California State Lands Commission has not approved Buyer's acquisition of the Assets, including the Plant;

(c) By one party upon notice to the other if there has been (i) a material default or material breach under this Agreement by the other party which is not cured by the earlier of the Closing Date or the date 30 days after receipt by the other party of notice from the terminating party specifying with particularity such breach or default or; (ii) a fraudulent act by the other party with respect to this Agreement; or

(d) By either Buyer or Seller upon notice to the other party, if (i) the Closing shall not have occurred by the Termination Date, despite the absence of any material default, material breach or fraudulent act by either party; or (ii) (A) in the case of termination by Seller, the conditions set forth in Article 9 for the Closing cannot reasonably be met despite the use of best efforts as set forth in Article 5 by the Termination Date and (B) in the case of termination by Buyer, the conditions set forth in Article 8 for the Closing cannot be met despite the use of best efforts as set forth in Article 5 by the Termination Date, unless in either of the cases described in clause (A) or (B), the failure of the condition is the result of the material breach, material default or fraudulent act under this Agreement by the party seeking to terminate. The Termination Date for the Closing shall be December 11, 1999. Such date, or such later date as may be specifically provided for in this Agreement (including any date arising under operation of Sections 2.9, 8.6, and 8.8(a) hereof) or agreed upon by the parties, is herein referred to as the "Termination Date." Each party's right of termination hereunder is in addition to any other rights it may have hereunder or otherwise.

11.2. Effect of Termination

If there has been a termination pursuant to Section 11.1(a), (b) or (d), then this Agreement shall be deemed terminated, and all further obligations of the parties hereunder shall terminate, except that the obligations set forth in Sections 5.1, 6.4(d)(ix)-(x), and in Articles 12 and 13 shall survive. In the event of such termination of this Agreement, there shall be no liability for damages on the part of a party to another under and by reason of this Agreement or the transactions contemplated hereby except as set forth in Article 12. If there has been a termination pursuant to Section 11.1(c), the obligations set forth in Section 5.1, 11.2 and in Articles 12 and 13 shall survive, and the remedies for which shall not be limited by the provisions of this Agreement. The foregoing provisions shall not limit or restrict the availability of specific performance or other injunctive or equitable relief to the extent that specific performance or such other relief would otherwise be available to a party hereunder.

Without limiting the foregoing, if this Agreement is terminated pursuant to this Article 11 for any reason other than the material breach by Seller, then Buyer agrees that Seller may immediately recommence the Auction, or otherwise sell, the Plant. In such an event, Buyer shall not, and shall cause its employees, advisors, agents and other representatives not to (on Buyer's behalf), (i) directly or indirectly oppose in any proceeding or forum Seller's auction and sale of the Plant to any Person, (ii) directly or indirectly submit, finance, prepare, file or advise with respect to, any testimony, brief, motion, letter, press release or other communication, written or oral, which opposes, interferes with or delays Seller's proposed or actual auction and sale of the Plant, and (iii) directly or indirectly take any action, formal or informal, which is intended or could reasonably be expected to prevent or delay Seller's proposed or actual auction and sale of the

Plant. Furthermore, if such termination occurs, Buyer shall, and shall cause each of its employees, advisors, agents and other representatives to (a) negotiate reasonably and in good faith with Seller in connection with such subsequent auction and sale in respect of Buyer's consent to the assignment of all existing leases between Seller and Buyer relating to the Plant to the proposed purchaser of the Plant, (b) negotiate reasonably and in good faith with Seller in respect of the extension and transfer of the Tidelands Use and Occupancy Permit dated January 31, 1996, relating to the National City Marine Terminal (Port District Document No. 33868) (the "Tidelands Permit") to the proposed purchaser of the Plant, and (c) negotiate reasonably and in good faith in respect of any Licenses or other approvals necessary or useful in connection with the operations of the Plant.

ARTICLE 12.

Survival and Remedies; Indemnification

12.1. Survival

Except as may be otherwise expressly set forth in this Agreement, the representations, warranties, covenants and agreements of Buyer and Seller set forth in this Agreement, or in any writing required to be delivered in connection with this Agreement, shall survive the Closing Date.

12.2. Exclusive Remedy

Absent fraud or unless otherwise specifically provided herein, the sole exclusive remedy for damages of a party hereto for any breach of the representations, warranties, covenants and agreements of the other party contained in this Agreement shall be the remedies contained in this Article 12.

12.3. Indemnity by Seller

(a) Seller shall indemnify Buyer and its Affiliates, and their respective shareholders, directors, officers, employees, contractors and agents and hold them harmless from and against any and all claims, demands, suits, loss, liability, damage and expense, including reasonable attorneys' fees and costs of investigation, litigation, arbitration, settlement and judgment (collectively "Losses"), which they may sustain or suffer or to which they may become subject as a result of:

(i) The inaccuracy of any representation or the breach of any warranty made by Seller in this Agreement;

(ii) The nonperformance or breach of any covenant or agreement made or undertaken by Seller in this Agreement;

(iii) If the Closing occurs, the failure of Seller to pay, discharge or perform as and when due, any of the Excluded Liabilities (including the Excluded Liabilities enumerated in Sections 2.4(c), (d), (f) and (k), and any Losses as a

result of or in connection with the failure of Seller to comply with any Bulk Sales Laws referred to in Section 7.1); and

(iv) If the Closing occurs, the ongoing operations of Seller (including in respect of the Excluded Assets and Excluded Liabilities) after the Closing Date, subject to the further provisions of the O&M Agreement and the Facilities Services Agreement.

(b) The indemnification obligations of Seller provided above shall, in addition to the qualifications and conditions set forth in Sections 12.5 and 12.6, be subject to the following qualifications:

(i) With respect to claims of indemnity for breaches of representations and warranties under clause (a)(i) above:

(A) Notice to Seller of such claim specifying the basis thereof must be made, or an action at law or in equity with respect to such claim must be served, before the second anniversary of the earlier to occur of the Closing Date or the date on which this Agreement is terminated, as the case may be, except that such time limitation shall not apply to breaches of the warranties contained in Sections 3.1, 3.2, 3.3 and 3.4;

(B) Buyer and its respective Affiliates shall be entitled only to recover the amount by which the aggregate Losses sustained or suffered by them as a result of circumstances described in such clause (a)(i) exceed one percent of the Purchase Price (the "Deductible Amount"), provided, however, that individual claims of $5,000 or less shall not be aggregated for purposes of calculating either the Deductible Amount or the excess of Losses over the Deductible Amount;

(C) In no event shall Seller be liable to Buyer and its respective Affiliates under clause (a)(i) for Losses in the nature of consequential damages, punitive damages, lost profits, damage to reputation or the like, but such damages shall be limited to out-of-pocket Losses and diminution in value, and to an aggregate limit of 100 percent of the Purchase Price; and

(D) In no event shall Seller be liable to Buyer for any Losses resulting from Buyer's development and/or use of the property for any use(s) other than fossil-fuel electric generation or a substantially similar industrial use.

(ii) Buyer and its respective Affiliates shall not be entitled to indemnity under clauses (a)(ii) and (iii) above except for out-of-pocket Losses actually suffered or sustained by them, and such indemnity shall not include Losses in the nature of consequential damages, punitive damages, lost profits, diminution in value, damage to reputation or the like; except that the provisions of this clause (b)(ii) shall not apply to a breach of Section 7.3 of the Three Party Agreement.

12.4. Indemnity by Buyer

(a) Buyer shall indemnify Seller and its Affiliates, and their respective shareholders, directors, officers, employees, contractors and agents, and hold them harmless from and against any and all Losses which they may sustain or suffer or to which they may become subject as a result of:

(i) The inaccuracy of any representation or the breach of any warranty made by Buyer in this Agreement;

(ii) The nonperformance or breach of any covenant or agreement made or undertaken by Buyer in this Agreement;

(iii) If the Closing occurs, the failure of Buyer to pay, discharge or perform as and when due, any of the Assumed Liabilities;

(iv) If the Closing occurs, the ongoing operations of Buyer and the Assets after the Closing Date, including the continuation or performance by Buyer after the Closing Date of any agreement or practice of Seller, subject to the further provisions of the O&M Agreement and the Facilities Services Agreement; and

(v) If the Closing occurs, subject to Seller's obligations in Section 6.4, the use of any South Bay Land or Leased Real Property, or any portion thereof from and after the Closing Date.

(b) The indemnification obligations of Buyer provided above shall, in addition to the qualifications and conditions set forth in Sections 12.5 and 12.6, be subject to the following qualifications:

(i) Seller and its Affiliates shall not be entitled to indemnity for breaches of representations and warranties under clause (a)(i) unless notice to Buyer of such claim specifying the basis thereof is made, or an action at law or in equity with respect to such claim is served, before the second anniversary of the earlier to occur of the Closing Date or the date on which this Agreement is terminated, as the case may be, except that such time limitation shall not apply to breaches of the representations and warranties contained in Sections 4.1, 4.2, 4.3, 4.4, and 4.11;

(ii) Seller and its Affiliates shall be entitled only to recover the amount by which the aggregate Losses sustained as a result of circumstances described in clause (a)(i) above exceed the Deductible Amount, provided, however, that individual claims of $5,000 or less shall not be aggregated for purposes of calculating either the Deductible Amount or the excess of Losses over the Deductible Amount; and

(iii) Seller and its Affiliates shall not be entitled to indemnity under clauses (a)(ii)-(iii) above except for out-of-pocket Losses actually suffered or

sustained by them and such indemnity shall not include Losses in the nature of consequential damages, punitive damages, lost profits, diminution in value, damage to reputation or the like, except that the provisions of this clause (b)(iii) shall not apply to a breach of Section 7.3 of the Three Party Agreement.

12.5. Further Qualifications Respecting Indemnification

The right of a Person indemnified pursuant to this Agreement (an "Indemnitee") to indemnity hereunder shall be subject to the following additional qualifications:

(a) The Indemnitee shall promptly upon its discovery of facts or circumstances giving rise to a claim for indemnification, including receipt by it of notice of any demand, assertion, claim, action or proceeding, judicial, governmental or otherwise, by any third party (such third party actions being collectively referred to herein as "Third Party Claims"), give notice thereof to the indemnifying party (the "Indemnitor"), such notice in any event to be given within 60 days from the date the Indemnitee obtains actual knowledge of the basis or alleged basis for the right of indemnity or such shorter period as may be necessary to avoid material prejudice to the Indemnitor;

(b) In computing losses, such amounts shall be computed net of any related recoveries to which the Indemnitee is entitled under insurance policies, or other related payments received or receivable from third parties, and net of any tax benefits actually received by the Indemnitee or for which it is eligible, taking into account the income tax treatment of the receipt of indemnification; and

(c) The indemnification shall not apply to Losses that are caused by the gross negligence or willful misconduct of the Indemnitee.

12.6. Procedures Respecting Third Party Claims

In providing notice to the Indemnitor of any Third Party Claim (the "Claim Notice"), the Indemnitee shall provide the Indemnitor with a copy of such Third Party Claim or other documents received and shall otherwise make available to the Indemnitor all relevant information material to the defense of such claim and within the Indemnitee's possession. The Indemnitor shall have the right, by notice given to the Indemnitee within 15 days after the date of the Claim Notice, to assume and control the defense of the Third Party Claim that is the subject of such Claim Notice, including the employment of counsel selected by the Indemnitor after consultation with the Indemnitee, and the Indemnitor shall pay all expenses of, and the Indemnitee shall cooperate fully with the Indemnitor in connection with, the conduct of such defense. The Indemnitee shall have the right to employ separate counsel in any such proceeding and to participate in (but not control) the defense of such Third Party Claim, but the fees and expenses of such counsel shall be borne by the Indemnitee unless the Indemnitor shall agree otherwise; provided, however, if the named parties to any such proceeding (including any impleaded parties) include both the Indemnitee and the Indemnitor, the Indemnitor requires that the same counsel represent both the Indemnitee and the Indemnitor, and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them, then

the Indemnitee shall have the right to retain its own counsel at the cost and expense of the Indemnitor. If the Indemnitor shall have failed to assume the defense of any Third Party Claim in accordance with the provisions of this Section, then the Indemnitee shall have the absolute right to control the defense of such Third Party Claim, and, if and when it is finally determined that the Indemnitee is entitled to indemnification from the Indemnitor hereunder, the fees and expenses of Indemnitee's counsel shall be borne by the Indemnitor, provided that the Indemnitor shall be entitled, at its expense, to participate in (but not control) such defense. The Indemnitor shall have the right to settle or compromise any such Third Party Claim for which it is providing indemnity so long as such settlement does not impose any obligations on the Indemnitee (except with respect to providing releases of the third party). The Indemnitor shall not be liable for any settlement effected by the Indemnitee without the Indemnitor's consent except where the Indemnitee has assumed the defense because Indemnitor has failed or refused to do so. The Indemnitor may assume and control, or bear the costs, of any such defense subject to its reservation of a right to contest the Indemnitee's right to indemnification hereunder, provided that it gives the Indemnitee notice of such reservation within 15 days of the date of the Claim Notice.

ARTICLE 13.

General Provisions

13.1. Notices

All notices, requests, demands, waivers, consents and other communications hereunder shall be in writing, shall be delivered either in person, by telegraphic, facsimile or other electronic means, by overnight air courier or by mail, and shall be deemed to have been duly given and to have become effective (a) upon receipt if delivered in person or by telegraphic, facsimile or other electronic means, (b) one Business Day after having been delivered to an air courier for overnight delivery or (c) three Business Days after having been deposited in the U.S. mails as certified or registered mail, return receipt requested, all fees prepaid, directed to the parties or their permitted assignees at the following addresses (or at such other address as shall be given in writing by a party hereto):

If to Seller, addressed to:

San Diego Gas & Electric Company
101 Ash Street
San Diego, California 92112
Attn: Bruce Williams
Facsimile: (619) 696-4027

with a copy to each counsel for Seller:

San Diego Gas & Electric Company
101 Ash Street
San Diego, California 92112
Attn: Michael Thorp, Esq.
Facsimile: (619) 699-5027

Latham & Watkins
633 West Fifth Street, Suite 4000
Los Angeles, California 90071
Attn: David B. Rogers, Esq.
Facsimile: (213) 891-8763

If to Buyer, addressed to:

San Diego Unified Port District
3165 Pacific Highway
Attn: Executive Director
Facsimile: (619) 686-6444

with a copy to each counsel for Buyer:

Munger, Tolles & Olson
355 South Grand Avenue
Attn: Jeffrey A. Heintz, Esq.
Facsimile: (213) 687-3702

Procopio, Cory, Hargreaves & Savitich LLP
530 B Street, Suite 2100
Attn: John L. Lormon, Esq.
Facsimile: (619) 235-0398

13.2. Attorneys' Fees

Subject to the provisions of Section 13.9, in any litigation or other proceeding relating to this Agreement (but excluding any proceedings under Section 2.9), the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees.

13.3. Successors and Assigns

(a) Except as provided in Section 13.3(b), the rights under this Agreement shall not be assignable or transferable nor the duties delegable by either party without the prior consent of the other, and nothing contained in this Agreement, express or implied, is intended to confer upon any Person, other than the parties hereto, their permitted successors-in-interest and permitted assignees and any Person benefiting from the indemnities provided herein, any rights or remedies

under or by reason of this Agreement unless so stated to the contrary. As a condition to any such assignment, transfer or delegation, (i) the assignor, transferor or delegator shall provide the other party with a copy of all documents effectuating such assignment, transfer or delegation and (ii) the assignor, transferor or delegator shall not be released from any of their obligations hereunder. Notwithstanding the foregoing, Buyer may grant to its lenders a security interest in its rights under this Agreement (which may permit exercise of remedies only as and if the Closing occurs) or assign (after Closing) its rights hereunder to any Person or Persons acquiring the Assets, including the Plant; provided that neither the grant of any such interest, nor the foreclosure of any such interest, shall in any way release, reduce or diminish the obligations of Buyer to Seller hereunder.

(b) Except as provided in the Three Party Agreement, Buyer may not assign, transfer or delegate any of its rights or obligations hereunder to Lessee.

13.4. Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

13.5. Captions and Paragraph Headings

Captions and paragraph headings used herein are for convenience only and are not a part of this Agreement and shall not be used in construing it.

13.6. Entirety of Agreement; Amendments

This Agreement (including the Schedules and Exhibits hereto), the Related Agreements and the other documents and instruments specifically provided for in this Agreement and the Related Agreements contain the entire understanding between the parties concerning the subject matter of this Agreement and such other documents and instruments and, except as expressly provided for herein, supersede all prior understandings and agreements, whether oral or written, between them with respect to the subject matter hereof and thereof. There are no representations, warranties, agreements, arrangements or understandings, oral or written, between the parties hereto relating to the subject matter of this Agreement and such other documents and instruments which are not fully expressed herein or therein. This Agreement may be amended or modified only by an agreement in writing signed by each of the parties hereto. All Exhibits and Schedules attached to or delivered in connection with this Agreement are integral parts of this Agreement as if fully set forth herein.

13.7. Construction

This Agreement and any documents or instruments delivered pursuant hereto shall be construed without regard to the identity of the Person who drafted the various provisions of the same. Each and every provision of this Agreement and such other documents and instruments shall be construed as though the parties participated equally in the drafting of the same. Consequently, the parties acknowledge and agree that any rule of construction that a document is

to be construed against the drafting party shall not be applicable either to this Agreement or such other documents and instruments.

13.8. Waiver

The failure of a party to insist, in any one or more instances, on performance of any of the terms, covenants and conditions of this Agreement shall not be construed as a waiver or relinquishment of any rights granted hereunder or of the future performance of any such term, covenant or condition, but the obligations of the parties with respect thereto shall continue in full force and effect. No waiver of any provision or condition of this Agreement by a party shall be valid unless in writing signed by such party or operational by the terms of this Agreement. A waiver by one party of the performance of any covenant, condition, representation or warranty of the other party shall not invalidate this Agreement, nor shall such waiver be construed as a waiver of any other covenant, condition, representation or warranty. A waiver by any party of the time for performing any act shall not constitute a waiver of the time for performing any other act or the time for performing an identical act required to be performed at a later time.

13.9. Arbitration

(a) Agreement to Arbitrate. Any controversy or claim arising out of or relating to this Agreement, or the breach or alleged breach hereof, shall, upon demand of either Seller or Buyer, be submitted to arbitration in the manner hereinafter provided. Seller and Buyer will make every reasonable effort to resolve any such controversy or claim without resort to arbitration. But in the event the parties are unable to effect a satisfactory resolution between themselves, such controversy shall be submitted to arbitration in accordance with the terms and provisions of this Section 13.9 and in accordance with the then-current Commercial Arbitration Rules (hereinafter the "Rules") of the American Arbitration Association (or any successor organization) (hereinafter the "AAA"). Any such arbitration shall take place in San Diego, California and shall be administered by the AAA. In the event of any conflict between the terms and provisions of this Section 13.9 and the Rules, the terms and provisions of this Section 13.9 shall prevail.

(b) Submission to Arbitration. A party desiring to submit to arbitration any such controversy shall send a written arbitration demand to the AAA and to the opposing party. The demand shall set forth a clear and complete statement of the nature of the claim, its basis, and the remedy sought, including the amount of damages, if any. The opposing party may, within 30 days of receiving the arbitration demand, assert a counterclaim and/or set-off. The counterclaim or set-off, which shall be sent to the AAA and the opposing party, shall include a clear and complete statement of the nature of the counterclaim or set-off, its basis, and the remedy sought, including the amount of damages, if any.

(c) Selection of Arbitration Panel. The dispute shall be decided by a panel of three neutral arbitrators selected as follows. The AAA shall submit to the parties, within 10 days after receipt of an arbitration demand, a list of 11 potential arbitrators consisting

of retired federal or state court judges; provided that none of the potential arbitrators shall have (or have ever had) any material affiliation of any kind with either party or Lessee or an Affiliate of either party or Lessee. Each party shall, within five days, strike four, three, two, one or none of the arbitrators, rank the remaining arbitrators in order of preference (with "1" designating the most preferred, "2" the next most preferred and so forth) and so advise the AAA in writing. The AAA shall appoint the arbitrators with the best combined preference ranking on both lists and designate the most preferred arbitrator as presiding officer (in each case, selecting by lot, if necessary, in the event of a tie).

(d) Prehearing Discovery. There shall be no prehearing discovery except as follows. Subject to the authority of the presiding officer of the arbitration panel to modify the provisions of this paragraph before the arbitration hearing upon a showing of exceptional circumstances, each party (i) shall propound to the other no more than 20 requests for production of documents, including subparts, and (ii) shall take no more than two discovery depositions. Such discovery shall be conducted in accordance with the provisions and procedures of the Federal Rules of Civil Procedure. No interrogatories or requests for admission shall be permitted. Disputes concerning discovery obligations or protection of discovery materials shall be determined by the presiding officer of the arbitration panel. The foregoing limitations shall not be deemed to limit a party's right to subpoena witnesses or the production of documents at the arbitration hearing, nor to limit a party's right to depose witnesses that are not subject to subpoena to testify in person at the arbitration hearing; provided, however, that the presiding officer of the arbitration panel may, upon motion, place reasonable limits upon the number and length of such testimonial depositions.

(e) Arbitration Hearing. The presiding officer of the arbitration panel shall designate the place and time of the hearing. The hearing shall be scheduled to begin within 90 days after the filing of the arbitration demand (unless extended by the arbitration panel on a showing of exceptional circumstances) and shall be conducted as expeditiously as possible. In all events, the issues being arbitrated, which shall be limited to those issues identified in the initial claim and counter-claim submitted to the arbitration panel pursuant to Subsection (d) above, shall be submitted for decision within 30 days after the beginning of the arbitration hearing. At least 30 days prior to the beginning of the arbitration hearing, each party shall provide the other party and the arbitration panel with written notice of the identity of each witness (other than rebuttal witnesses) it intends to call to testify at the hearing, together with a detailed written outline of the substance of the anticipated testimony of each such witness. The arbitration panel shall not permit any witness to testify that was not so identified prior to the hearing and shall limit the testimony of each such witness to the matters disclosed in such outline. Subject to the foregoing, the parties shall have the right to attend the hearing, to be represented by counsel, to present documentary evidence and witnesses, to cross-examine opposing witnesses and to subpoena witnesses. The Federal Rules of Evidence shall apply and the panel shall determine the competency, relevance, and materiality of evidence as appropriate. The panel shall recognize privileges available under applicable law. A stenographic record shall be made of the arbitration proceedings.

(f) Award. The panel's award shall be made by majority vote of the panel. An award in writing signed by at least two of the panel's arbitrators shall set forth the panel's findings of fact and conclusions of law. The award shall be filed with the AAA and mailed to the parties no later than 30 days after the last day of testimony at the arbitration hearing. The panel shall have authority to issue any lawful relief that is just and equitable, except punitive damages. The award shall state that it dissolves and supersedes any provisional remedies entered pursuant to Subsection (g) below.

(g) Provisional Remedies. Pending the selection of the arbitration panel, upon request of a party, the AAA may appoint a retired judge to serve as a provisional arbitrator to rule on any motion for preliminary relief. Any preliminary relief ordered by the provisional arbitrator may be immediately entered in any federal or state court having jurisdiction thereof even though the decision on the underlying dispute may still be pending. Once constituted, the arbitration panel may, upon request of a party, issue a superseding order to modify or reverse such preliminary relief or may itself order preliminary relief pending a full hearing on the merits of the underlying dispute. Any such initial or superseding order of preliminary relief may be immediately entered in any federal or state court having jurisdiction thereof even though the decision on the underlying dispute may still be pending. Such relief may be granted by the appointed arbitrator or the arbitration panel only after notice to and opportunity to be heard by the opposing party. Such awards of preliminary relief shall be in writing and, if ordered by a panel of three arbitrators, must be signed by at least two of the panel members.

(h) Entry of Award by Court. The arbitration panel's arbitration award shall be final. The parties agree and consent that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof.

(i) Costs and Attorneys' Fees. The prevailing party shall be entitled to recover its costs and reasonable attorneys' fees, and the party losing the arbitration shall pay all expenses and fees of the AAA, all costs of the stenographic record, all expenses of witnesses or proofs that may have been produced at the direction of the arbitrators, and the fees, costs, and expenses of the arbitrators. The arbitration panel shall designate the prevailing party for these purposes.

13.10. Governing Law

This Agreement shall be governed in all respects, including validity, interpretation and effect, by the laws of the State of California applicable to contracts made and to be performed wholly within the State of California by residents of the State of California, provided that federal law, including the Federal Arbitration Act, shall govern all issues concerning the validity, enforceability and interpretation of the arbitration provision set forth in Section 13.9 hereof. Any action or proceeding arising under this Agreement shall be adjudicated in San Diego, California.

13.11. Severability

Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be valid, binding and enforceable under applicable law, but if any provision of this Agreement is held to be invalid, void (or voidable) or unenforceable under applicable law, such provision shall be ineffective only to the extent held to be invalid, void (or voidable) or unenforceable, without affecting the remainder of such provision or the remaining provisions of this Agreement.

13.12. Consents Not Unreasonably Withheld

Wherever the consent or approval of any party is required under this Agreement, such consent or approval shall not be unreasonably withheld, unless such consent or approval is to be given by such party at the sole or absolute discretion of such party or is otherwise similarly qualified.

13.13. IBEW Union

Buyer agrees to recognize, subject to the requirements of federal labor laws, Local 465 of the International Brotherhood of Electric Workers, AFL-CIO ("IBEW Union"), as the exclusive bargaining representative of those employees hired by Buyer who are included in Exhibit A of the Generation Business Unit Collective Bargaining Agreement between Seller and IBEW Union. Buyer further agrees to defend and indemnify Seller against any claim arising out of an alleged failure of Buyer, for any reason, to comply with the foregoing recognition requirement.

13.14. Time Is of the Essence

Time is hereby expressly made of the essence with respect to each and every term and provision of this Agreement. The parties acknowledge that each will be relying upon the timely performance by the other of its obligations hereunder as a material inducement to each party's execution of this Agreement.

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the date first above written.

Buyer:

SAN DIEGO UNIFIED PORT DISTRICT

APPROVED SHM ATTORNEY

By: _____
Name:
Title:

By: _____
Name:
Title:

By: _____
Name:
Title:

Seller:

SAN DIEGO GAS & ELECTRIC COMPANY

By: _____
Name: EDWARD A. GUILES
Title: PRESIDENT

By: _____
Name: GARY D. COTTON
Title: SR VICE PRES.

EXHIBIT A

LNG SITE

THAT PORTION OF RANCHO DE LA NACION, PARTIALLY IN THE CITY OF CHULA VISTA, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, SAID PORTION ALSO LYING WITHIN FRACTIONAL SECTION 169, SAID PORTION'S WESTERLY BOUNDARY BEING THE MEAN HIGH TIDE LINE, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST NORTHEASTERLY CORNER OF PARCEL 1 AS SHOWN ON PARCEL MAP 16887; THENCE ALONG THE EASTERLY SIDE OF SAID PARCEL 1, SOUTH 07°21'58" WEST, 191.22 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 07°21'58" WEST, 177.99 FEET; THENCE SOUTH 16°22'18" WEST, 229.19 FEET; THENCE SOUTH 11°21'28" EAST, 129.86 FEET; THENCE SOUTH 29°03'04" EAST, 558.63 FEET; THENCE SOUTH 03°08'05" EAST, 245.63 FEET; THENCE SOUTH 31°10'00" EAST,

347.33 FEET; THENCE SOUTH 70°53'22" EAST, 67.83 FEET; THENCE DEPARTING SAID EASTERLY SIDE OF SAID PARCEL 1 OF PARCEL MAP 16887, NORTH 72°08'47" EAST, 608.63 FEET; THENCE NORTH 08°35'26" EAST, 0.12 FEET; THENCE NORTH 02°43'45" EAST, 1337.29 FEET; THENCE NORTH 87°11'47" WEST, 1111.03 FEET TO THE POINT OF BEGINNING.

EXHIBIT B

SOUTH BAY SITE

THAT PORTION OF RANCHO DE LA NACION, PARTIALLY IN THE CITY OF CHULA VISTA, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, SAID PORTION ALSO LYING WITHIN FRACTIONAL SECTIONS 169 AND 170, SAID PORTION'S WESTERLY BOUNDARY BEING THE MEAN HIGH TIDE LINE, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A HARBOR ENGINEER DISK AND TACK LYING IN "J' STREET MARKED "STA 118" PER RECORD OF SURVEY 9061, THENCE SOUTH 03°39'29" WEST, 228.95 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 03°39'29" WEST, 501.98 FEET; THENCE SOUTH 12°38'15" EAST, 323.53 FEET; THENCE SOUTH 08°34'47" WEST, 440.97 FEET; THENCE SOUTH 12°41'09" WEST, 496.14 FEET; THENCE SOUTH 10°01'48" WEST, 717.39 FEET; THENCE SOUTH 06°48'19" WEST, 201.38 FEET; THENCE SOUTH 11°23'30' WEST, 4.03 FEET; THENCE SOUTH 12°13'49" WEST, 255.70 FEET; THENCE SOUTH 11°09'19" WEST, 82.18 FEET; THENCE SOUTH 70°26'27" EAST, 63.03 FEET; THENCE SOUTH 70°26'27" EAST, 750.24 FEET TO THE MOST NORTHEASTERLY CORNER OF PARCEL 1 AS SHOWN ON PARCEL MAP 16887; THENCE ALONG THE EASTERLY SIDE OF SAID PARCEL 1 SOUTH 07°21'58" WEST, 191.22 FEET; THENCE DEPARTING SAID PARCEL 1 OF PARCEL MAP 16887, SOUTH 87°11'47" EAST, 1111.03 FEET; THENCE NORTH 02°43'45" EAST, 1035.17 FEET TO A TANGENT CURVE CONCAVE WESTERLY, RADIUS 1890.08 FEET, RADIAL BEARING NORTH 87°16'15" WEST; THENCE ALONG SAID CURVE 674.68 FEET; THENCE NORTH 17°43'22" WEST, 1091.60 FEET; THENCE NORTH 17°46'30" WEST, 1299.63 FEET; THENCE SOUTH 72°09'32" WEST, 150.00 FEET; THENCE SOUTH 17°46'30" EAST, 59.98 FEET; THENCE SOUTH 17°46'30" EAST, 240.00 FEET; THENCE SOUTH 72°09'32" WEST, 693.17 FEET TO THE POINT OF BEGINNING.

EXHIBIT C

TRANSMISSION PROPERTY

THOSE PORTIONS OF QUARTER SECTIONS 170, 171 AND 172 OF RANCHO DE LA NACION, IN THE CITY OF CHULA VISTA, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 166, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID SAN DIEGO COUNTY, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS IN PARCELS 1, 2, AND 3:

PARCEL 1:

ALL THAT PORTION OF THE WESTERLY 150.00 FEET OF THE EASTERLY 170.00 FEET OF SAID QUARTER SECTION 170, WHICH LIES NORTHERLY OF THAT CERTAIN COURSE DESCRIBED IN DEED DATED JUNE 12, 1956, FROM SANTA FE LAND IMPROVEMENT COMPANY TO SAN DIEGO GAS & ELECTRIC COMPANY RECORDED IN BOOK 6156, PAGE 587 OF OFFICIAL RECORDS OF SAN DIEGO COUNTY, AS BEING "NORTH 70°12'41" EAST, 150.00 FEET".

PARCEL 2:

THE EASTERLY 20.00 FEET OF THE NORTHERLY 170.00 FEET OF THE WESTERLY 150.00 FEET OF THE EASTERLY 170.00 FEET OF SAID QUARTER SECTION 171.

ALSO: THAT PORTION OF THE WESTERLY 150.00 FEET OF THE EASTERLY 170.00 FEET OF SAID QUARTER SECTION 171 LYING SOUTHERLY OF THE NORTHERLY 170.00 FEET OF SAID QUARTER SECTION 171.

ALSO: THE WESTERLY 30.00 FEET OF THE EASTERLY 70.00 FEET OF THE SOUTHERLY 150.00 FEET OF THE NORTHERLY 170.00 FEET OF SAID QUARTER SECTION 171.

ALSO. A TRACT OF LAND 2.00 FEET BY 75.00 FEET LYING WITHIN THE NORTHERLY 20.00 FEET OF THE WESTERLY 150.00 FEET OF THE EASTERLY 170.00 FEET OF SAID QUARTER SECTION 171. (UNABLE TO PLOT)

PARCEL 3:

THE WESTERLY 150.00 FEET OF THE EASTERLY 170.00 FEET OF SAID QUARTER SECTION 172.

EXCEPTING THEREFROM THE WESTERLY 90.00 FEET OF THE EASTERLY 170.00 FEET OF THE SOUTHERLY 332.00 FEET OF SAID QUARTER SECTION 172.

ALSO EXCEPTING THEREFROM THAT PORTION LYING NORTHERLY OF THE NORTHERLY LINE OF "F" STREET. (80.00 FEET WIDE)