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8 **AMENDED AND RESTATED**
9 **POWER PURCHASE AGREEMENT**
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11 **Executed by the**
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13 **CITY OF RIVERSIDE, CALIFORNIA**
14 **acting by and through the**
15 **CITY OF RIVERSIDE DEPARTMENT**
16 **OF PUBLIC UTILITIES**
17

18 **and**
19

20 **WINTEC-PACIFIC SOLAR, LLC**
21 **(Wintec-Pacific Solar Wind Project)**
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WINTEC-PACIFIC SOLAR, LLC - RIVERSIDE
AMENDED AND RESTATED
POWER PURCHASE AGREEMENT

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1 **WINTEC-PACIFIC SOLAR, LLC - RIVERSIDE**

2 **AMENDED AND RESTATED**

3 **POWER PURCHASE AGREEMENT**

4

5 1. PARTIES: This AMENDED AND RESTATED POWER PURCHASE

6 AGREEMENT (this "Agreement") is executed by and between Wintec-Pacific Solar,

7 LLC ("Seller"), and the CITY OF RIVERSIDE, CALIFORNIA, a California

8 municipal corporation acting by and through its Department of Public Utilities

9 ("Buyer") on this ^{15th} ~~21st~~ November, 2005. Both Seller and Buyer are sometimes

10 referred to herein individually as "Party" and collectively as "Parties."

11 2. RECITALS:

12 2.1 Buyer procures sufficient capacity and energy (where "power" may herein

13 refer to either or both terms) from power production facilities, including wind powered

14 production facilities, to meet the electric power requirements placed on Buyer by its

15 customers.

16 2.2 On January 28, 2003, the Parties entered into an agreement ("Original

17 Agreement") under which Seller sells to Buyer all of the Energy Output generated by

18 the Seller's wind powered electric generating units, with generation capacity of up to

19 five (5) megawatts (MW), to be located at a specific site near the City of Palm

20 Springs, County of Riverside, California.

21 2.3 Due to unforeseen circumstances, Seller was only able to construct two (2)

22 Vestas V47 660 KW wind turbine generators at the specified Facility location with

23 generating capacity totaling 1.32 MW. These generating units are characterized as

24 Wind Energy Conversion System (WECS) Permit No. 33R1, Site Ids 8001 (Unit 1)

25 and 8002 (Unit 2), respectively, and the facility is recognized by the California Energy

26 Commission as Buckwind CEC50066.

1 2.4 Seller intends to build additional wind turbine generators in the general
2 location of the two existing units but outside the specific Facility location stated in the
3 Original Agreement.

4 2.5 Therefore, the Parties desire to enter into this Agreement amending and
5 restating the Original Agreement to:

6 2.5.1 allow the Buyer to purchase (i) the Energy Output of the units
7 referred to in Section 2.3, (ii) the additional Energy Output to be generated by the units
8 referred to in Section 2.4 and, (iii) the Energy Output of any Additional Unit(s) as
9 agreed; and

10 2.5.2 provide for generation capacity from the Project Wind Turbines
11 including Additional Unit(s) to exceed the five (5) MW limit as originally intended
12 through the construction of the original units, as agreed to by the Authorized
13 Representatives in accordance to Section 9.

14 3. AGREEMENT: NOW, THEREFORE, in consideration of the mutual covenants
15 herein contained, the sufficiency and adequacy of which are hereby acknowledged and
16 the foregoing recitals that are incorporated herein, the Parties agree to the following:

17 4. DEFINITIONS: The terms listed in this Section shall have the meanings set forth
18 herein whenever the terms appear in this Agreement, whether in the singular or the
19 plural or in the present or past tense. The plain meaning of terms not listed in this
20 Section and otherwise used in this Agreement shall apply, unless such unlisted terms
21 have meanings as commonly used in Good Utility Industry Practice, in which case the
22 Good Utility Industry Practice meaning shall apply.

23 4.1 "Additional Unit(s)" means each new wind turbine generator whereby the
24 construction has been proposed by Seller for the purpose of selling the Energy Output
25 to Buyer pursuant to Section 9.2.

26 //

1 4.2 "Authorized Representative" means the representative designated by each
2 Party, in accordance to Section 14.1, to act in such Party's behalf with respect to those
3 matters specified herein to be the functions of an Authorized Representative.

4 4.3 "Availability Factor" means the percentage obtained by (i) dividing the
5 hourly availability in a twelve (12) month period by (ii) the product of aggregate
6 megawatt rating multiplied by the number of hours in such twelve (12) month period.

7 4.4 "Business Day" means each Monday through and including Friday during the
8 term of this Agreement other than nationally recognized holidays observed by either
9 Party.

10 4.5 "Capacity Factor" means the percentage obtained by dividing (i) the Energy
11 Output during a twelve (12) month period by (ii) the product of the aggregate
12 megawatt rating of the Project Wind Turbine(s) multiplied by the number of hours in
13 such twelve (12) month period.

14 4.6 "Commercial Operation " means when a particular Project Wind Turbine or
15 Additional Unit(s) is ready for regular, daily operation, is capable of being connected
16 to the Grid, and is capable of producing Energy Output in accordance with Good
17 Utility Industry Practice, all as certified in writing by Seller to Buyer.

18 4.7 "Commercial Operation Date" means, with respect to a particular Project
19 Wind Turbine or Additional Unit(s), the first day on which Commercial Operation
20 occurs.

21 4.8 "Completion Date" means the date when a Project Wind Turbine or
22 Additional Unit(s) has achieved Commercial Operation and the Conditions Precedent
23 specified in Section 12.1 have been satisfied.

24 4.9 "Conditions Precedent" has the meaning given in Section 12.1.

25 //

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1 4.10 "Construction Proposal" means a notice from Seller to Buyer of Seller's
2 intention to build one or more Additional Units, as specified in Section 9.2 and Exhibit
3 A.

4 4.11 "Contract Year" means the consecutive twelve (12) month period
5 commencing with the Completion Date of the Project Wind Turbines referred to in
6 Section 2.3, or its anniversary. The Completion Date of the Project Wind Turbines
7 referred to in Section 2.3 is recognized as December 30, 2003.

8 4.12 "Delivery Arrangements Agreement" means one or more agreements
9 between Buyer and any party other than Seller, including the ISO, that provide for the
10 receipt of Energy Output at the Points of Delivery and for the transmission and
11 delivery of such Energy Output to points beyond the Points of Delivery.

12 4.13 "Energy Output" means certified renewable electrical energy generated by
13 the Project Wind Turbines, delivered at the Points of Delivery and credited to Buyer
14 by the ISO.

15 4.14 "Energy Payment Rate" has the meaning ascribed in Section 10.

16 4.15 "Event of Default" means an event as defined in Section 13 that confers a
17 contractual right upon the non-defaulting Party to terminate the Agreement.

18 4.16 "Facility" has the meaning ascribed in Section 7.

19 4.17 "Facility Substation" means the existing SCE Buckwind Substation with
20 respect to the initial Project Wind Turbines referred to in Section 2.3, or other
21 interconnection facilities or substations containing a point of interconnection between
22 the Facility Distribution System and SCE's distribution facilities.

23 4.18 "Facility Distribution System" means the Facility distribution lines and
24 associated equipment necessary to connect the Project Wind Turbines to SCE's
25 distribution facilities.

26 //

1 4.19 "GDPIPD" means the implicit price deflator for the gross domestic product
2 as computed and published by the U.S. Department of Commerce, Bureau of
3 Economic Analysis. The figures to be used in this adjustment for a Contract Year
4 shall be those presented in the final press release of the most recent quarter preceding
5 that Contract Year.

6 4.20 "Good Utility Industry Practice(s)" means the practices, methods, and acts
7 (including, but not limited to, the practices, methods, and acts engaged in or approved
8 by a significant portion of the electric utility industry) that, at a particular time, in the
9 exercise of reasonable judgment in light of the facts known or that should reasonably
10 have been known at the time a decision was made, would have been expected to
11 accomplish the desired result in a manner consistent with law, regulation, codes,
12 standards, equipment manufacturer's recommendations, reliability, safety,
13 environmental protection, economy, and expedition. With respect to the Facility, Good
14 Utility Industry Practice(s) includes, but is not limited to, taking reasonable steps to
15 ensure that:

16 4.20.1 equipment, materials, resources, and supplies are available to meet
17 the Facility's needs;

18 4.20.2 sufficient operating personnel are available at all times and are
19 adequately experienced, trained and licensed as necessary to operate the Facility
20 properly and efficiently, and are capable of responding to reasonably foreseeable
21 emergency conditions whether caused by events on or off the site of the Facility;

22 4.20.3 preventive, routine, and non-routine maintenance and repairs are
23 performed on a basis that ensures reliable long-term and safe operation, and are
24 performed by knowledgeable, trained, and experienced personnel utilizing proper
25 equipment and tools;

26 //

1 4.20.4 appropriate monitoring and testing are performed to ensure equipment
2 is functioning as designed;

3 4.20.5 equipment is not operated in a reckless manner, or in a manner unsafe
4 to workers, the general public, or contrary to environmental laws or regulations or
5 without regard to defined limitations such as flood conditions, safety inspection
6 requirements, operating voltage, current, volt-ampere reactive (VAR) loading,
7 frequency, rotational speed, polarity, synchronization, and/or control system limits;
8 and

9 4.20.6 the equipment will function properly under both normal and
10 reasonably expected emergency conditions at the Facility.

11 4.21 "Grid" means the electrical transmission system that is connected to and
12 beyond the Point of Delivery and controlled by the Independent System Operator.

13 4.22 "Independent System Operator" or "ISO" means the California Independent
14 System Operator or any successor that controls and operates the Grid.

15 4.23 "Interconnection Facilities" means all of the land rights, materials,
16 equipment, and facilities owned by SCE and installed for the purpose of
17 interconnecting the Facility to the Grid, including, but not limited to, electrical
18 interconnection, switching, metering, relaying, and communication and safety
19 equipment.

20 4.24 "Interconnection Facilities Agreement" means the agreement between
21 Wintec Energy, Ltd. and SCE, certain rights under which have been transferred to
22 Seller by Wintec Energy, Ltd. with respect to the interconnection of the Facility to the
23 Grid.

24 4.25 "Metering Devices" means an electronic kilowatt-hour meter and associated
25 potential transformers and current transformers used to measure the Energy Output
26 from the Facility, as described in Section 8.3.3.

1 4.26 "On-Peak Month" means any calendar months of June through and
2 including September.

3 4.27 "Operating Committee" means the committee comprised of one delegate
4 each from Buyer and Seller pursuant to Section 12.5 of this Agreement.

5 4.28 "Point(s) of Delivery" means any electric system point at which Seller
6 makes the Energy Output available to Buyer, as more fully described in Section 9.4.

7 4.29 "Prime Rate" means the prime interest rate as published in The Wall Street
8 Journal on the date of interest (or, if The Wall Street Journal is not published on that
9 day, the next succeeding date of publication).

10 4.30 "Production Tax Credit" means the tax credit amount in cents per kWh
11 described in Section 45 of the Internal Revenue Code of 1996, or any successor or
12 alternative credit or benefit provided by Section 45 or a similar provision of the
13 Internal Revenue Code.

14 4.31 "Project Finance Parties" means Nordex USA, Inc. (or any affiliated entity
15 providing financing to Seller) or any banking organization providing construction or
16 permanent financing or refinancing of the Facility.

17 4.32 "Project Wind Turbine(s)" mean the wind turbine generators referred to in
18 Section 2.3 or accepted by Buyer pursuant to Section 9, or reasonably acceptable
19 replacements or substitutes therefore, which constitute part of the Facility and are
20 dedicated to producing Energy Output for sale to Buyer pursuant to this Agreement.

21 4.33 "SCE" means the Southern California Edison Company, or its successor.

22 4.34 "Seller's Interconnection Facilities" means that portion of the Facilities that
23 are owned by Seller and located outside of the boundary fence of the Facility
24 Substation but with sufficient additional cable attached to reach to the Point of
25 Delivery within the Facility Substation.

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1 4.35 "Wintec" means Wintec Energy, Ltd., a California corporation.

2 5. TERM

3 5.1 Effectiveness; Basic Term

4 The Original Agreement, effective January 28, 2003, shall be amended and
5 restated as provided herein upon the date this agreement is signed by both Parties and
6 shall terminate at midnight on December 30, 2018, subject to the early termination
7 provisions set forth in Section 13 of this Agreement, or as otherwise agreed by the
8 Authorized Representatives.

9 5.2 Survival of Terms and Conditions

10 Obligations incurred hereunder but not satisfied shall survive termination of this
11 Agreement until fully discharged. Applicable provisions of this Agreement shall
12 continue in effect after termination to the extent necessary to provide for final billings
13 and adjustments related to the period prior to termination, including repayment of any
14 money due and owing to or by Buyer or Seller pursuant to this Agreement.

15 6. EXHIBITS

16 Exhibit A is attached hereto and incorporated herein by this reference.

17 7. FACILITY DESCRIPTION

18 7.1 Summary Description

19 The Wintec-Pacific Solar Wind Project, which includes all of the following, the
20 purpose of which is to produce and sell electricity: Seller's equipment, all Project
21 Wind Turbines, step-up transformer(s), circuit breakers, Facility Distribution
22 System(s), protective devices and associated equipment, improvements, and other
23 tangible and intangible assets, property, access, and contract rights reasonably
24 necessary for the construction, operation, and maintenance of the foregoing to be
25 located at the site, as specified in Section 7.2 utilized for producing Energy Output for
26 sale to Buyer pursuant to this Agreement. Seller shall construct, operate, and maintain

1 the Facility in a workmanlike, professional manner according to Good Utility Industry
2 Practice(s). The Facility shall be:

3 7.1.1 capable of supplying Energy Output in accordance with this
4 Agreement;

5 7.1.2 capable of operating at power levels as specified in this Agreement or
6 as agreed by the Parties' Authorized Representatives pursuant to Section 9 with
7 respect to Additional Unit(s); and

8 7.1.3 equipped with appropriate metering devices, protective devices, and
9 generator control systems.

10 7.2 Site

11 The Facility shall be located in the San Gorgonio Pass Wind Resource Area (as
12 such term is defined by the California Energy Commission,) the County of Riverside,
13 California.

14 8. INTERCONNECTION FACILITIES AND METERING

15 8.1 Interconnection Facilities Agreement

16 Wintec has negotiated and entered into the Interconnection Facilities Agreement
17 with SCE, and Wintec has assigned certain rights to utilize the Interconnection
18 Facilities to Seller. Seller has received all consents from SCE necessary to utilize the
19 Interconnection Facilities. During the term of this Agreement, Seller shall have the
20 continuing obligation to maintain such agreements in effect, or such other
21 agreement(s) or facilities as may be required for Seller to transmit any Energy Output
22 to the Points of Delivery in accordance with this Agreement.

23 8.2 Delivery Arrangements Agreement

24 Buyer shall be solely responsible for negotiating, and maintaining during the term
25 of this Agreement, the Delivery Arrangements Agreement. Buyer shall be responsible

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1 for paying any costs associated with the use of the ISO's transmission system under
2 the Delivery Arrangements Agreement.

3 8.3 Other Provisions Related to Interconnection

4 8.3.1 House Power and Maintenance Power

5 This Agreement does not provide for the supply of any electric service by
6 Buyer to Seller or to the Facility. Seller shall be responsible for arranging and paying
7 for any power required for the operation of the Facility and the Facility Substation.

8 8.3.2 Access to Facility

9 During the term of this Agreement, appropriate representatives of Buyer shall
10 at all reasonable times, including weekends and nights, and with reasonable prior
11 notice, have access to the Facility and the Interconnection Facilities (to the extent
12 permitted under the Interconnection Facilities Agreement), to read any Metering
13 Devices measuring Energy Output, maintain meters installed by Buyer pursuant to
14 Section 8.3.3.3, and to perform all inspections and operational reviews as may be
15 appropriate to facilitate the performance of this Agreement. While at the Facility, such
16 representatives shall observe such reasonable safety precautions as may be required by
17 Seller and shall conduct themselves in a manner that will not interfere with the
18 construction, operation or maintenance of the Facility.

19 8.3.3 Metering Devices and Atmospheric Monitoring

20 8.3.3.1 All Metering Devices used to measure the Energy Output under
21 this Agreement shall be paid for and owned by Seller, and installed, operated, and
22 maintained by Seller in accordance with requirements of the ISO. Seller shall, at
23 Seller's expense, install communication equipment that allows Buyer to read the
24 Metering Devices from a remote location (such as Buyer's headquarters) at any time.
25 Except for meters provided by Buyer in accordance with Section 8.3.3.3, Metering
26 Devices shall be maintained directly by Seller or by agents or subcontractors directly

1 under the Seller's control. All Metering Devices used to measure the Energy Output
2 under this Agreement shall be sealed and the seal may be broken only when such
3 Metering Devices are to be inspected, and tested and/or adjusted. The number, type,
4 and location of such Metering Devices shall be consistent with the requirements of the
5 ISO. Seller will use its best efforts to make real time data available to Buyer regarding
6 wind speed and direction at the Facility, and any other data reasonably accessible to
7 the Facility.

8 8.3.3.2 All Metering Devices shall be maintained, calibrated, and
9 tested in conformance with the policies of the ISO and the terms of the Interconnection
10 Facilities Agreement. Seller shall arrange to inspect and test the Metering Devices at
11 least once per calendar year, unless more frequent testing and inspection is appropriate
12 as a result of ISO requirements, or repairs or replacements to the Metering Devices.
13 Buyer, at its own expense, may require that Seller initiate testing and inspection of the
14 Metering Devices. Seller shall notify and permit a representative of Buyer to witness
15 and verify all inspections and tests, provided, however, that Buyer shall comply with
16 all of Seller's safety standards while at the Facility. Seller shall provide Buyer with
17 copies of any periodic or special inspection or testing reports relating to the Metering
18 Devices.

19 8.3.3.3 In addition to the communication equipment installed by Seller
20 pursuant to Section 8.3.3.1, Buyer may elect to install and maintain, at its own
21 expense, other Metering Devices and data gathering and communication equipment
22 used to monitor, record, or transmit data relating to the Energy Output from the Project
23 Wind Turbines. Seller shall arrange for a location within the Facility accessible to
24 Seller and Buyer, for such data gathering and communication equipment that may be
25 installed.

26 //

1 8.3.3.4 Seller shall notify Buyer within forty-eight (48) hours of Seller
2 receiving actual notice of any inaccuracy or defect in a Metering Device. Seller shall
3 cause the Metering Devices to be adjusted, repaired, replaced, and/or recalibrated as
4 near as reasonably practicable to a condition of zero error at the expense of the Party
5 owning the defective or inaccurate device.

6 8.3.4 Adjustment for Inaccurate Meters

7 Buyer shall only pay for energy credited to Buyer by the ISO. Seller shall be
8 responsible for adjustments not recognized by the ISO. In such an event, Buyer will
9 provide settlement records to assist Seller. Seller shall have the exclusive right to
10 negotiate such adjustments with the ISO, and Buyer will cooperate with Seller in any
11 such negotiations.

12 8.3.5 Reliability Standards

13 Seller shall operate the Facility in a manner that complies with the
14 requirements of the ISO and Good Utility Industry Practices.

15 8.3.6 Participating Intermittent Resource Certification

16 Unless otherwise agreed by the Operating Committee, Seller shall maintain in
17 effect ISO certification of the Project Wind Turbines as a Participating Intermittent
18 Resource under the terms of the ISO's Operating Agreement and Tariff on file with
19 the Federal Energy Regulatory Commission.

20 9. OBLIGATION TO SELL AND PURCHASE ENERGY OUTPUT

21 9.1 Initial Project Wind Turbines

22 Seller shall achieve initial energy deliveries from the Project Wind Turbines by no later
23 than September 30, 2003 and shall achieve their Completion Date by no later than December
24 31, 2003, in each case extended by the number of days that initial energy deliveries or their
25 Completion Date was delayed due to Force Majeure or SCE's actions or inactions; provided,
26 that Seller shall have given Buyer prompt written notice of the cause of such delay, the date

1 the delay commenced and all actions Seller is taking to prevent such delay. Breach of this
2 Section 9.1 shall constitute an Event of Default as provided under Section 13 and Buyer may
3 pursue remedies available to it including those available pursuant to Section 13.3.

4 9.2 Additional Unit(s)

5 To the extent that Seller desires to construct one or more Additional Units, the Energy
6 Output of which shall be purchased by Buyer, Seller's Authorized Representative shall
7 provide a Construction Proposal, as generally described in Exhibit A, to the Buyer's
8 Authorized Representative that will include the complete description of each proposed
9 Additional Unit(s), including but not limited to nameplate data, MW rating, general
10 geographical location, Facility Substation, and expected Completion Date. The Construction
11 Proposal will be subject to the review and written approval of the Parties' Authorized
12 Representatives.

13 9.2.1 Seller shall achieve the Commercial Operation Date with respect to each
14 Additional Unit within 30 days after the Completion Date specified in the related
15 Construction Proposal, in each case extended by the number of days of delay due to Force
16 Majeure or actions taken or not taken by SCE or the ISO; provided, that Seller shall have
17 given Buyer prompt written notice of the cause of such delay, the date the delay commenced
18 and all actions Seller is taking to prevent such delay. Breach of this Section 9.2.1 shall cause
19 the related Construction Proposal to be void *ab initio* unless otherwise agreed in writing by
20 the Authorized Representatives.

21 9.2.2 Once an Additional Unit has achieved Commercial Operation, the Parties'
22 Authorized Representatives shall execute an Addendum to the Agreement in substantially the
23 form of the Sample Addendum attached hereto as Exhibit "B" and such Addendum shall be
24 approved as to form by Buyer's City Attorney. Such Addendum shall make such Additional
25 Unit part of and subject to the same rates, terms and conditions as the other Project Wind
26 Turbines in accordance with this Agreement. In the Addendum Seller shall certify to Buyer

1 that such Additional Unit has achieved Commercial Operation and shall specify the
2 Commercial Operation Date of such Additional Unit. Thereafter, the Additional Unit shall
3 be considered a Project Wind Turbine.

4 9.3 Sale and Purchase

5 9.3.1 Buyer shall purchase any and all Energy Output generated by the
6 Project Wind Turbines and delivered to the Points of Delivery prior to the Completion
7 Date. Beginning on the Completion Date, and throughout the term of this Agreement,
8 Seller shall supply from the Facility and sell to Buyer, and Buyer shall receive and
9 purchase, the entire Energy Output of the Project Wind Turbines in accordance with
10 the terms of this Agreement. Seller shall deliver the Energy Output to, and make such
11 Energy Output available to Buyer at, the Points of Delivery. Seller shall not curtail or
12 interrupt delivery of Energy Output for economic reasons.

13 9.3.2 If Buyer determines in its sole judgment that its receipt of Energy
14 Output deliveries hereunder, in combination with the rates, terms, and conditions of
15 the Delivery Arrangements Agreement, may result in unacceptable economic
16 consequences to Buyer, then Buyer may elect to curtail or suspend Energy Output
17 deliveries hereunder. Any such curtailment or suspension of Energy Output deliveries
18 by Buyer shall not relieve Buyer of its obligation to pay Seller for all Energy Output
19 available but not delivered by Seller at Buyer's request. Buyer agrees that any election
20 under this section shall be made in writing to Seller and shall state the specific reason
21 for the curtailment or suspension, and Buyer shall give Seller not less than seven (7)
22 days notice of such reason. Seller shall utilize meteorological data and other
23 engineering estimates to determine the number of megawatt-hours (MWh) of
24 electricity that would have been generated by the Project Wind Turbines and Seller
25 shall be entitled to include such amount in Energy Output as if such electricity were
26 generated and delivered to Points of Delivery. In addition, Buyer shall pay to Seller an

1 amount equal to the estimated number of MWh described in the preceding sentence
2 multiplied by the rate then currently in effect for the Production Tax Credit available
3 to Seller for sales of electricity from the Project Wind Turbine(s). During any month
4 in which Buyer has curtailed or suspended Energy Output deliveries under this
5 Section, Seller's invoice shall state separately (i) the estimated generation during
6 periods of actual suspension or curtailment; (ii) the total amount due to Seller, equal
7 to the sum of (A) the Energy Payment Rate for such generation multiplied by the
8 estimated generation, plus (B) the Production Tax Credit rate that would have been
9 available to Seller for such generation multiplied by the estimated generation.

10 9.3.3 Unless Buyer elects to procure Scheduling Coordinator (as that term is
11 defined in the ISO's Operating Agreement and Tariff) services from a third party, Buyer shall
12 be the Scheduling Coordinator for the Project Wind Turbines during the term of this
13 Agreement. As the Scheduling Coordinator for the Project Wind Turbines, Buyer shall be
14 responsible for paying all costs and charges assessed to Buyer by the ISO for use of the ISO
15 transmission system in connection with energy deliveries hereunder. Buyer shall not be
16 responsible for and shall reduce payments to Seller hereunder by an amount equal to any costs
17 or charges assessed to Buyer by the ISO related to (i) energy forecasting services associated
18 with the Project Wind Turbines, or (ii) any other administrative costs or charges attributable to
19 the ISO's implementation of processes or procedures to accommodate Participating
20 Intermittent Resources (as that term is defined in the ISO's Operating Agreement and Tariff
21 on file with the Federal Energy Regulatory Commission), or (iii) any cost or charges
22 associated with the Participating Intermittent Resource Program (as that term is defined in the
23 ISO's Operating Agreement and Tariff) or successor program, that is attributable to seller's
24 obligations, compliance and non-compliance.

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1 9.4 Point of Delivery

2 The Point of Delivery shall be the point within a Facility Substation where the
3 SCE distribution facilities connect to the Grid pursuant to the Interconnection
4 Facilities Agreement.

5 9.5 Exception

6 Buyer shall not be obligated to purchase Energy Output that cannot be delivered
7 due to Force Majeure including without limitation, disruptions, breakdowns, electrical
8 system failures and/or mechanical failures, maintenance or repair, including, for
9 reasons of Force Majeure, to the Facility Substation and/or the Grid; provided that
10 such inability to deliver is not due, in whole or in part, to Buyer's negligence or its
11 breach of, or default under, this Agreement or the Delivery Arrangements Agreement.
12 As between Buyer and Seller, Seller shall not be entitled to recover lost revenues from
13 Buyer arising out of Buyer's failure to purchase Energy Output due to events
14 described in this Section 9.5.

15 9.6 Exclusions

16 The Parties acknowledge that the Project Wind Turbines have the potential to
17 produce substantial carbon dioxide credits and other environmental air quality credits
18 and related emissions reduction credits or benefits (economic and otherwise) related to
19 the generation of energy after Commercial Operation (such attributes are referred to
20 herein as "Green Credits"). The Parties agree that any and all such Green Credits shall
21 be the property of Buyer. In furtherance of the foregoing, Seller hereby transfers to
22 Buyer all right, title and interest Seller has or will have in, to, and under such Green
23 Credits. Seller agrees to provide such further evidence of the right, title and interest of
24 Buyer in such Green Credits, and such information with respect to such Green Credits,
25 as Buyer shall reasonably request. Seller agrees that it shall, upon Buyer's reasonable
26 request (and at Buyer's expense, if any), take all necessary actions to qualify the

1 Energy Output for such Green Credits and make available to Buyer any records
2 relating to the Facility in order to fulfill any regulatory reporting requirements with
3 respect to such Green Credits, or to assist Buyer with any regulatory requirement
4 relating to Facility qualification for such Green Credits. Seller shall not incur any such
5 expenses absent Buyer's prior written approval thereof.

6 10. PAYMENT FOR ENERGY OUTPUT

7 10.1 Price for Energy Output Prior to the Completion Date

8 Prior to the Completion Date of the Project Wind Turbines referred to in Section
9 2.3, Buyer agrees to purchase from Seller any Energy Output produced by Seller and
10 delivered to Buyer at the Point of Delivery at a rate of forty-four dollars (\$44.00) per
11 megawatt hour.

12 10.2 Price for Energy Output after the Completion Date

13 After the Completion Date of the Project Wind Turbines referred to in Section 2.3
14 and during the first Contract Year, the Energy Payment Rate for Energy Output
15 produced by Seller and delivered to Buyer at the Point of Delivery shall be forty-four
16 dollars (\$44.00) per megawatt hour (the "Initial Rate"). For each Contract Year after
17 the first Contract Year, the Energy Payment Rate shall be the Initial Rate multiplied by
18 the percentage change in the GDPIPD from the quarter during which the Completion
19 Date occurred to the quarter preceding the beginning of such Contract Year, provided,
20 that the Energy Payment Rate during a Contract Year shall be no less than the prior
21 Contract Year's Energy Payment Rate.

22 10.3 Price for Energy Output associated with Additional Units

23 The Energy Payment Rate for Energy Output produced by Seller and delivered to
24 Buyer at the Point of Delivery associated with any Additional Units shall be the
25 Energy Payment Rate at the then prevailing Energy Payment Rate determined in
26 accordance with Section 10.2, unless otherwise agreed by Authorized Representatives.

1 10.4 Energy Output prior to, on and after the Completion Date shall be metered
2 in whole kilowatt-hours (kWh) by the Metering Device(s), adjusted for electrical
3 losses to Point of Delivery. Energy Output delivered to and purchased by Buyer at the
4 Point of Delivery shall be deemed to be equal to the energy credited to Buyer by the
5 ISO.

6 11. BILLING AND PAYMENT

7 11.1 Billing Statement and Invoices

8 The monthly billing period shall be the calendar month. No later than fifteen (15)
9 calendar days after the end of each calendar month, Seller shall prepare, and provide to
10 Buyer, a statement showing Energy Output and an invoice for any amounts due from Buyer
11 to Seller under the terms of this Agreement, for the previous calendar month billing period.
12 The statement and invoice shall be sent to the Buyer at the following address unless
13 otherwise specified in writing by Buyer:

14 Billing Address:

15 City of Riverside Public Utilities
16 Resources Division
17 2911 Adams Street
18 Riverside, CA 92504

18 11.2 Metered Billing Data

19 All billing data based on metered deliveries to Buyer shall be collected by the
20 Metering Device(s) in accordance with Section 8.3.3.

21 11.3 Payment Dates; Late Payments

22 Payments due Seller or Buyer, as the case may be, shall be due and payable by
23 electronic funds transfer, or by wire transfer, as designated by the owed Party, on or
24 before the twentieth (20th) calendar day following the owing Party's receipt of the
25 owed Party's proper billing invoice. If the amount due is not paid on or before the due
26 date, a late payment charge shall be applied to the unpaid balance and shall be added

1 to the next invoice. Such late payment charge shall be calculated based on an annual
2 interest rate equal to the Prime Rate on the first day of the month in which the invoice
3 is rendered and shall be pro rated by days from the date payment was due until the date
4 when payment is sent.

5 The Parties acknowledge that the ISO may submit true-up settlement statements
6 several months after an invoice has been paid by Buyer. Buyer may net any amount
7 owed to Buyer as a result of such true-up against the amount of any subsequent
8 invoice from Seller or any amount owed to Seller.

9 11.4 Billing Disputes

10 11.4.1 Either Buyer or Seller may contest invoiced amounts if a reasonable basis
11 exists therefor (a "Billing Dispute"). The contesting Party's representative shall notify in
12 writing the representative of the other Party of a Billing Dispute within thirty (30) calendar
13 days from the receipt of a disputed invoice rendered under this Agreement.

14 11.4.2 Uncontested portions of invoiced amounts shall be paid on or before
15 the due date or shall be subject to the late payment interest charges set forth above.

16 12. OPERATIONS AND MAINTENANCE

17 12.1 Conditions Precedent to Facility Completion Date

18 With respect to each Project Wind Turbine referred to in Section 2.3 and each
19 Additional Unit(s), Seller shall advise Buyer in writing when Seller believes that all of
20 the Conditions Precedent have been completed. Thereafter, Seller shall provide
21 evidence reasonably requested by Buyer of the satisfaction or occurrence of all
22 Conditions Precedent. Buyer shall use its best efforts to respond in writing within two
23 (2) Business Days (but in any event shall respond within six (6) Business Days) of
24 receipt of Seller's written notification either confirming to Seller that all of the
25 Conditions Precedent have been satisfied or have occurred or stating with specificity
26 those Conditions Precedent that Buyer believes, in good faith, have not been satisfied,

1 have not occurred or that Seller has not provided to Buyer sufficient evidence thereof.
2 Buyer's confirmation shall not be unreasonably withheld or delayed, and Buyer's
3 failure to respond within six (6) Business Days of receipt of Seller's written
4 notification shall be deemed to constitute Buyer's written confirmation to Seller of the
5 satisfaction or occurrence of all "Conditions Precedent". The occurrence of each of
6 the following shall be Conditions Precedent to the Completion Date:

7 12.1.1 Seller has certified or will have certified with respect to Additional
8 Units pursuant to Section 9.2, to Buyer in writing that all of the Project Wind Turbines
9 have achieved Commercial Operation and specified the Commercial Operation Date of
10 the Project Wind Turbines;

11 12.1.2 The Facility is in compliance with the Interconnection Facilities
12 Agreement;

13 12.1.3 All construction and testing of the Interconnection Facilities have
14 been completed in accordance with the standards of the Interconnection Facilities
15 Agreement and Good Utility Industry Practices;

16 12.1.4 Seller is in all material respects in compliance with the terms and
17 conditions of this Agreement;

18 12.1.5 Metering Devices in conformity with the regulations of the ISO are
19 installed at the Facility Substation; and

20 12.1.6 All arrangements with the ISO necessary for delivery of Energy
21 Output to Buyer are in place. Such arrangements include, but not limited to, the
22 obligation of Seller to obtain (and maintain during the term of this Agreement)
23 certification of the Project Wind Turbines as a Participating Intermittent Resource
24 under the terms of the ISO's Operating Agreement and Tariff.

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1 12.2 Facility Operation and Reliability Standards

2 Seller shall maintain the Facility in a manner that complies with the rules for
3 safety and reliability set forth in the Interconnection Facilities Agreement and Good
4 Utility Industry Practice. Seller shall comply with all applicable local, state, and
5 Federal laws, regulations, and ordinances, including, but not limited to, all applicable
6 Federal, state, and local environmental laws, regulations and ordinances presently in
7 effect or which may be enacted during the term of this Agreement. Seller shall staff,
8 control, and operate the Facility consistent at all times with the Operating Procedures
9 referenced below in this Section.

10 12.2.1 Seller shall provide a maintenance schedule for the Facility for the
11 first year of operation at least thirty (30) days prior to each Completion Date.
12 Thereafter, Seller shall submit to Buyer annual maintenance schedules no later than
13 October 1 of each year that cover the twelve (12) month period starting January 1 and
14 ending December 31, and a long-term maintenance schedule that will encompass each
15 of the immediately ensuing four (4) calendar years. Buyer shall provide written notice
16 of any reasonable objections to the proposed annual maintenance schedule within ten
17 (10) Business Days of receipt thereof, and failure to so object shall be deemed
18 approval of the annual maintenance schedule. Seller shall furnish Buyer with
19 reasonable advance notice of any change in the annual maintenance schedule.
20 Reasonable advance notice of any change in the annual maintenance schedule
21 involving any shutdown of any part of the Facility is as follows:

<u>Scheduled Outage Expected Duration</u>	<u>Advance Notice to Buyer</u>
Less than 2 calendar days	at least 48 hours
2 to 5 calendar days	at least 7 calendar days
Major overhauls (over 5 calendar days)	at least 30 calendar days

26 //

1 12.2.2 Seller shall not schedule any planned maintenance outages for the
2 entire Facility during any weekday of an On-Peak Month without the prior written
3 approval of Buyer not to be unreasonably withheld, delayed or conditioned.

4 12.2.3 Seller shall provide Buyer notice as soon as practicable of any
5 Facility limitation not specified in the maintenance schedule, the degree of the
6 limitation, and any changes to a limitation that Seller is aware of, as well as when the
7 limitation is removed.

8 12.3 Operations Record

9 Seller shall maintain an operations log, which shall include information on the
10 Availability Factor of the Project Wind Turbines, planned and unplanned maintenance
11 outages, circuit breaker trip operations as a result of protective relay operation, partial
12 deratings of equipment, and any other significant event related to the operation of the
13 Project Wind Turbines. The operations record shall be available for inspection by
14 Buyer upon reasonable advance request, and Seller shall make the data available on a
15 real-time basis by remote access to Buyer if Buyer reimburses Seller for the costs of
16 the necessary equipment and software license to process the data by remote access.

17 12.4 Monthly Reports

18 Seller shall provide to Buyer a monthly report, prior to or concurrent with Seller's
19 issuance of the billing statement referred to in Section 11.1, with such information and
20 in such form as Buyer shall reasonably request, by electronic mail and in hard copy,
21 regarding the operations of the Project Wind Turbines. Each monthly report shall
22 include: all reporting information maintained in the operations record; data on the
23 wind during the month, a comparison of the available wind energy compared to the
24 actual wind energy generated during the month, and hourly output of the Project Wind
25 Turbines. The monthly report shall also include an estimate of monthly energy output

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1 for the calendar year and such other information related to the operation of the Project
2 Wind Turbines that Buyer reasonably requests.

3 12.5 Operating Committee and Operating Procedures

4 12.5.1 The Authorized Representatives shall each appoint one delegate and
5 one alternate delegate to act on matters relating to the operation of the Project Wind
6 Turbines. Such delegates shall constitute the Operating Committee. The Parties'
7 Authorized Representatives shall notify each other in writing of such appointments
8 within thirty (30) days after execution of this Agreement and any changes thereto. The
9 Operating Committee shall have no authority to modify the terms or conditions of this
10 Agreement.

11 12.5.2 If requested by either Party, the Operating Committee shall, acting
12 reasonably, develop and distribute mutually agreeable written operating procedures
13 ("Operating Procedures") no later than thirty (30) days prior to an expected
14 Completion Date. Operating Procedures shall include, but not be limited to: method
15 of day-to-day communications; metering, telemetering, telecommunications, and data
16 acquisition procedures; operating and maintenance scheduling and reporting;
17 operations log; and such other matters as may be mutually agreed upon by the
18 Operating Committee.

19 12.6 Modification of Reports to Conform to California Energy Commission 20 (CEC) or Other Requirements

21 Buyer and Seller agree that the reports provided under this Agreement will be
22 conformed to requirements of the CEC, or such other entity requiring reports relating
23 to the Facility, and that the reporting requirements under this Section 12 will be
24 modified in a manner consistent therewith. Buyer and Seller also agree that, to the
25 extent reasonably possible given the reporting requirements of the CEC or other entity,
26 the Seller shall not be required to provide multiple reports to multiple entities, i.e., the

1 Seller shall provide the same report during each period with respect to the Facility to
2 each entity, including Buyer, that requires reports.

3 13. DEFAULT AND TERMINATION:

4 13.1 Events of Default of Seller

5 13.1.1 The occurrence of any of the following shall constitute an immediate
6 Event of Default without the opportunity to cure:

7 13.1.1.1 Seller dissolution or liquidation;

8 13.1.1.2 Seller assignment of this Agreement or any of its rights under
9 it for the benefit of creditors;

10 13.1.1.3 Seller abandonment of construction and/or operation of the
11 Facility;

12 13.1.1.4 Seller filing of a petition in bankruptcy or insolvency or for
13 reorganization or arrangement under the bankruptcy laws of the United States or under
14 any insolvency act of any state, or Seller voluntarily taking advantage of any such law
15 or act by answer or otherwise;

16 13.1.1.5 Commencing on the first (1st) anniversary of a Completion
17 Date, Seller's failure to maintain a Project Wind Turbine Availability Factor greater
18 than seventy-five percent (75%), provided that such failure is not the result of Force
19 Majeure; or

20 13.1.1.6 Commencing on the first (1st) anniversary of a Completion
21 Date, the related Project Wind Turbine does not produce an amount of energy equal to
22 an annual Capacity Factor of twenty percent (20%), provided that such failure is not
23 the result of Force Majeure; or

24 13.1.1.7 Seller's failure to meet a Completion Date as set forth in
25 Section 9.1 (subject to the extensions of time available to Seller under Section 9.1).

26 //

1 13.1.2 The occurrence of any of the following shall constitute an Event of
2 Default of Seller unless Seller shall have cured the same within ninety (90) days after
3 receipt by Seller of written notice thereof from Buyer:

4 13.1.2.1 Seller's assignment of this Agreement or any of Seller's
5 rights or obligations under this Agreement or the sale or transfer of voting control of
6 Seller or Seller's sale or other transfer of any material portion of its interest in the
7 Facility, other than in compliance with the provisions of Section 19;

8 13.1.2.2 The filing of a case in bankruptcy or any proceeding under
9 any other insolvency law against Seller as debtor or its parent or any other affiliate that
10 could materially impact Seller's ability to perform its obligations hereunder; provided,
11 however, that Seller does not cure by obtaining a stay or dismissal of the filing within
12 ninety (90) days of the date of such filing;

13 13.1.2.3 Seller tampering with or adjusting of the Metering Devices
14 for the Project Wind Turbines in ways not expressly permitted by Sections 8.3.3 and
15 8.3.4;

16 13.1.2.4 The sale by Seller to a third party, or diversion by Seller for
17 any use, of the Energy Output committed to Buyer by Seller absent Buyer's prior
18 written consent to such sale, diversion or use;

19 13.1.2.5 Seller's failure to maintain in effect any material agreements
20 required to deliver the Energy Output to the Point of Delivery;

21 13.1.2.6 Seller's failure to acquire or maintain permits needed to
22 construct and operate the Facility;

23 13.1.2.7 Seller's failure to acquire or maintain land rights needed to
24 access, construct, and operate the Facility; or;

25 13.1.2.8 Seller's failure to comply with any other material obligation
26 under this Agreement.

1 13.1.3 Seller's failure to make any payment when required under this
2 Agreement shall constitute an Event of Default of Seller unless:

3 13.1.3.1 Seller shall have cured the same within thirty (30) days after
4 receipt by Seller of written notice thereof from Buyer; or

5 13.1.3.2 Seller has filed in good faith a Billing Dispute with respect to
6 such unpaid amounts and complied with Section 11.4.

7 13.2 Events of Default of Buyer

8 13.2.1 The following shall constitute Events of Default of Buyer upon their
9 occurrence and no cure period shall be applicable:

10 13.2.1.1 Buyer's dissolution or liquidation, provided that division of
11 Buyer into multiple entities shall not constitute dissolution or liquidation; or

12 13.2.1.2 Buyer's general assignment of this Agreement or any of its
13 rights hereunder for the benefit of creditors.

14 13.2.2 The following shall constitute Events of Default of Buyer upon their
15 occurrence unless cured within ninety (90) days after the receipt by Buyer of written
16 notice thereof from Seller:

17 13.2.2.1 Except as a result of Billing Dispute as provided in Section
18 11.4, Buyer fails to purchase the entire Energy Output of the Project Wind Turbines in
19 accordance with Section 9; provided, that such failure is not the result of Force
20 Majeure;

21 13.2.2.2 Buyer defaults on its obligations under the Delivery
22 Arrangements Agreement, and such default renders Seller unable to deliver the Energy
23 Output at the Point of Delivery or affects Seller's right to be paid under this
24 Agreement for delivery at the Point of Delivery for its Energy Output;

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1 13.2.2.3 Buyer's assignment of this Agreement or any of Buyer's
2 rights under this Agreement without obtaining Seller's prior written consent pursuant
3 to Section 19; or

4 13.2.2.4 Buyer's failure to comply with any other material obligation
5 under this Agreement after receipt of notice thereof.

6 13.2.3 Buyer's failure to make any payment when required under this
7 Agreement shall constitute an Event of Default unless:

8 13.2.3.1 Buyer shall have cured the same within thirty (30) days after
9 receipt by Buyer of written notice thereof; or

10 13.2.3.2 Buyer has filed in good faith a Billing Dispute with respect to
11 such unpaid amounts and complied with Section 11.4.

12 13.3 Termination for Cause

13 In addition to any other right or remedy available at law or in equity or pursuant
14 to this Agreement, including the right to seek damages for breach of this Agreement,
15 the non-defaulting Party may, upon written notice to the defaulting Party, terminate
16 this Agreement if any one or more of the Events of Default described in this Section
17 occur and are not cured within the time periods set forth herein, if any. Neither Party
18 shall have the right to terminate this Agreement except as provided for upon the
19 occurrence of an Event of Default as described above or as otherwise may be explicitly
20 provided for in this Agreement. All remedies in this Agreement shall survive
21 termination or cancellation of this Agreement and are cumulative.

22 13.4 No Consequential Damages

23 In no event shall either Party be liable for the other Party's alleged lost profits or
24 other consequential damages; provided, however, that any amounts which are
25 expressly provided herein to be payable shall not be construed as lost profits or
26 consequential damages.

1 14. CONTRACT ADMINISTRATION AND NOTICES

2 14.1 Authorized Representatives

3 Each Party shall designate by written notice to the other Party a representative
4 who is authorized to act on its behalf in the implementation of this Agreement and
5 with respect to those matters contained herein which are the functions and
6 responsibilities of the Authorized Representatives. Each Authorized Representative
7 may delegate actual performance of such functions and responsibilities; provide, that
8 any agreement of the Authorized Representatives required to be in writing shall be
9 signed by the Authorized Representatives. Each Party may at any time change the
10 designation of its Authorized Representative by written notice to the other Party.

11 The Parties' Authorized Representatives shall have authority to act for their
12 respective principals in all technical matters relating to performance of this
13 Agreement, matters relating to each Construction Proposal and matters related to the
14 resolution of disputes or potential disputes. However, they shall not have the authority
15 to amend or modify any provision of this Agreement

16 14.2 Notices

17 All notices, demands or other communications required from or given by a Party
18 pursuant to this Agreement shall be provided to the other Party in accordance with the
19 requirements set forth in this Section 14. All notices, demands or other
20 communications required hereunder shall be given or made in writing and shall be
21 delivered personally, sent by facsimile (fax), sent by a courier service, or mailed by
22 registered or certified mail, postage prepaid to the Parties at the following addresses,
23 or at such other address as may be designated by notice given pursuant hereto:

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1 If to Seller:

2
3 Wintec-Pacific Solar, LLC
4 **1090 N. Palm Canyon Drive, Suite A**
5 Palm Springs, CA 92262
6 Attn: Frederick Noble, President
(760) 323-9490
(760) 323-0688 fax

7
8 If to Buyer:

9 City of Riverside Public Utilities
10 3900 Main Street
11 Riverside, CA 92522
12 Attn: Public Utilities Director
(951) 826-5197
(951) 369-0548 fax

13 Notices given personally or sent by facsimile shall be deemed given the day so
14 given, transmitted or sent. Notices mailed or sent by a courier service as provided
15 herein shall be deemed given on the third Business Day following the date so mailed
16 or on the date of actual receipt, whichever is earlier.

17 14.3 Representative for Notice

18 Each Party shall maintain a designated representative to receive notices
19 hereunder. Such representative may, at the option of each Party, be the same person as
20 that Party's Authorized Representative or alternate representative on the Operating
21 Committee, or a different person. Either Party may, by written notice to the other,
22 pursuant to Section 14.1 above, change the representative or the address to which such
23 notices and communications are to be sent.

24 14.4 Operating Records

25 Seller and Buyer shall each keep complete and accurate records and all other data
26 required by each of them for the purposes of proper administration of this Agreement,

1 including such records as may be required by State or Federal regulatory authorities.

2 14.5 Billing and Payment Records

3 To facilitate payment and verification, Seller shall keep all books and records
4 necessary for billing and payments in accordance with the provisions of Section 11
5 and grant the Buyer reasonable access to those records.

6 14.6 Examination of Records

7 Seller and Buyer may examine the billing and operating records and data kept by
8 the other relating to transactions under, and administration of, this Agreement at any
9 time during the period the records are required to be maintained, but in no event less
10 than three (3) years, upon request with reasonable advanced notice and during normal
11 business hours.

12 15. DISPUTE RESOLUTION

13 15.1 Good Faith Effort to Resolve; Continued Performance

14 Any contract dispute or contract issue between the Parties arising out of this
15 Agreement shall be subject to binding arbitration. The Parties shall make a good faith
16 effort to negotiate the resolution of disputes before initiating arbitration. During a
17 contract dispute or contract issue between the Parties arising out of this Agreement,
18 including during arbitration, the Parties shall continue performance under this
19 Agreement pending resolution of the dispute, unless to do so would be impossible or
20 impracticable.

21 15.2 Arbitration Location

22 Any arbitration shall take place in Riverside, California, unless the Parties agree
23 otherwise. The American Arbitration Association's arbitration procedures for
24 commercial arbitration, Non-Administered Arbitration Rules (AAA Rules), shall be
25 used for each dispute; provided, however, that: (1) the Parties shall have the discovery
26 rights provided in the Federal Rules of Civil Procedure unless the Parties agree

1 otherwise; and (2) for claims of \$1 million or more, each arbitration shall be conducted
2 by a panel of three neutral arbitrators. The Parties shall select the arbitrators from a
3 list containing the names of fifteen (15) qualified individuals supplied by the
4 American Arbitration Association. If the Parties cannot agree upon three (3)
5 arbitrators on the list within twenty (20) Business Days, the Parties shall take turns
6 striking names from the list of proposed arbitrators. The Party initiating the arbitration
7 shall take the first strike. This process shall be repeated until three (3) arbitrators
8 remain on the list, and those individuals shall be designated as the arbitrators. For
9 disputes involving less than \$1 million, a single neutral arbitrator shall be selected
10 consistent with the AAA Rules.

11 15.3 Remedy for Arbitration Proceedings

12 Except for arbitration awards which declare the rights and duties of the Parties
13 under this Agreement, the payment of monies shall be the exclusive remedy available
14 in any arbitration proceeding. Under no circumstances shall specific performance be
15 an available remedy against Buyer. The arbitration award shall be final and binding
16 on both Parties, except that either Party may seek judicial review based upon any of
17 the grounds referred to in the Federal Arbitration Act, 9 U.S.C. §1-16 (1988).
18 Judgment upon the award rendered by the arbitrators may be entered into any court
19 having jurisdiction thereof.

20 15.4 Costs of Arbitration

21 Each Party shall be responsible for its own costs of arbitration, including legal
22 fees. The arbitrators may apportion all costs of arbitration, including legal fees,
23 between the Parties in such manner as they deem reasonable taking into account the
24 circumstances of the case, the conduct of the Parties during the proceeding, and the
25 result of the arbitration.

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1 16. FORCE MAJEURE

2 16.1 Definition of Force Majeure

3 The term "Force Majeure," as used in this Agreement, means causes or events beyond
4 the reasonable control of, and without the fault or negligence of the Party claiming Force
5 Majeure, including, without limitation, acts of God, sudden actions of the elements such as
6 floods, earthquakes, hurricanes, wind speeds in excess of safe working limits, or tornadoes;
7 sabotage; vandalism beyond that which could reasonably be prevented by Seller; terrorism;
8 war; riots; fire; explosion; severe cold or hot weather or snow or other extreme or severe
9 weather conditions; blockage, insurrection, strike, slow down, or labor disruptions (even if
10 such difficulties could be resolved by conceding to the demands of a labor group); and
11 requirements, actions or failures to act by the ISO, but only if such requirements, actions or
12 failures to act prevent or delay performance; the adoption of or change in any rule or
13 regulation or judicial decision lawfully imposed by Federal, state, or local government
14 bodies; inability, despite due diligence, to obtain required licenses, permits, or approvals for
15 the construction and operation of the Facility under the terms of this Agreement; and the
16 mechanical or equipment breakdown of the Grid to the extent not caused by the Party
17 claiming the Force Majeure. The term "Force Majeure" does not include any full or partial
18 curtailment in the electric output of the Facility that is caused by or arises from the act or acts
19 of any third party, including, without limitation, any vendor, materialman, customer, or
20 supplier of Seller, unless such act or acts is or are itself or themselves excused by reason of
21 Force Majeure. The term "Force Majeure" also does not include any full or partial
22 curtailment in the electric output of the Facility that is caused by or arises from a mechanical
23 or equipment breakdown of the Facility, or fires, explosions, or other mishap or events or
24 conditions attributable to normal wear and tear or flaws related to the Facility, unless caused
25 by a Force Majeure event specifically listed in the first sentence of this Section 16.1.

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1 16.2 Applicability of Force Majeure

2 Neither Party shall be responsible or liable for any delay or failure in its
3 performance under this Agreement due to conditions or events of Force Majeure
4 (except that any and all obligations to pay money shall not be delayed or excused by
5 conditions or events of Force Majeure), provided that:

6 16.2.1 The non-performing Party gives the other Party prompt written
7 notice describing the particulars of the occurrence of the Force Majeure;

8 16.2.2 The suspension of performance is of no greater scope and of no
9 longer duration than is required by the Force Majeure;

10 16.2.3 The non-performing Party proceeds with reasonable diligence to
11 remedy its inability to perform and provides weekly progress reports to the other Party
12 describing actions taken to end the Force Majeure; and

13 16.2.4 The non-performing Party shall provide written notice of its ability
14 to resume performance of its obligations under this Agreement.

15 16.3 Limitations on Effect of Force Majeure

16 In no event will any delay or failure of performance caused by any conditions or
17 events of Force Majeure extend this Agreement beyond its stated term. In the event of
18 any delay or failure of performance caused by conditions or events of Force Majeure,
19 which would otherwise constitute an Event of Default pursuant to Section 13, the cure
20 provisions of Section 13 shall not apply and such delay or failure of performance, if
21 not previously cured, shall be extended day-for-day by the event of Force Majeure;
22 provided that such delay or failure shall become an Event of Default one (1) year from
23 the date of notice provided for in Section 13. The other Party may, at any time
24 following the end of such one-year period, terminate this Agreement upon written
25 notice to the affected Party, without further obligation by the terminating Party except
26 as to costs and unpaid balances incurred prior to the effective date of such termination.

1 The other Party may, but shall not be obligated to, extend such one year period, for
2 such additional time as it, at its sole discretion, deems appropriate, if the affected Party
3 is exercising due diligence in its efforts to cure the conditions or events of Force
4 Majeure.

5 16.4 Delays Attributable to Buyer

6 Seller shall be excused from delays in meeting performance deadlines under this
7 Agreement, on a day-for-day basis, for any delays attributable to Buyer, including,
8 without limitation, delays in Buyer obtaining any required permits, consents, or
9 approvals and agreements, including, without limitation, the Delivery Arrangements
10 Agreement, from governmental authorities or third parties required for Buyer to
11 perform its obligations under this Agreement. Seller shall provide Buyer with timely
12 written notice that a delay allegedly attributable to Buyer has occurred or is expected
13 to occur. The notice shall specify the length of any extension to a performance
14 deadline to which Seller feels entitled.

15 17. REPRESENTATIONS AND WARRANTIES

16 17.1 Seller's Representations and Warranties

17 Seller hereby represents and warrants that as of the date hereof:

18 17.1.1 Seller is a limited liability company, duly organized, validly existing
19 and in good standing under the laws of the State of California, and is qualified to
20 perform its obligations under this Agreement in the State of California and in each
21 other jurisdiction where the failure to so qualify would have a material adverse effect
22 upon the business or financial condition of Seller; and Seller has all requisite power
23 and authority to conduct its business, to own its properties, and to execute, deliver, and
24 perform its obligations under this Agreement.

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1 17.1.2 The execution, delivery, and performance of its obligations under
2 this Agreement by Seller have been duly authorized by all necessary corporate action,
3 and do not and will not:

4 17.1.2.1 require any consent or approval of Seller's members, other
5 than that which has been obtained and is in full force and effect;

6 17.1.2.2 violate any provision of law, rule, regulation, order, writ,
7 judgment, injunction, decree, determination, or award currently in effect having
8 applicability to Seller or violate any provision in any charter documents of Seller, the
9 violation of which could have a material adverse effect on the ability of Seller to
10 perform its obligations under this Agreement;

11 17.1.2.3 result in a breach or constitute a default under Seller's
12 charter documents, or under any agreement relating to the management or affairs of
13 Seller or any indenture or loan or credit agreement, or any other agreement, lease, or
14 instrument to which Seller is a party or by which Seller or its properties or assets may
15 be bound or affected, the breach or default of which could reasonably be expected to
16 have a material adverse effect on the ability of Seller to perform its obligations under
17 this Agreement; or

18 17.1.2.4 result in, or require the creation or imposition of, any
19 mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance
20 of any nature (other than as may be contemplated by this Agreement) upon or with
21 respect to any of the assets or properties of Seller now owned or hereafter acquired,
22 the creation or imposition of which could reasonably be expected to have a material
23 adverse effect on the ability of Seller to perform its obligations under this Agreement.

24 17.1.3 This Agreement is a valid and binding obligation of Seller.

25 17.1.4 The execution and performance of this Agreement will not conflict
26 with or constitute a breach or default under any contract or agreement of any kind to

1 which Seller is a party or any judgment, order, statute, or regulation that is applicable
2 to Seller or the Facility.

3 17.1.5 To its best knowledge, all approvals, authorizations, consents, or
4 other action required by any governmental authority to authorize Seller's execution,
5 delivery, and performance under this Agreement have been duly obtained and are in
6 full force and effect.

7 17.2 Buyer's Representations and Warranties

8 Buyer hereby represents and warrants the following:

9 17.2.1 Buyer is authorized by California law, and other applicable laws, to
10 purchase electric power generated by generating facilities or otherwise acquired from
11 other resources, including wind energy facilities.

12 17.2.2 The execution and performance of Buyer's obligations under this
13 Agreement has been duly authorized by all necessary action, and does not and will not:

14 17.2.2.1 require any further consent or approval; or

15 17.2.2.2 to the knowledge of Buyer, violate any provision of
16 California or Federal law, rule, regulation, order, writ, judgment, injunction, decree,
17 determination, or award currently in effect having applicability to Buyer, or conflict
18 with or constitute a breach or default under any contract or agreement of any kind to
19 which Buyer is a party, the violation, conflict, or breach or default of which could
20 have a material adverse effect on the ability of Buyer to perform its obligations under
21 this Agreement.

22 17.2.3 This Agreement is a valid and binding obligation of Buyer.

23 18. REGULATORY JURISDICTION AND COMPLIANCE

24 18.1 Governmental Jurisdiction and Regulatory Compliance

25 Each Party shall at all times comply with all applicable laws, ordinances, rules,
26 and regulations applicable to it. As applicable, each Party shall give all required

1 notices, shall procure and maintain all necessary governmental permits, licenses, and
2 inspections necessary for performance of this Agreement, and shall pay its respective
3 charges and fees in connection therewith.

4 18.2 Provision of Support

5 Either Party may request that the other Party cooperate with the requesting Party
6 in connection with regulatory proceedings or regulatory reporting requirements related
7 to this Agreement, or in connection with litigation related to this Agreement in which
8 the requesting Party is or may be involved. Each Party shall be the sole judge as to the
9 extent of its cooperation.

10 19. ASSIGNMENT AND OTHER TRANSFER RESTRICTIONS

11 19.1 Binding on Successors

12 This Agreement shall be binding upon and inure to the benefit of, or may be
13 performed by, the successors and assigns of the Parties.

14 19.2 No Assignment Without Consent

15 Except as provided elsewhere herein, no Party may assign or otherwise transfer its
16 rights or obligations under this Agreement unless it has obtained the prior written
17 consent of the other Party. Seller may assign and/or delegate, or transfer or permit the
18 transfer of all or any portion of its interests in the Facility or this Agreement, as
19 described below or to any person or entity after obtaining the prior written consent of
20 Buyer, which shall not be unreasonably withheld, delayed or conditioned; provided
21 that such other person or entity assumes, or is otherwise bound to perform, all of
22 Seller's obligations under this Agreement. No assignment, delegation, pledge, or
23 transfer shall relieve or release Seller to any extent of any of its pre-transfer
24 obligations under this Agreement. No assignment, pledge, or other transfer of this
25 Agreement by any Party shall operate to release the assignor, pledgor, or transferor
26 from any of its obligations under this Agreement unless consent to the release, which

1 shall not be unreasonably withheld, delayed or conditioned, is given in writing by the
2 other Party.

3 19.3 Assignment as Security to Project Finance Parties

4 Without limiting the obligations described in Section 19.1 and 19.2, Seller may
5 assign all of its rights and interests under this Agreement with respect to all or a
6 portion of the Facility to the Project Finance Parties as security for Seller's obligations
7 to the Project Finance Parties. Buyer acknowledges that as a result of such assignment
8 of Seller's rights and interests under this Agreement to the Project Finance Parties:

9 19.3.1 Right to Assume Agreement. The Project Finance Parties will have
10 the right upon the occurrence of a default or an event of default under the Project
11 Finance Parties' agreements with Seller to assume or cause a nominee to assume all of
12 the rights and obligations of Seller under this Agreement assigned to such Project
13 Finance Parties;

14 19.3.2 Cure Right. The Project Finance Parties will have the right to cure
15 any default or any Event of Default by Seller under this Agreement with respect to the
16 portion of the Facility in which the Project Finance Parties have rights on the same
17 terms and during the same periods available to Seller. In the event such Event of
18 Default is cured and this Agreement is not terminated, this Agreement shall remain in
19 effect;

20 19.3.3 No Obligation. Neither the Project Finance Parties, nor any
21 bondholders or participant for whom they may act, will be obligated to perform any
22 obligation or be deemed to incur any liability herein provided on the part of Seller
23 unless and until the Project Finance Parties have exercised their rights under such
24 assignments;

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1 19.3.4 Consent to Assignment. Buyer acknowledges that the Project
2 Finance Parties may have other or further requests with respect to the assignment of
3 this Agreement. Buyer will consider any such requests in good faith; and

4 19.3.5 Project Finance Party Notice. Buyer agrees that if requested by
5 Seller a copy of any notice sent to Seller hereunder shall be sent in the manner
6 provided herein simultaneously to the Project Finance Parties at the addresses
7 provided by the Project Finance Parties to Buyer in writing. The designation and title
8 of the person to be notified or the address of such person may be changed at any time
9 by written notice given in accordance with Section 14.1.

10 19.4 No Limitation on Sale of Interests

11 Nothing in this Agreement shall prohibit the Seller, or any company or
12 partnership to which this Agreement is assigned with Buyer's consent, from selling
13 equity interests, whether shares, membership or partnership interests, to third parties.

14 19.5 Resale of Energy Output

15 Buyer will have the right, without consent of Seller, to sell all or part of the
16 Energy Output to be purchased pursuant to this Agreement to other utilities or other
17 third parties in any lawful fashion. Regardless of any such sale, Buyer shall at all times
18 remain liable for all obligations undertaken to Seller under the terms of this Agreement
19 including without limitation the purchase of the Energy Output.

20 20. CONFIDENTIAL INFORMATION

21 20.1 Availability

22 The Parties have and will develop certain information, processes, know-how, techniques
23 and procedures concerning the Facility (collectively, "Information"), which they consider
24 confidential and proprietary. Notwithstanding the confidential and proprietary nature of such
25 Information, Buyer and Seller (each, the "Disclosing Party") may make this Information
26 available to the other (each, a "Receiving Party") subject to the provisions of this Section.

1 20.2 Designation

2 At the time of furnishing or making available for inspection such confidential or
3 proprietary Information, the Disclosing Party shall expressly designate by label, stamp,
4 or oral communication (to be confirmed in writing) the Information which it considers
5 to be confidential and/or proprietary.

6 20.3 Obligations

7 The Receiving Party's obligations with respect to the use or disclosure of such
8 Information thereafter will be as set forth in this Section.

9 20.4 Conditions and Restrictions

10 Upon receiving or learning of Information designated as confidential and/or
11 proprietary by the Disclosing Party, the Receiving Party shall:

12 20.4.1 Treat such Information as confidential and use reasonable care not
13 to divulge such Information to any third party except as required by law, subject to the
14 restrictions set forth below;

15 20.4.2 Restrict access to such Information to employees (and others who
16 agree to be bound by this Agreement) whose access is reasonably necessary in
17 developing the Facility and for the purposes of this Agreement;

18 20.4.3 Use such Information solely for the purpose of developing the
19 Facility and for the purposes of this Agreement; and

20 20.4.4 Upon the termination of this Agreement, destroy or return any such
21 Information in written or other tangible form and any copies thereof, if asked to do so
22 in writing by the Disclosing Party.

23 20.5 Exceptions

24 The restrictions in this Section do not apply to:

25 20.5.1 The contents of this Agreement, which becomes a public document
26 upon its finalization;

1 20.5.2 Information which is, or becomes, publicly known or available
2 otherwise than through the action of the Receiving Party in violation of this
3 Agreement;

4 20.5.3 Information which is in the possession of the Receiving Party prior
5 to receipt from the Disclosing Party or is independently developed by the Receiving
6 Party; provided that the person or persons developing same have not had access to
7 such information; or

8 20.5.4 Information which is, in the reasonable written opinion of counsel to
9 the Receiving Party, required to be disclosed pursuant to applicable law or regulation
10 (including any Freedom of Information Act or Public Records Act request); provided,
11 however, that the Receiving Party, prior to such disclosure, shall provide reasonable
12 advance notice to the Disclosing Party of the time and scope of the intended disclosure
13 in order to permit the Disclosing Party opportunity to obtain a protective order or
14 otherwise seek to prevent or limit the scope or otherwise impose conditions upon such
15 disclosure.

16 20.6 Term of Obligations

17 The obligations of the Parties under this section shall remain in full force and
18 effect for two (2) years following the termination of this Agreement.

19 21. MISCELLANEOUS

20 21.1 Waiver

21 The failure of either Party to enforce or insist upon compliance with or strict
22 performance of any of the terms or conditions of this Agreement, or to take advantage
23 of any of its rights shall not constitute a waiver or relinquishment of any such terms,
24 conditions, or rights, but the same shall be and remain at all times in full force and
25 effect.

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1 21.2 Taxes

2 Seller shall be responsible for any and all present or future Federal, state,
3 municipal, or other lawful taxes applicable by reason of the ownership and operation
4 of the Facility and all ad valorem taxes relating to the Facility and the Interconnection
5 Facilities.

6 21.3 Disclaimer of Third Party Beneficiary Rights

7 In executing this Agreement, Buyer does not, nor should it be construed to, extend
8 its credit or financial support for the benefit of any third parties lending money to or
9 having other transactions with Seller. Nothing in this Agreement shall be construed to
10 create any duty to, or standard of care with reference to, or any liability to, any person
11 not a Party to this Agreement.

12 21.4 Relationship of the Parties

13 This Agreement shall not be interpreted to create an association, joint venture, or
14 partnership between the Parties nor to impose any partnership obligation or liability
15 upon either Party. Neither Party shall have any right, power, or authority to enter into
16 any agreement or undertaking for, or act on behalf of, or to act as an agent or
17 representative of, the other Party.

18 Seller shall be solely liable for the payment of all wages, taxes, and other costs
19 related to the employment of persons to perform such services, including all Federal,
20 state, and local income, social security, payroll, and employment taxes and statutorily
21 mandated workers' compensation coverage. None of the persons employed by Seller
22 shall be considered employees of Buyer for any purpose; nor shall Seller represent to
23 any person that he or she is or shall become a Buyer employee.

24 21.5 Survival of Obligations

25 Cancellation, expiration, or earlier termination of this Agreement shall not relieve
26 the Parties of obligations that by their nature or expressly stated should survive such

1 cancellation, expiration, or termination, including, without limitation, warranties,
2 remedies, or indemnities.

3 21.6 Severability

4 In the event any of the terms, covenants, or conditions of this Agreement or the
5 application of any such terms, covenants, or conditions, shall be held invalid, illegal,
6 or unenforceable by any court having jurisdiction, all other terms, covenants, and
7 conditions of the Agreement and their application not adversely affected thereby shall
8 remain in force and effect, provided that the remaining valid and enforceable
9 provisions materially retain the essence of the Parties' original bargain.

10 21.7 Interpretation

11 Unless the context of this Agreement otherwise requires, (a) words of any gender
12 include each other gender; (b) words using the singular or plural number also include
13 the plural or singular number, respectively; (c) the terms "hereof," "herein," "hereby"
14 and derivative or similar words refer to this entire Agreement ; (d) the terms "Section"
15 refer to the specified Section of this Agreement; and (e) any reference to the entirety or
16 any part of this Agreement shall refer to any amendment, supplement or replacement
17 of the same. Whenever this Agreement refers to a number of days, such number shall
18 refer to calendar days unless Business Days are specified.

19 21.8 Complete Agreement; Amendments

20 The terms and provisions contained in this Agreement and referenced
21 documents constitute the entire Agreement between Buyer and Seller and shall
22 supersede all previous communications, representations, or agreements, either
23 verbal or written, between Buyer and Seller with respect to the sale of electric
24 capacity and energy from the Facility and the subject matter of this Agreement.
25 This Agreement may be amended, changed, modified, or altered; provided that such

26 //

1 amendment, change, modification, or alteration shall be in writing and signed by
2 both Parties hereto.

3 21.9 Binding Effect

4 This Agreement, as it may be amended from time to time pursuant to this Section,
5 shall be binding upon and inure to the benefit of the Parties' respective successors-in-
6 interest, legal representatives, and assigns.

7 21.10 Headings

8 Captions and headings used in the Agreement are for ease of reference only and
9 do not constitute a part of this Agreement.

10 21.11 Counterparts

11 This Agreement may be executed in any number of counterparts, and each
12 executed counterpart shall have the same force and effect as an original instrument.

13 21.12 Choice of Law

14 This Agreement shall be governed by and construed in accordance with the laws
15 of the State of California (without reference to choice of law doctrine), except to the
16 extent the Parties' rights and obligations are required to be governed by United States
17 Federal law, then such rights and obligations shall be governed by United States
18 Federal law.

19 21.13 Nondiscrimination

20 During Seller's performance of this Agreement, Seller shall not discriminate on
21 the grounds of race, religious creed, color, national origin, ancestry, age, physical
22 disability, mental disability, medical condition including the medical condition of
23 Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto,
24 marital status, sex or sexual orientation, in the selection and retention of employees
25 and subcontractors and the procurement of materials and equipment, except as
26 provided in Section 12940 of the California Government Code. Further, Seller agrees

1 to conform to the requirements of the Americans with Disabilities Act in the
2 performance of this Agreement.

3 22. SIGNATURE CLAUSE

4 IN WITNESS WHEREOF, the Parties have executed this Agreement.

5 WINTEC-PACIFIC SOLAR, LLC

6
7 By: 
8 PRESIDENT

9 Date: 10/6/2005

10 By: 
11 Vice President


12 Date: 10/6/2005

13 CITY OF RIVERSIDE

14
15 By: 


16
17 Date: 11/21/05

18
19
20 Approved as to form

21  10/13/05
22 Eileen M. Teichert

23 Supervising Deputy City Attorney

24
25 Attest:

26 
City Clerk

EXHBIT A

Sample

CONSTRUCTION PROPOSAL

Date

Name of Authorized Representative
City of Riverside
2911 Adams Street
Riverside, CA 92504

Subject: Construction Proposal for Additional Unit(s) in accordance to the Amended and Restated Agreement between Wintec Pacific Solar and the City of Riverside

Wintec Pacific Solar, LLC desires to construct, own and operate wind powered electric generating units for the purpose of selling the Energy Output to the City of Riverside. In accordance with Section 9.2 of the subject Agreement, Wintec hereby submits this Construction Proposal for Additional Unit(s) as described below:

Description of the Wind Turbine Generator
Nameplate data
MW rating

Description of the Geographical Location
Vicinity map
Property description

Description of the Facility Substation

Project Timeline
Estimated Completion Date
Anticipated Commercial Operation Date

If this Construction Proposal is acceptable to the City of Riverside, please so indicate by executing both originals of this letter and returning one original to Wintec for its files. This does not constitute an amendment to the subject agreement and all terms and conditions of the agreement remain in full force and effect.

Sincerely,

Wintec Pacific Solar, LLC

Agreed and Accepted:

this _____ day of _____, 20XX

City of Riverside

By: _____

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EXHIBIT B

Sample

**ADDENDUM TO AMENDED AND RESTATED POWER PURCHASE
AGREEMENT**

[City of Riverside and Wintec-Pacific Solar, LLC]

On this ___ day of _____, 20___, the City of Riverside ("Buyer") and Wintec-Pacific Solar, LLC ("Seller") hereby enter into this Addendum ("Addendum") to the Amended and Restated Power Purchase Agreement dated _____, 2005 ("Agreement"), pursuant to Section 9.2.2 of the Agreement.

In consideration of the following mutual covenants and agreements, the Parties agree as follows:

1. Seller certifies that the generating unit(s) ("Additional Unit") described in the Construction Proposal agreed to and accepted by Buyer on _____, 20___ achieved Commercial Operation on _____, 20___.
2. The Additional Unit is characterized by the permitting agency as follows:
Permit No. _____
Wind Turbine Identification No. _____.
3. As of the date of this Addendum, the Additional Unit is a Project Wind Turbine, subject to the same rates, terms and conditions as the Project Wind Turbines under the Agreement.
4. All other terms and conditions of the Agreement, not expressly modified, supplemented or revised herein, are incorporated into this Addendum.

IN WITNESS WHEREOF, the Parties have executed this Addendum to the Agreement on the date first listed above.

WINTEC-PACIFIC SOLAR, LLC

CITY OF RIVERSIDE

By: _____

By: _____

Approved as to form

By: _____
City Attorney

Attest:

City Clerk