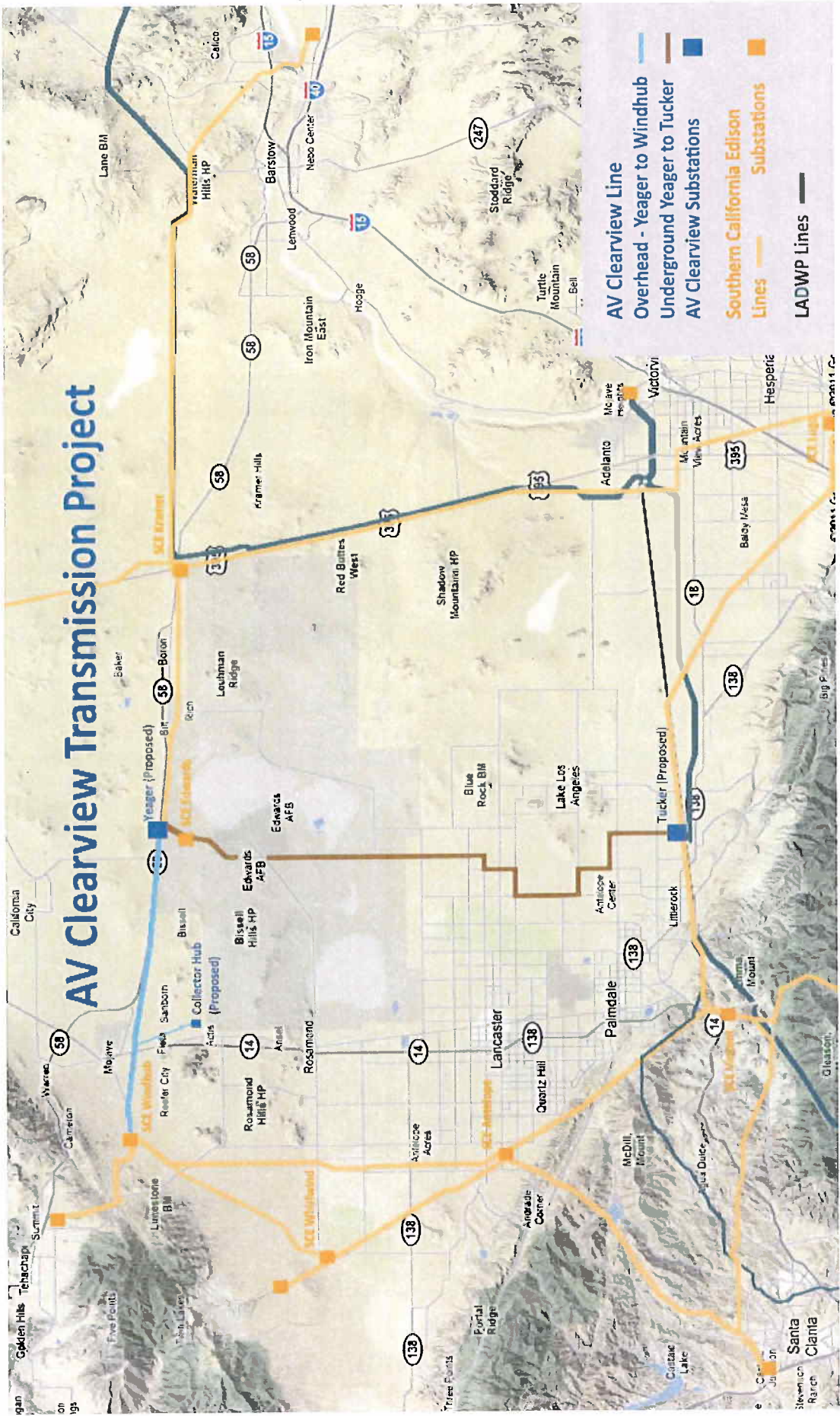


# AV Clearview Transmission Project



- AV Clearview Line**
- Overhead - Yeager to Windhub**
- Underground Yeager to Tucker**
- AV Clearview Substations**
- Southern California Edison Lines**
- Substations**
- LADWP Lines**

## PROJECT DEVELOPMENT AGREEMENT

**THIS PROJECT DEVELOPMENT AGREEMENT** (“Agreement”) is entered into as of the \_\_\_ day of September 2011, by and among the **CITY OF LANCASTER**, a California Charter City and Municipal Corporation (“City”), **LANCASTER POWER AUTHORITY**, a joint powers authority (“LPA”), and **CRITICAL PATH TRANSMISSION LLC**, a Delaware limited liability company (“Company”).

### RECITALS

A. Capitalized terms in this Agreement have the meanings ascribed to such terms in Article 1.

B. As determined by the California Energy Commission (“CEC”), the transmission system in the State of California regularly experiences congestion on major paths that prevents its optimal economic operation. Transmission constraints in major load centers such as Los Angeles affect both the economic and reliable operation of the system. The CEC has called for modernizing and upgrading the bulk transmission grid to be a centerpiece of the State of California’s electricity planning process (2003 Integrated Energy Policy Report, Docket #02-IEP-01, Publication #100-03-019F, adopted by the CEC on November 12, 2003).

C. The Federal Energy Regulatory Commission (“FERC”) has taken steps to encourage investment in transmission infrastructure. In the Selected FERC Orders, FERC has indicated its intent to bolster transmission infrastructure in constrained areas (and specifically in the western United States) through the allowance of cost-based rates, premiums on equity returns and accelerated depreciation.

D. SBX1-2 requires that California utilities reach a 33% Renewable Portfolio Standard by 2020. Transmission capacity to Los Angeles is limited, and that Los Angeles area electrical utilities are at risk of not meeting state mandates for renewal energy.

E. In order to meet renewable energy goals it has been determined that the current transmission infrastructure in the northern Los Angeles County area is insufficient, and there is a need for the timely installation of new generation and/or transmission facilities.

F. Company is a developer of transmission infrastructure in California and is the “Project Sponsor” (as defined in the CAISO tariff) of the Project.

G. Company is developing the Project to provide a high voltage transmission line from an existing substation on Edwards Air Force Base to a new substation interconnecting to the SCE Vincent-Lugo line. The Project will improve the transmission infrastructure into Los Angeles, provide needed renewable energy power to Los Angeles and improve regional grid reliability.

H. The City has key elements of jurisdiction or authority concerning the Project, including:

1. The authority to conduct activities as a municipal utility under Article 11, Section 9(a), of the California Constitution, including the furnishing of power outside its boundaries;

2. The authority to own and operate the Project;

3. The jurisdiction under the State Planning and Zoning Law (California Government Code Sections 65000, *et seq.*) to exercise land use jurisdiction over the real property used for Project facilities within the City's boundaries, including the adoption of an ordinance approving a land use development agreement under Government Code Sections 65864, *et seq.*;

4. Jurisdiction under the Franchise Act of 1937 (California Public Utilities Code Sections 6201, *et seq.*) to grant a franchise to use public streets and rights-of-way for facilities for the transmission of electricity;

5. Authority to grant a lease, easement, license or other interest in real property owned by City;

6. Jurisdiction under the Eminent Domain Law (California Code of Civil Procedure Sections 1230.010, *et seq.*) to acquire real property interests to accommodate Project facilities, both within and outside City's boundaries, extraterritorial condemnation having been expressly authorized by Section 1240.125 of such law; and

7. Authority under the CEQA Guidelines (Title 14, California Code of Regulations Section 15051(b)) to act as Lead Agency and evaluate potential environmental impacts of the Project, and adopt appropriate mitigation measures.

J. The Parties have previously entered into a Confidentiality Agreement and Reimbursement Agreement, dated July 12, 2011.

**NOW, THEREFORE**, in consideration of the foregoing recitals of fact, the mutual covenants, representations and conditions described herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

#### **ARTICLE 1. DEFINITIONS**

The following words and phrases are used as defined terms throughout this Agreement and each such term shall have the stated meanings:

1.1 “**Affiliate**” means, with respect to any person or entity any other person or entity that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such person or entity. For purposes of the foregoing, “control,” “controlled by” and “under common control with,” means, with respect to any person or entity, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person or entity, whether through the ownership of voting securities, partnership or member interests, by contract or otherwise.

1.2 “**Agreement**” has the meaning ascribed to it in the Preamble.

1.3 “**Acquiring Entity**” means the public entity designated by City to take title to Project Assets pursuant to the Option, which shall be City, LPA, HDPA or a City Entity.

1.4 “**Best Reasonable Efforts**” means reasonably prompt, substantial and persistent efforts in a manner that is commercially, technically, legally and financially reasonable in order to achieve the intent and purposes of this Agreement, but that does not require extraordinary or unusual actions that would not be reasonable under the circumstances.

1.5 “**California ISO**” or “**ISO**” means the California Independent System Operator (or its successor), the non-profit public benefit corporation responsible for managing the flow of electricity over the long-distance, high voltage power lines that make up the bulk of the electric transmission system in the State of California.

1.6 “**CEC**” means the California Energy Commission.

1.7 “**CEQA**” means the California Environmental Quality Act (California PUBLIC RESOURCES CODE Sections 21000, *et seq.*) and the related California CODE OF REGULATIONS Sections 15000 *et seq.* (the “CEQA Guidelines”), as amended from time to time.

1.8 “**City**” means the City of Lancaster, a charter city and a California municipal corporation.

1.9 “**City Authorizing Resolution**” means the resolution approving this Agreement, adopted by the City Council.

1.10 “**City Clerk**” means the duly elected and serving City Clerk of City.

1.11 “**City Council**” means the duly elected and constituted governing council of City.

1.12 “**City Entity**” means a public entity, other than City itself or LPA, which is under the direction and control of the City Council and whose jurisdiction includes the power to conduct municipal utility activities as a municipal corporation under Article XI, Section 9(a) of the California Constitution.

1.13 “**Company**” means Critical Path Transmission LLC, a Delaware limited liability company.

**1.14** “*Company Indemnitee*” means Company, its directors, officers, shareholders, partners, members, contractors, lenders, agents and employees, Project lenders, all of their respective Affiliates, and all of their and their Affiliates’ respective directors, officers, shareholders, partners, members, contractors, lenders, agents and employees.

**1.15** “*Confidentiality Agreement*” means the agreement concerning confidential information with respect to the Project, dated July 12, 2011, and on file with the City Clerk.

**1.16** “*CPUC*” means California Public Utilities Commission.

**1.17** “*Days*” means calendar days, not business days.

**1.18** “*EIR*” means an environmental impact report prepared pursuant to CEQA.

**1.19** “*EIS*” means an environmental impact statement prepared pursuant to NEPA.

**1.20** “*Effective Date*” means the date this Agreement is approved and executed by Lancaster.

**1.21** “*Encumbrance*” means a mortgage, deed of trust or any other device by which the Project Assets or the TSRs, or any portion thereof, secure a loan or indebtedness. To “Encumber” means to create an Encumbrance.

**1.22** “*Entitlements*” means all grants of authorization to develop real property and the statutes, ordinances, plans, decisions, resolutions, permits, rules, regulations, and official policies that must be complied with and/or issued as a condition to and in accordance with authorization for development of real property for the Project. Examples of “Entitlements” include a general plan, zoning designations and regulations, subdivision maps, use permits, special use permits, conditional use permits, temporary use permits, municipal code and zoning ordinance provisions, site plans, development plans, design reviews, variances, building permits, certificates of occupancy, and amendments to any of the above. The term “Entitlements” is not dependent on the nature (such as legislative, quasi-judicial, ministerial or administrative) of the matter in question.

**1.23** “*EPC Contract*” means a contract for the engineering, procurement and construction of a portion of the Project.

**1.24** “*Estoppel Certificate*” means a writing, signed by the Party issuing it, certifying that: (i) this Agreement is in full force and effect and is a binding obligation of that Party; (ii) this Agreement has not been amended or modified either orally or in writing or, if amended or modified, describing the amendments; (iii) all consents required to be given by the Party have been given; (iv) to the knowledge of the Party, no default in the performance of the requesting Party’s obligations under the Agreement exists or, if a default does exist, the nature and amount of any default; and (v) certifying to such other matters as the requesting Party may reasonably request.

**1.25** “*FERC*” means the Federal Energy Regulatory Commission.



**1.26** *“Force Majeure Event”* means any cause beyond the reasonable control of a Party which renders it unable to perform a given obligation hereunder, and includes failure of or imminent threat of failure of facilities due to flood, earthquake, volcanic activity, tsunami, tornado, storm, fire, pestilence, lightning, and other natural catastrophe, epidemic, war, riot, civil disturbance or disobedience, vandalism, strike, labor dispute, labor or material shortage, sabotage, terrorism, restraint by court order or public authority, and action or non-action by, or inability to obtain the necessary authorizations or approvals from, any governmental agency (not meant to include Lancaster) or authority, which by exercise of such Party’s Best Reasonable Efforts could not reasonably have prevented and which by the exercise of such Party’s Best Reasonable Efforts cannot be overcome.

**1.27** *“FONSI”* means a finding of no significant impact under NEPA.

**1.28** *“HDPA”* means the High Desert Power Authority, a joint powers authority.

**1.29** *“Lancaster”* means City and LPA, collectively.

**1.30** *“Lancaster Housing Authority”* means the Lancaster Housing Authority, a public body, corporate and politic.

**1.31** *“Lancaster Indemnatee”* means the LPA, the Redevelopment Agency, a City Entity, all of their respective Affiliates, and all of their and their Affiliates’ respective directors, officers, elected officials, appointed officials, members, contractors, lenders, agents and employees.

**1.32** *“Lead Agency”* means the public agency that has primary responsibility for decisions regarding the proper manner of complying with CEQA in considering and carrying out a project.

**1.33** *“LPA”* means the Lancaster Power Authority, a joint powers authority.

**1.34** *“LPA Authorizing Resolution”* means the resolution approving this Agreement, adopted by the LPA governing board.

**1.35** *“NEPA”* means the National Environmental Policy Act (42 United States Code Sections 4321, *et seq.*).

**1.36** *“Operating Memorandum”* means a separate agreement entered into by two or more Parties to implement some aspect of this Agreement in furtherance of the Project, as described in Article 13.

**1.37** *“Option”* means the option for City, LPA or a City Entity to acquire an ownership interest in the Project, as described in Article 8.

**1.38** *“Optional Termination Fee”* is described in Section 8.5.

**1.39** *“Party”* means City, LPA or Company. “Party” shall include a City Entity upon execution of an amendment to this Agreement as provided in Section 8.3.2.2.

**1.40** “*Project*” means the AV Clearview Transmission Project, as described in Article 2.

**1.41** “*Project Assets*” means all tangible and intangible property necessary for the construction and operation of the Project, including land and land rights, easements, construction materials, permits, certificates, governmental approvals or authorizations, design and construction plans and documents, fully or partially constructed portions of the Project and all EPC Contracts or other contracts being used for the construction, operation, maintenance, management or any other purpose related to the Project, exclusive of Transmission System Rights.

**1.42** “*Project Contracts*” means this Agreement, the Purchase and Sale Agreement, any Operating Memoranda, and any other agreement entered into by Company and City, LPA or a City Entity concerning the Project or contemplated under this Agreement.

**1.43** “*Project Participation Fee*” or “*PPF*” means a payment to Lancaster or the Acquiring Entity for its participation in securing the entitlements and other approvals necessary for development of the Project. Included in the PPF are the liquidated value of all application, processing and development impact fees and other monetary exactions on development of any form or description that exist as of the Effective Date, or could hereafter be adopted or increased, as established by Lancaster or any City Entity. The Parties expressly acknowledge that, despite the adoption of this Agreement and the land use development agreement described in Section 5.2.2, City is not waiving any constitutional or statutory authority that may now exist or hereafter be established to levy and assess any application, processing or development impact fee as to the Project, or any general or special tax that is not generally applicable to all citizens of, or property situated within, City. The PPF does not include, and is not intended to replace a) reimbursement by Company under the Reimbursement Agreement to City and its “Subordinate Entities” (as that term is defined in such Reimbursement Agreement), or an Acquiring Entity for out-of-pocket expenditures (including, for example, reimbursement for the costs of environmental and other consultants, attorneys or City staff time), b) generally assessed property taxes or any in-lieu payment under Section 6.2.2, c) generally assessed sales and use taxes under Section 6.2.3, d) generally assessed franchise fees or in-lieu payment under Section 6.2.4, e) the Project Supervision Fee under Section 6.2.6 or any operation, maintenance or other operational or ownership costs as set forth in Article 5, or f) any other financial benefits otherwise intended to go to Lancaster or an Acquiring Entity under this Agreement or the Purchase and Sale Agreement. The PPC shall be included in the Transfer Commitment Agreement executed by an Assignee in the event Company elects to assign this Agreement as set forth in Section 20.10

**1.44** “*Prudent Utility Practice*” means any of the range of practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the range of practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition.

**1.45** *“Purchase and Sale Agreement”* means an agreement entered into between City, LPA or a City Entity and Company for the acquisition of the Project Assets pursuant to the exercise of the Option.

**1.46** *“Regional Transmission Organization”* or *“RTO”* means a FERC-certified transmission organization that encompasses the geographical region in which the Project is constructed.

**1.47** *“Reimbursement Agreement”* means the agreement between Critical Path and LPA concerning reimbursement of City expenses on the Project, dated July 12, 2011, and on file with the City Clerk.

**1.48** *“Representative”* means a Party’s representative on the Project Consultation Committee.

**1.49** *“SCE”* means Southern California Edison Company.

**1.50** *“Selected FERC Orders”* means orders of the Federal Energy Regulatory Commission as follows: Order Approving the Path 15 Letter Agreement: Western Area Power Administration, 99 FERC ¶ 61,306, Order Denying Rehearing, 100 FERC ¶ 61,331 (2002); Notice of Proposed Policy Statement, Proposed Pricing Policy for Efficient Operation and Expansion of Transmission Grid, 102 FERC ¶ 61,032 (2003); Allegheny Power System Operating Companies, et al., 106 FERC ¶ 61,003 (2004).

**1.51** *“Transfer Commitment Agreement”* means an commitment executed by an assignee of this Agreement received from Company in substantial form set forth in Section 20.10.

**1.52** *“TSRs”* or *“Transmission System Rights”* means any and all rights to use, receive value for, or derive benefit from, the transmission capacity created by the Project, as further described in this Section 1.51. TSRs include all associated, appurtenant and necessary rights thereto, including “firm transmission rights” and “financial rights” (and the revenue derived there from) as such terms are used by the California ISO Tariff and Protocols, and any alternative or successor rights or entitlements, and further include any property or economic rights or authorizations necessary to realize the full economic benefit of such TSRs. TSRs or Transmission System Rights do not include the Project Assets. The use of this definition does not limit Company in seeking any additional or alternative revenues or rights that are authorized by FERC due to the beneficial increase in the California ISO controlled grid capacity resulting from the Project.



**ARTICLE 2.**  
**DESCRIPTION OF THE PROJECT**

The Project includes the design, permitting, financing, construction, and commencement of commercial operation of a transmission line and associated facilities intended to transmit electrical power through a dedicated connection between a terminal located on Edwards Air Force Base and SCE's transmission grid serving the Vincent Substation, thus providing electrical power for use in renewable energy electrical transmission and distribution facilities in northern Los Angeles County and Kern County. The Project's transmission lines are anticipated to extend between SCE's "Edwards Substation" within Edwards Air Force Base limits and a new substation interconnecting to SCE's Vincent Lugo line in Los Angeles unincorporated area. The Project shall include any upgrades, modifications, extensions or changes to the Project that the Parties may agree upon during the course of the Project. Specifically, the Parties are contemplating a second phase of the Project to include reinforcing the existing 115kV SCE Kramer-Edwards line and corresponding upgrades to the Kramer and Edwards substations.

**ARTICLE 3.**  
**GENERAL COOPERATION**

**3.1 Cooperation of the Parties.** Each Party agrees to work together in good faith with the other Parties during the term of this Agreement, and use its Best Reasonable Efforts to carry out its obligations hereunder. Each Party agrees to use its Best Reasonable Efforts to (a) cooperate with the other Party in all material respects; (b) identify and resolve all issues concerning implementation of this Agreement; and (c) otherwise take all reasonable steps and perform all reasonable actions necessary to accomplish the purposes and intent of this Agreement.

**3.2 Project Consultation Committee.** A Project Consultation Committee shall be established to facilitate regular communication and coordination concerning Project activities and provide a forum for review and consultation with City. Consultation shall, without limitation, address such topics as Project design and capacity; selection of technology; selection of potential and preferred routes; preparation of environmental documents; processing of City, CPUC, FERC and ISO approvals; long term contracts (including those contracts described in Sections 6.2.7 and 6.3.2); and obtaining rights of way. Each Party shall designate Representatives to participate in the Project Consultation Committee, as set forth in Section 3.3 and Section 3.4. The Project Consultation Committee shall meet as often as the Representatives deem necessary or upon the request of either Company's Representative or Lancaster's Representative, at such times and places as Representatives agree. Company shall have responsibility for the preparation of meeting minutes, which shall set forth all matters addressed excepting any matter that any Party asserts to be confidential information as described in the Confidentiality Agreement. The Parties recognize and acknowledge that it is in their mutual best interests when each Party uses its Best Reasonable Efforts to engage in meaningful consultation that is reasonably anticipated to assist in achieving their shared and respective objectives as described in this Agreement; however, the Parties further recognize and agree that defining a degree of consultation for purposes of contractual enforcement is not practicable and that, accordingly, no claim, right or cause of action shall accrue to any Party under this Section 3.2 based on its assertion of alleged insufficiency of such consultation by any other Party.

**3.3 Company's Representative.** Wayne Stevens, Managing Director of Company, is designated as Company's Representative, who is authorized to take actions to implement this Agreement on behalf of Company. Company's Representative may in turn designate to Lancaster in writing such other Company staff as such Representative deems appropriate to assist in implementing this Agreement, along with their permissible scope of authority. Depending on the issues to be reviewed or the decisions to be made by the Project Consultation Committee at any particular meeting, Company's Representative shall bring to the meeting such other Company staff as may be necessary. Lancaster shall be entitled to rely upon the instruction, direction, approval or request of Company's Representative and his designees. Company may change its Representative or designees at any time by prior written notice to Lancaster.

**3.4 Lancaster's Representative.** The City Manager of Lancaster is designated as Lancaster's Representative, who is authorized to take actions to implement this Agreement on behalf of City and LPA. Lancaster's Representative may in turn designate to Company in writing such other City staff as such Representative deems appropriate to assist in implementing this Agreement, along with their permissible scope of authority. Depending on the issues to be reviewed or the decisions to be made by the Project Consultation Committee at any particular meeting, Lancaster's Representative shall bring to the meeting such other Lancaster staff as may be necessary. Company shall be entitled to rely upon the instruction, direction, approval or request of Lancaster's Representative and his or her designees. Lancaster may change its Representative or designees at any time by prior written notice to Company.

**3.5 Status reports.** Until commercial operations of the Project commence, and no less often than once each month, on the Wednesday preceding a City Council meeting, Company shall submit a brief written report of the status of the Project. Company may orally convey any information it deems to be confidential information as described in the Confidentiality Agreement.

#### **ARTICLE 4. COMPANY'S ROLE AND RESPONSIBILITIES**

**4.1 Developer and Project Manager.** Until Lancaster or a City Entity acquires ownership of the Project Assets, in accordance with Article 8, through a closing pursuant to the Purchase and Sale Agreement, Company shall be the Project Sponsor, as well as the developer and manager of the Project, with the right and responsibility to make decisions regarding the Project typically vested in an owner, developer and project manager, including Project design studies and work; application for and pursuit of approval for necessary permits, financing, development, underwriting and contracting; material and equipment acquisition; implementation of required environmental mitigation; land acquisition; and construction; and as further described in this Article.

**4.2 Ownership.** Company is the owner of the Project, unless and until Lancaster or a City Entity exercises the Option and acquires ownership of the Project Assets.

**4.3 Project Feasibility.** Company may perform such feasibility analyses as it deems appropriate, and reevaluate Project feasibility from time to time in its discretion.

**4.4 Project Design and Capacity.** Company shall have the right and responsibility to determine Project design and capacity, subject only to the lawful jurisdiction of governmental entities. The Project shall be designed and constructed consistent with good utility practices. As of the date hereof, Company anticipates that the transmission capacity of the Project will be approximately 3,200 MW. A decision to change the anticipated capacity of the Project shall rest solely in Company's discretion.

**4.5 Selection of Technology.** Company shall have the right and responsibility to determine Project specifications and select the technology and corresponding equipment and material for use in the Project, from among competing vendors and manufacturers, and to award contracts to vendors. At all times, Lancaster and/or HDPA has the right to attend any technology discussions and meeting regarding the Project.

**4.6 Selection of Potential and Preferred Routes.** Company shall have the right and responsibility to select potential and preferred routes for the Project in consultation with City, subject to the lawful jurisdiction of governmental entities, including City.

**4.7 Preparation of Environmental Document.** Company and City shall consult concerning City's role as Lead Agency under CEQA, as further described in Section 5.1. City, exercising its lawful discretion under CEQA, may conclude that an EIR is required for the Project. If City reaches such conclusion, Company shall have the right, at its discretion, to cause a draft EIR to be prepared by a consultant retained by Company, subject to independent evaluation by City, consistent with CEQA Guidelines Section 15084(d)(3). Company shall also have the right, as further described in Section 5.1, to prepare drafts of any other documents in the environmental process for City's review and independent exercise of judgment concerning the sufficiency thereof. City shall be entitled to retain its own independent consultant, for which City shall be reimbursed under the Reimbursement Agreement, and who shall be regularly and reasonably informed of the progress and who shall be involved to the extent necessary to conduct an appropriate independent review of the draft EIR/EIS on behalf of City without the need to duplicate any significant time and effort.

**4.8 Application for Governmental and Regulatory Approvals.** Company shall submit an application for, and pursue approval of, any permit, license, entitlement or other approval required for the Project by any governmental agency. City shall cooperate with and use its Best Reasonable Efforts to assist Company in applying for and obtaining any such approvals, permits, licenses or Entitlements, from other governmental entities and City will process all such applications submitted to it pursuant to the applicable codes and ordinances. The Parties may agree that LPA shall submit certain applications if the Parties determine such action to be in the best interest of the Project.

**4.8.1 City Approvals.** Company and City shall consult to determine what City Entitlements and other approvals are required for the Project. Company shall apply for any necessary City Entitlements and approvals, and City shall process such applications in conformance with applicable law. Nothing in this Agreement shall be deemed to require City to act on an application to a particular outcome. The Parties recognize that City shall exercise such jurisdiction and discretion as is lawfully vested in it as to each application concerning the Project.

4.8.2 *CPUC, FERC and ISO Approvals.* Company shall apply for such approvals as are required for the Project by CPUC, FERC and the California ISO. As further described in Article 7, Company intends to request FERC approval of the regulatory and ratemaking principles set forth therein, and action by the ISO to establish and support a revenue recovery mechanism for the Project. Company shall consult with City regarding the timing of such applications, which shall be at the discretion of Company. The Parties may agree that LPA shall apply for certain approvals required for the Project by CPUC, FERC, and the California ISO if the Parties determine such action to be in the best interest of the Project. At all times, Lancaster and/or HDPA has the right to attend discussions and meetings with the CPUC, FERC, CEC and ISO.

4.8.3 *Additional Government Approvals and Permits.* Company shall apply for Entitlements and any other approvals or permits required for the Project by any other governmental agencies. The Parties may agree that LPA shall submit certain applications for Entitlements and any other approvals or permits required for the Project by any other governmental agencies if the Parties determine such action to be in the best interest of the Project.

**4.9 Negotiation and Documentation of Rights-of-Way.** Company shall negotiate and document any lease, easement, license, permit, right-of-way, or franchise necessary for the Project. At the discretion of Company and City, City may take the lead in negotiating any lease, easement, license, permit, right-of-way or franchise on Edwards Air Force Base or in Kern County.

**4.10 Development Costs.** Company shall be responsible for paying development costs it determines are necessary for the Project and shall have the sole discretion to determine whether and when a particular expense should be incurred, subject to the terms of this Agreement and the Reimbursement Agreement. Nothing in this Agreement shall require Company to fund development costs beyond the date notice of Company's decision to withdraw from the Project and terminate this Agreement under the terms of Article 15 is received by City or LPA, subject to liabilities covered by Section 5.4.5, and excepting any costs which have already been incurred and are legally payable. In consultation with City, Company shall be permitted to suspend the Project at its discretion for a period not to exceed 180 days.

**4.11 Operating Costs.** From and after the sale to the Acquiring Entity of the Project Assets, and as to be further described in the Purchase and Sale Agreement, Company shall be responsible for all expenses relating to the operation and maintenance of the Project, including taxes (such as business, real property, use, and sales taxes), assessments and any other fees or exactions payable to other federal, state and local jurisdictions within which any of the Project Assets are located and any necessary contracts covered under Section 6.2.7, as well as any penalties or fines levied by FERC, NERC or WECC arising from actions not directly resulting from operator error.



**4.12 Financing and Encumbrances.** Company shall have the right and authority to arrange for such construction and permanent financing of the Project as it deems appropriate. Company shall use its Best Reasonable Efforts to obtain such financing for the Project. Company shall have the right to place an Encumbrance on Project Assets and TSRs in order to facilitate financing. Company shall seek Lancaster's review of the draft financing documents to the extent such documents encumber the Project Assets. A default under this Agreement shall not defeat, render invalid, diminish or impair the lien of any lender.

**4.13 Management of Project Documents.** Company shall have the right to retain any and all of Company's documents associated with the Project at its offices in Chatsworth, except those Documents Company provides to Lancaster in furtherance of Lancaster's obligations hereunder. Upon acquisition of the Project Assets by the Acquiring Entity pursuant to the Purchase and Sale Agreement, Company shall provide the Acquiring Entity all such documents as Acquiring Entity deems necessary for such entity to perform its obligations as owner of the Project Assets. Lancaster (and its advisors and consultants) shall have the right to review other Project documents (excluding documents protected from disclosure as attorney work-product or subject to the attorney-client privilege, or internal memoranda of Company or its Affiliates) at reasonable times, upon reasonable notice and in accordance with the Confidentiality Agreement executed by the Parties. In no event shall Lancaster be deemed to own or have custody of Project documents created by or on behalf of and retained by Company and not provided to Lancaster in connection with Lancaster's obligations hereunder. Company shall retain ownership, custody and control of all Project documents it retains. Documents that Lancaster reviews at Company's offices shall not be considered as having been provided to Lancaster under this section.

**4.14 Media Relations.** Company shall prepare all press releases issued by the Parties on the Project, subject to the advance approval of City, which shall not be unreasonably withheld or delayed. City shall act on a proposed press release within five (5) business days after receipt from Company.

**4.15 Schedule.** Company shall have the right and authority to establish its preferred schedule for the Project, in consultation with City. As of the date hereof, Company anticipates commencement of review under CEQA in the third quarter of 2011; the completion of permitting and development activities and commencement of construction in 2012; and completion of construction and commencement of commercial operation in 2014 or early 2015.

## **ARTICLE 5. LANCASTER'S ROLE AND RESPONSIBILITIES**

**5.1 Environmental Review.** City shall act as Lead Agency for the Project for purposes of conducting environmental review under CEQA, with its costs and expenses reimbursed as provided in the Reimbursement Agreement. Upon Company's request, and upon consultation with City and the appropriate federal agency or agencies, City's environmental review shall result in a joint NEPA/CEQA document.



5.1.1 *Applications.* Company shall apply to City for one or more discretionary Entitlements or approvals within City's jurisdiction. City shall use its Best Reasonable Efforts to determine whether the application is complete within thirty (30) Days.

5.1.2 *Initial Study.* The Parties anticipate that City will conclude that an EIR will be prepared for the Project, and thus acknowledge that an initial study would not be legally required. However, Company may in its discretion prepare, and submit for City's independent evaluation and possible use, a draft environmental checklist form as described in CEQA Guidelines Appendix G. If City concludes that an EIR will be prepared, City shall issue a notice of preparation as soon as reasonably practicable. Company may in its discretion prepare, and submit for City's independent evaluation and possible use, a draft notice of preparation.

5.1.3 *Draft EIR.* Assuming City determines that an EIR will be prepared for the Project pursuant to CEQA, Company may in its discretion elect to have Company's consultant prepare the draft EIR pursuant to CEQA Guidelines Section 15084(d). Any such draft EIR will be subject to City's independent evaluation of its sufficiency. Company may in its discretion prepare, and submit for City's independent evaluation and possible use, proposed responses to comments on the draft EIR. If Company has requested preparation of a joint NEPA/CEQA document, Company may prepare the EIR as a joint EIR/EIS, or as a joint EIR/FONSI, in consultation with City and the appropriate federal agency or agencies.

5.1.4 *Completion of Review.* City shall use its Best Reasonable Efforts to complete its review of the Project under CEQA and, as appropriate, NEPA, as soon as practicable, and in any event within the times required by law. Company shall instruct its consultant to provide City and its consultant with any and all documentation and written information relied on by Company's consultant and necessary for City to conduct a meaningful review of the draft EIR as provided in Section 4.7.

5.1.5 *Environmental Review Process.* Upon Company's or City's request, City and Company shall negotiate and execute an Operating Memorandum to govern the CEQA and, as appropriate, NEPA process consistent with this Section 5.1. Any such memorandum shall be consistent with NEPA (as appropriate), CEQA and the CEQA Guidelines, and shall serve to aid the Parties in expeditiously completing the environmental review process.

5.1.6 *Lead Agency Status.* If City's status as Lead Agency is disputed, Company may in its discretion and in consultation with City submit the matter to the State Office of Planning and Research for resolution pursuant to CEQA Guidelines Sections 15053 and 16000, *et seq.* City may participate in any such submittal and advocate in support of resolving the matter in favor of City as Lead Agency.

5.1.7 *Alternate Lead Agency.* Company may request, in consultation with City that it is in the best interests of the Project to recognize another public agency as Lead Agency for the Project. In such event and notwithstanding anything to the contrary in this Agreement or any Operating Memorandum, the Parties shall each use their Best Reasonable Efforts to accomplish an expeditious transition of the CEQA and NEPA process to such agency.

**5.2 Discretionary Land Use Approvals.** Company shall apply for, and City shall process, applications for discretionary land use approvals as described in this Section 5.2.

5.2.1 *Approvals Required.* Company and City shall consult to determine the specific approvals required for the Project under City's Municipal Code. Company shall submit applications for such approvals as soon as reasonably practicable.

5.2.2 *Land Use Development Agreement.* While not a required land use approval, Company may apply to City for approval of a land use development agreement pursuant to California Government Code Sections 65864, *et seq.* City shall process any such application concurrently with other applications for required land use approvals.

5.2.3 *Processing Approvals.* City shall use its Best Reasonable Efforts to process and act upon Company's applications as soon as reasonably practicable, upon certification of the necessary environmental document under CEQA.

5.2.4 *City's Decisions.* Nothing in this Agreement shall be interpreted to require any particular outcome in City's decisions on discretionary land use approvals. The Parties recognize that City is legally vested with the responsibility to evaluate applications on their merits, independently exercise its jurisdiction and reach its decision to approve or disapprove such applications.

### **5.3 Real Property Interests.**

5.3.1 *Non Rights-of-Way Sites.* If the Project requires a site for establishing a substation or other associated facilities City shall use its Best Reasonable Efforts to assist and cooperate with Company in order to make a suitable site mutually agreeable with City and Company available for Project use.

5.3.1.1 City-Owned Property. If the site is on real property owned by City, then City and Company shall negotiate an option agreement under which Company shall have the option to lease the property at fair market value on mutually agreeable terms and conditions. The term of the lease shall be for at least fifty five (55) years, with two extended terms of ten (10) years each, available at Company's option on stated conditions, including continued payment of rent based on fair market value. Company shall have the right to extend the lease term for additional periods at fair market value rates and under terms and conditions generally consistent with the original lease, up to an aggregate total term of ninety nine (99) years as allowed by law, in order to accommodate Project financing needs, and with all extensions subject to applicable law. The option consideration shall be one dollar (\$1.00), and the option shall be exercised, if at all, and the interest there under acquired coincident with the close of construction financing for the Project. The Parties recognize that Company's right and ability to exercise the option for use by the Project will be dependent upon City's ultimate certification of an appropriate environmental document under CEQA. As to any City-owned property, upon Company's request, City shall, alternatively, convey fee title of such property to the Redevelopment Agency and cause the Agency to, in turn, lease such property to Company for ninety nine (99) years consistent with applicable provisions of the Community Redevelopment Law.

5.3.2 *Easements/Franchises.* City shall grant Company easements (for transmission lines) or franchises (as to other Project Assets within City owned streets) for fair market value or, in the case of a franchise the consideration provided for under law (and subject to the provisions of Section 5.5), in locations reasonably requested by Company across any City-owned property, for the purpose of locating the Project Assets or any portion thereof.

**5.4 Acquisition by Eminent Domain.** The Project may require the acquisition and disposition of property interests both within and outside City's boundaries. Upon Company's request, City shall consider the initiation of proceedings to acquire property for the Project as provided in this Section. City may determine that LPA is the appropriate condemning authority; for convenience, a reference in this Section 5.4 to "City" shall also be to LPA as required by the context. Company recognizes that City's filing a complaint in eminent domain is subject to separate, discretionary decisions of the City Council or LPA Board on the adoption of a resolution of necessity and the approval of an appropriate environmental document under CEQA. City is under no obligation to actually initiate an eminent domain proceeding, since such a decision is legally vested in the City Council or other governing board and cannot be pre-determined by this Agreement.

5.4.1 *Company's Request.* Company may request City to consider the initiation of eminent domain proceedings, as to any real property interests Company reasonably deems necessary for the Project. Company shall specify any such property with sufficient particularity, including the necessary legal description, to allow City to begin its proceedings.

5.4.2 *City's Actions.* Upon Company's request and consistent with requirements imposed by law, City may commence all condemnation proceedings, defend inverse condemnation proceedings and take all other steps and actions necessary to acquire the real property interests necessary for the Project and identified by Company. Promptly upon issuance of an order of immediate possession for a particular real property interest, City shall convey such interest to Company; provided, however, that conveyance of a site within City's territorial limits shall be by lease as described in Section 5.3.1. The transfer of any such interest to Company shall be at no cost except for reimbursement as provided in Section 5.4.3 and as otherwise specifically provided for under this Agreement. City shall consult with counsel designated by Company as to pending actions, pleadings and case status and otherwise advise Company from time to time of its activities under this Section 5.4, as requested by Company.

5.4.3 *Reimbursement.* Company shall reimburse City for any and all of the following costs, expenses and liabilities reasonably incurred by City in performing its obligations under this Section 5.4: (a) reasonable fees and disbursements of attorneys, appraisers and other professionals employed or retained by City, subject to the terms and conditions of the Reimbursement Agreement; (b) court costs; (c) statutory deposits; and (d) any final compensation or negotiated awards which may be rendered or achieved as part of any condemnation proceeding.

5.4.4 *Termination of Proceedings.* Company may request at any time that City terminate an eminent domain proceeding as to a particular property interest, or settle any claim against City in connection with such a proceeding, including any inverse condemnation claim. City may comply or not with any such request as it sees fit. In either event, however, Company shall not be responsible directly or indirectly for any cost, expense or liability thereafter incurred by City which could have been avoided had City terminated or settled any proceeding or claim as requested by Company. It is agreed that a cost, expense or liability shall not be deemed to be one which could have been avoided by the settlement of a matter as requested by Company unless a settlement of the claim on the basis requested by Company was in fact available to City.

5.4.5 *Indemnification.* To the fullest extent provided by applicable law, and subject to the limitations contained in Section 5.4.4, Company shall defend, indemnify and hold harmless each Lancaster Indemnitee from and against all liability, loss, damage, expense, costs (including reasonable attorneys' fees) arising out of a termination of an eminent domain proceeding commenced hereunder, or any inverse condemnation proceeding brought against a Lancaster Indemnitee as a result of any proceedings requested by Company, or any other claim or action for damages brought against a Lancaster Indemnitee as a result of activity engaged in by a Lancaster Indemnitee, which activity was necessary under this Section 5.4, except to the extent of such Lancaster Indemnitee's negligence or willful misconduct and except as otherwise provided in Section 5.4.4.

**5.5 Franchise Agreement.** If the Project is legally required to obtain a franchise to cross City streets and rights-of-way, Company shall apply to City for a franchise agreement under the provisions of the Franchise Act of 1937 (California Public Utilities Code Sections 6201, *et seq.*). City shall process Company's application in accordance with the provisions of such act. The terms and conditions of the franchise agreement as submitted to the City Council for its consideration shall be no more burdensome than those set forth in the then existing franchise agreement for electric transmission facilities with SCE or its successor-in-interest.

**5.6 Application, Processing and Development Impact Fees.** Company shall be responsible for compensating City for processing the applications to City described in this Agreement and for all existing and any future fees or monetary exactions on the Project PPF.

5.6.1 *City Ordinances and Resolutions.* Wherever a fee or other monetary exaction is established, or hereafter could be established, by ordinance or City Council resolution to accept or defray the cost of processing an application or to offset the impacts of development, Company shall compensate City for such fee PPF.

5.6.2 *Determination under Political Reform Act.* City has determined that Company is not a source of income, within the meaning of the Political Reform Act (California Government Code Sections 81000, *et seq.*), to any City staff member, attorney or consultant simply by virtue of Company reimbursing City for its expenses under the terms of any Project Contracts, consistent with Government Code Section 87103.6.

**5.7 Approvals from Other Governmental Agencies.** City shall cooperate with and use its Best Reasonable Efforts to support Company's applications for Entitlements and approvals from other governmental agencies.

**ARTICLE 6.**  
**FINANCIAL PROVISIONS**

**6.1 Allocation of Benefit.** By this Article 6, the Parties wish to allocate or recognize specific financial benefits from the Project as to City and LPA, and to allocate or recognize other specific financial benefits as to Company. In consideration for Company's financial contribution to the Project and its role as Project Sponsor, developer and manager, the Parties agree that any financial benefit from the Project that is not specifically allocated to City, LPA, or a City Entity by this Agreement or by law, shall be allocated to Company, with Company having the full right to utilize, convey or further allocate such benefit.

**6.2 Benefits to Lancaster.** Lancaster and any City Entities shall be entitled to the financial benefits described in this Section 6.2, whether or not they are recoverable by Company through FERC approved rates.

6.2.1 *Project Participation Fee.* Assuming Project success as further described below, Lancaster shall receive the PPF.

6.2.1.1 Amount. The amount of the PPF shall be two percent (2%) of the Project's Transmission Revenue Requirement initially submitted to FERC.

6.2.1.2 Payment. The PPF shall be payable at such time as the Project has been constructed and is placed in commercial operation. Lancaster shall have the right to either receive such fee within thirty (30) days of the date the Project has been placed in commercial operation or receive the fee over a mutually agreeable period. Lancaster shall notify Company of its election as to the timing of receipt of payment, and provide a schedule with preferred amortization and payment amounts (over a period not to exceed ten (10) years), within thirty (30) Days after execution of this Agreement. The interest to accrue on any unpaid balance shall be **[the London Interbank Offer Rate then in effect]**. Lancaster shall have the right to invest the PPF as an equity investor into the project and would be entitled to a pro-rata share of the rate based cost recovery.

6.2.1.3 Non-Payment of PPF. If for any reason the project is terminated prior to the time for payment of the PPF or the PPF is otherwise not payable for any reason, including a taking or condemnation under Section 14.2, Company shall pay Lancaster any outstanding sums due under the Reimbursement Agreement and any sums that would have been required to be paid by any applicant for land use or other City approvals under a City ordinance or resolution in effect at the time of termination.



6.2.2 *Property Taxes.* A material factor in Lancaster's determination to participate in the Project is the anticipation of the receipt of property taxes from Project facilities located within City's boundaries. If Lancaster exercises the Option described in Article 8, Project facilities would be publicly owned and thus not liable for the payment of property taxes to the extent they are located within the boundaries of the City. Accordingly, if Lancaster exercises the Option and acquires the Project Assets under the Purchase and Sale Agreement, the Project shall be responsible for payment of an in-lieu property tax payment to City or a City Entity, as directed by City. Such payment shall be calculated in the same amount (including lawfully permitted and imposed annual increases), and payable at the same times as that portion of the property taxes that would have been payable to City if Company were to own the Project during commercial operation.

6.2.3 *Sales and Use Taxes.* City shall be entitled to receive sales and use taxes ordinarily payable under law, and may take such steps it deems appropriate to confirm that City is the point of sale for the acquisition of certain purchases of goods and material for Project purposes. Company shall use its Best Reasonable Efforts to cooperate with City in order to help facilitate the maximum recognition of sales and use taxes by City as reasonably possible; provided, however, that Company shall have no liability to City if such recognition is not successful. City shall bear the cost of any consultant it may engage for the purposes of assisting in the implementation of this Section. In no event shall this Section result in a tax being charged to Company or the Project that would not have been payable but for this Section.

6.2.4 *Franchise Fee.* A material factor in Lancaster's determination to participate in the Project is the anticipation of the receipt of a franchise fee by City, assuming a franchise agreement is legally required as described in Section 5.5. If Lancaster exercises the Option, Project facilities would be publicly owned and thus not subject to a City franchise agreement or the payment of a franchise fee. Accordingly, if Lancaster exercises the Option and acquires the Project Assets under the Purchase and Sale Agreement, the Project shall be responsible for payment of an in-lieu franchise fee payment to City. Such payment shall be calculated in the same amount and payable at the same times as franchise fees would have been payable under a franchise agreement if Company were to own the Project during commercial operation.

6.2.5 *Supervision After Commercial Operation.* If the Option is exercised in accordance with Article 8, the Parties shall negotiate a Project Supervision Agreement, which shall set forth the Acquiring Entity's role and responsibilities as owner, from and after commercial operation of the Project and acquisition of Project Assets by the Acquiring Entity. Project Supervision Agreement shall provide for commercially reasonable services for overall Project supervision, including responsibility for supervision of Project security. To the extent they are recoverable through FERC approved rates, **[the Acquiring Entity's contract price for services performed under such Project Supervision Agreement shall initially be \$500,000 per year (the "Project Supervision Fee"), as adjusted below]**, exclusive of costs associated with any leases, insurance, maintenance, security, or Project operational activities performed by the Acquiring Entity as the owner/operator of the Project or any operational contracts negotiated by Company and assigned to the Acquiring Entity, which Company shall pay contingent upon successful and continuing Project operation and the receipt by Company of revenues from the California ISO for the time period covered by each such payment. The Project Supervision Fee

shall be adjusted annually (but in no event reduced) in accordance with the consumer price index issued by the Bureau of Labor Statistics for the Consolidated Metropolitan Statistical Area covering Los Angeles (or any replacement index).

6.2.6 *Additional Contracts.* If the Option is exercised in accordance with Article 8, from and after the sale of the Project Assets to Lancaster, Company shall have in place all contracts necessary to support the commencement and continuation of commercial operations for the transmission of electrical energy for which the Project was constructed. These contracts shall include, but not be limited to, agreements for insurance, operations, maintenance and security, among others. All of the necessary contracts shall be paid for out of the financial benefits allocated to Company as to be further described in the Purchase and Sale Agreement, which shall contain provisions reasonably satisfactory to the Acquiring Entity concerning manner of payment of operational expenses for the Project and the priority for distribution of revenues received by Company from the California ISO. Company shall pay for any such contracts regardless of whether or not the costs of such contracts are recoverable by Company through FERC approved rates. Any such contracts assigned by Company to the Acquiring Entity shall have been negotiated at rates and costs that are just and reasonable and shall provide levels of service sufficient to meet the requirements of FERC and NERC.

**6.3 Benefits to Company and its Affiliates.** Company and its affiliates shall be entitled to the financial benefits described in this Section 6.3.

6.3.1 *Ownership and Allocation of TSRs.* Company shall have the sole right to the ownership and allocation of Transmission System Rights and all financial benefits derived there from. Company intends to utilize a portion of such TSRs (and revenues from the California ISO associated therewith) in order to obtain financing for the Project. Company's right to own and allocate TSRs shall extend for fifty (50) years.

6.3.2 *Provision of Services.* Company shall have the right to enter into such contracts for services in support of the Project as it deems appropriate. As of the date hereof, Company anticipates entering into contracts on behalf of the Project for financial advisory, accounting, fiscal administration and other Project administration services. Company also anticipates that such contracts may be with Company's Affiliates in those circumstances where such Affiliates provide the necessary services. Any such contracts shall be for services that are reasonably necessary and customary under the circumstances of the Project, and for compensation that is within the range of market rates for such services in the Los Angeles Area. Such contracts may provide for services either before or after commercial operation of the Project, or both before and after such commercial operation. Any contracts for services to be performed from and after commercial operation may be long term in nature, shall be identified in the Purchase and Sale Agreement and shall be included within the Project Assets acquired by the Acquiring Entity in the event of the exercise of the Option and acquisition of Project Assets as described in Article 8. Each contract for services to be performed from and after commercial operation shall include a provision that provides substantially that each party agrees to use reasonable, good faith efforts to consider and negotiate changes or additions thereto that may be reasonably requested by the Acquiring Entity.

6.3.3 *Additional Company Benefits.* In addition to any other benefits not specifically described in this Section 6.3, Company shall also be entitled to any benefit not specifically allocated to Lancaster or any City Entity, consistent with Section 6.1.

**6.4 Potential Additional City Benefits.** In furtherance of its efforts to obtain all necessary licenses, permits, rights of way and entitlements for the Project, Company may negotiate financial benefit for one or more additional public entities, other than Lancaster or a City Entity. Unless approved by Lancaster in advance, such approval may not be unreasonably withheld, conditioned or delayed, the financial benefit accruing to Lancaster and, as may be appropriate, the Acquiring Entity, in the aggregate, shall reasonably approximate or exceed the value of financial benefit provided by the Project to any other individual public entity and its subordinate entities. The comparison of respective financial benefit shall exclude those sums required to be paid by law, including sales and use taxes, business license taxes, property taxes and gross receipt taxes, and shall also exclude payment for the fair market value of any real property interests and contracts for services and exclude total franchise fees for use of rights of way whose calculation is based on lineal measurement of the right of way utilized.

## **ARTICLE 7. REGULATORY AND RATE MAKING PRINCIPLES**

**7.1 Purpose.** This Article 7 sets forth certain key principles that shall be addressed to Company's satisfaction in regulatory and rate making proceedings for the Project. The Parties confirm their agreement as to these principles and the manner of implementing them as described herein.

**7.2 Financial Structure.** Subject to FERC approval, the financial structure for the Project shall be determined solely by Company and is presently expected to include (a) a rate of return on equity as specified by Company; (b) a fixed revenue requirement recoverable from the California ISO; (c) a depreciable life for the Project as specified by Company; and (d) use of a target debt equity capital structure as determined by Company to be necessary for financing the Project.

**7.3 Project Rates.** The rates, terms and conditions for the use of Project facilities are subject to regulation by FERC. Transmission revenue requirements and rates charged will be just and reasonable, consistent with the public interest, or established under existing law. Approved rates and revenue requirements are expected to be sufficient to recover all costs and expenses associated with the Project, including costs and expenses of development, financing, construction and operation of the Project; and the cost of land, permits, franchises, taxes, and other such costs and expenses. The anticipated regulatory and rate making structure assumes cost-based rates, and recovery of all expenses required for the continued operation of Project facilities. Company shall seek the necessary approvals in order to establish the necessary revenue recovery mechanism for the Project, in Company's capacity as the participating transmission owner of the Transmission System Rights. Lancaster shall use Best Reasonable Efforts to assist Company in proceedings before FERC and the California ISO. If requested by Company, the Acquiring Entity shall become a participating transmission owner consistent with applicable California ISO Tariffs and Protocols, provided that the Acquiring Entity is compensated for its reasonably necessary out-of-pocket expenditures resulting there from.

Lancaster hereby reserves the right to file as an Intervener in the FERC or PUC rate case(s) at its own expense.

In the event the FERC approved Transmission rates and revenues are insufficient to cover fully the costs and expenses of constructing and operating the Project as detailed in Company's Transmission Rate request to FERC, Company and Lancaster (or a City Entity) shall meet through the Project Consultation Committee process set forth in Article 3 to arrive at a fair and equitable modification of the Project Transmission rates and revenues submittal and Project Operating Budget. In no event shall Company reduce any financial benefit to Lancaster, a City Entity or Acquiring Entity set forth in this Agreement without the full written consent and approval of such entity.

**7.4 Project Operations.** The Project will be coordinated with the existing transmission system and operated in accordance with prudent utility practice as a transmission facility within the California ISO's control area. Scheduling shall be performed in accordance with the appropriate control area scheduling procedures and standards consistent with the North American Electric Reliability Council, and/or business practices and procedures adopted in standard market designs of FERC-certified Regional Transmission Organizations. Operational control will be under the California ISO. At Lancaster's sole discretion, LPA will be the Participating Transmission Owner.

**7.5 Use of TSRs.** The transmission capability made available by the Project shall be utilized by Company in a manner consistent with FERC regulations. The Acquiring Entity and Company shall turn over the operational control of the Project to the California ISO. In the event FERC approves an RTO that encompasses the geographic confines of the Project, the Acquiring Entity and Company commit to turn over the operational control of the Project to the RTO under agreed upon terms and conditions negotiated between the Parties and the RTO.

**7.6 Filing with FERC.** The Parties shall enter into an Operating Memorandum prepared by Company's FERC counsel and reasonably approved by Lancaster for filing with the Federal Energy Regulatory Commission. Upon Company's request, and notwithstanding the provisions of Section 13.2, the operating memorandum shall require approval of the City Council (on behalf of City), of the LPA Board of Directors (on behalf of LPA) and of the governing board of a City Entity that is a party to such memorandum. The purpose of the operating memorandum shall be to obtain FERC approval of the regulatory and rate making principles described in this Article, and such other matters as appropriate. In the event that FERC does not accept the Operating Memorandum for filing in its entirety, makes modifications or does not approve the rate treatments set forth in this Article, the Parties will use their Best Reasonable Efforts and negotiate in good faith to make necessary changes to preserve to the extent practical the original intent of the Parties.

## **ARTICLE 8. OPTION TO ACQUIRE PROJECT ASSETS**

**8.1 Grant of Option.** Subject to the terms and conditions of this Agreement, Company hereby grants Lancaster an Option to purchase the Project Assets, subject to the terms and conditions of this Article 8.

**8.2 Purchase Price.** The Parties have carefully considered the allocation of risks and benefits of the Project in order to arrive at the purchase price. Company is assuming development risk for the Project and is responsible for development funding and for seeking sufficient debt and equity financing for the Project. In return, Company is also allocated the benefit of ownership and assignment of TSRs associated with the Project. Lancaster wishes to own the Project Assets in furtherance of its activities as a municipal utility. Lancaster's participation in the Project is important, given its unique geographical characteristics, as further described in the Recitals. In consideration of all relevant factors, including the reservation of TSRs to Company, the Parties have determined that the appropriate purchase price for the Project Assets if acquired by Lancaster through exercise of the Option is one dollar (\$1.00).

**8.3 Exercise of Option.** The Parties acknowledge that final action to exercise the Option by Lancaster or a City Entity shall await completion of the Entitlement and permitting process, which includes City's determination to certify appropriate environmental documentation for the Project. The Parties further acknowledge that exercise of the Option is subject to various discretionary determinations by City on Entitlements and other approvals. However, the Parties also acknowledge that Company's efforts to obtain financing for the Project would benefit from a preliminary indication by Lancaster or a City Entity as to their intent regarding exercise of the Option. Under no circumstances however, shall Lancaster or a City Entity legal or financial position as contemplated within this Agreement be compromised in any manner should Lancaster or a City Entity elect to not provide any preliminary indication regarding exercise of the Option.

8.3.1 *Initial Determination.* Coincident with adoption of the City Authorizing Resolution and the LPA Authorizing Resolution, City shall state its intent to exercise (or cause LPA or a City Entity to exercise) the Option.

8.3.2 *Interim Determination.* Lancaster shall notify Company of its interim determination concerning its intent to exercise the Option as provided in this Section 8.3.2.

8.3.2.1 Time for Notice. Lancaster shall give Company notice of its interim determination to either exercise or not exercise the Option, no later than six months after the date Company submits a complete application, as deemed by City, to City pursuant to Section 5.2.1.

8.3.2.2 Contents of Notice. Such notice shall specifically indicate Lancaster's intent regarding exercise of the Option. In the event the notice indicates Lancaster's preliminary intent to exercise the Option, then the notice shall also specify any conditions that must be satisfied as a prerequisite for Lancaster to actually exercise the Option, and shall identify the Acquiring Entity. If the Acquiring Entity is other than City or LPA, then the Acquiring Entity and the Parties shall execute an amendment to this Agreement under which the Acquiring Entity becomes fully bound as a Party hereto, and shall be considered the holder of the Option and included within the defined term "Lancaster" as the context requires. In the event the notice indicates Lancaster's interim determination not to exercise the Option, then the notice shall specify conditions that would have to be rectified in order for Lancaster to exercise the Option.



8.3.3 *Final Determination.* The Acquiring Entity shall notify Company of its final determination concerning its intent regarding exercise of the Option as provided in this Section 8.3.3.

8.3.3.1 Time for Notice. The Acquiring Entity shall give Company notice of its final determination to either exercise or not exercise the Option, and shall execute the Purchase and Sale Agreement if its intent is to exercise the Option, no later than forty (40) Days after the City Council certifies the appropriate environmental documentation for the Project. The Notice shall be effective only after the period for filing a legal challenge under CEQA has run following the filing and posting of a notice of determination, which notice shall be filed and posted at the first opportunity.

8.3.3.2 Contents of Notice. Such notice shall specifically indicate the Acquiring Entity's final determination regarding exercise of the Option. If the designated Acquiring Entity is a City Entity (and not City or LPA), and a validation judgment is not obtained within the required time as set forth in Section 18.8, then either City or LPA (as determined by City) shall perform the obligations as Acquiring Entity under the Purchase and Sale Agreement. In the event the Acquiring Entity is a new entity and a validation judgment has been timely obtained, the costs involved in obtaining the validation judgment shall be included in the reimbursable expenses under the Reimbursement Agreement.

8.3.4 *Purchase and Sale Agreement.* The Parties shall use their Best Reasonable Efforts to negotiate and prepare for submittal to the governing board of the Acquiring Entity and subsequent execution a Purchase and Sale Agreement within six (6) months after the approval of the Project by the Board of Governors of the California ISO, but no later than eight (8) months after execution of this Agreement. If negotiations are progressing, with each participating Party using its Best Reasonable Efforts to bring the negotiations to a mutually agreeable conclusion, then the specified time for negotiating and preparing a Purchase and Sale Agreement shall be extended for an additional thirty (30) Days at the written request of a Party, and subsequently for up to three, additional such thirty (30) Day periods. At the conclusion of any such additional thirty (30) Day period, if Company determines that the Parties are unlikely to successfully negotiate such agreement, it may give Lancaster thirty (30) Days' notice to conclude negotiations. The performance of the Purchase and Sale Agreement shall result in the acquisition by the Acquiring Entity of the Project Assets coincident with the commencement of commercial operation of the Project. The Purchase and Sale Agreement shall be and shall constitute the irrevocable commitment of the Acquiring Entity to acquire the Project Assets consistent with the terms thereof. Execution by Company shall constitute its irrevocable commitment to a sale to Lancaster consistent with the terms hereof. Thereafter, the Parties shall be entitled to rely upon such irrevocable commitments in moving forward to close the transaction and in obtaining construction and long term financing for, and commencing and completing the construction of, the Project.

**8.3.5 Obligation to Achieve Purchase Closing.** If the Acquiring Entity gives notice of its final determination to exercise the Option, the Parties shall use their Best Reasonable Efforts to consummate such transaction in the manner and within the time described in the Purchase and Sale Agreement. The purchase closing date shall be further specified in the Purchase and Sale Agreement with reference to commencement of commercial operation, and shall be subject to the satisfaction of mutually agreeable conditions precedent as described therein. Such conditions shall include the obligation to provide customary and reasonable legal opinions from counsel reasonably satisfactory to the Parties receiving such opinions.

**8.4 Determination Regarding Competitive Bidding.** Lancaster has determined that competitive bidding is not required to enter into this Agreement by City or LPA, or as to the exercise of the Option and acquisition of Project Assets by Lancaster or a City Entity, under applicable law including the California PUBLIC CONTRACTS CODE and City's MUNICIPAL CODE. The nature of this Agreement, the Project Assets (including the contracts for services described in Section 6.3.2) and the Option contained herein are such that competitive proposals would be impossible and unavailing and would not produce advantage in the public interest, nor obtain the best economic result for the public.

**8.5 Company's Option to Terminate; Payment of Optional Termination Fee.** Company may, after Lancaster or the Acquiring Entity has exercised its Option to Purchase pursuant to this Section 8, elect to not execute a Purchase and Sale Agreement with Lancaster or the Acquiring Entity pursuant to this Section 8, or after execution of the Purchase and Sale Agreement may nonetheless elect to not sell the Project to Lancaster or the Acquiring Entity Company; provided, however, that in order to exercise its rights under this Section 8.5, Company shall pay to Lancaster or the Acquiring Entity, whichever is appropriate, the Optional Termination Fee in an amount equal to eighty million dollars (\$80,000,000). The Optional Termination Fee shall be due as of Commercial Operation Date.

## **ARTICLE 9. COOPERATION IN PROJECT FINANCING**

The Parties acknowledge that construction and long term financing for the Project will be arranged by Company and its Affiliates, on such terms and conditions as Company deems appropriate. Such financing for the development, construction and ownership of the Project may be arranged with Project lenders, who may finance on a recourse or nonrecourse basis. Each Party agrees to use its Best Reasonable Efforts to consider and negotiate in good faith changes or additions to Project Contracts that may be reasonably requested by Project lenders in order to support Project financing. The Parties also agree that, notwithstanding Section 20.10, Company (or its permitted assignees) may assign Project Contracts to the Project lenders as collateral to support Project financing. Lancaster agrees to enter into an agreement directly with Project lenders under which Lancaster shall consent to such assignment and shall agree to other customary provisions reasonably acceptable to Lancaster for the benefit of the Project lenders, including provisions under which such lenders (a) may exercise and receive the rights and benefits of Company under the Project Contracts; (b) shall be entitled to receive copies of any notices under Project Contracts that Lancaster might provide to Company; (c) shall be given the right to consent to any proposed amendments to Project Contracts; (d) shall be entitled to receive any payments made by Lancaster to Company under Project Contracts; (e) shall have reasonable

extended cure periods to cure any defaults by Company under Project Contracts; and (f) shall be provided other similar or related benefits or protections as mutually agreed among Company, Lancaster and the Project lenders. In connection with any such collateral assignment to Project lenders, Lancaster further agrees to furnish such lenders with such other documents and legal opinions as may be reasonably requested by the lenders and as are reasonably acceptable to Lancaster. References in this Article to "Lancaster" shall include a City Entity or the Acquiring Entity, or both, as required by the context. Nothing in this Article shall require Lancaster to assume any liability of Company under any of the Project Contracts or Project financing documents, except as to contracts to be performed by Lancaster.

Lancaster, HDPa and City shall have the right to review any and all documents pertaining to the Project construction and financing upon written request to Company. Company shall discuss any and all terms and conditions of contracts for construction or long term financing that may, in Lancaster, HDPa or City's sole opinion may impact Lancaster, HDPa or City relative to its potential ownership and/or operation of the Project.

#### **ARTICLE 10. EXCLUSIVITY**

During the term of this Agreement, Company shall have the exclusive right to negotiate with Lancaster and any City Entity concerning the establishment of electrical transmission facilities that Company has submitted to the California ISO. Lancaster and/or any City Entity shall not negotiate or enter into any agreement with any entity other than Company for the development of the electrical transmission facilities that Company has submitted to the California ISO. Additionally, during the term of this Agreement, and subject to Company's rights under Section 8.5, Company shall negotiate in good faith with Lancaster or any City Entity designated by Lancaster and agrees not to negotiate with another entity for participation in the Project in lieu of Lancaster or such designated City Entity; provided, however, that if Lancaster (a) indicates under Sections 8.3.1, 8.3.2 or 8.3.3 that its initial, interim or final determination (respectively) is not to exercise the Option; (b) specifies conditions to its exercise of the Option or its acquisition of the Project Assets that cannot reasonably or timely be met; (c) at any time indicates its intent not to exercise the Option or acquire Project Assets; or (d) along with Company, has not successfully negotiated and prepared for submittal to the governing board of the Acquiring Entity and subsequent execution a Purchase and Sale Agreement by the time provided in Section 8.3.4, together with any permitted extension, then Company may solicit participation by another entity.

**ARTICLE 11.  
INDEMNITY**

**11.1 Company Indemnity.** To the fullest extent permitted by applicable law, Company shall defend, indemnify and hold harmless each Lancaster Indemnitee from and against all liability, loss, damage, expense, costs (including reasonable attorney's fees) of every nature resulting from injury to or death of persons, and damage to or loss of tangible property of third parties, to the extent caused by or arising out of the performance by Company, its officers, employees, agents and contractors, under this Agreement or the negligent acts or omissions of, or the willful misconduct of, Company, its officers, employees, agents and contractors, in connection with this Agreement, except such liability, loss, damage, expense or costs attributable to the negligence or willful misconduct of a Lancaster Indemnitee.

**11.2 Lancaster Indemnity.** To the fullest extent permitted by applicable law, Lancaster shall defend, indemnify and hold harmless each Company Indemnitee from and against all liability, loss, damage, expense, costs (including reasonable attorney's fees) of every nature resulting from injury to or death of persons, and damage to or loss of tangible property of third parties, to the extent caused by or arising out of the performance by Lancaster, any City Entity, or their respective officers, employees, agents and contractors, under this Agreement, except as covered under Section 5.4, and except such liability, loss, damage, expense or costs attributable to the negligence or willful misconduct of a Company Indemnitee.

**11.3 Joint, Contributory or Concurrent Negligence.** It is the intent of the Parties that where negligence is determined to have been joint, contributory or concurrent, principles of comparative negligence will be followed and each Party shall bear the proportionate cost of any liability attributable to that Party's negligence. The obligations of City, LPA and a City Entity under this Article shall be joint and several. The obligations of the Parties under this Article shall survive the termination or expiration of this Agreement, consistent with Section 20.16.

**ARTICLE 12.  
REPRESENTATIONS AND WARRANTIES**

**12.1 City's Representations and Warranties.** City represents and warrants to Company as of the date hereof as follows:

12.1.1 City is a Charter City and municipal corporation, which has been duly formed and organized and is validly existing and in good standing under the constitution and laws of the State of California.

12.1.2 City has the power, right and authority to enter into this Agreement and to undertake the actions contemplated hereby.

12.1.3 All requisite action has been taken by City in connection with entering into this Agreement.

12.1.4 The individuals executing this Agreement on behalf of City have the legal power, right and actual authority to bind City to the terms and conditions of this Agreement.



12.1.5 Neither the execution and delivery of this Agreement, nor the incurrence of the obligations herein set forth, nor compliance with the terms of this Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, any note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, agreement, lease or other agreement or instrument to which City is a party or by which any of City's properties may be bound.

12.1.6 This Agreement is, and all documents required hereby to be executed by City, will be valid, legally binding obligations of and enforceable against City in accordance with their terms.

12.1.7 City has all governmental licenses, authorizations, consents and approvals to execute, deliver, and perform its obligations under this Agreement.

12.1.8 No City official has a financial interest in this Agreement within the meaning of GOVERNMENT CODE Section 1090, nor does any City official who makes or participates in the making of a governmental decision on this Agreement have a conflict of interest under the Political Reform Act (GOVERNMENT CODE Sections 81000, *et seq.*). No City official, consultant or advisor is being compensated with a fee that is contingent on or defined by the payment of any sums to City by Company.

**12.2 City's Notice.** City shall promptly give Company notice upon the occurrence of any event, or receipt of any notice, which might give rise to a breach by City of any of its representations, covenants or warranties set forth in Section 12.1.

**12.3 LPA's Representations and Warranties.** LPA represents and warrants to Company as of the date hereof as follows:

12.3.1 LPA is a joint powers authority, which has been duly formed and organized and is validly existing and in good standing under the laws of the State of California, as and to the extent described in final, binding judgments of the Superior Court of such State.

12.3.2 LPA has the power, right and authority to enter into this Agreement and to undertake the actions contemplated hereby, as and to the extent described in final, binding judgments of the Superior Court of such State.

12.3.3 All requisite action has been taken by LPA in connection with entering into this Agreement.

12.3.4 The individuals executing this Agreement on behalf of LPA have the legal power, right and actual authority to bind LPA to the terms and conditions of this Agreement.

12.3.5 Neither the execution and delivery of this Agreement, nor the incurrence of the obligations herein set forth, nor compliance with the terms of this Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, any note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, agreement, lease or other agreement or instrument to which LPA is a party or by which any of LPA's properties may be bound.



12.3.6 This Agreement is, and all documents required hereby to be executed by LPA, will be valid, legally binding obligations of and enforceable against LPA in accordance with their terms.

12.3.7 LPA has all governmental licenses, authorizations, consents and approvals to execute, deliver and perform its obligations under this Agreement.

12.3.8 No LPA official has a financial interest in this Agreement within the meaning of GOVERNMENT CODE Section 1090, nor does any LPA official who makes or participates in the making of a governmental decision on this Agreement have a conflict of interest under the Political Reform Act (GOVERNMENT CODE Sections 81000, *et seq.*). No LPA official, consultant or advisor is being compensated with a fee that is contingent on or defined by the payment of any sums to LPA by Company.

**12.4 LPA's Notice.** LPA shall promptly give Company notice upon the occurrence of any event, or receipt of any notice, which might give rise to a breach by LPA of any of its representations, covenants or warranties set forth in Section 12.3.

**12.5 Company's Representations and Warranties.** Company represents and warrants to Lancaster as of the date hereof as follows:

12.5.1 Company is a limited liability company that has been duly formed and organized and is validly existing and in good standing under the laws of the State of Delaware.

12.5.2 Company has the power, right and authority as a limited liability company to enter into this Agreement and to undertake the actions contemplated hereby.

12.5.3 All requisite action has been taken by Company in connection with entering into this Agreement.

12.5.4 The individuals executing this Agreement on behalf of Company have the legal power, right and actual authority to bind Company to the terms and conditions of this Agreement.

12.5.5 Neither the execution and delivery of this Agreement, nor the incurrence of the obligations herein set forth, nor compliance with the terms of this Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, Company's articles of incorporation, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, agreement, lease or other agreement or instrument to which Company is a party or by which any of Company's properties may be bound.

12.5.6 This Agreement is, and all documents required hereby to be executed by Company, will be valid, legally binding obligations of and enforceable against Company in accordance with their terms.

12.5.7 Company has all governmental licenses, authorizations, consents and approvals to execute, deliver and perform its obligations under this Agreement, other than permits required to be obtained for construction and operation of the Project.

**12.6 Company's Notice.** Company shall promptly give Lancaster notice upon the occurrence of any event, or receipt of any notice, which might give rise to a breach by Company of any of its representations, covenants or warranties set forth in Section 12.5.

### **ARTICLE 13. AMENDMENTS AND OPERATION OF THE AGREEMENT**

**13.1 Amendment.** This Agreement may be amended only by the mutual agreement of the Parties. Any Party may propose an amendment to this Agreement, and shall give notice of the requested amendment to each Party. No amendment of this Agreement shall be binding unless it is in writing and signed by the Parties.

**13.2 Operating Memoranda.** This Agreement requires a close degree of cooperation between Lancaster and Company. From time to time, the Parties may wish to clarify or provide further detail of their performance obligations under this Agreement. During the term of this Agreement, Lancaster and Company may at any time agree that such clarifications are necessary or appropriate, in which event they shall effect such clarifications through written Operating Memoranda approved by the Parties. Each executed Operating Memorandum shall be consistent with this Agreement and shall be attached hereto. The City Manager may execute an Operating Memorandum on behalf of City without City Council action; the Executive Director of LPA may execute an Operating Memorandum on behalf of LPA without action by the LPA Board; and the Executive Director or comparable official of a City Entity may execute an Operating Memorandum on behalf of such entity without action by its governing board; and Company shall be entitled to rely on any such Operating Memorandum so executed. Notwithstanding the foregoing, nothing in this Section 13.2 shall prevent the City Manager or Executive Director, in his discretion and in circumstances he deems appropriate, from submitting an Operating Memorandum to the City Council or governing board for approval.

### **ARTICLE 14. FORCE MAJEURE AND CONDEMNATION EVENTS**

**14.1 Force Majeure.** Each Party shall be excused from performance and shall not be considered to be in default with respect to any obligation hereunder, except the obligation to pay money in a timely manner, if and to the extent that its failure or delay in performance is due to a Force Majeure Event, subject to the provisions of this Section 13.

14.1.1 *Initial Notice.* The Party claiming a Force Majeure Event shall give the other Parties written notice describing the particulars of the Force Majeure Event as soon as is reasonably practicable (provided that the failure of a Party to provide the notice in a timely manner shall preclude that Party from claiming relief from the Force Majeure Event hereunder only if and to the extent that such failure actually prejudices another Party).

14.1.2 *Scope and Duration.* The suspension of performance shall be of no greater scope and of no longer duration than are reasonably required by the Force Majeure Event. The Party claiming relief shall use its Best Reasonable Efforts to overcome or mitigate the effects of the Force Majeure Event. When such Party is able to resume performance of its obligations under this Agreement that were precluded by the event, the Party shall provide written notice to the other Parties to that effect, identifying the specific dates during which performance was precluded, and indicating that the Party has promptly resumed its performance hereunder.

**14.2 Taking or Condemnation.** If, prior to the closing of the acquisition of Project Assets by the Acquiring Entity under the Purchase and Sale Agreement, all or any portion of the Project Assets is taken by any governmental or other entity under any law or by right of taking, condemnation, eminent domain or other proceeding, then Company shall have the right, at its expense, to appear in such proceeding and to receive the award for all compensable value of any and all Project Assets, and any other of Company's compensable assets as they appear, along with any costs, expenses and damages resulting from such proceeding. Nothing in this Section 14.2 limits any right Lancaster may have to appear in a condemnation proceeding and, at its sole expense, pursue available remedies in the event of condemnation of a property interest of Lancaster's, provided, however, that any recovery by Lancaster shall be subordinate to Company's recovery of full compensation for any of Company's property interests. No portion of any award to Company shall be distributed to Lancaster, unless the amount of such award exceeds the compensation due for Company's property interests and includes sums to which Lancaster has a contractual right to recover under the Project Contracts. To the extent either Party receives any amounts or proceeds in connection with such proceedings which are payable in respect to the other Party's interest, the receiving Party agrees to hold any such amounts received by it in trust for the other Party and to promptly pay the same to it. The Parties agree to use their Best Reasonable Efforts in order to carry out the intent of this Section 14.2.

## **ARTICLE 15. TERM AND TERMINATION**

**15.1 Term.** The term of this Agreement shall commence on the Effective Date and shall terminate on the earliest of (a) June 30, 2017, or as extended by mutual written agreement; (b) the date that either Party formally exercises in writing a right to terminate pursuant to Section 15.2; (c) upon the closing of the acquisition by the Acquiring Entity of Project Assets under the Purchase and Sale Agreement; (d) upon the event described in Section 15.2.3; or (e) such other date as may be agreed upon by the Parties in writing.

### **15.2 Termination.**

15.2.1 *By Lancaster.* Lancaster may terminate this Agreement if (a) Company has defaulted in its performance under a Project Contract and failed to cure such default after notice as provided in Article 16 (or such other applicable notice provision); or (b) Company becomes bankrupt, as defined in Section 15.2.4.

15.2.2 *By Company.* Company may terminate this Agreement at any time it determines, in its sole discretion, to withdraw from and cease pursuing the Project. In addition, Company may terminate this Agreement at any time if City, LPA or a City Entity (a) has defaulted in its performance under a Project Contract and failed to cure such default after notice as provided in Article 16 (or such other applicable notice provision); or (b) becomes bankrupt, as defined in Section 15.2.4. Company may also terminate this Agreement if Lancaster indicates its interim determination not to exercise the Option as described in Section 8.3.2, or its final determination not to exercise the Option as described in Section 8.3.3, or if the Parties have not successfully negotiated and prepared for submittal to the governing board of the Acquiring Entity and subsequent execution a Purchase and Sale Agreement within the time provided in Section 8.3.4, together with any permitted extension. If Company abandons the Project and subsequently offers any portion of Project Assets for sale, Company shall notify Lancaster so that Lancaster may within a time frame reasonably specified by Company make an offer to purchase such Project Assets. Company shall consider such offer in good faith.

15.2.3 *Judgment.* This Agreement shall be terminated upon entry, after all appeals have been exhausted, of a final judgment or issuance of a final order directed to Lancaster as a result of any litigation to set aside, withdraw, or abrogate the approval of the City Council or LPA Board of this Agreement; provided, however, that in such event, the Parties shall use their Best Reasonable Efforts to negotiate in good faith and enter into a contractual relationship intended to preserve to the extent practical the original intent of the Parties and to restore the balance of burdens and benefits as described in this Agreement.

15.2.4 *Bankruptcy.* For purposes of this Section, “bankrupt” means a situation in which (a) a Party files a voluntary petition in bankruptcy or is adjudicated a bankrupt or insolvent, or files any petition or answer or consent seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future applicable law relating to bankruptcy, insolvency, or other relief for debtors, or seeks or consents or acquiesces in the appointment of any trustee, receiver, conservator or liquidator of such Party or of all or any substantial part of its properties (the term “acquiesce” as used in this definition, to include the failure to file a petition or motion to vacate or discharge any order, judgment or decree within fifteen (15) Days after entry of such order, judgment or decree); (b) a court of competent jurisdiction enters an order, judgment or decree approving a petition filed against any Party seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future bankruptcy law or law relating to insolvency or other relief for debtors, and such Party acquiesces in the entry of such order, judgment or decree or such order, judgment or decree remains unvacated and unstayed for an aggregate of sixty (60) Days (whether or not consecutive) from the date of entry thereof, or any trustee, receiver, conservator or liquidator of such Party or of all or any substantial part of its property is appointed without the consent or acquiescence of such Party and such appointment remains unvacated and unstayed for an aggregate of sixty (60) Days, whether or not consecutive; (c) a Party evidences its inability to pay its debts as they mature; (d) a Party gives notice to any governmental body of insolvency or pending insolvency, or suspension or pending suspension of operations; or (e) a Party makes a general assignment for the benefit of creditors or takes any other similar action for the protection or benefit of creditors.

**ARTICLE 16.  
DEFAULT**

**16.1 Default by Company.** If Lancaster determines that Company has not complied in good faith with terms or conditions of this Agreement, Lancaster shall give written notice to Company stating the manner in which Company has failed to comply and the steps Company must take to bring itself into compliance. If, within sixty (60) Days after such notice, Company does not commence all steps reasonably necessary to bring itself into compliance and thereafter diligently pursue such steps to completion, then Company shall be deemed to be in default hereunder. Lancaster shall have the right to pursue any remedy at law or equity, including specific performance.

**16.2 Default by Lancaster.** If Company determines that Lancaster has not complied in good faith with terms or conditions of this Agreement, Company shall give written notice to Lancaster stating the manner in which Lancaster has failed to comply and the steps Lancaster must take to bring itself into compliance. If, within sixty (60) Days after such notice, Lancaster does not commence all steps reasonably necessary to bring it into compliance and thereafter diligently pursue such steps to completion, then Lancaster shall be deemed to be in default. Company shall have the right to pursue any remedy available at law or equity, including specific performance.

**16.3 Pursuit of Dispute Resolution.** Nothing in this Article shall preclude a Party from seeking dispute resolution under Article 17 during the time in which a notice to cure a default is pending.

**ARTICLE 17.  
DISPUTE RESOLUTION**

**17.1 Initiation.** To commence a dispute resolution proceeding, a Party shall make written request to the other Party, specifically identifying the nature of the dispute in sufficient detail to allow for immediate evaluation and resolution. A Party shall have worked to resolve the matter through the Project Consultation Committee before commencing a formal dispute resolution under this Article.

**17.2 Attempted Resolution.** The Parties shall first use their Best Reasonable Efforts to consider all reasonable approaches in attempting to resolve a dispute through negotiation. Such efforts shall include, at a minimum, at least two (2) meetings that include personal participation of a Managing Director of Company (or more senior officer), the City Manager and the Executive Director of LPA or comparable officer of a City Entity (if such officials are not also the City Manager, and if LPA or such City Entity are involved in the dispute).



**17.3 Mediation.** If a dispute is not resolved within thirty (30) Days after receipt of notice of the written request by the responding Party, the Parties shall seek expeditious mediation by a neutral third-party. If the Parties are unable to agree upon a mediator, then they shall jointly request designation of a mediator by the Judicial Arbitration and Mediation Service (JAMS), its successor, or another mutually agreeable private mediation service. Mediation shall be commenced and completed within forty-five (45) Days after completion of the thirty (30) day period for attempted resolution by the Parties. The cost of the mediator shall be borne equally by the Parties.

**17.4 Arbitration.** If mediation does not resolve the dispute the Parties agree that such dispute shall be resolved exclusively by arbitration to be conducted in the County of Los Angeles in accordance with the rules of JAMS applying the laws of the State of California. Disputes shall not be resolved in any other forum or venue. The arbitration shall be conducted by an arbitrator agreed upon by the Parties. Discovery shall not be permitted, except as required by the rules of JAMS. The arbitration award shall not include factual findings or conclusions of law, and no punitive damages shall be awarded. The Parties understand that their right to appeal or to seek modification of any ruling or award of the arbitrator is severely limited. Any award rendered by the arbitrator shall be final and binding, and judgment may be entered on it in any court of competent jurisdiction. Notwithstanding the foregoing, any Party may seek an injunction in any court of competent jurisdiction to the limited extent necessary to preserve the status quo during the pendency of the final resolution of any dispute arising out of or related to this Agreement in accordance with this Section 17.

## **ARTICLE 18. JUDICIAL REVIEW**

**18.1 Initiation of Litigation.** If any dispute that arises under or relates to this Agreement (whether contract, tort, or both) is not resolved in accordance with Section 17, such dispute shall be resolved in the Superior Court of the City of Lancaster and County of Los Angeles, California, unless the Parties to the dispute mutually agree to a form of alternative dispute resolution. Notwithstanding any other provision of this Agreement, a Party shall have the right at any time to apply to the Superior Court of the City and County of Los Angeles to enjoin a breach of this Agreement. Nothing in this Section 18.1 or Section 20.2 shall be deemed a waiver of or in any way affect any Party's right to file a motion to remove an action to a neutral county or any other rights under California CODE OF CIVIL PROCEDURE Section 394, in the event that the City and County of Los Angeles or any of its subordinate entities becomes a party to the litigation.

**18.2 Specific Performance.** Lancaster and Company have invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and related activities, and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement. It is not possible to determine the sum of money which would adequately compensate a Party for such efforts. For the above reasons, Lancaster and Company agree that damages would not be an adequate remedy if a Party fails to carry out its obligations under this Agreement and that each Party shall have the right to seek and obtain specific performance as a remedy for breach of this Agreement. Notwithstanding the foregoing, Lancaster shall have no right to seek specific

performance to cause Company to proceed with the development of the Project, or any other remedy in connection with Company's decision not to proceed with the Project.

**18.3 Remedies Cumulative.** The rights and remedies provided in this Agreement shall not be exclusive but shall, to the extent permitted by law, be cumulative and in addition to all other rights and remedies existing at law, in equity or otherwise, except those rights and remedies which have been waived.

**18.4 Limitation on Damages.** Notwithstanding any other provision of this Agreement, in no event, whether as a result of breach of contract, tort (including negligence), strict liability or any other cause of action, shall a Party or any of its contractors be liable to another Party for special, indirect, incidental, punitive, exemplary or consequential damages of any nature whatsoever, including loss or damage caused by reason of loss of use, loss of profits or revenue, interest charges, cost of capital or claims of a Party's customers, and each Party hereby expressly releases each other Party therefrom.

**18.5 Applicability of Review.** Any modification, suspension or termination of this Agreement by any Party shall be subject to judicial review unless all affected Parties have consented in writing thereto.

**18.6 Attorney's Fees.** In any litigation by which one Party either seeks to enforce its rights under this Agreement or seeks a declaration of any rights or obligations under this Agreement, the prevailing Party shall be awarded reasonable attorneys' fees, together with any costs and expenses (including expert witness and referee costs), to resolve the dispute and to enforce the final judgment.

**18.7 Third-party Challenge.** The Parties shall cooperate with each other in all reasonable manners and use their Best Reasonable Efforts in order to keep this Agreement in full force and effect. The Parties shall cooperate in defending against any litigation challenging the approval of this Agreement or any provision therein.

**18.7.1 Defense of Litigation.** In the event of litigation brought by a third-party to the approval or implementation of this Agreement, or any aspect thereof, Lancaster and Company shall jointly cooperate in the defense. The Parties may, but are not required to, develop an operating memorandum to further describe the details of their defense of the litigation. In the event the plaintiff or petitioner obtains a final judgment in its favor in the trial court, the Parties shall decide whether to pursue an appeal. If both Parties wish to appeal, then each shall bear its own attorneys' fees and costs on appeal unless otherwise agreed. If one Party wishes to appeal, but the other does not, then the former Party shall be entitled to pursue the appeal at its sole cost and expense, and shall indemnify the other Party against any cost associated with the appeal. This Agreement shall remain in full force and effect while the third-party litigation, including any appellate review, is pending.

**18.7.2 Compliance with Judgment.** No Party shall be in breach of this Agreement if it acts in conformance with a final judgment from a court of competent jurisdiction entered because of a third-party challenge.

**18.8 Validation.** City shall initiate and pursue to final judgment a validation action pursuant to California CODE OF CIVIL PROCEDURE Sections 860, *et seq.* confirming the validity and legality of this Agreement. The costs of such an action shall be recoverable as a Reimbursable Expense pursuant to the terms of the Reimbursement Agreement.

**ARTICLE 19.  
NOTICES**

**19.1 Manner of Giving Notice.** Notices provided under the terms of this Agreement shall be in writing and transmitted by mail, personal delivery, or overnight mail service.

Notices to Lancaster shall be addressed to:

City Manager  
City of Lancaster  
44933 Fern Avenue  
Lancaster, California 93534  
Phone: (661) 723-6007  
Fax: (661) 723-6141

with a copy to:

David McEwen, City Attorney  
Stradling, Yocca, Carlson & Rauth  
660 Newport Center Drive, Suite 1600  
Newport Beach, California 92660-6441  
Phone: (949) 725-4162  
Fax: (949) 823-5162

Notices to Company shall be addressed to:

Wayne Stevens  
Critical Path Transmission LLC  
9400 Lurline Avenue  
Chatsworth, California 91311  
Phone: (818) 760-5480  
Fax: (818) 718-5800

with a copy to:

Brian Lee  
Baker Botts LLP  
620 Hansen Way  
Palo Alto, CA 94304-1014  
Phone: (650) 739-7519  
Fax: (650) 739-7619  
Brian.lee@bakerbotts.com

**19.2 Effective Date of Notices.** When personally delivered to the recipient, notice is effective on delivery. When mailed first class, postage prepaid, to the last address of the recipient known to the Party giving notice, notice is effective four mail delivery Days after deposit in a United States Postal Service office or mailbox, providing the fourth day lands on a normal business day and not on a federal or State of California holiday. In the event of service by mail and the fourth day lands on a federal or State of California holiday, notice shall be effective on the next business day. When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt. When delivered by overnight delivery service, charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery takes place on a normal business day and is confirmed by the delivery service, otherwise service shall be effective on the next business day. Where service is made by personal delivery, service shall not be effective unless delivery takes place on a normal business day during business hours (between 8:00 AM and 5:00 PM).

**19.3 Undeliverable Notice.** A correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the Party to be notified shall be deemed effective as of the first date that such notice was refused, unclaimed or deemed undeliverable by the postal authorities, messenger or overnight delivery service. A Party may not rely on an undeliverable notice unless the Party has also attempted personal or overnight delivery and placed a phone call to the usual business phone number of the other Party in an effort to confirm the current address for service.

**19.4 Change of Address.** A Party may change its address for notices by giving notice in writing to the other Party as required herein. Thereafter, notices shall be sent to the new address.

## **ARTICLE 20. GENERAL PROVISIONS**

**20.1 Entire Agreement.** This Agreement, the Reimbursement Agreement and the Confidentiality Agreement constitute the entire agreement between the Parties with respect to the subject matter hereof. With the exception of the Confidentiality Agreement and the Reimbursement Agreement (and such letter agreements entered into pursuant to the Reimbursement Agreement), each of which remains in full force and effect, this Agreement supersedes all previous negotiations, discussion and agreements between the Parties, and no parole evidence of any prior or other agreement shall be permitted to contradict or vary the terms hereof. No Party has been induced to enter into this Agreement by, nor is any Party relying on, any representation or warranty outside those expressly set forth in this Agreement.



**20.2 Interpretation and Governing Law.** The language in all parts of this Agreement shall, in all cases, be construed as a whole and in accordance with its fair meaning. A reference to a particular person, entity or Party shall include successors in interest to such person, entity or Party. A reference to a particular contract shall include amendments to such contract. In the event of a conflict between a provision of this Agreement and either or both of the Confidentiality Agreement and Reimbursement Agreement, the provisions of the Reimbursement Agreement or the Confidentiality Agreement, as applicable, shall control. The Parties agree that the laws of the State of California shall govern the construction and implementation of this Agreement. This Agreement shall be deemed to have been entered into, and obligations hereunder to have been incurred and performed, in Lancaster, California. Each Party specifically stipulates to venue in the City of Lancaster and County of Los Angeles.

**20.3 Severability.** Terms of this Agreement shall be severable as set forth in this Section 20.3.

**20.3.1 Provision of Agreement.** If any term, covenant, condition or provision of this Agreement, or the application thereof to any circumstance, shall at any time or to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, then the remainder of this Agreement, or the application thereof to circumstances other than those as to which it is held invalid or unenforceable, shall be valid and enforceable, to the fullest extent permitted by law, and interpreted in the manner most consistent with effectuating the Parties' intent.

**20.3.2 Jurisdiction of LPA or City Entity.** If for any reason a court of competent jurisdiction (or any other administrative agency legally vested with the jurisdiction to decide such matters) shall determine, by final judgment or order, that LPA or a City Entity lacks the legal capacity to conduct its activities under this Agreement, then the City Council hereby declares its intent to exercise its lawful role as a municipal utility in its own right, and shall fully perform the obligations of LPA or the City Entity hereunder as though it had done so in its own right in the first instance.

**20.4 Ambiguities.** Each Party and its counsel have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply in interpreting this Agreement.

**20.5 Waiver.** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the Party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

**20.6 Headings.** The headings in this Agreement are included for convenience only and shall not affect the construction or interpretation of any provision in this Agreement or any of the rights or obligations of the Parties.



**20.7 Relationship of the Parties.** Nothing in this Agreement shall be construed to create an association, joint venture, trust or partnership, or impose a trust or partnership, or to impose a trust or partnership covenant, obligation or liability on or with regard to anyone or more of the Parties. Each Party shall be responsible for its own covenants, obligations and liabilities as herein provided. No Party or group of Parties shall be under the control of or deemed to control any other Party or the Parties as a group. Except as expressly provided in this Agreement, no Party shall be the agent of or have a right or power to bind any other Party without its express consent.

**20.8 Intent.** The Parties intend that the waivers and disclaimers of liability, releases from liability, and limitations and apportionments of liability expressed throughout this Agreement shall apply 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, apportioned or fixed by any such provision, and shall extend to such Party's Affiliates and its and their directors, officers, shareholders, partners, members, employees and agents. The Parties also intend and agree that such provisions shall continue in full force and effect notwithstanding the completion, termination, suspension, cancellation, rescission or expiration of this Agreement.

**20.9 Non-Recourse Obligations.** The obligations of each Party under this Agreement shall be without recourse to any of the directors, officers, shareholders, partners, members, employees, agents, board members, Council members or Affiliates of such Party or of any of the foregoing.

**20.10 Assignment.** This Agreement shall be binding upon, and inure to the benefit of, each of the Parties and their respective successors and permitted assigns. Neither Party shall assign this Agreement or its rights or interests hereunder without the prior written consent of each other Party, which consent may not be unreasonably withheld, except that Company (a) may enter into the assignments and related transactions contemplated under Sections 4.11, 8.5 and Article 9; (b) may assign this Agreement, and its rights and obligations hereunder, to an Affiliate of the Company; and (c) may enter into one or more contracts or subcontracts with respect to the performance of its obligations under this Agreement as provided herein.

Any assignment of this Agreement by Company shall occur only by and pursuant to a written Assignment and Assumption Agreement ("Company Assignment and Assumption Agreement") entered into by and between Company and its assignee. The Company Assignment and Assumption Agreement shall: (i) be in a form approved by Lancaster; (ii) summarize the outstanding and unperformed duties and liabilities imposed upon Company pursuant to this Agreement; (iii) include an express provision indicating that the assignee assumes all duties and obligations imposed upon Company pursuant to this Agreement (whether or not included in the foregoing summary); (iv) include a statement acknowledging that all financial duties and obligations imposed upon Company pursuant to this Agreement are independent of Company's ability to recover the same from FERC rates; and (v) include Lancaster's written consent to the assignment.

Notwithstanding the provisions of this Section 20.10, Lancaster may at any time prior to December 31, 2011, assign its rights, duties and obligations under this Agreement (in whole or in part) to HDPA. Any assignment in violation of this Section shall be null and void.

**20.11 Estoppel Certificates.** A Party may make a written request for an Estoppel Certificate to another Party at any time. The Party to whom the request is made shall provide an Estoppel Certificate to the requesting Party as soon as possible, but in any event within thirty (30) Days after the request. The City Manager or any person designated by the City Manager may sign an Estoppel Certificate on behalf of City. The Executive Director or comparable official of LPA or a City Entity, respectively, may execute an Estoppel Certificate on behalf of such entity. Any officer of Company may sign on behalf of Company. The requesting Party shall reimburse the responding Party for all reasonable and direct costs and fees incurred by the responding Party in providing the Estoppel Certificate. Any such certificate may and is intended to be relied upon by any person, including the other Party, potential purchasers of all or any part of the Property, lenders, and potential lenders.

**20.12 Word Usage.** Unless the context clearly requires otherwise, (i) the plural and singular numbers shall each be deemed to include the other; (ii) the masculine, feminine and neuter genders shall each be deemed to include the others; (iii) "shall," "will" or "agrees" are mandatory, and "may" is permissive; (iv) "or" is not exclusive; and (v) "include," "includes" and "including" are not limiting.

**20.13 Time of Essence.** Time is of the essence regarding each provision of this Agreement of which time is an element.

**20.14 Counting Days.** Days shall be counted by excluding the first day and including the last day, unless the last day is a Saturday, a Sunday or a legal holiday, and then it shall be excluded. Any act required by this Agreement to be performed by a certain day shall be timely performed if completed before 5:00 p.m. local time on that date. If the day for performance of any obligation under this Agreement is a Saturday, a Sunday or a legal holiday, then the time for performance of that obligation shall be extended to 5:00 p.m. local time on the first following day that is not a Saturday, Sunday or legal holiday. As used in this Section, "legal holiday" means those Days observed as federal holidays by the government of the United States or state holidays by the State of California.

**20.15 Recitals.** Each recital set forth at the beginning of this Agreement is incorporated here by reference, as though fully set forth herein, and agreed by the Parties to be true and correct.

**20.16 Survival of Obligations.** It is understood and agreed by the Parties that whether or not it is specifically so provided herein, any term or provision of this Agreement, which by its nature and effect is required to be kept, observed, or performed after completion, termination, suspension, cancellation, rescission or expiration of this Agreement, shall survive such completion, termination, suspension, cancellation, rescission or expiration, and shall be and remain binding upon and for the benefit of the Parties until fully observed, kept or performed.

**20.17 Third Party Beneficiaries.** This Agreement is not intended, nor shall it be construed, to create any third party beneficiary rights in any person. All provisions hereof are for the exclusive benefit of Lancaster and Company. No provision hereof shall be construed to benefit or be enforceable by any third party. Notwithstanding the foregoing, Affiliates of Company are express third party beneficiaries of the provisions of Section 6.3, as required by the context.

**20.18 No Dedication.** No undertaking by any Party under any provision of this Agreement shall constitute, and no Party shall assert, the dedication of any Party's electrical or transmission system, equipment or facilities or other property or assets of such Party, or any portion of any thereof, to any other Party or to the public, or a portion thereof, or affect the status of Company as an independent private entity and not a public utility.

**20.19 Counterparts; Duplicate Originals.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument. This Agreement may also be executed in duplicate originals for each Party, and each such document shall constitute an original Agreement.

**20.20 Necessary Acts.** The Parties shall execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of this Agreement, including the delivery of customary and reasonably satisfactory evidence of and opinions on the validity of any representations and warranties contained in, and the authority to execute and enter into, any Project Contract.

[Remainder of Page Intentionally Blank]

**WHEREFORE**, the Parties have executed this Agreement below, further agreeing that execution may be in multiple counterparts, each executed copy of which shall constitute an original of the same instrument.

**CRITICAL PATH TRANSMISSION, LLC**,  
a Delaware limited liability company

By: \_\_\_\_\_  
Wayne Stevens, Managing Director

**CITY OF LANCASTER**, a Charter City and  
Municipal Corporation

By: \_\_\_\_\_  
Mark V. Bozigian, City Manager

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
David R. McEwen, City Attorney

Approved by Dept. Head \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Geri K. Bryan, CMC City Clerk