



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

CYPRESS ASSOCIATES, LLC,

Plaintiff,

v.

SUNNYSIDE COGENERATION  
ASSOCIATES PROJECT, SUNNYSIDE  
HOLDINGS I, INC. and SUNNYSIDE II, L.P.,

Defendants.

Civil Action No. 1607-N

**FILED UNDER SEAL**

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following person:

R. Judson Scaggs, Jr. (#2676)  
William M. Lafferty (#2755)  
Samuel T. Hirzel (#4415)  
Morris, Nichols, Arsht & Tunnell  
1201 N. Market Street  
P.O. Box 1347  
Wilmington, DE 19899-1347  
(302) 658-9200

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**COMPLAINT**

Plaintiff Cypress Associates, LLC (“Cypress”), by and through its undersigned attorneys, brings this Complaint against Sunnyside Cogeneration Associates Project (“SCA”) and its partners Sunnyside Holdings I, Inc. (“Sunnyside I Partner”), and Sunnyside II, L.P. (“Sunnyside II Partner”) (hereinafter collectively known as “Defendants”). In support of its Complaint, Cypress states as follows:

**I. PARTIES**

1. Plaintiff is a New York Limited Liability Company with its principal place of business in New York, located at 52 Vanderbilt Avenue, Suite 902, New York, NY 10017.

2. Defendant SCA is a Utah joint venture with its principal place of business in Utah, located at One Power Plant Road, P.O. Box 159, Sunnyside, UT 84539. Sunnyside I Partner and Sunnyside II Partner are the two partners of, and control, SCA.

3. Defendant Sunnyside I Partner is a Delaware corporation with its principal place of business located at 103 Springer Building, 3411 Silverside Road, Wilmington, DE 19810.

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ORDER.**

4. Defendant Sunnyside II Partner is a Delaware Limited Partnership with its principal place of business located at 111 Market Place, Suite 200, Baltimore, MD 21202.

## **II. FACTUAL BACKGROUND**

5. On December 1, 1987, Carbon County, Utah (the "Issuer") issued Variable Rate Demand Resource Recovery Bonds, 1987 Series ("1987 Bonds"), in the principal amount of eighty million (\$80,000,000.00) dollars. These bonds were issued to finance the design, development and construction of a solid waste disposal facility (the "Waste Facility"), as well as other property and improvements, for the purpose of abating pollution within Carbon County, Utah.

6. The proceeds from the 1987 Bonds were then loaned by the Issuer to Sunnyside Power Corporation ("SPC") pursuant to a Loan Agreement dated December 1, 1987 (the "Loan Agreement").

7. The 1987 Bonds were structured as conduit financing used to finance the Waste Facility. Conduit financing is a financial vehicle whereby an authorized municipality issues bonds on behalf of a for-profit private entity. The authorized municipality then loans the proceeds of the bonds to the private entity to finance its projects. The private entity guarantees repayment of the bonds by executing a loan and guarantee agreement through which the private entity agrees to make payments on the debt. The authorized municipality has no obligation to make payment on the debt if the private entity defaults.

8. In this case, the Issuer is the authorized municipality which issued the bonds, and SPC is the private entity which borrowed the proceeds of the bonds. The Issuer retains only very limited rights and obligations under the 1987 Bonds with the rest assumed by SPC. The transaction in this case is typical of conduit financings and was used to allow a SPC, the borrower, access to tax-exempt financing markets and enable them to build projects such as

the Waste Facility. The most common type of purchaser of conduit financing bonds is a large institutional investor, usually a mutual fund investing on behalf of individuals seeking tax-exempt income.

9. SCA assumed the obligations on the bonds from SPC, effectively taking the place of SPC on the project.

10. The 1987 Bonds were refinanced a number of times during the period from 1987 to 1999. The last refinancing resulted in the issuance of the currently outstanding fifty nine million dollars (\$59,000,000.00) in Solid Waste Disposal Revenue Refunding Bonds, Series 1999A (the "Series A Bonds") and eighteen million dollars (\$18,000,000.00) in Solid Waste Disposal Revenue Refunding Bonds, Series 1999B (as amended, the "Series B Bonds") (the Series A Bonds and the Series B Bonds are hereinafter collectively referred to as the "Refunding Bonds"). Because a portion of the principal of the Series A Bonds has been retired, the amount of Series A Bonds outstanding is currently about \$48,700,000. Cypress is the beneficial owner of \$13,400,000 of the principal amount of the Series B Bonds, representing approximately 74.4% of the Series B Bonds outstanding.

11. The Refunding Bonds were issued through an exchange offer (the "Exchange Offer") pursuant to an Exchange Agreement dated August 31, 1999 (the "Exchange Agreement") and an Amended and Restated Trust Indenture dated August 1, 1999 (the "Indenture") between the Issuer and U.S. Bank Trust National Association and the Loan Agreement. The Exchange Offer was consummated simultaneously with the acquisition of SCA's joint venture interests by Sunnyside I Partner and Sunnyside II Partner and their affiliates in approximately August 1999. The Indenture is attached hereto as Exhibit A (a form of the



Series B Bonds are attached as Appendix B to the Indenture), the Loan Agreement is attached hereto as Exhibit B and the Exchange Agreement is attached hereto as Exhibit C.

12. The Refunding Bonds were also a conduit financing structure. As is typical of conduit financing transactions, a bondholder seeking repayment of principal and interest on the Refunding Bonds must seek such repayment from SCA and not the Issuer.

13. Principal on the Series B Bonds is payable in a single bullet on maturity August 15, 2024. *See* Indenture, Section 2.03.

14. Interest on the Series B Bonds is based on SCA's cash flow rather than a percentage of the outstanding principal and is paid annually on the 15th of February. *See* Indenture at 4 and 10.

15. Interest on the Series B Bonds is defined as one-half of the Series B Amount, which in turn is defined in the Indenture as the Base Amount. *See* Indenture, Definition of "Base Amount" at 4. As described in more detail below, the Series B Bonds share equally with the joint venture partners in the funds generated by SCA after payment of operating expenses, debt service on the Series A Bonds, capital expenditures and certain fees and other specified payments.

16. The Base Amount is defined in the Indenture as:

[F]or the twelve month period ending on December 31 of each year, the Borrower's gross revenues during such period less actual expenditures for items included in the applicable Annual Operating Budget not in excess of the amount budgeted, for such item in such Annual Operating Budget for such period, including, without limitation, (i) capital expenditures for maintenance of the Facility required or permitted to be made during such period in accordance with the provisions of the Loan Agreement, (ii) principal paid at maturity or scheduled redemption of the Series 1999A Refunding Bonds, together with interest paid thereon, during such period, (iii) any payment made during such period to replenish the Debt Service Reserve Fund or reimburse the issuer of any Debt Service

Reserve Fund Guarantee provided with respect to, or for the benefit of the holders of, the Refunding Bonds, (iv) the Administrative Fee payable to CP Sunnyside during such period, and (v) the Service and Maintenance Fee payable to the Borrower during such period, plus any unpaid Service and Maintenance Fees for any prior periods.

*See* Indenture at 4 (emphasis added).

17. The Service and Maintenance Fee (the “S&M Fee”) described in the definition of Base Amount is in substance a fixed fee that rises over time and is payable to SCA for its efforts on behalf of the Waste Facility. *Id.* at 15.

18. Notwithstanding the clear language of the Indenture, the Defendants have been consistently miscalculating the Base Amount which has had the effect of reducing the interest payments to the holders of the Series B Bonds (the “B Bondholders”). Instead of using actual expenditures, the Defendants have been deducting actual plus accrued expenditures from the calculation of the Base Amount. Moreover, Defendants have compounded their collective error by deducting the same accrued expenditures year after year; in effect, not only have the Defendants erred by deducting the accrued rather than actual expenditures, they have been double, triple and even quadruple deducting these accrued and unpaid expenditures.

19. For fiscal year 2001, SCA realized approximately \$42.5 million in income from operations and deducted actual expenditures of approximately \$14 million as set forth in the definition of the Base Amount, also known as the “Waterfall.” Included in these actual expenditures was a payment to SCA of approximately \$1.55 million for S&M Fees. The excess of approximately \$28.5 million was divided equally between the B Bondholders and the equity holders. In 2001, SCA calculated the Base Amount properly. Therefore, the calculations for 2001 are set forth in the Series B Bond Amount Report January 1, 2001 through December 31, 2001, which is attached hereto as Exhibit D.

20. In 2002, SCA realized approximately \$7.9 million in income from operations and deducted over \$9 million in actual expenditures. SCA paid actual S&M Fees in 2002 of approximately \$0.8 million. Nonetheless, in calculating the Base Amount, SCA deducted S&M Fees of approximately \$1.6 million, consisting of the \$0.8 million of S&M Fees actually paid and \$0.8 million of S&M Fees accrued but not paid. There were no distributions made either to the equity owners or B Bondholders; this would have been true even if SCA had deducted only the amount of S&M Fees it was actually paid. The calculations for 2002 are set forth in the Series B Bond Amount Report January 1, 2002 through December 31, 2002, which is attached hereto as Exhibit E.

21. In 2003, SCA realized approximately \$10.9 million in income from operations (from both operations and a one-time receipt of funds previously held in trust) and deducted actual operating expenses, debt service and capital expenditures of approximately \$8.4 million. In 2003, SCA did not pay an S&M Fee. Notwithstanding this fact and in addition to the \$8.4 million in actual cash expenditures set forth above, SCA deducted over \$1.6 million attributed to 2003 S&M Fees and deducted again the \$0.8 million of unpaid S&M Fees attributed to 2002, the second deduction for the unpaid 2002 S&M Fees. After deducting over \$2.4 million of unpaid S&M Fees for 2002 and 2003, SCA calculated a Base Amount of \$181,060 and distributed approximately \$90,530 to the B Bondholders. Had the Base Amount been properly calculated by excluding the unpaid S&M Fees, the Base Amount would have been approximately \$2.6 million and more than \$1.3 million should have been paid to the B Bondholders. The calculations for 2003 are set forth in the Series B Bond Amount Report January 1, 2003 through December 31, 2003, which is attached hereto as Exhibit F.

22. In 2004, SCA realized approximately \$13 million in income from operations and deducted actual operating expenses, debt service and capital expenditures of approximately \$8.3 million. As in 2003, in 2004 SCA did not pay any S&M Fees. Notwithstanding this fact, SCA deducted approximately \$1.7 million attributed to 2004 S&M Fees and deducted again the \$0.8 million of unpaid S&M Fees attributed to 2002 and the \$1.6 million of unpaid S&M Fees attributed to 2003. This calculation constitutes the third deduction for unpaid 2002 S&M Fees and the second deduction for unpaid 2003 S&M Fees. After deducting over \$4.1 million of unpaid S&M Fees for 2002, 2003 and 2004, SCA calculated a Base Amount of \$633,505, of which the B Bondholders would have been entitled to \$316,752. Had the Base Amount been properly calculated by excluding the unpaid S&M Fees, the Base Amount would have been almost \$4.8 million and more than \$2.3 million should have been paid to the B Bondholders. Upon being informed the miscalculations by Cypress, Defendants indicated that the \$316,752 they calculated as the "Base Amount" for 2004 – which grossly understates the amounts due to the B Bondholders – is no longer what the Defendants are willing to pay. The calculations for 2004, prior to the subsequent change in the Defendants' formulation, are set forth in the Series B Bond Amount Report January 1, 2004 through December 31, 2004, which is attached hereto as Exhibit G.

23. SCA has consistently miscalculated the Base Amount by deducting accrued, but unpaid, amounts attributed to S&M Fees. Defendants' method of calculation is inconsistent with the definition of Base Amount in the Indenture. From 2002 through 2004, in calculating the "Base Amounts" SCA deducted S&M Fees aggregating \$9.0 million that were never actually paid. Had these improper deductions not been made, the Base Amounts for these years would have increased by approximately \$7.4 million.

24. As a result of SCA's miscalculation, the B Bondholders are owed approximately \$3.7 million, which is one-half of the \$7.4 million set forth in paragraph 23 above.

25. In February or March of 2005, SCA paid more than \$4.1 million to the Defendants purportedly for accrued but unpaid S&M Fees for the 2001 through 2004 period. Nevertheless, in calculating the Base Amount for this period, SCA had deducted an aggregate amount of almost \$7.4 million. Moreover, SCA has informed Cypress that it will yet again deduct this amount in calculating the 2005 Base Amount. Further, had SCA correctly calculated the Base Amount in the 2001 through 2004 period, the Waterfall would have mandated that any unpaid amounts on the Series B Bonds be paid instead of the S&M Fees. As a result, the Defendants improperly paid themselves at the expense of the Series B Bondholders.

26. Section 7.11 of the Indenture provides that each and every Bondholder shall have the absolute and unconditional right to receive payment of principal and interest on the bonds or to institute suit for the enforcement of such payment. *See* Indenture, Section 7.11.

27. In November, 2004, SCA and Utah Power and Light Company ("UPLC") agreed in principle to the terms of an Amendment (the "Amendment") to the Power Purchase Agreement ("PPA") regulating the prices paid for energy delivered by the SCA plant. *See* Draft Amendment attached hereto as an exhibit to Exhibit H; *see also* Notice to Bondholders attached hereto as Exhibit I attaching final Amendment as an exhibit thereto. On December 15, 2004, SCA sent the Series A Bondholders and the B Bondholders a letter seeking approval of the Amendment to the PPA. *See* Exhibit H. The December 15 letter specifically references, among other things, the need for Bondholder approval under Section 9.4 of the Loan Agreement and states that the Amendment "must be approved by the SCA Bondholders prior to their subsequent

approval by the Public Service Commission of Utah.” The Amendment to the PPA purportedly resolves a dispute between SCA and UPLC regarding the price for energy delivered. The Amendment includes “floor” and “ceiling” energy prices purportedly guaranteeing a steady minimum and maximum revenue stream from the operation of SCA’s plant. The PPA currently calculates energy prices to be paid by UPLC to SCA without any floor or ceiling prices and, in fact, power prices quoted for Palo Verde electricity – to which the price UPLC has paid to SCA historically has been closely correlated – have been more than 50% above the ceiling proposed in the Amendment.

28. The Amendment to the PPA directly changes the amount of principal and interest that will be paid on the Series B Bonds. Under Sections 10.02 and 10.08 of the Indenture, SCA may not modify or amend the Indenture in a manner that affects any bondholders’ principal and interest payments under the bonds without the express consent of every affected bondholder. *See* Indenture, Sections 10.02 and 10.08. The Amendment to the PPA is a de facto amendment of the Indenture. Cypress did not consent to any such Amendment or modification.

29. Moreover, under Section 9.4 of the Loan Agreement, SCA cannot amend the Facility Documents, including the PPA, without 80% approval of the bondholders. *See* Loan Agreement, Section 9.4 (referencing the defined term “Required Percentage of the Bondholders” from the Indenture). Cypress holds over 20% of the outstanding Series B Bonds. Consequently, SCA cannot amend the PPA without Cypress’ approval.

30. Nevertheless, on June 20, 2005, SCA and UPLC submitted the proposed amendment to the Utah Public Service Commission (“Utah PSC”) for approval, even though such an Amendment did not receive appropriate authorization from Cypress, and represented that

because a majority of the outstanding Series A and B Bonds had consented to the Amendment, the requisite approvals had been obtained. Consequently, SCA has proposed the Amendment to the PPA which would directly affect the interest payments on the Series B Bonds while attempting to circumvent the consent requirements under the Indenture.

31. If approved and put into effect, the Amendment will potentially limit the interest payments to the Series B Bondholders by placing a cap on the amount of energy revenues that SCA could conceivably receive. Because electricity prices change daily and are difficult to forecast with any accuracy, it is impossible to determine the potential lost interest that will be suffered by the Series B Bondholders. SCA cannot “end run” the requirements set forth in the Indenture by amending the PPA.

**COUNT I**  
**(BREACH OF CONTRACT/BREACH OF COVENANT OF  
GOOD FAITH AND FAIR DEALING RE AMENDMENT TO PPA)**

32. Cypress realleges and incorporates by reference paragraphs 1 through 31 above.

33. Section 9.4 of the Loan Agreement prohibits SCA from amending the Facility Documents (including the PPA) “without the prior written consent of . . . the Required Percentage of Bondholders.” The “Required Percentage of Bondholders” is defined in the Indenture as “Bondholders of 80% or more in aggregate principal amount of the Outstanding Bonds.” Similarly, Sections 10.02 and 10.08 of the Indenture prohibit SCA from amending the Indenture in a manner that affects any Bondholders’ principal and interest payments under the bonds without the express consent of every affected Bondholder. Because the purported Amendment to the PPA may modify the amount of interest paid to the Bondholders, it is a de facto amendment to the Indenture.

34. Recognizing that the Amendment needed Bondholder approval, SCA solicited such approval by letter dated December 15, 2004 – a letter that specifically references, among other things, Section 9.4 of the Loan Agreement and states that the Amendment “must be approved by the SCA Bondholders prior to their subsequent approval by the Public Service Commission of Utah.” However, Cypress – which owns greater than 20% of the outstanding principal amount of the Bonds – did not consent and, therefore, the requisite percentage vote was not obtained under the Loan Agreement or the Indenture.

35. Notwithstanding the foregoing, on June 20, 2005, SCA and UPLC submitted the proposed Amendment to the Utah PSC for approval – even though the Amendment did not receive the requisite vote – representing to the Utah PSC that the requisite vote had been obtained since a majority of the Series A and B Bonds allegedly had consented to the Amendment.

36. SCA’s attempt to amend the PPA without the requisite vote of the Bondholders under the Loan Agreement and the Indenture is a blatant attempt to circumvent the consent/voting rights of the Bondholders contained in the Loan Agreement and Indenture. As such, SCA has breached the rights of the Bondholders under the Loan Agreement and Indenture, and breached the implied covenant of good faith and fair dealing contained in those agreements.

37. Cypress is entitled to an injunction enjoining enforcement of the Amendment to the PPA, and requiring SCA to disclose its failure to obtain the requisite Bondholder approval to the Utah PSC, and to withdraw its support for the proposed Amendment before the Utah PSC. If an injunction is not granted, Cypress will be irreparably harmed due to SCA’s disregard of its consent/voting rights under the Loan Agreement and Indenture.



38. In addition, due to SCA's failure to obtain the requisite approval of the Bondholders for the proposed Amendment to the PPA under the Loan Agreement and Indenture, Cypress will be entitled to equitable rescission or cancellation of the Amendment to the PPA if it is approved by the PSC without proper prior approval by the Bondholders.

39. Cypress has no adequate remedy at law.

**COUNT II**  
**(SPECIFIC PERFORMANCE)**

40. Cypress realleges and incorporates by reference paragraphs 1 through 39 above.

41. When SCA sought and procured financing for the Waste Facility, it obligated itself to perform under the Loan Agreement, the Indenture, the Series A Bonds and the Series B Bonds.

42. By purporting to amend the PPA without obtaining the requisite consent of the Bondholders, SCA has violated the consent/voting rights of the Bondholders under the Loan Agreement and Indenture and effectively seeks to absolve itself of its responsibility to pay future principal and interest under the Indenture and the Series B Bonds.

43. Cypress is entitled to specific enforcement of the Loan Agreement, the Indenture and Series B Bonds as written, requiring SCA to obtain the requisite consent of the Bondholders prior to amending the PPA.

44. Cypress has no adequate remedy at law.

**COUNT III**  
**(DECLARATORY JUDGMENT)**

45. Cypress realleges and incorporates by reference paragraphs 1 through 44 above.

46. An actual and justifiable controversy presently exists between Cypress and SCA as to the lawful and correct interpretation of the “Base Amount.”

47. The Base Amount should be calculated by deducting only actual cash expenditures.

48. Cypress is entitled to a declaration of the meaning of the “Base Amount” definition under the Trust Indenture as permitting deduction of only actual cash expenditures and not accrued S&M Fees or other accrued amounts.

**COUNT IV**  
**(DECLARATORY JUDGMENT)**

49. Cypress realleges and incorporates by reference paragraphs 1 through 48 above.

50. In February or March of 2005, SCA paid more than \$4.1 million to the Defendants purportedly for accrued but unpaid S&M Fees for the 2001 through 2004 period.

51. Had SCA properly calculated the Base Amount under the Indenture, Defendants would not have been entitled to payment of these S&M Fees.

52. Cypress is entitled to a declaratory judgment declaring that SCA was not entitled to a payment of \$4.1 million in S&M Fees for the 2001 through 2004 period and an order compelling Defendants to return said amount to the pool of funds used to calculate the Base Amount.

**COUNT V**  
**(BREACH OF CONTRACT/BREACH OF COVENANT OF  
GOOD FAITH AND FAIR DEALING RE CALCULATION OF BASE AMOUNT)**

53. Cypress realleges and incorporates by reference paragraphs 1 through 52 above.

54. SCA has refused, and continues to refuse, to pay the amounts properly due and owing to Cypress.

55. SCA has breached its contractual obligations under the Series B Bonds, the Loan Agreement and the Indenture by denying the Bondholders full principal and interest payments under the Series B Bonds.

56. SCA has breached the implied covenant of good faith and fair dealing inherent in these contracts by refusing to acknowledge, accept, or undertake without reservation, its obligations to pay or reimburse, or to arrange for the payment or reimbursement, of the full principal and interest payments on the Series B Bonds.

57. Moreover, the Defendants improperly paid themselves \$4.1 million in February 2005, an amount which would not have been payable had SCA properly followed the provisions of the Indenture and Loan Agreement.

58. As a direct and proximate result of SCA's breaches of contract and/or the implied covenant of good faith and fair dealing, which are continuing at least to date of this Complaint, SCA has deprived Cypress of the benefits of principal and interest payments for which Cypress has sustained damages in amount in excess of \$2,700,000.00 and such damages are continuing (74.4% of the amount owed the Series B Bondholders in paragraph 24 above).

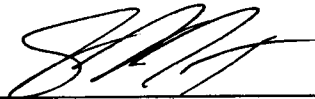
59. Cypress is entitled to an order requiring Defendants to pay to Cypress such damages and all other direct, indirect, consequential, incidental, optional, compensatory, and other damages resulting from SCA's breach of contract.

#### **PRAYER FOR RELIEF**

WHEREFORE, Cypress respectfully requests that the Court enter a final order and judgment in Cypress' favor in all respects and grant Cypress the following relief:

- A. An injunction prohibiting SCA from enforcing the Amendment to the PPA and requiring SCA to disclose its failure to obtain the requisite Bondholder approval to the Utah PSC, and to withdraw its support for the proposed Amendment before the Utah PSC;
- B. Equitable rescission of the Amendment to the PPA;
- C. Specific performance of the Loan Agreement, the Indenture and the Series B Bonds as written;
- D. A declaratory judgment that the Base Amount should be calculated deducting only actual cash expenditures and not accrued amounts;
- E. A declaratory judgment that SCA was not entitled to a payment of \$4.1 million for accrued and unpaid S&M Fees under a accurate and correct determination of the Base Amount and order that the \$4.1 million be repaid to SCA by the recipients;
- F. Damages in an amount to be proven at trial (including prejudgment and post-judgment interest);
- G. Costs and expenses (including attorneys' fees) incurred by Cypress in prosecuting this action; and
- H. Such other and further relief as this Court deems just and proper.

MORRIS, NICHOLS, ARSHT & TUNNELL



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R. Judson Scaggs, Jr. (#2676)  
William M. Lafferty (#2755)  
Samuel T. Hirzel (#4415)  
1201 N. Market Street  
Wilmington, Delaware 19801  
(302) 658-9200  
Attorneys for Plaintiff  
Cypress Associates, LLC

September 2, 2005

EFiled: Sep 2 2005 11:50AM  
Transaction ID 6616275



## EXHIBIT A

**TRUST INDENTURE**

**between**

**CARBON COUNTY, UTAH  
and  
U.S. BANK TRUST NATIONAL ASSOCIATION,  
AS TRUSTEE**

**relating to**

**\$59,000,000  
CARBON COUNTY, UTAH  
SOLID WASTE DISPOSAL REVENUE REFUNDING BONDS  
(SUNNYSIDE COGENERATION ASSOCIATES PROJECT)  
SERIES 1999A  
and  
\$18,000,000  
CARBON COUNTY, UTAH  
SOLID WASTE DISPOSAL REVENUE REFUNDING BONDS  
(SUNNYSIDE COGENERATION ASSOCIATES PROJECT)  
SERIES 1999B**

**Dated as of August 1, 1999**

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## TRUST INDENTURE

THIS TRUST INDENTURE, dated as of August 1, 1999 (the "Indenture"), by and between CARBON COUNTY, UTAH, a political subdivision of the State of Utah (the "Issuer"), and U.S. BANK TRUST NATIONAL ASSOCIATION, a national banking association authorized to exercise corporate trust powers, as trustee (the "Trustee"),

### WITNESSETH:

WHEREAS, in 1987, the Issuer issued \$80,000,000 in aggregate principal amount of its Variable Rate Demand Resource Recovery Revenue Bonds (Sunnyside Power Corporation), 1987 Series (the "1987 Bonds") to finance the acquisition, construction, development and equipping of a solid waste disposal facility and related property and improvements in Carbon County, Utah (the "Project") for the use and benefit of Sunnyside Power Corporation, a Utah corporation ("SPC"), and loaned the proceeds thereof to SPC; and

WHEREAS, SPC subsequently transferred all of its right, title and interest in and to the Project to the Borrower, including all of its right, title and interest in the proceeds of the 1987 Bonds, subject to the obligations of SPC with respect thereto; and

WHEREAS, in 1990, the Issuer issued an additional \$20,000,000 in aggregate principal amount of its Solid Waste Disposal Revenue Bonds (Sunnyside Cogeneration Project-1990 Short-term Series)(the "1990 Bonds"), for the purpose of financing the costs of completing the Project; and

WHEREAS, in 1991, the Issuer issued \$80,000,000 in aggregate principal amount of its Solid Waste Disposal Refunding Revenue Bonds (Sunnyside Cogeneration Project – 1991 Short-term Series)(the "1991 Short-term Bonds") to refund the 1987 Bonds; and

WHEREAS, thereafter, in 1991, the Issuer issued \$109,500,000 in aggregate principal amount of its Solid Waste Disposal Refunding Revenue Bonds, Series 1991 (Sunnyside Cogeneration Associates Project)(the "1991 Refunding Bonds") to refund the 1990 Bonds and the 1991 Short-term Bonds and provide additional funding for the Project, and, in 1993, issued an additional \$7,000,000 in aggregate principal amount of its Solid Waste Disposal Revenue Bonds, Series 1993 (Sunnyside Cogeneration Associates Project)(the "1993 Bonds" and, together with the 1991 Refunding Bonds, the "Prior Bonds") to finance the acquisition and/or construction of additional improvements to the Project; and

WHEREAS, the Borrower has requested the Issuer to issue and deliver \$59,000,000 in aggregate original principal amount of its Solid Waste Disposal Revenue Refunding Bonds (Sunnyside Cogeneration Associates Project), Series 1999A (the "Series 1999A Refunding Bonds"), and \$18,000,000 in aggregate original principal amount of its Solid Waste Disposal Revenue Refunding Bonds (Sunnyside Cogeneration Associates Project), Series 1999B (the "Series 1999B Refunding

Bonds” and, together with the Series 1999A Refunding Bonds, the “Refunding Bonds”), in exchange for all of the issued and outstanding Prior Bonds pursuant to the Exchange Agreement; and

WHEREAS, the Issuer has determined that the issuance and delivery of the Refunding Bonds in exchange for the Prior Bonds will further the public purposes of the Act; and

WHEREAS, all things necessary to make the Refunding Bonds, when issued, executed and delivered by the Issuer and authenticated by the Trustee, to the extent required, pursuant to this Indenture, the valid, binding and legal special limited obligations of the Issuer, and to constitute this Indenture a valid assignment and pledge of the revenues herein pledged to the payment of the principal of and interest on the Refunding Bonds and a valid assignment and pledge of certain rights of the Issuer has been done and performed, and the creation, execution and delivery of this Indenture, and the execution, issuance and delivery of the Refunding Bonds, subject to the terms hereof, have in all respects been duly authorized;

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that to secure the payment of principal of and interest on any Refunding Bonds issued pursuant hereto according to their true intent and meaning, and all other amounts due from time to time under this Indenture, including those due to the Trustee, to secure the performance and observance of all of the covenants, agreements, obligations and conditions contained therein and herein, and to declare the terms and conditions upon and subject to which the Refunding Bonds are and are intended to be issued, held, secured and enforced and in consideration of the premises and the acceptance by the Trustee of the trusts created herein and of the purchase and acceptance of the Refunding Bonds by the Bondholders and for other good and valuable consideration, the receipt of which is acknowledged, the Issuer has executed and delivered this Indenture and absolutely and irrevocably pledges and assigns to the Trustee and to its successors in trust, on the basis set forth herein, and its and their assigns, all right, title and interest of the Issuer in and to the Trust Estate as defined in Article I.

TO HAVE AND TO HOLD unto the Trustee and its successors in trust and its and their assigns forever;

IN TRUST, NEVERTHELESS, and subject to the provisions hereof,

1. for the equal and proportionate benefit, security and protection of all Refunding Bonds, except as otherwise expressly provided herein,
2. for the enforcement of the payment of the principal of and interest on the Refunding Bonds, and all other amounts due from time to time under this Indenture, including those due to the Trustee, when payable, according to the true intent and meaning thereof and of this Indenture, and
3. to secure the performance and observance of and compliance with the covenants, agreements, obligations, terms and conditions of this Indenture and the Loan Documents,

in each case, without preference, priority or distinction, as to lien or otherwise except as provided herein, of any one Bond over any other by reason of designation, number, date of the Refunding Bonds or of authorization, issuance, sale, execution, authentication, delivery or maturity thereof, or otherwise, so that each Bond and all Refunding Bonds shall have the same right, lien and privilege under this Indenture and shall be secured equally and proportionately hereby, it being intended that the lien and security of this Indenture shall take effect from the date of the actual issuance and exchange of the Refunding Bonds for the Prior Bonds; provided, however, that, upon satisfaction of and in accordance with the provisions of Article IX hereof, the rights assigned hereby shall cease, determine and be void to the extent described therein; otherwise, such rights shall be and remain in full force and effect;

PROVIDED, FURTHER, that the pledge of the right, title and interest of the Issuer in and to the Trust Estate is given subject to the right of the Issuer to issue Additional Bonds secured on a parity basis with the Refunding Bonds by the Trust Estate; and

It is declared that all Refunding Bonds issued hereunder and secured hereby are to be issued, authenticated and delivered, and that all Facility Revenues assigned or pledged hereby are to be dealt with and disposed of under, upon and subject to, the terms, conditions, stipulations, covenants, agreements, obligations, trusts, uses and purposes provided in this Indenture; and the Issuer has agreed and covenanted, and agrees and covenants with the Trustee and with each and all Bondholders, as follows:

## ARTICLE I

### DEFINITIONS AND INTERPRETATIONS

**Section 1.01 Definitions.** Unless the context otherwise requires, the terms defined in this Article I shall, for all purposes of this Indenture and of any indenture supplemental hereto, have the meanings herein specified:

*“Act”* means the Utah Industrial Facilities and Development Act, as amended, comprising Chapter 17 of Title 11 of the Utah Code Annotated 1953.

*“Additional Bonds”* means any additional parity Bonds authorized to be issued by the Issuer pursuant to Section 2.13 hereof.

*“Administrative Fee”* means the fee payable to CP Sunnyside pursuant to the Administrative Service Agreement, dated as of August 31, 1999, between CP Sunnyside and the Borrower, as thereafter amended or modified with the consent of the holders of at least fifty-one percent (51%) of the principal amount of the Outstanding Refunding Bonds, which consent will not be unreasonably withheld or delayed, in an amount equal to \$275,000 per annum as of the date hereof, which amount (as and to the extent previously increased) shall be increased effective as of each January 1,

commencing January 1, 2001, by the percentage change in the CPI as compared to the CPI as of the preceding January 1.

*"Affiliate"* of any specified entity means any Person controlling, controlled by or under common control with another Person

*"Annual Operating Budget"* means the Operating Budget for the Facility prepared in accordance with the provisions of Section 2.6(b) of the Loan Agreement.

*"Attesting Officer"* means the County Clerk or Deputy County Clerk of the Issuer.

*"Authorized Denomination"* means \$100,000 and any integral multiple of \$1,000 in excess thereof.

*"Authorized Representative"* means (i) in the case of the Issuer, each person at the time designated to act on behalf of the Issuer by the most recent written certificate furnished to the Trustee, the Consulting Engineer and the Borrower containing the specimen signature of such person and signed on behalf of the Issuer by its Chief Executive Officer, (ii) in the case of the Borrower, each person at the time designated to act on behalf of the Borrower by the most recent written certificate furnished to the Issuer, the Trustee and the Consulting Engineer containing the specimen signature of such person and signed on behalf of the Borrower by its general partners, and (iii) in the case of the Consulting Engineer, each person at the time designated to act on behalf of the Consulting Engineer by the most recent written certificate furnished to the Issuer, the Trustee and the Borrower containing the specimen signature of such person and signed on behalf of the Consulting Engineer by its authorized officer.

*"Bankruptcy Code"* means Title 11 of the United States Code, as it is amended from time to time and any successor thereto or replacement thereof.

*"Base Amount"* means, for the twelve-month period ending on December 31 of each year, the Borrower's gross revenues during such period less actual expenditures for items included in the applicable Annual Operating Budget not in excess of the amount budgeted, for such item in such Annual Operating Budget for such period, including, without limitation, (i) capital expenditures for maintenance of the Facility required or permitted to be made during such period in accordance with the provisions of the Loan Agreement, (ii) principal paid at maturity or scheduled redemption of the Series 1999A Refunding Bonds, together with interest paid thereon, during such period, (iii) any payment made during such period to replenish the Debt Service Reserve Fund or reimburse the issuer of any Debt Service Reserve Fund Guarantee provided with respect to, or for the benefit of the holders of, the Refunding Bonds, (iv) the Administrative Fee payable to CP Sunnyside during such period, and (v) the Service and Maintenance Fee payable to the Borrower during such period, plus any unpaid Service and Maintenance Fees for any prior periods.

*"Beneficial Owner"* means, as to any Bond which is held by a nominee, the beneficial owner of such Bond provided that such beneficial owner has notified the Trustee and provided satisfactory evidence of its beneficial ownership to the Trustee.

*"Bonds"* means the Refunding Bonds and any Additional Bonds issued pursuant to this Indenture.

*"Bond Counsel"* means Snell & Wilmer L.L.P., Phoenix, Arizona, or any other nationally-recognized firm of attorneys experienced in the issuance of tax-exempt obligations of political subdivisions, selected by the Borrower and reasonably acceptable to the Issuer.

*"Bond Fund"* means the trust fund of that name created and established pursuant to Section 4.01 hereof.

*"Bondholder" or "holder of Refunding Bonds" or "Owner of Refunding Bonds"* means the Person who owns a Bond, provided that, in accordance with the provisions of Section 2.08 hereof, the person in whose name a Bond is registered in the Bond Register shall be regarded as such owner for all purposes.

*"Bond Legislation"* means the resolution adopted on August 18, 1999 by the Board of County Commissioners of Carbon County, Utah, and any subsequent amendment or modification thereof.

*"Bond Register" and "Bond Registrar"* shall have the respective meanings specified in Section 2.08 hereof.

*"Book-Entry Bonds"* means any series of Bonds or any part of a series of Bonds for which a Securities Depository or its nominee is the Bondholder.

*"Borrower"* means Sunnyside Cogeneration Associates, a joint venture organized and existing under the laws of the State of Utah, and, to the extent permitted by the Loan Agreement, its lawful successors and assigns.

*"Business Day"* means any day of the year other than (a) a Saturday or Sunday, (b) any day on which banks located in the State or in the city in which the Principal Office of the Trustee is located are required or authorized by law to remain closed, or (c) any day on which the New York Stock Exchange is closed.

*"Chief Executive Officer"* means the Chairman or the Chairman *pro tem* of the Board of Commissioners of the Issuer.

*"Code"* means the Internal Revenue Code of 1986, as amended, including, when appropriate, the statutory predecessor or successor of the Code, and all applicable Regulations promulgated pursuant thereto.

*"Constellation"* means Constellation Power, Inc., a Maryland corporation, or its successors in interest.

*"Consulting Engineer"* means an engineering firm with nationally-recognized expertise in the area of electric utility engineering, having one or more licensed engineers in the State, and any successor thereto appointed in the manner provided in this Indenture. The initial Consulting Engineer shall be R.W. Beck & Company.

*"Counsel"* means an attorney-at-law or law firm (who may be counsel for the Issuer or the Borrower), acceptable to the Trustee.

*"CPI"* means the Consumer Price Index (West Regional Index) for all Urban Consumers (CPI-U) most recently published by the United States Department of Labor, Bureau of Labor Statistics, or, if the issuance of such index is discontinued, the official index published by the Federal government which is most nearly equivalent to such index, as determined by the Borrower with the concurrence of the Issuer.

*"CP Sunnyside"* means CP Sunnyside I, Inc., a Maryland corporation, and its successors in interest.

*"Debt Service Reserve Fund"* means the fund of that name created and established pursuant to Section 4.01 hereof.

*"Debt Service Reserve Fund Guarantee"* means any letter of credit, surety bond, irrevocable guarantee, or any other credit enhancement, or any combination thereof, in a form reasonably acceptable to the Required Percentage of the Bondholders, issued by a Debt Service Reserve Fund Guarantor guaranteeing payment of any amounts payable from the Debt Service Reserve Fund.

*"Debt Service Reserve Fund Guarantor"* means Constellation or any other issuer or issuers of any Debt Service Reserve Fund Guarantee(s) reasonably acceptable to the Required Percentage of Bondholders.

*"Deed of Trust"* means the Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing, dated as of August 1, 1999, from the Borrower, as grantor, to the trustee named therein, as trustee, for the benefit of the Trustee, as beneficiary, together with any amendments or modifications thereto and any related financing statements.

*"Defeasance Obligations"* means Government Obligations.

*"Determination of Taxability"* means, with respect to the Refunding Bonds, (a) the Trustee's receipt of written notice, supported by an opinion of Bond Counsel, substantially to the effect that interest on any Refunding Bonds is or will be includable in the gross income of the Bondholders for Federal income tax purposes (other than Bondholders who are substantial users of the Project, or related persons, as provided in Section 147(a) of the Code), or (b) the Trustee's receipt of written notice substantially to the effect that the Internal Revenue Service claims that interest on the Refunding Bonds is includable in the gross income of the Bondholders for Federal income tax purposes (other than Bondholders who are substantial users of the Project, or related persons, as provided in Section 147(a) of the Code), provided that any such claim shall not be deemed a Determination of Taxability unless the

Borrower has been afforded a reasonable opportunity (at the Borrower's sole cost and expense and for a period not to exceed six months) to pursue any judicial or administrative remedy available to the Borrower with respect to such claim.

"DTC" shall have the meaning given to such term in Section 2.12 hereof.

"Eligible Investments" means any of the following securities:

(a) Government Obligations;

(b) direct and general obligations of any state of the United States of America or any municipality or political subdivision of such state, or obligations of any corporation, if such obligations are in one of the two highest rating categories by Standard & Poor's Rating Group or Moody's Investors Service, or, upon the discontinuance of either or both of such rating agencies, any other nationally recognized rating service;

(c) negotiable or non-negotiable certificates of deposit, time deposits, or other similar banking arrangements, issued by any nationally or state-chartered bank (including the Trustee) or trust company or any savings and loan association, domiciled in the State, if either

(i) the long-term obligations of such bank or trust company are rated in one of the two highest rating categories by Standard & Poor's Rating Group or Moody's Investors Service, or, upon the discontinuance of either or both of such rating services, any other nationally recognized rating service or

(ii) the deposits are continuously secured as to principal, but only to the extent not insured by the Federal Deposit Insurance Corporation, or similar corporation chartered by the United States of America,

(1) by lodging with a bank or trust company, as collateral security, obligations described in paragraph (a) or (b) above or, with the approval of the Trustee, other marketable securities eligible as security for the deposit of trust funds under applicable regulations of the Comptroller of the Currency of the United States of America or applicable state law or regulations, having a market value (exclusive of accrued interest) not less than the amount of such deposit, or

(2) if the furnishing of security as provided in clause (1) of this paragraph is not permitted by applicable law, in such manner as may then be required or permitted by applicable state or federal laws and regulations regarding the security for the deposit of trust funds;

(d) repurchase agreements with respect to obligations listed in paragraph (a) or (b) above if entered into with a nationally or state-chartered bank domiciled in the State (including the Trustee), trust company domiciled in the State or a broker or dealer (as defined by the



Securities Exchange Act of 1934, as amended) which is a member of the Securities Investors Protection Corporation if

(i) such obligations that are the subject of such repurchase agreement are delivered to the Trustee or are supported by a safekeeping receipt issued by a depository satisfactory to the Trustee, provided that such repurchase agreement must provide that the value of the underlying obligations shall be maintained at current market value, calculated no less frequently than monthly, of not less than the repurchase price,

(ii) a prior perfected security interest in the obligations which are the subject of such repurchase agreement has been granted to the Trustee, and

(iii) such obligations are free and clear of any adverse third-party claims;

(e) commercial paper rated in the highest rating category by Standard & Poor's Rating Group or Moody's Investors Service, or, upon the discontinuance of either rating service or both of such ratings services, any other nationally recognized rating service;

(f) money market mutual funds invested solely in obligations listed in paragraphs (a), (b), (c) or (d) above;

(g) investment agreements continuously secured by the obligations listed in paragraphs (a), (b) or (c) above, or (i) below, with any nationally or state-chartered bank domiciled in the State, trust company domiciled in the State or broker or dealer (as defined by the Securities Exchange Act of 1934, as amended) which is a member of the Securities Investors Protection Corporation if

(i) such obligations are delivered to the Trustee or supported by a safekeeping receipt issued by a depository satisfactory to the Trustee, provided that such investment agreements must provide that the value of the underlying obligations shall be maintained at a current market value, calculated no less frequently than monthly, of not less than the amount deposited thereunder,

(ii) a prior perfected security interest in the obligations which are securing such agreement has been granted to the Trustee, and

(iii) such obligations are free and clear of any adverse third-party claims;

(h) investment agreements with any nationally or state-chartered bank, financial institution, insurance company or trust company, domiciled in the State, which has long-term debt obligations rated in one of the two highest rating categories by Standard & Poor's Rating Group or Moody's Investors Service, or, upon the discontinuance of either rating service or both of such rating services, any other nationally recognized rating service;

(i) certificates or receipts issued by any nationally or state-chartered bank, domiciled in the State, trust company domiciled in the State or broker or dealer (as defined by the Securities Exchange Act of 1934, as amended) which is a member of the Securities Investors Protection Corporation, organized and existing under the laws of the United States of America or any state thereof, the outstanding unsecured long-term debt of which is rated in either of the two highest rating categories by Standard & Poor's Rating Group or Moody's Investors Service, or, upon the discontinuance of either rating services, in the capacity of custodian, which certificates or receipts evidence ownership of a portion of the principal of or interest on Government Obligations held (which may be in book entry form) by such bank, trust company or broker or dealer (as defined by the Securities Exchange Act of 1934, as amended) as custodian;

(j) tax-exempt obligations (as defined in section 150(a)(6) of the Code and which are not "investment property" as defined in Section 148(b)(2) of the Code) rated in one of the two highest rating categories by Standard & Poor's Rating Group or Moody's Investors Service, or, upon the discontinuance of either rating service or both of such rating services, any other nationally recognized rating service; and

(k) any other investment approved in writing by the holders of at least fifty-one percent (51%) of the principal amount of the Outstanding Refunding Bonds;

provided, however, that "Eligible Investments" shall not include any financial instrument, commonly known as a "derivative," whose performance is derived, at least in part, from the performance of any underlying asset, including, without limitation, futures, options on securities, options on futures, forward contracts, swap agreements, structured notes and participations in pools of mortgages or other assets.

Any repurchase agreements and any investment agreements which are required to be collateralized in accordance with the provisions hereof shall comply with the following provisions: (A) the provider of such agreement shall agree to repurchase the securities immediately and without penalty upon the request of the Trustee in order to use the proceeds for any purpose for which the fund from which the investment was made may be used, (B) the securities are held by the Trustee or a third party acting solely as agent for the Trustee which is (1) a Federal Reserve Bank or (2) a bank which is a member of the Federal Deposit Insurance Corporation and which has combined capital, surplus and undivided profits of not less than \$50,000,000; (C) a perfected security interest under the Uniform Commercial Code, or book entry procedures prescribed at 31 C.F.R. 306.1 et seq. or 31 C.F.R. 350.00 et seq. in such securities is created for the benefit of the Trustee and the perfection of such security interest (or the procedures therefor) is confirmed by an opinion of Counsel; (D) the percentage of the fair market value of the securities in relation to the amount of the repurchase obligation, including principal and interest, is equal to at least 103%; and (E) the depository will value the collateral securities no less frequently than weekly and will liquidate the collateral securities if any deficiency in the required collateral percentage is not restored within two (2) Business Days of such valuation.

Notwithstanding the foregoing, any Eligible Investment must be limited to those instruments that have a predetermined fixed dollar amount of principal due at maturity that cannot vary or change. If the obligation is rated, it should not have an "r" highlighter affixed to its rating. Interest on variable rate

securities should be tied to a single interest rate index plus a single fixed spread (without multipliers), if any, and move proportionately with that index.

*"Event of Bankruptcy"* means the filing of a petition in bankruptcy (or other commencement of a bankruptcy or similar proceedings) by or against the Issuer or the Borrower, as debtor, under the Bankruptcy Code or any other bankruptcy, reorganization, insolvency or other similar law as now or hereafter in effect.

*"Event of Default"* means any of the events specified in Section 7.01 hereof to be an Event of Default. A "default" means any event that, with the giving of notice or the passage of time or both, would constitute an Event of Default.

*"Exchange Agreement"* means the Exchange Agreement, dated as of August 30, 1999, among the Issuer and the holders of the Prior Bonds.

*"Exempt Facilities"* means facilities which (i) qualify as "solid waste disposal facilities", as defined in Section 142(a)(6) of the Code and Section 1.103-8(f)(2)(ii) of the Treasury Regulations relating thereto, and (ii) qualify as a "project" under the Act.

*"Facility"* means (i) the Project, consisting generally of facilities for the processing and burning of waste coal, (ii) electric generation facilities having a maximum (boiler limited) gross output of approximately 58.5 megawatts, and (iii) an interconnection line from such facilities to the point of interconnection with the high voltage side of the step-up transformer of PacifiCorp in Carbon County, Utah.

*"Facility Revenues"* means all revenues, income, rents and receipts derived or to be derived by the Borrower from or attributable to the ownership or operation of the Facility, including without limitation proceeds of any business interruption or other insurance, income derived from the sale or use of electric energy, transmitted or distributed by the Facility, together with any receipts derived from the sale of any property or any rights therein pertaining to the Facility or incidental to the operation of the Facility, all as determined in conformity with cash accounting principles, the investment income and amounts in the Funds established pursuant to this Indenture (except the Rebate Fund) to be applied pursuant to Section 7.08 hereof, the proceeds of any insurance or condemnation awards relating to the Facility and proceeds of the Loan Documents, but not including sums paid to the Borrower in satisfaction of any contractual obligation to indemnify the Borrower for third-party liability to the extent such sums do not exceed the actual damage, loss, or cost suffered by the Borrower in connection therewith.

*"Fiscal Year"* means each calendar year, except that the first Fiscal Year shall begin on the Issue Date and end on December 31, 1999.

*"Funds"* means the Project Fund, the Revenue Fund, the Bond Fund, the Debt Service Reserve Fund, the Working Capital Fund and the Rebate Fund, including any account within any such Fund, and any other fund designated as such in an indenture supplemental hereto.

*"GAAP"* means generally-accepted accounting principles applied on a consistent basis in the United States.

*"Government Obligations"* means bills, certificates of indebtedness, notes, bonds or similar securities which are direct non-callable obligations of, or the principal of and interest on which are unconditionally guaranteed by, the United States of America.

*"Immediate Notice"* means written notice transmitted by electronic means, including by facsimile transmission, or by telephone (promptly confirmed in writing), and received by the party to which or whom addressed.

*"Indenture"* means this Trust Indenture, as amended or supplemented from time to time.

*"Interest Payment Date"* means, (a) for the Refunding Bonds, the fifteenth day of February and August of each year, beginning February 15, 2000, and, for any Additional Bonds, the days designated in the supplemental indenture authorizing such Additional Bonds, (b) for Refunding Bonds subject to redemption in whole or in part on any date, the date designated for any such redemption, and (c) for all Refunding Bonds, any date determined pursuant to Section 7.02 hereof.

*"Issuance Costs"* means the costs incurred by or on behalf of the Borrower in connection with the issuance and delivery of the Refunding Bonds, and the Loan, by the Issuer to the Borrower, including, without limitation, the following: the Borrower's financial, accounting and appraisal fees, expenses and disbursements; the Issuer's fees and expenses; the cost of printing, engraving and reproduction services; legal fees and expenses for Bond Counsel, Issuer's counsel, Trustee's counsel, and Borrower's counsel; the initial or acceptance fee of the Trustee; and all other fees, charges and expenses incurred in connection with the issuance of such Bonds and the preparation and filing or recording of this Indenture and of any document, including the Loan Documents, relating to the issuance of such Bonds and the making of such Loan.

*"Issue Date"* means, with respect to the Refunding Bonds, the date of issuance and delivery of the Refunding Bonds to the Bondholders and, with respect to any Additional Bonds, the date of issuance and delivery of such Additional Bonds to the initial purchasers thereof.

*"Issuer"* means Carbon County, Utah, and its successors and assigns.

*"Legislative Authority"* means the Board of County Commissioners of the Issuer.

*"Letter of Representations"* means, whenever the Bonds of any series are Book-Entry Bonds, the Blanket Letter of Representations, dated February 1, 1995, executed by the Issuer and delivered to DTC, and any amendments thereto or successor blanket agreements between the Issuer and any successor Securities Depository, relative to a system of Book-Entry Bonds to be maintained by the Securities Depository with respect to any bonds, notes or other obligation issued by the Issuer.

*"Loan"* means the loan deemed to be made by the Issuer to the Borrower of the proceeds of the sale of the Refunding Bonds.

*"Loan Agreement"* means the Loan Agreement, dated as of the date of this Indenture, between the Issuer and the Borrower, as thereafter amended or supplemented from time to time.

*"Loan Documents"* means the Loan Agreement, the Notes, the Deed of Trust and the Security Agreement.

*"Loan Payments"* means the amounts required to be paid by the Borrower in repayment of the Loan pursuant to the provisions of the Loan Documents, and any amounts received or realized by the Trustee thereunder in accordance with Article VII thereof.

*"Notes"* mean the non-negotiable promissory notes of the Borrower, dated as of the date of the Refunding Bonds, in the form attached to the Loan Agreement as **Exhibit "C"** and in the aggregate original principal amounts of \$59,000,000 and \$18,000,000, respectively, evidencing the obligations of the Borrower to make Loan Payments in aggregate amounts equal to the principal and interest payable on the Refunding Bonds.

*"Officer's Certificate"* of the Issuer or the Borrower means, respectively, a written certificate, statement, request, direction or order signed in the name of the Issuer by its Chief Executive Officer, or such other person as may be designated and authorized in writing to sign for the Issuer, and forwarded to the Trustee, or in the name of the Borrower by any joint venture partner thereof or any other person or persons as may be designated and authorized in writing by its joint venture partners to sign for the Borrower and forwarded to the Trustee.

*"Operation and Maintenance Costs"* means all operation and maintenance costs of the Borrower for the Facility in any Fiscal Year or period to which such term is applicable, including, without limitation, payments for fuel, additives, or chemical and transportation costs relating thereto, local taxes, insurance, consumables, payments pursuant to any lease, payments pursuant to all agreements for the operation and maintenance of the Facility, reasonable legal fees and expenses paid by the Borrower in connection with the maintenance or operation of the Facility, fees paid in connection with obtaining, transferring, maintaining, or amending any applicable permits and reasonable general and administrative expenses; provided, however, that Operation and Maintenance Costs shall not include (i) any and all capital costs (as determined in accordance with GAAP), (ii) depreciation or obsolescence charges or reserves therefor, (iii) amortization of intangibles or other bookkeeping entries of a similar nature, (iv) any interest charges and charges for the payment or amortization of principal of indebtedness of the Borrower, (v) any income, franchise or other taxes imposed on the Borrower's income by any jurisdiction and (vi) any amounts budgeted by line item in the Annual Operating Budget for renewals and replacements for such Fiscal Year.

*"Outstanding"* means, with respect to any Bonds or any series of Bonds issued and delivered pursuant hereto, as of the time in question, all Bonds, or all Bonds of such series, authenticated and delivered pursuant to this Indenture, except:

(a) Bonds theretofore cancelled or delivered to the Trustee for cancellation under Section 2.11 hereof;

(b) Bonds which are deemed to have been paid in accordance with Article IX hereof; and

(c) Bonds in substitution for which other Bonds have been authenticated and delivered pursuant to Article II hereof.

In determining whether the owners of a requisite aggregate principal amount of Bonds Outstanding have concurred in any request, demand, authorization, direction, notice, consent or waiver under the provisions hereof, Bonds which are held by or on behalf of the Borrower (unless all of the Outstanding Bonds are then owned by the Borrower) shall be disregarded for the purpose of any such determination.

*"Paying Agent" or "Co-Paying Agent"* means any national banking association, bank and trust company or trust company appointed by the Borrower and meeting the qualifications of, and subject to the obligations of, the Trustee in Article VIII hereof. Initially, the Trustee shall be the Paying Agent.

*"Person" or "person"* means an individual, corporation, firm, association, partnership, trust, organization or other legal entity or group of entities, including a governmental entity or any agency or political subdivision thereof.

*"Power Purchase Agreement"* means the Power Purchase Agreement, dated January 30, 1987, between the Borrower and Utah Power & Light Company, as thereafter amended.

*"Principal Office of any Paying Agent"* means the office designated as such in writing to the Trustee.

*"Principal Office of the Trustee"* means the designated corporate trust office of the Trustee, which office at the date of the Trustee's acceptance of the duties and obligations imposed on the Trustee by this Indenture is in Phoenix, Arizona, provided, however, that for the purposes of transfer, registration, exchange, payment and surrender of the Refunding Bonds, Principal Office of the Trustee means the corporate trust office of U.S. Bank Trust National Association in St. Paul, Minnesota, or such other office as may be designated by the Trustee from time to time.

*"Prior Bonds"* means the Prior Bonds, as defined in the recitals to this Indenture.

*"Project"* means the Project, as defined in the recitals to this Indenture.

*"Project Costs," "Cost of the Project" or "Costs"* means any cost (not in excess of the amount set forth therefor in the Annual Operating Budget) of an improvement or modification to the Project or in respect of the Project now or hereafter permitted pursuant to the Act, including, without limitation, (i) amounts payable to contractors or suppliers (including fees for designing any such improvement or modification), (ii) costs of labor, services, materials, supplies and equipment furnished by the Borrower (including shipping charges) in connection with any such improvement or modification; (iii) architectural, engineering, legal and other professional fees, marketing costs and brokerage commissions; (iv) costs of funding a reserve to the extent permitted by the Code; (v) interest on the

Bonds during the construction of such improvement or modification, to the extent required or permitted by the Act and the Code; (vi) costs of financing such improvement or modification, including bond discount, printing expenses, title insurance, mortgage taxes and recording fees, fees payable to the Issuer, Trustee and Paying Agent accruing prior to the completion of any such improvement or modification, and legal and accounting fees.

*"Project Fund"* means the fund of that name created and established pursuant to Section 4.01 hereof.

*"Project Site"* means the real estate located in Carbon County, Utah, as more fully described in **Exhibit "B"** to the Loan Agreement.

*"Rating Service"* means any nationally recognized securities rating service that, upon application of the Issuer or the Borrower, shall have assigned a rating that is then in effect with respect to any Bonds issued pursuant hereto.

*"Rebate Amount"* has the meaning ascribed in Section 1.148-3(b) of the Regulations and generally means the excess as of any date of the future value of all receipts on nonpurpose investments over the future value of all payments on nonpurpose investments, all as determined in accordance with Section 1.148-3 of the Regulations.

*"Rebate Fund"* means the fund of that name created and established pursuant to Section 4.01 hereof.

*"Record Date"* means, (i) with respect to any Interest Payment Date described in subsections (a) or (b) of that defined term, (1) in the case of Refunding Bonds which are not Book-Entry Bonds, the close of business of the Trustee on the 1st day of the calendar month in which such Interest Payment Date occurs, regardless of whether such day is a Business Day, and (2) in the case of Book-Entry Bonds, the close of business of the Trustee on the Business Day preceding the Interest Payment Date, and (ii) with respect to any other Interest Payment Date, a date selected by the Trustee.

*"Refunding Bonds"* means the Series 1999A Refunding Bonds and the Series 1999B Refunding Bonds.

*"Regulations"* means any applicable Internal Revenue Service Regulations promulgated in temporary or final form pursuant to the Code or any corresponding provision of a predecessor or successor statute.

*"Required Percentage of Bondholders"* means Bondholders of eighty percent (80%) or more in aggregate principal amount of the Outstanding Bonds.

*"Required Reserve"* means \$6,000,000.

*"Responsible Officer,"* when used with respect to the Trustee, means any officer in the corporate trust department (or any successor thereto) of the Trustee, or any other officer or

representative of the Trustee customarily performing functions similar to those performed by any of such officers and also means, with respect to a particular corporate trust matter, any other officer of the Trustee to whom such matter is referred because of that officer's knowledge of and familiarity with the particular subject.

*"Revenue Fund"* means the fund of that name created and established pursuant to Section 4.01 hereof.

*"Securities Depository"* means a person that is registered as a clearing agency pursuant to Section 17A of the Securities Exchange Act of 1934 or whose business is confined to the performance of the functions of a clearing agency with respect to exempted securities, as defined in Section 3(a)(12) of such Act for the purposes of Section 17A thereof.

*"Security Agreement"* means the Security Agreement, dated as of August 1, 1999, between the Borrower, as debtor, and the Trustee, as secured party.

*"Series B Amount"* means the Base Amount, excluding therefrom any interest expense (except interest on the Series 1999A Refunding Bonds), taxes and depreciation, for each Fiscal Year.

*"Series 1999A Refunding Bonds"* means the Issuer's \$59,000,000 Solid Waste Disposal Revenue Refunding Bonds (Sunnyside Cogeneration Associates Project), Series 1999A.

*"Series 1999B Refunding Bonds"* means the Issuer's \$18,000,000 Solid Waste Disposal Revenue Refunding Bonds (Sunnyside Cogeneration Associates Project), Series 1999B .

*"Service and Maintenance Fee"* means the fee in the initial amount of \$1,500,000 per annum payable to the Borrower for its service and maintenance costs and expenses with respect to the Facility, which amount (as and to the extent previously increased) shall be increased effective as of each January 1, commencing January 1, 2001, by the percentage change in the CPI as compared to the CPI as of the preceding January 1.

*"Special Tax Counsel"* means, with respect to the Refunding Bonds, Ballard Spahr Andrews & Ingersoll, LLP, Washington, D.C.

*"Sunnyside Generation"* means Sunnyside Generation, LLC, a Delaware limited liability company and its successors in interest.

*"State"* means the State of Utah.

*"Tax Certificate and Agreement"* means the Tax Certificate and Agreement executed and delivered by the Issuer and the Borrower in connection with the issuance, delivery and exchange of the Refunding Bonds.

*"Trustee"* means U.S. Bank Trust National Association, a national banking association and any successor trustee hereunder, acting in its trust capacity.



*"Trust Estate"* means all right, title and interest of the Issuer in and to (a) the Loan Documents (except for Unassigned Issuer's Rights), (b) the Facility Revenues, (c) the moneys and investments on deposit in the Funds (except for the Rebate Fund and except as otherwise provided in Section 4.08 hereof) and (d) all other property of every name and nature from time to time hereafter by delivery or by writing mortgaged, pledged, delivered or hypothecated as and for additional security under the Indenture by the Issuer or by anyone on its behalf or with its written consent in favor of the Trustee.

*"Unassigned Issuer's Rights"* means the Unassigned Issuer's Rights, as defined in the Loan Agreement.

*"Working Capital Fund"* means the fund of that name created and established pursuant to Section 4.01 hereof.

**Section 1.02 Rules of Interpretation.** For purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

(a) The words "herein," "hereof" and "hereunder" and other similar words refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

(b) The definitions in this Article are applicable whether the terms defined are used in the singular or the plural.

(c) All accounting terms that are not defined in this Indenture have the meanings assigned to them in accordance with then applicable generally accepted accounting principles.

(d) Any pronouns used in this Indenture include both the singular and the plural and cover both genders.

(e) Any terms not defined in this Indenture but which are defined in the Loan Agreement have the same meaning in this Indenture as are given to them in the Loan Agreement.

(f) Any terms defined elsewhere in this Indenture have the meanings attributed to them where defined.

(g) Words referring to the redemption or calling for redemption of Refunding Bonds shall not be deemed to refer to the payment of Refunding Bonds at their stated maturity.

(h) The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent, or control or affect the meaning or construction of any provisions or sections hereof.

## ARTICLE II

### AUTHORIZATION, EXECUTION, AUTHENTICATION, REGISTRATION AND DELIVERY OF REFUNDING BONDS

**Section 2.01 Authorization of Refunding Bonds; Limitation.** The Refunding Bonds are hereby authorized to be issued as revenue bonds of the Issuer in the following aggregate principal amounts:

- (i) \$59,000,000 Solid Waste Disposal Revenue Refunding Bonds, (Sunnyside Cogeneration Associates Project), Series 1999A, and
- (ii) \$18,000,000 Solid Waste Disposal Revenue Refunding Bonds, (Sunnyside Cogeneration Associates Project), Series 1999B.

Additional Bonds are hereby authorized to be issued in accordance with Section 2.13 hereof and supplemental indentures described in Article X hereof. Except as provided in Section 2.03(a) hereof, no obligations may be issued by the Issuer or for the benefit of the Borrower, other than Additional Bonds, which have a claim on the Trust Estate.

**Section 2.02 Refunding Bonds Limited, Special Obligations.** The Refunding Bonds shall be limited, special obligations of the Issuer, payable solely from the Trust Estate. The Refunding Bonds shall constitute a valid claim of the respective owners thereof against the Trust Estate, which is pledged to secure the payment of the principal of and interest on the Refunding Bonds, and which shall be utilized for no other purpose, except as expressly authorized in this Indenture. The Refunding Bonds shall not constitute general obligations of the Issuer and under no circumstances shall the Refunding Bonds be payable from, nor shall the holders thereof have any rightful claim to, any income, revenues, funds or assets of the Issuer other than those pledged hereunder for security of the payment of the Refunding Bonds.

**Section 2.03 Details of Refunding Bonds.** (a) The Refunding Bonds shall be issued in Authorized Denominations, shall be dated the Issue Date, and shall mature and bear interest as follows:

- (i) Series 1999A Refunding Bonds. The Series 1999A Refunding Bonds shall be numbered from RA-1 upward, shall be issued in the aggregate original principal amount of \$59,000,000 and shall bear interest at the rates set forth below (calculated on the basis of a 360-day year of twelve 30-day months) payable on February 15, 2000, and semiannually thereafter on each Interest Payment Date. Series 1999A Refunding Bonds in the original principal amount of \$8,450,000 shall bear interest at the rate of six and three-eighths per cent (6.375%) per annum and, subject to prior redemption, mature on August 15, 2011, and Series 1999A Refunding Bonds in the original principal amount of \$50,550,000 shall bear interest at the rate of seven and one-tenth per cent (7.10%) per annum and, subject to prior redemption, shall mature on August 15, 2023.

All Series 1999A Refunding Bonds shall bear interest (a) from the Issue Date, if authenticated prior to the first Interest Payment Date, or (b) otherwise from the Interest Payment Date that is, or that immediately precedes, the date on which such Bond is authenticated (unless payment of interest is in default, in which case such Bond shall bear interest from the last date to which interest has been paid).

(ii) Series 1999B Refunding Bonds. The Series 1999B Refunding Bonds shall be numbered from RB-1 upward, shall be dated the Issue Date, shall be issued in the original principal amount of \$18,000,000, shall bear interest payable (A) on August 15, 2000, and each August 15<sup>th</sup> thereafter, in an amount equal to one-quarter of the Series B Amount for the preceding Fiscal Year, plus one-half of the income and gain from investments of moneys in the Series 1999B Account of the Bond Fund during the preceding Fiscal Year, plus one-half of any additional amount required to be deposited therein, or less one-half of any amount required to be disbursed therefrom, on the preceding February 15<sup>th</sup> pursuant to the provisions of Section 5.19 of the Loan Agreement, and (B) on February 15, 2001 and each February 15<sup>th</sup> thereafter, in an amount equal to one-quarter of the Series B Amount for the second preceding Fiscal Year, plus one-half of the income and gain from investments of moneys in the Series 1999B Account of the Bond Fund during the second preceding Fiscal Year, plus one-half of any additional amount required to be deposited therein, or less one-half of any amount required to be disbursed therefrom, on the preceding February 15<sup>th</sup> pursuant to the provisions of Section 5.19 of the Loan Agreement and, subject to prior redemption, shall mature on August 15, 2024.

(b) Medium and Place of Payment. The principal of and interest on the Refunding Bonds shall be payable in lawful money of the United States of America. Principal of the Refunding Bonds shall be payable by the Paying Agent upon presentation and surrender of the Refunding Bonds as they become due, whether at maturity or prior redemption, at the Principal Office of the Trustee. Interest on the Refunding Bonds shall be payable by the Paying Agent to the holders of Refunding Bonds by check or draft mailed to such holders at their addresses as they appear on the Bond Register on the Record Date, provided, however, that principal of and interest due and payable to any holder of Refunding Bonds in an aggregate principal amount of \$1,000,000 or more will be paid, upon the written request of any such Bondholder, in form and substance satisfactory to the Trustee, by wire transfer of immediately available funds to any account within the United States of America designated by such Bondholder not less than ten (10) days prior to such Interest Payment Date.

If any principal of or interest on any Refunding Bond is not paid when due (whether at maturity, by acceleration or call for redemption or otherwise), then the overdue installments of principal and, to the extent permitted by law, interest shall bear interest until paid at the same rate set forth in such Refunding Bond.

Details with respect to any Additional Bonds shall be as set forth in supplemental indentures providing for their issuance.

**Section 2.04 Execution of Refunding Bonds.** The Refunding Bonds shall be signed by the manual or facsimile signature of the Chief Executive Officer of the Issuer and attested by the manual or facsimile signature of the Attesting Officer of the Issuer. The Refunding Bonds may bear the seal of the Issuer or a facsimile thereof will be affixed to or imprinted on the Refunding Bonds. In case any officer whose signature or a facsimile of whose signature shall appear on any Refunding Bond shall cease to be such officer before the delivery of such Refunding Bond, such signature or facsimile shall nevertheless be valid and sufficient for all purposes as if such officer had remained in office until such delivery.

**Section 2.05 Authentication of Refunding Bonds.** The Refunding Bonds shall bear a certificate of authentication, substantially in the respective forms set forth on Appendix "A" and Appendix "B" hereto, duly executed by the Trustee. The Trustee shall authenticate each Refunding Bond with the manual signature of a Responsible Officer of the Trustee, but it shall not be necessary for the same Responsible Officer to authenticate all of the Bonds of a series. Only such authenticated Refunding Bonds shall be entitled to any right or benefit under this Indenture. Such certificate on any Refunding Bond issued hereunder shall be conclusive evidence that the Refunding Bond has been duly issued and is secured by the provisions hereof.

**Section 2.06 Forms of Refunding Bonds.** The Refunding Bonds shall be in substantially the respective forms set forth in Appendix "A" and Appendix "B" hereto, with such appropriate variations, legends, omissions and insertions as permitted or required by this Indenture. The form of each series of Additional Bonds shall be as set forth in the supplemental indenture providing for their issuance.

**Section 2.07 Delivery of Refunding Bonds.** The Trustee shall authenticate and deliver the Refunding Bonds *pro rata* to the holders of the Prior Bonds, in exchange for the Prior Bonds, pursuant to the Exchange Agreement, when the following have been filed with the Trustee:

(a) A copy of the Bond Legislation certified by the Attesting Officer of the Issuer authorizing (1) the execution and delivery of this Indenture, (2) the execution and delivery of the Loan Agreement and the assignment of the Loan Agreement and the Notes to the Trustee, and (3) the issuance, execution and delivery of the Refunding Bonds in accordance with the Exchange Agreement;

(b) An original executed counterpart of this Indenture;

(c) An original executed counterpart of the Loan Agreement;

(d) The original executed Notes, assigned by the Issuer to the Trustee;

(e) An original executed counterpart of the Deed of Trust and the Security Agreement;

(f) An original executed counterpart of the Exchange Agreement;

(g) An original executed counterpart of the Tax Certificate and Agreement;

(h) An opinion of Counsel to the Borrower, addressed to the Issuer, the Trustee, and the Bondholders to the effect that the Loan Documents have been duly authorized, executed and delivered by the Borrower and are enforceable against the Borrower, subject to applicable bankruptcy and equitable principles;

(i) An Opinion of Bond Counsel, addressed to the Issuer, the Borrower, the Trustee and the Bondholders, to the effect that this Indenture and the Refunding Bonds have been validly authorized, executed and delivered, and are binding and enforceable against the Issuer, subject to applicable bankruptcy and equitable principles, and that interest on the Refunding Bonds (except interest on any Refunding Bond during any period in which it is held by a substantial user of the Project or a related person, as defined in Section 147(a) of the Code) is excludable from the gross income of the owners for Federal income tax purposes under existing law and is exempt from income taxation by the State, with respect to which Bond Counsel may rely on the opinion of Special Tax Counsel, addressed to the Issuer and Bond Counsel, to the effect that interest on the Refunding Bonds (except interest on any Refunding Bond during any period in which it is held by a substantial user of the Project or a related person, as defined in Section 147(a) of the Code) is excludable from the gross income of the owners for Federal income tax purposes under existing law;

(j) A request and authorization of the Issuer, signed by its Chief Executive Officer, to the Trustee to authenticate and deliver the Refunding Bonds as provided in this Section 2.07;

(k) An extended ALTA Lender's title insurance policy in any amount not less than \$77 million, issued by a title insurer authorized to transact such business in the State (i) insuring that the Borrower has valid fee simple or leasehold interests in the Project Site, subject only to Permitted Encumbrances and (ii) evidencing the fact that the liens and security interests created by the Deed of Trust and the Security Agreement constitute valid first liens on the interests of Borrower in the Facility, subject only to Permitted Encumbrances;

(l) An agreement executed by PacifiCorp confirming the subordination of its lien on the Facility pursuant to the Power Purchase Agreement to the liens of this Indenture, the Deed of Trust and the Security Agreement; and

(m) An opinion or certification of the Issuer to the effect that necessary State law approvals, consents or opinions have been obtained.

Additional Bonds shall be delivered only upon compliance with the provisions of Section 2.13 hereof and the provisions of the supplemental indentures providing for their issuance.

**Section 2.08 Registration of Transfer and Exchange of Bonds; Persons Treated as Bondholders.** The Trustee shall act as initial bond registrar (the "Bond Registrar") and in such capacity shall maintain a bond register (the "Bond Register") for the registration and transfer of Bonds. Upon surrender of any Bonds at the Principal Office of the Trustee, together with an assignment duly executed by the current holder of such Bonds or such Bondholder's duly authorized attorney or legal representative in such form as shall be satisfactory to the Trustee, such Bonds may, at the option of the

Bondholder, be exchanged for an equal aggregate principal amount of Bonds of the same series and maturity, of Authorized Denominations and bearing interest at the same rate and in the same form as the Bonds surrendered for exchange, registered in the name or names requested by the assignee of the then Bondholder; provided the Trustee is not required to exchange or register the transfer of any Bonds after giving notice calling such Bond for redemption, in whole or in part. The Issuer shall execute and the Trustee shall authenticate any Bonds whose execution and authentication is necessary to provide for exchange of Bonds pursuant to this Section 2.08 and the Issuer may rely on a representation from the Trustee that such execution is required.

Any exchange or registration of transfer of Bonds shall be at the expense of the Borrower except that the Trustee may make a charge to any Bondholder requesting such exchange or registration in the amount of any tax or other governmental charge required to be paid with respect thereto but will not impose any other charge.

Prior to due presentment for registration of transfer of any Bond, the Trustee shall treat the Person shown on the Bond Register as the holder of such Bond and the Person exclusively entitled to payment of principal of, redemption premium, if any, and interest thereon and, except as otherwise expressly provided herein, the exercise of all other rights and powers of the owner thereof, and neither the Issuer, the Borrower, the Trustee nor any agent of the Issuer, the Borrower or the Trustee shall be affected by any notice to the contrary.

**Section 2.09 Temporary Bonds.** Prior to the preparation of definitive Bonds of any series, the Issuer may issue temporary Bonds in registered form and in such denominations as the Issuer may determine but otherwise in substantially the form provided for definitive Bonds of such series with appropriate variations, omissions and insertions. The Issuer shall promptly prepare, execute and deliver to the Trustee before the first Interest Payment Date for such Bonds, definitive Bonds and, upon presentation and surrender of Bonds in temporary form, the Trustee shall authenticate and deliver in exchange therefor definitive Bonds of the same maturity for the same aggregate principal amount. Until exchanged for definitive Bonds, Bonds in temporary form shall, in all respects, be entitled to the lien and benefit of this Indenture.

**Section 2.10 Mutilated, Lost or Destroyed Bonds.** If any Bond has been mutilated, lost or destroyed, the Issuer shall execute, and the Trustee shall authenticate and deliver to the Bondholder, a new Bond of like date and tenor in exchange and substitution for, and upon cancellation of, such mutilated Bond or in lieu of and in substitution for such lost or destroyed Bond but only if the Bondholder has paid the reasonable expenses and charges of the Issuer and the Trustee in connection therewith and, in the case of a lost or destroyed Bond, (a) filed with the Trustee evidence satisfactory to the Trustee that such Bond was lost or destroyed and (b) furnished to the Trustee indemnity satisfactory to it. If any such Bond has matured or been called for redemption and is payable, instead of issuing a new Bond the Trustee may pay the same without issuing a replacement Bond.

If, after the delivery of such replacement Bond, the original Bond in lieu of which such replacement Bond was issued is presented for payment or registration, the Trustee shall seek to recover such replacement Bond from the person to whom it was delivered or any person taking therefrom and

shall be entitled to recover from the security or indemnity provided therefor to the extent of any loss, damage, cost or expense incurred by the Trustee or the Issuer in connection therewith.

**Section 2.11 Cancellation and Disposition of Bonds.** The Issuer or the Borrower may deliver Bonds to the Trustee for cancellation at any time and for any reason and the Trustee is hereby authorized to cancel such Bonds. All Bonds that have been paid (whether at maturity or by acceleration, upon redemption or pursuant to Section 3.09 hereof), or delivered to the Trustee for cancellation, shall not be reissued. Unless otherwise directed by the Issuer or the Borrower, the Trustee shall treat such Bonds in accordance with its document retention policies.

**Section 2.12 Securities Depository.** Notwithstanding any other provision hereof to the contrary, the provisions of this Section 2.12 shall apply to the Refunding Bonds so long as all of the Refunding Bonds are maintained as Book-Entry Bonds. The Refunding Bonds shall be registered in the name of Cede & Co., as nominee of The Depository Trust Company ("DTC"), and shall be held by the Trustee as custodian for DTC. The Issuer acknowledges that it has executed and delivered a Blanket Letter of Representations to DTC. All payments of principal of and interest on the Refunding Bonds and all notices with respect thereto, including notices of full or partial redemption, shall be made and given at the times and in the manner set out in the Letter of Representations. The terms and provisions of the Letter of Representations shall govern in the event of any inconsistency between the provisions of this Indenture and the Letter of Representations. The Letter of Representations may be amended without Bondholder consent. All payments of principal of and interest on Refunding Bonds which are Book-Entry Bonds and all notices with respect thereto, including notices of full or partial redemption, shall be made and given at the times and in the manner set out in the Letter of Representations.

The book-entry registration system for any Refunding Bonds may be terminated and certificates shall thereupon be delivered to and registered in the name of the Beneficial Owners under either of the following circumstances:

(i) DTC notifies the Issuer and the Trustee that it is no longer willing or able to act as Securities Depository for such Refunding Bonds and a successor Securities Depository for the Refunding Bonds is not appointed by the Issuer at the direction of the Borrower prior to the effective date of such discontinuation; or

(ii) The Issuer and the holders of at least fifty-one percent (51%) of the principal amount of the Outstanding Refunding Bonds determines that continuation of the book-entry system through DTC (or a successor Securities Depository) is not in the best interests of the Owners of the Refunding Bonds.

In the event a successor Securities Depository is appointed by the Issuer at the direction of the Borrower, the Book-Entry Bonds will be registered in the name of such successor Securities Depository or its nominee. In the event certificates are required to be issued to Beneficial Owners, the Trustee, the Borrower and the Issuer shall be fully protected in relying upon a certificate of the then-current Securities Depository, or its participants, as to the identity of and the principal amount of Refunding Bonds held by such Beneficial Owners.

The Beneficial Owners of Book-Entry Bonds will not receive physical delivery of certificates except as provided herein. For so long as there is a Securities Depository for such Refunding Bonds, all of such Refunding Bonds shall be registered in the name of the nominee of the Securities Depository, all transfers of beneficial ownership interests in such Refunding Bonds will be made by the nominee of the Securities Depository, and no investor or other party purchasing, selling or otherwise transferring beneficial ownership of such Refunding Bonds is to receive, hold or deliver any certificate. The Issuer, the Trustee and the Borrower shall have no responsibility or liability for transfers of beneficial ownership interests in such Refunding Bonds.

The Issuer, the Borrower and the Trustee will recognize the Securities Depository or its nominee as the Bondholder for all purposes, including receipt of payments, notices and voting; provided the Trustee may recognize votes by or on behalf of Beneficial Owners as if such votes were made by Bondholders of a related portion of the Refunding Bonds when such votes are received in compliance with an omnibus proxy or other comparable evidence delivered to the Trustee by the Bondholders.

With respect to Book-Entry Bonds, the Issuer, the Borrower and the Trustee shall be entitled to treat the Person in whose name any such Bond is registered as the absolute owner of such Bond for all purposes of this Indenture, and none of the Issuer, the Borrower or the Trustee shall have any responsibility or obligation to any Beneficial Owner of such Book-Entry Bond. Without limiting the immediately preceding sentence, neither the Issuer, the Borrower nor the Trustee shall have any responsibility or obligation with respect to (a) the accuracy of the records of any Securities Depository, or any other Person with respect to any ownership interest in Book-Entry Bonds, (b) the delivery to any Person, other than a Bondholder, of any notice with respect to Book-Entry Bonds, including any notice of redemption or refunding, (c) the selection of the particular Refunding Bonds or portions thereof to be redeemed or refunded in the event of a partial redemption or refunding of part of the Refunding Bonds Outstanding or (d) the payment to any Person, other than a Bondholder, of any amount with respect to the principal of, redemption premium, if any, or interest on Book-Entry Bonds.

**Section 2.13 Additional Bonds.** Additional Bonds on a parity with the Refunding Bonds may be issued pursuant to the provisions hereof with the consent of the the holders of at least fifty-one percent (51%) of the principal amount of the Outstanding Refunding Bonds. The terms and conditions for the issuance and payment of, and the security for, such Additional Bonds will be set forth in a supplement to this Indenture.

### ARTICLE III

#### REDEMPTION OF REFUNDING BONDS

**Section 3.01 Redemption Dates and Prices.** The Refunding Bonds may not be called for redemption by the Issuer except as provided in this Article III. Additional Bonds may not be called for redemption by the Issuer except as provided in the supplemental indenture providing for their issuance.

**Section 3.02 Mandatory Sinking Fund Redemption of Series 1999A Refunding Bonds.** The Series 1999A Refunding Bonds maturing on August 15, 2011 are subject to mandatory



sinking fund redemption in part by lot on August 15<sup>th</sup> of each year, commencing on August 15, 2008, at a redemption price equal to the principal amount thereof plus accrued interest thereon to the date of redemption, in the following principal amounts:

<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>
2008	\$1,370,000	2010	\$2,360,000
2009	2,360,000	2011*	2,360,000

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\*Maturity

The Series 1999A Refunding Bonds maturing on August 15, 2023 are subject to mandatory redemption in part by lot, on August 15<sup>th</sup> of each of the years 2000 to 2010 and of each of the years 2012 to 2023, at a redemption price equal to the principal amount thereof plus accrued interest thereon to the date of redemption, in the following principal amounts:

<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>
2000	\$ 920,000	2014	\$2,360,000
2001	2,005,000	2015	2,507,000
2002	2,443,000	2016	2,655,000
2003	2,445,000	2017	2,655,000
2004	2,445,000	2018	2,655,000
2005	2,445,000	2019	2,655,000
2006	2,445,000	2020	2,655,000
2007	2,445,000	2021	2,655,000
2008	1,075,000	2022	2,655,000
2009	85,000	2023	3,540,000
2010	85,000		
2012	2,360,000		

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\*Maturity

Appendix "C" hereto sets forth the principal and interest payable with respect to the Series 1999A Refunding Bonds after taking into account the scheduled sinking fund redemptions but absent extraordinary or optional redemptions and without consideration of any adjustments thereto that may be made in accordance with the provisions of the final paragraph of Section 2.03(a)(i) hereof.

**Section 3.03 Extraordinary Redemption upon Change of Control.** The Refunding Bonds are subject to mandatory redemption, and shall be redeemed, in whole, and not in part, on the next Business Day for which timely notice of redemption can be given, at a price of 100% of the principal amount thereof, plus accrued interest to the date of redemption, in the event of a change of control of the Borrower, directly or indirectly, prior to August 31, 2001. For the purposes hereof, a "change of control" of the Borrower shall be deemed to have occurred only if (i) Constellation ceases to control, directly or indirectly, fifty percent (50%) or more of the voting power of the Borrower or to direct or cause the direction of the management and policies of those affiliates of Constellation owning a direct or indirect equity interest in the Borrower without the consent of the Required Percentage of Bondholders or (ii) the Borrower is terminated for tax purposes as provided in Section 708 of the Code.

**Section 3.04 Extraordinary Redemption from Insurance and Condemnation Proceeds.** In the event of damage to, or destruction or condemnation of, all or any substantial portion(s) of the Facility which in the reasonable judgment of the Borrower cannot practicably be repaired, restored or replaced, and provided that the Borrower complies with the conditions set forth in Section 5.8 of the Loan Agreement, the Refunding Bonds are subject to mandatory redemption, and shall be redeemed, in whole, on the next Business Day for which timely notice of redemption can be given, and in part, in Authorized Denominations (provided that no Bond may be redeemed in part if the principal amount thereof to be Outstanding following such partial redemption is not an Authorized Denomination), on the next Interest Payment Date for which timely notice of redemption can be given, from any insurance or condemnation proceeds deposited with the Trustee, and, in the case of redemption in whole, other moneys deposited with the Trustee by the Borrower, for the purpose of redemption pursuant to the provisions of Section 5.8 of the Loan Agreement, at a price of 100% of the principal amount of the Refunding Bonds to be redeemed plus accrued interest to the redemption date.

**Section 3.05 Extraordinary Redemption Upon Determination of Taxability.** The Refunding Bonds are subject to mandatory redemption, and shall be redeemed, by the Issuer on the next Business Day for which timely notice of redemption can be given following a Determination of Taxability, at a redemption price equal to 100% of the principal amount thereof plus accrued interest to the redemption date. The foregoing redemption shall be in whole unless, in the opinion of Bond Counsel mutually acceptable to the Issuer and the Borrower, the redemption of a portion of the Refunding Bonds would have the result that interest payable on the Refunding Bonds remaining Outstanding after such

redemption would not be includable in the gross income for Federal income tax purposes of any owner of any such Refunding Bonds.

**Section 3.06 Optional Redemption of Refunding Bonds.** The Refunding Bonds are subject to optional redemption, in whole or in part, by the Issuer, at the request of the Borrower, on such date or dates, if any, as may be approved by the Required Percentage of Bondholders.

**Section 3.07 Selection of Bonds for Redemption.** If less than all of the Refunding Bonds are called for redemption, Series 1999A Refunding Bonds shall be redeemed first, pro rata and thereafter, Series 1999B Bonds shall be redeemed, pro rata, in such manner as the Trustee may determine as provided below. Except as provided below, the portion of any Bond to be redeemed shall be an Authorized Denomination or any multiple thereof and in selecting Refunding Bonds for redemption, each Bond shall be considered as representing that number of Refunding Bonds which is obtained by dividing the principal amount of such Bond by the minimum Authorized Denomination. If a portion of a Bond shall be called for redemption, a new Refunding Bond or Refunding Bonds in an aggregate principal amount equal to the unredeemed portion thereof shall be issued to the Bondholder upon the surrender thereof. If for any reason the principal amount of Refunding Bonds called for redemption would result in a redemption of Refunding Bonds in less than the Authorized Denominations, the Trustee is hereby authorized to adjust the selection of Refunding Bonds for such purpose in order to minimize any such redemption. Notwithstanding the foregoing, the Securities Depository for Book-Entry Bonds shall select the Refunding Bonds for redemption within particular maturities according to its stated procedures.

### **Section 3.08 Notice of Redemption**

(a) When any Bonds (or portions thereof) are to be redeemed, the Issuer, at the request of the Borrower or the Trustee, as the case may be, shall give or cause to be given notice of the redemption of the Bonds to the Trustee no later than forty-five (45) days prior to the redemption date or such shorter time as may be acceptable to the Trustee. The Trustee, at the expense of the Borrower, shall send notice of any redemption, identifying the Bonds to be redeemed, the redemption date and the method and place of payment and the information required by paragraph (b) below, by first class mail to each holder of a Bond called for redemption to the holder's address listed on the Bond Register. Such notice shall be sent by the Trustee by first class mail not less than thirty (30) nor more than (60) days prior to the scheduled redemption date. If notice is given as stated in this paragraph (a), failure of any Bondholder to receive such notice, or any defect in the notice, shall not affect the redemption or the validity of the proceedings for the redemption of such Bonds.

(b) In addition to the foregoing, the redemption notice shall contain with respect to each Bond being redeemed, (i) the CUSIP number, (ii) the date of issue, (iii) the interest rate, (iv) the maturity date, and (v) any other descriptive information needed to accurately identify the Bonds to be redeemed. The Trustee shall also send each notice of redemption at least thirty (30) days before the redemption date to (x) any Rating Service then rating the Bonds to be redeemed; (y) all of the registered Securities Depositories known to the Trustee to be in the business of holding substantial amounts of bonds of a

type similar to the Bonds; and (z) one or more nationally-recognized municipal securities information repositories identified by the Issuer.

(c) On or before the date fixed for redemption, subject to the provisions of paragraph (a) of this Section 3.08, moneys shall be deposited with the Trustee to pay the principal of, redemption premium, if any, and interest accrued to the redemption date on the Bonds called for redemption. Upon the deposit of such moneys, the Bonds to be redeemed shall cease to bear interest on the redemption date and shall no longer be entitled to the benefits of this Indenture (other than for payment) and shall no longer be considered Outstanding.

**Section 3.09 Purchase at Any Time.** The Trustee, upon the written request of the Issuer or the Borrower, shall purchase any Bonds as specified by the Issuer or the Borrower, as the case may be, in the open market at a price not exceeding a price set by the Issuer or the Borrower, as the case may be. Such purchase of Bonds shall be made with funds provided by the party directing such purchase and not with any portion of the Trust Estate. Upon purchase by the Trustee, such Bonds shall be treated as delivered for cancellation pursuant to Section 2.11 hereof. Nothing in this Indenture shall prevent the Issuer or the Borrower from purchasing Bonds on the open market without the involvement of the Trustee and delivering such Bonds to the Trustee for cancellation pursuant to Section 2.11 hereof.

## ARTICLE IV

### FUNDS AND ACCOUNTS

**Section 4.01 Creation of Funds.** The following Funds are hereby created and established with the Trustee and the proceeds of the Refunding Bonds and any Additional Bonds, together with all Facility Revenues and other amounts received by the Trustee for such purpose, shall be deposited in the Funds described herein and held in trust for the purposes set forth herein (provided that the Trustee need not open any such Fund on its books and records until moneys are required to be deposited therein):

- (a) The Project Fund.
- (b) The Revenue Fund.
- (c) The Bond Fund, including a Series 1999A Account and a Series 1999B Account.
- (d) The Debt Service Reserve Fund.
- (e) The Working Capital Fund.
- (f) The Rebate Fund.

**Section 4.02 Project Fund.** The Project Fund shall be used for the payment of any Project Costs relating to any future capital acquisitions and improvements to the Facility to be paid from the proceeds of Additional Bonds. The Project Fund shall consist of the amounts required or permitted to

be deposited therein pursuant to any provision hereof or of the Loan Documents. Separate accounts within the Project Fund shall be maintained by the Trustee for future capital acquisitions and improvements if the Issuer or the Borrower determines that separate accounts are desirable with respect to particular capital acquisitions and improvements or designated portions of capital acquisitions and improvements. In addition, the Trustee shall deposit all proceeds of any insurance claim or condemnation award received pursuant to Section 5.8 of the Loan Agreement into the Project Fund; such amounts shall be used to repair, rebuild, restore or replace all or any portion of the Project following the damage, destruction or condemnation thereof as provided in Section 5.8 of the Loan Agreement and, to the extent not so used, shall be transferred to the Bond Fund and used to redeem Bonds in accordance with the provisions of Section 3.04 hereof.

(a) Payments shall be made from the Project Fund, or any account so established, by the Trustee as follows:

(i) Payments from the Project Fund shall be made only upon receipt by the Trustee of a requisition executed by the Borrower in a form set forth in a supplement to this Indenture.

(ii) Upon completion of, and payment or reimbursement of the Borrower for, any addition or improvement to or of the Project, or any repair, rebuilding, restoration or replacement of any portion thereof damaged, destroyed or condemned (in any such case, as evidenced by a certificate of the Borrower delivered to the Trustee), any moneys remaining in the Project Fund shall be transferred to the Bond Fund to redeem Bonds pursuant to the provisions of Section 3.04 hereof, unless the Borrower directs that such moneys be deposited into the Debt Service Reserve Fund or used to purchase Bonds in accordance with the provisions of Section 3.09 hereof, accompanied in either case by an opinion of Bond Counsel to the effect that such application will not adversely affect any applicable exemption from Federal income taxation of the interest on any Outstanding Bonds.

(b) Notwithstanding anything to the contrary herein, to the extent an Event of Default described in clause (a) or (b) of Section 7.01 shall have occurred and be continuing and no other moneys are available under this Indenture to cure such Event of Default, no moneys on deposit in the Project Fund shall be disbursed or applied as provided in subsection (a) of this Section 4.02. In any such event, moneys on deposit in the Project Fund shall be applied by the Trustee in accordance with Article VII hereof.

#### **Section 4.03 Revenue Fund.**

(a) The Borrower has pledged the Revenue Fund as security for the payment of the principal of, and interest on, the Bonds and shall deposit or cause to be deposited into the Revenue Fund upon receipt all Facility Revenues except for the proceeds of casualty insurance claims and condemnation awards delivered to the Trustee, which shall be applied as provided in Section 4.02 hereof, and except for investment earnings on the Funds held by the Trustee and pledged to secure the

Bonds, which shall be applied as provided in Section 5.02 hereof. So long as no Event of Default has occurred and is continuing hereunder, and unless otherwise directed in a certificate of the Borrower, with the consent of the Consulting Engineer, funds in the Revenue Fund shall be transferred and applied by the Trustee, to the extent available therein, on the first Business Day of each month, commencing September 1, 1999, in the following order of priority, by transfer to the Borrower, or by disbursement, at the request of the Borrower, to the Persons entitled to receive the same, as directed by the Borrower, or by transfer to other Funds held by the Trustee, as appropriate:

(i) First, to the Borrower, the amount necessary for payment of budgeted Operation and Maintenance Costs for such month, as set forth in the approved Annual Operating Budget for the then-current Fiscal Year then on file with the Trustee;

(ii) Second, to the Series 1999A Account of the Bond Fund, on December 1, 1999, and on the first day of each of the two calendar months thereafter, one-third, and on March 1, 2000 and the first day of each calendar month thereafter, one-sixth, of the interest due on the Series 1999A Refunding Bonds on the next succeeding Interest Payment Date, and on January 1, 2000 and on the first day of each of the seven calendar months thereafter, one-eighth, and on September 1, 2000 and the first day of each calendar month thereafter, one-twelfth, of the principal due on the Series 1999A Refunding Bonds on the next succeeding August 15<sup>th</sup>, subject, in the case of the transfers on each August 1<sup>st</sup>, to a credit for any income or gain on investments of moneys in the Series 1999A Account of the Bond Fund then on deposit in such Account;

(iii) Third, to any Debt Service Reserve Fund Guarantor(s), any amounts necessary to reimburse such Debt Service Reserve Fund Guarantor(s) for any unreimbursed payments made with respect thereto, *pro rata* on the basis of such unreimbursed payments, and, thereafter, to the Debt Service Reserve Fund, any amount necessary to increase the amount on deposit therein, after taking into consideration the amount(s) available pursuant to any Debt Service Reserve Fund Guarantee(s) then in effect, to the Required Reserve; and

(iv) Fourth, to CP Sunnyside, an amount equal to one-twelfth of the Administrative Fee for such Fiscal Year.

(b) On February 1, 2000, following any payments and transfers required pursuant to subsection (a) hereof, the Trustee shall disburse from the Revenue Fund to the Borrower the sum of \$1,250,000, representing the Service and Maintenance Fee due for the preceding Fiscal Year and for the first half of the then-current Fiscal Year, and on each February 1<sup>st</sup> and August 1<sup>st</sup> thereafter, following any payments and transfers required pursuant to subsection (a) hereof, the Trustee shall disburse from the Revenue Fund to the Borrower an amount equal to one-half of the Service and Maintenance Fee for such Fiscal Year, plus any additional amount necessary to pay any accrued and unpaid portion of the Service and Maintenance Fee for any prior period (until paid in full), provided that a *pro rata* portion of the Service and Maintenance Fee shall be payable for the period commencing on

January 1 of any Fiscal Year and ending on the date during such Fiscal Year in which the Refunding Bonds are paid in full, at maturity or prior redemption.

(c) On each February 1<sup>st</sup> and August 1<sup>st</sup>, commencing February 1, 2000, following any payments and transfers required pursuant to subsections (a) and (b) hereof, the Trustee shall transfer from the Revenue Fund to the Working Capital Fund any amount necessary to cause the amount on deposit in the Working Capital Fund (including any income and gain on investments thereof) to be not less than \$2,000,000.

(d) On each February 20<sup>th</sup>, commencing February 20<sup>th</sup>, 2000, the Trustee shall transfer moneys from the Revenue Fund to the Series 1999B Account of the Bond Fund in an amount equal to one-half of the Series B Amount for the preceding Fiscal Year as reported by the Borrower pursuant to the provisions of Section 5.19 of the Loan Agreement; provided, however, that to the extent the Revenue Fund does not, on such date, contain an amount equal to the Series B Amount for the preceding Fiscal Year, the Trustee shall deposit in the Series 1999B Account of the Bond Fund one half of the moneys then available in the Revenue Fund for such purpose and shall, on the first day of each month thereafter, following the payments and transfers required pursuant to subsections (a)(i) and (a)(ii) of this Section 4.03, transfer from the Revenue Fund to the Series 1999B Account of the Bond Fund one-half of any moneys then contained in the Revenue Fund until such time as the Trustee has deposited in the Series 1999B Account of the Bond Fund an amount equal to one-half of the Series B Amount with respect to such preceding Fiscal Year and shall, concurrently with each such transfer, disburse from the Revenue Fund to the Borrower an equal amount.

(e) On each February 20<sup>th</sup>, commencing February 20, 2000, following any payments and transfers required pursuant to subsections (a), (b), (c) and (d) hereof, the Trustee shall transfer from the Revenue Fund to the Borrower, any balance remaining in the Revenue Fund (including income and gain on investments thereof).

(f) Operation and Maintenance Costs payable pursuant to Section 4.03(a)(i) hereof shall not in any event exceed the amounts budgeted for such purpose in the Annual Operating Budget for the then-current Fiscal Year approved by the Consulting Engineer, as amended from time to time in accordance with the provisions of the Loan Agreement.

(g) In the event that at any time during any twelve month period (commencing August 16th of each year) amounts on deposit in the Bond Fund are, and for so long as they remain, sufficient to pay the principal and interest to become due on the Bonds during such twelve month period (ending on the next succeeding August 15th), no additional amounts need be deposited in the Bond Fund pursuant to the provisions of this Section 4.03 until the next succeeding September 1<sup>st</sup>.

#### **Section 4.04 Bond Fund.**

(a) The Bond Fund is pledged and shall be used solely to pay the principal of and interest on Outstanding Bonds. The Trustee shall deposit into the appropriate account of the Bond Fund (i) any moneys transferred from the Revenue Fund pursuant to the provisions of Section 4.03(a)(ii) and Section

4.03(c) hereof, (ii) any other moneys received by the Trustee from the Borrower or any other Person for deposit in such Fund pursuant to the Loan Agreement (including any insurance or condemnation moneys required to be deposited therein to redeem Bonds pursuant to Section 3.04 hereof), (iii) any other amount received by the Trustee from the Borrower or any other person to redeem Bonds pursuant to the provisions of Sections 3.03 or 3.05 hereof, and (iv) any other amounts required to be deposited in such Fund pursuant to the terms hereof. Amounts deposited to the Bond Fund shall be applied on a first-in, first-out basis.

(b) Moneys on deposit in the Series 1999A Account of the Bond Fund shall be applied as follows:

(i) First, to the payment of interest, when due, on the Series 1999A Refunding Bonds, including any accrued interest due in connection with redemptions of Bonds; and

(ii) Second, to the payment when due, of the principal of the Series 1999A Refunding Bonds then payable, at maturity or upon redemption.

(c) Moneys on deposit in the Series 1999B Account of the Bond Fund shall be applied as follows: One-half of the amount, if any, deposited in the Series 1999B Account of the Bond Fund on or after February 20<sup>th</sup>, 2000, and on or after each February 20<sup>th</sup> thereafter, in accordance with the provisions of Section 4.03 (d) hereof, representing one-half of the Series B Amount for the preceding Fiscal Year, together with one-half of any income and gain from investments of moneys in the Series 1999B Account of the Bond Fund therein during such preceding Fiscal Year plus one-half of any additional amount required to be deposited therein, or less one-half of any amount required to be disbursed therefrom, on such February 20<sup>th</sup> pursuant to the provisions of Section 5.19(b) of the Loan Agreement, shall be paid on August 15<sup>th</sup> of such calendar year, and the remaining one-half of such amount shall be paid on the succeeding February 15<sup>th</sup>, to the holders of the Series 1999B Refunding Bonds on the respective Record Dates therefor as interest on the Series 1999B Refunding Bonds.

In the event any accountant's statement submitted to the Trustee pursuant to Section 5.19(b) of the Loan Agreement demonstrates that the Borrower's report of the Series B Amount for the preceding Fiscal Year exceeded the actual amount thereof, any moneys thereafter deposited in the Series 1999B Account of the Bond Fund shall first be disbursed to the Borrower to the extent of one-half of such excess prior to making the payments contemplated by this subsection (c), and in the event any such accountant's statement demonstrates that the Borrower's report of the Series B Amount for the preceding Fiscal Year was less than the actual amount thereof, the Trustee shall, on the succeeding February 20<sup>th</sup>, withhold from the next moneys payable to the Borrower pursuant to the provisions of Section 4.03(e) hereof and deposit to the Series 1999B Account of the Bond Fund an amount equal to one-half of such deficiency, which amount shall be added to and become part of the payments contemplated by this subsection (c) as provided above.



#### **Section 4.05 Debt Service Reserve Fund.**

(a) Concurrently with the issuance and delivery of the Refunding Bonds, the Trustee shall deposit in the Debt Service Reserve Fund from moneys provided by the Borrower an amount, after taking into consideration any Debt Service Reserve Fund Guarantee(s) delivered concurrently herewith, equal to the Required Reserve and shall thereafter deposit moneys therein in accordance with the provisions of Section 4.03(a)(iii) hereof. Thereafter, if on the third (3<sup>rd</sup>) Business Day preceding any Interest Payment Date, moneys in the Bond Fund and in the Debt Service Reserve Fund are not sufficient to pay in full the principal and interest otherwise due on the Refunding Bonds on such Interest Payment Date, the Trustee shall give Immediate Notice thereof to each Debt Service Reserve Fund Guarantor(s) and to the Bondholders.

(b) Moneys deposited in the Debt Service Reserve Fund shall be applied as follows:

(i) On the date of any required payment from the Bond Fund, moneys in the Debt Service Reserve Fund or, to the extent moneys are required in excess thereof, moneys drawn on a Debt Service Reserve Fund Guarantee (pro rata in the event there are two or more Debt Service Reserve Fund Guarantees), shall be transferred to the Bond Fund and applied to cure any deficiency in the Bond Fund;

(ii) In the event the Trustee has drawn on any Debt Service Reserve Fund Guarantee(s) to make payments due with respect to the Bonds, any moneys thereafter deposited to the Debt Service Reserve Fund shall first be used to reimburse such Debt Service Reserve Fund Guarantor(s) pro rata on the basis of any unreimbursed payments thereunder in accordance with the terms of the related Debt Service Reserve Fund Guarantee;

(iii) Upon delivery to the Trustee of an Officer's Certificate of the Borrower, any amount in the Debt Service Reserve Fund, including any Debt Service Reserve Fund Guarantee(s), in excess of the Required Reserve on any annual valuation date, or on any date on which one or more Debt Service Reserve Fund Guarantee(s) are deposited in the Debt Service Reserve Fund, shall be (A) transferred to the Series 1999A Account of the Bond Fund and credited against the payments next becoming due (in direct order) under the Loan Agreement in respect of the principal of or interest on the Series 1999A Refunding Bonds, or (B) applied as may be specified in an Officer's Certificate of the Borrower if such Certificate is accompanied by an opinion of Bond Counsel to the effect that such other application will not cause interest on any Bonds to be includable in gross income for Federal income tax purposes;

(iv) Upon delivery to the Trustee of moneys sufficient, alone or together with one or more Debt Service Reserve Fund Guarantees, to cause the amount in the Debt Service Reserve Fund to equal the Required Reserve, the Trustee shall cancel and deliver to the Borrower any Debt Service Reserve Fund Guarantee(s) previously in effect requested by the Borrower together with an acknowledgement thereof; and

(v) In each month during the 12-month period preceding the final maturity of the Series 1999A Refunding Bonds, any moneys held in the Debt Service Reserve Fund shall be credited against the payments otherwise due under the Loan Agreement in respect of principal of and interest on such Series 1999A Refunding Bonds and shall be transferred to the Bond Fund for the payment of such principal and interest; provided, however, that no such credit shall be given and no such transfer shall be made if and to the extent that, immediately prior to such credit and transfer, the amount on deposit in the Debt Service Reserve Fund is less than the Required Reserve, less the amounts previously transferred to the Bond Fund during such 12-month period pursuant to this subparagraph (v).

(i) Income and gain from investments in the Debt Service Reserve Fund shall be transferred to and deposited in the Revenue Fund on each February 1 and August 1.

(c) In lieu of or in substitution for cash, and subject to the approval of the Required Percentage of Bondholders, the Borrower shall be permitted to deliver to the Trustee one or more Debt Service Reserve Fund Guarantees for deposit in the Debt Service Reserve Fund, provided that:

(i) except as otherwise approved by the Required Percentage of Bondholders, a Debt Service Reserve Fund Guarantee (including any replacement Debt Service Reserve Fund Guarantee) must be issued either by Constellation or by a United States bank, trust company or national banking association (including any United States branch or agency of a foreign bank or trust company) or insurance company whose unsecured long term debt obligations (in the case of a United States bank, trust company or national banking association (including any United States branch or agency of a foreign bank or trust company)) or whose claims paying abilities (in the case of an insurance company) are rated by a Rating Service, at the time the Debt Service Reserve Fund Guarantee is issued and at the time of each extension or renewal thereof, in a rating category of not less than "AA" from Standard & Poor's or the equivalent rating by another Rating Service;

(ii) the Debt Service Reserve Fund Guarantee (including any replacement Debt Service Reserve Fund Guarantee, if provided by a different issuer) has an initial term of not less than one (1) year and any extension, renewal or replacement (if provided by the same issuer) thereof has a term of not less than one (1) year;

(iii) the Trustee is authorized and has the duty and right to draw on the Debt Service Reserve Fund Guarantee(s) (pro rata if more than one) to satisfy the purposes for which the Debt Service Reserve Fund was established; and

(iv) the Trustee shall receive a certification of the Borrower to the effect that all of the requirements set forth above have been satisfied.

Upon any such substitution, funds on deposit in the Debt Service Reserve Fund which, when added to the face amount of the Debt Service Reserve Fund Guarantee, exceed the Required Reserve on all Outstanding Bonds shall be applied as provided in subsection (b)(iii)

above. Thereafter, the Debt Service Reserve Fund Guarantees shall be considered a part of the Debt Service Reserve Fund and the amount available thereunder shall be included in any calculations of the amount required to be maintained in the Debt Service Reserve Fund; provided that, (A) if the sum of the amount available under the Debt Service Reserve Fund Guarantees and the amount of moneys on deposit in the Debt Service Reserve Fund exceeds the amount required to be on deposit pursuant to subsection (a) above, the Borrower shall be permitted (i) to cause the amount available under the Debt Service Reserve Fund Guarantees to be reduced by an amount equal to such excess, or (ii) to direct that the excess moneys in the Debt Service Reserve Fund be applied as permitted under subsection (b)(iii) above, and (b) if the Debt Service Reserve Fund Guarantees is not extended, renewed or replaced at least ninety (90) days prior to its scheduled expiration or termination date, the Trustee shall, not later than ten (10) days prior to such date, draw on such Debt Service Reserve Fund Guarantee(s) (pro rata if more than one) for the full amount thereof and deposit the proceeds thereof into the Debt Service Reserve Fund.

(d) If there are cash and investments on deposit in the Debt Service Reserve Fund in addition to any Debt Service Reserve Fund Guarantee(s), such cash and investments must be withdrawn and applied prior to any draws on such Debt Service Reserve Fund Guarantee.

**Section 4.06 Working Capital Fund.** Concurrently with the issuance and delivery of the Bonds, the Borrower has delivered to the Trustee to be deposited in the Working Capital Fund, or otherwise applied to pay working capital with respect to the Facility, an aggregate of \$2,000,000. Thereafter, amounts shall be deposited in the Working Capital Fund in accordance with the provisions of Section 4.03 (c) hereof and may be disbursed therefrom at the request of the Borrower upon the Trustee's receipt of a certification by the Borrower that any such amounts are required for the operation of the Project during such calendar month and will not be used for any other purpose. Any amounts withdrawn from the Working Capital Fund for such purpose shall be replenished in accordance with the provisions of Section 4.03(c) hereof. Moneys held from time to time in the Working Capital Fund may be invested at the direction of the Borrower in Eligible Investments.

**Section 4.07 Rebate Fund.** Pursuant to the Loan Agreement, the Borrower has covenanted to pay to the Trustee for deposit in the Rebate Fund amounts due in respect of "arbitrage rebate" pursuant to Section 148(f) of the Code as determined in accordance with the Tax Certificate and Agreement. Amounts on deposit in the Rebate Fund may be used solely to make payments to the United States of America, and to pay costs related to the calculation of the amounts due, as provided in Section 148 of the Code and the Tax Certificate and Agreement. Upon satisfaction of the Borrower's covenants described above, any amounts remaining in the Rebate Fund shall be applied in accordance with Section 4.09 hereof. The Trustee agrees, on behalf of the Issuer and the Borrower, to keep detailed records with respect to each and every Nonpurpose Investment attributable to Gross Proceeds (as such terms are defined for the purposes of Section 148 of the Code and, particularly, Section 1.148-1(b) of the Treasury Regulations thereunder) of the Refunding Bonds, including: (i) purchase date, (ii) purchase price, (iii) information establishing fair market value on the date of such investment being allocated to Gross Proceeds of the Refunding Bonds, and thus a Nonpurpose Investment, and on

the date it ceases to be allocated to Gross Proceeds and thus not a Nonpurpose Investment, (iv) any accrued interest paid, (v) face amount, (vi) coupon rate, (vii) periodicity of interest payments, (viii) disposition price, and (ix) applicable broker's fees. Such detailed record keeping is required for the calculation of the rebate amount (within the meaning of Section 1.148-3 of the Treasury Regulations) that, in part, will require a determination of the difference between the actual aggregate earnings on all Nonpurpose Investments and the amount of such earnings assuming a rate of return equal to the yield on the Refunding Bonds.

**Section 4.08 Revenues to Be Held for All Bondholders, With Certain Exceptions.**

Until applied as herein provided and except where moneys have been deposited with or paid to the Trustee pursuant to an instrument restricting the application of such moneys to particular Bonds, the moneys and investments held in all Funds (other than the Working Capital Fund and the Rebate Fund) established hereunder and the proceeds of any remedies exercised pursuant to Article VII hereof shall be held in trust pursuant to the terms of this Indenture for the equal and proportionate benefit of the holders of all Outstanding Bonds, except that: (a) on and after the date on which the interest on or principal of any particular Bond is due and payable from the Bond Fund or, with respect to which a call for redemption has been given and funds for such redemption have been deposited with the Trustee, the unexpended balance of the amount deposited or reserved in the Bond Fund for the making of such payments shall, to the extent necessary therefor, be held for the benefit of the Bondholder or Bondholders entitled thereto; and (b) any special redemption fund established in connection with the defeasance of any Bonds in accordance with Article IX shall be held for the benefit of the holders of Bonds being defeased.

**Section 4.09 Repayment to the Borrower from Amounts Remaining in Any Funds.**

Any amounts remaining in any Funds (a) after all of the Outstanding Bonds shall be deemed paid and discharged under the provisions of this Indenture, and (b) after payment of all fees, charges and expenses of the Trustee, the Bond Registrar and any Paying Agents and of all other amounts required to be paid under this Indenture or the Loan Documents, shall be paid to the Borrower as provided in the Loan Agreement to the extent that such amounts are in excess of those necessary to effect the payment and discharge of the Outstanding Bonds.

**Section 4.10 Disposition of Unclaimed Funds.** Notwithstanding any provisions of this Indenture, and subject to applicable unclaimed property laws, any money deposited with the Trustee or any Paying Agent in trust for the payment of principal of, premium of or interest on the Bonds remaining unclaimed for four (4) years after the payment thereof: (a) shall be reported and disposed of by the Trustee in accordance with applicable unclaimed property laws; or (b) to the extent permitted by applicable law, shall be paid to the Borrower, whereupon all liability of the Issuer and the Trustee with respect to such money shall cease, and the holders of the Bonds shall thereafter look solely to the Borrower for payment of any amounts then due. Moneys held by the Trustee or any Paying Agent subject to this Section shall not be invested and the Trustee shall have no liability for payment of interest thereon.

**Section 4.11 Additional Funds and Accounts.** In addition to the Funds and accounts specifically created and established by this Article IV, the Trustee shall have the authority to create and

maintain such other funds and accounts as it may deem reasonably necessary for proper administration hereunder.

## ARTICLE V

### INVESTMENT OR DEPOSIT OF FUNDS

**Section 5.01 Deposits and Security.** All moneys received by the Trustee pursuant to this Indenture for deposit in any Fund established hereunder shall be considered trust funds, except moneys deposited in the Rebate Fund.

**Section 5.02 Investment or Deposit of Funds.**

(a) Moneys on deposit in the Funds established pursuant to Article IV hereof shall be invested and reinvested by the Trustee pursuant to the provisions of this Section 5.02 for the benefit of the Fund in which deposited.

(b) All moneys on deposit in Funds shall be invested in Eligible Investments which shall mature, or be subject to repurchase, withdrawal without penalty or redemption at the option of the holder on or before the dates on which the amounts invested are reasonably expected to be needed for the purposes hereof.

(c) All purchases or sales of Eligible Investments shall be made at the direction of the Borrower (given in writing or orally, confirmed in writing) or, in the absence of such direction, to the extent reasonably practicable, by the Trustee in Eligible Investments described in clause (f) of the definition thereof, provided that neither the Issuer nor the Trustee shall be accountable for any depreciation in the value of Eligible Investments or for any losses incurred upon any authorized disposition thereof.

(d) Any securities or investments held by the Trustee may be transferred by the Trustee, if required in writing by the Borrower, from any of the Funds or accounts mentioned in Article IV to any other Fund or account mentioned in Article IV at the then current market value thereof without having to be sold and purchased or repurchased; provided, however, that (1) after any such transfer or transfers, the investments in each such Fund or account shall be in accordance with the provisions as stated in this Indenture and (2) whenever any other transfer or payment is required to be made from any particular Fund, such transfer or payment shall be made from such combination of maturing principal, redemption premiums, liquidation proceeds and withdrawals of principal as the Trustee deems appropriate for such purpose.

(e) Subject to the foregoing, the Trustee is expressly authorized to invest moneys on deposit in two or more Funds in a single investment, provided that a portion of the investment allocable to each such Fund, and all payments received with respect to such allocable portion, shall be applied in accordance with the applicable provisions governing such Fund hereunder.

(f) The Issuer acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory authority grant the Issuer the right to receive brokerage confirmations of security transactions as they occur, the Issuer will not receive such confirmations to the extent permitted by law. The Trustee will furnish the Issuer with periodic cash transaction statements which include detail for all investments hereunder through its own bond or investment department or trust investment department, or those of any affiliate. The Trustee or any of its affiliates may act as sponsor, advisor or manager in connection with any investments made by the Trustee pursuant hereto.

**Section 5.03 Valuation of Funds.** The Trustee shall determine the value of the assets in each of the Funds established hereunder on, or on a date not earlier than three days prior to August 1 of each year. As soon as practicable after each such valuation date, the Trustee shall furnish to the Issuer and the Borrower a report of the status of each Fund as of such date. The Trustee shall also advise the Borrower at such time of any amount then available in the Bond Fund as a credit against future deposits prior to the next valuation date in direct order of the due dates of such deposits. In computing the value of amounts in any Fund, investments shall be valued at the fair market value thereof and shall include accrued but unpaid interest on each investment, and all investments (valued as aforesaid) and accrued interest thereon shall be deemed a part of such Funds. In making any such valuations, the Trustee may utilize and rely upon computerized securities pricing services that may be available to it, including those available through its regular accounting system. Upon the request of the Borrower, the Trustee shall also provide the Borrower with monthly or other periodic statements showing amounts deposited into and withdrawn from each Fund, the investments made with amounts in each Fund and the investment income received from such investments.

## ARTICLE VI

### COVENANTS AND AGREEMENTS OF THE ISSUER

#### Section 6.01 Covenants and Agreements of the Issuer.

(a) General. In addition to any other covenants and agreements of the Issuer contained in this Indenture or the Loan Agreement, the Issuer further covenants and agrees with the Bondholders and the Trustee as provided in this Section 6.01.

(b) Payments of Principal and Interest. The Issuer will pay all principal of and interest on the Bonds or cause them to be paid, solely from the sources provided herein, on the dates, at the places and in the manner provided in this Indenture and the Loan Agreement.

(c) Revenues and Assignment of Revenue. The Issuer will not assign or otherwise dispose of all or any portion of the Facility Revenues or create or authorize to be created any debt, lien or charge thereon, other than the assignment thereof pursuant to this Indenture.

(d) Recordings and Filings. At the expense of the Borrower, the Issuer will cooperate with the Borrower in the Borrower's performance of its obligation to cause this Indenture, or any related instruments or documents relating to the assignment made by the Issuer pursuant to this Indenture to

secure the Bonds, to be recorded and filed in the manner and in the places which may be required by law in order to preserve and protect fully the security of the holders of the Bonds and the rights of the Trustee hereunder.

(e) Inspection of Project Books. All books, instruments and documents in the Issuer's possession relating to the Project and the Facility Revenues shall be open to inspection at all times during the Issuer's regular business hours by any accountants or other agents or representatives of the Trustee or the Bondholders which the Trustee or the holders of at least fifty-one percent (51%) of the principal amount of the Outstanding Refunding Bonds, as the case may be, may designate from time to time.

(f) Register. At reasonable times and under reasonable regulations established by the Bond Registrar, the Bond Register may be inspected and copied by or delivered to the Borrower, the Issuer or by a representative designated by the the holders of at least fifty-one percent (51%) of the principal amount of the Outstanding Refunding Bonds.

(g) Rights and Enforcement of the Loan Agreement. The Trustee may enforce, in its name or in the name of the Issuer, all rights of the Issuer for and on behalf of the holders, except for Unassigned Issuer's Rights, and may enforce all covenants, agreements and obligations of the Borrower under and pursuant to the Loan Agreement, regardless of whether the Issuer is in default in the pursuit or enforcement of those rights, covenants, agreements or obligations. The Issuer will do all things and take all actions on its part necessary to comply with covenants, agreements, obligations, duties and responsibilities on its part to be observed or performed under the Loan Agreement, and will take all reasonable and practicable actions within its authority to keep the Loan Agreement in effect in accordance with the terms thereof.

(h) Issuer Not to Adversely Affect Exclusion From Gross Income of Interest on the Refunding Bonds. The Issuer covenants that it (1) will take, or require to be taken, all actions that may be required of the Issuer for the interest on the Refunding Bonds to be and remain excludable from the gross income of the Bondholders for Federal income tax purposes and (2) will not take or authorize to be taken any actions that would adversely affect that exclusion under any provisions of the Code.

**Section 6.02 Observance and Performance of Covenants, Agreements, Authority and Actions.** The Issuer hereby agrees to observe and perform at all times all covenants, agreements, authority, actions, undertakings, stipulations and provisions to be observed or performed on its part pursuant to the Loan Agreement, this Indenture, the Bond Legislation and the Bonds which are executed, authenticated and delivered under this Indenture, and pursuant to all proceedings of its Legislative Authority pertaining thereto.

In particular, the Issuer represents and warrants that:

(i) It is duly authorized by the laws of the State, including particularly and without limitation the Act, to issue the Refunding Bonds, to execute and deliver this Indenture and the Loan Documents to which it is a party and to provide the security for

payment of the principal of and interest on the Refunding Bonds in the manner and to the extent set forth in this Indenture.

(ii) All actions required on its part to be performed for the issuance, sale and delivery of the Refunding Bonds and for the execution and delivery of this Indenture and the Loan Documents have been or will be taken duly and effectively; provided no representation is made as to any state securities or "Blue Sky" laws.

(iii) The Refunding Bonds will be valid and enforceable special, limited obligations of the Issuer according to their terms, subject to applicable bankruptcy and equitable principles.

### **Section 6.03 Tax Covenants.**

(a) The Issuer covenants that it will not make or direct the Trustee to make any investment or other use of the proceeds of any series of Bonds issued hereunder which would cause such series of Bonds to be "arbitrage bonds" as that term is defined in Section 148(a) of the Code, and all Regulations promulgated with respect thereto, and that it will comply with the requirements of the Code and Regulations throughout the term of such series of Bonds.

(b) Notwithstanding the foregoing, the Issuer hereby reserves the right to elect to issue one or more series of Additional Bonds, the interest on which is not exempt from Federal income taxation, if such election is made prior to the issuance of such Additional Bonds, in which event the covenants contained in this Section 6.03 shall not apply to such series of Bonds.

(c) The Issuer covenants to notify the Trustee and the Borrower promptly upon receipt of any correspondence, notice or other communication from any source substantially to the effect that interest on the Refunding Bonds is not or may not be exempt from gross income for Federal income tax purposes.

**Section 6.04 Enforcement of Issuer's Obligations.** So long as no Event of Default hereunder shall have occurred and be continuing, the Issuer may exercise all its rights under the Loan Documents or any other lease, agreement or contract, or supplement or amendment thereto, provided that, except as permitted hereby or by the Loan Documents, the Issuer shall not amend any of the same so as to affect adversely the Issuer's ability to perform its covenants under this Indenture or change the payments or term of the Loan Documents or the security interest thereby and hereby created. The Issuer shall file with the Trustee copies of the Loan Agreement, together with all amendments or supplements thereto, whether or not the Trustee's consent is required thereto, and shall give prompt notice to the Trustee of any default by any of the parties thereto of which it has actual knowledge.



## ARTICLE VII

### EVENTS OF DEFAULT AND REMEDIES

**Section 7.01 Events of Default Defined** Each of the following is an “Event of Default” hereunder:

(a) Default in the payment of any installment of interest on any Bond when it becomes due and payable and such default continues for five (5) days;

(b) Default in the payment of principal of any Bond when it becomes due and payable, provided, however, that any such failure will not constitute an Event of Default hereunder if the Borrower transfers to or at the direction of the Trustee for the benefit of the Bondholders all of its right, title and interest in and to the Facility and the Trust Estate;

(c) Subject to the provisions of Section 7.07 hereof, default in the performance, or breach, of any material covenant, warranty or representation of the Issuer contained in this Indenture (other than a default described in subsections (a) and (b) of this Section 7.01);

(d) The occurrence of any Event of Default under the Loan Documents; or

(e) An Event of Bankruptcy of the Issuer; the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator or other similar official of the Issuer or of any substantial portion of its property; or the ordering of the winding up or liquidation of its affairs and the continuance of any such involuntary filing, appointment or order unstayed and in effect for a period of sixty (60) consecutive days.

If a Determination of Taxability occurs with respect to any series of the Refunding Bonds, there shall be no Event of Default resulting therefrom if all or part of the Refunding Bonds of such series are redeemed pursuant to Section 3.05 hereof.

### **Section 7.02 Remedies Upon Default**

(a) If an Event of Default described in Section 7.01, except subsection (e) of Section 7.01, occurs and is continuing, the Trustee may, and upon the written request of holders of at least fifty-one percent (51%) of the principal amount of the Outstanding Bonds shall, subject to the requirements of Section 8.02(e) hereof, by written notice to the Issuer, the Borrower and the Bondholders, declare the principal of the Bonds and all interest accrued thereon to the date of acceleration determined by the Trustee to be immediately due and payable. If an Event of Default described in Section 7.01(e) hereof occurs, the principal of the Bonds and all interest accrued thereon to the date thereof shall be immediately due and payable without further action on the part of the Trustee, and the Trustee shall give notice thereof to the Issuer, the Borrower and the Bondholders.

(b) At any time after such a declaration of acceleration has been made and before the entry of a judgment or decree for payment of the money due, the Trustee may, or the holders of at least fifty-one percent (51%) of the principal amount of the Outstanding Refunding Bonds, by written notice to the Issuer and the Trustee, and subject to the requirements of Section 8.02(e) hereof, may direct the Trustee to, rescind and annul such declaration and its consequences if:

(i) there has been paid to or deposited with the Trustee by or for the account of the Issuer, or provision reasonably satisfactory to the Trustee in reliance upon an opinion of Counsel has been made for the payment of a sum sufficient to pay (A) all overdue installments of interest on the Bonds; (B) the principal of, and redemption premium, if any, on any Bonds which have become due other than by such declaration of acceleration and interest thereon; (C) to the extent lawful, interest upon overdue installments of interest and redemption premium, if any; and (D) all sums paid or advanced by the Trustee hereunder, together with the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel prior to the date of notice of rescission; and

(ii) all other Events of Default, other than the nonpayment of principal of, redemption premium, if any, and interest on the Bonds which have occasioned such acceleration, have been cured or waived.

(c) No such rescission and annulment shall affect any subsequent default or impair any consequent right.

### **Section 7.03 Additional Remedies.**

(a) Upon the occurrence of an Event of Default, the Trustee may, and upon the written request of the holders of at least fifty-one percent (51%) of the principal amount of the Outstanding Refunding Bonds, and subject to the requirements of Section 8.02(e) hereof, shall (1) exercise any or all rights of the Issuer under the Loan Documents and (2) proceed to protect and enforce its rights and the rights of the holders of the Bonds under this Indenture by a suit or suits in equity or at law, either for the specific performance of any covenant or agreement contained herein or therein or in aid of the execution of any power herein or therein granted, or for the enforcement of any other appropriate legal or equitable remedy, as the Trustee in reliance upon the advice of Counsel may deem most effective to protect and enforce any of the rights or interests of the Bondholders under the Bonds or this Indenture.

(b) Without limiting the generality of the foregoing, the Trustee shall at all times have the power to institute and maintain, or intervene in, such proceedings as it may deem expedient (1) to prevent any impairment of the Trust Estate by any acts which may be unlawful or in violation of this Indenture or the Loan Documents, and (2) to protect its interests and the interests of the Bondholders in the Trust Estate and in the issues, profits, revenues and other income arising therefrom, including the power to maintain proceedings to restrain the

enforcement of or compliance with any governmental enactment, rule or order which may be unconstitutional or otherwise invalid, if the enforcement of, or compliance with, such enactment, rule or order would impair the Trust Estate or be prejudicial to the interests of the Bondholders or the Trustee

**Section 7.04 Marshaling of Assets.** Upon the occurrence of an Event of Default, all moneys in all Funds (other than moneys in the Rebate Fund) shall be available to be utilized by the Trustee in accordance with this Article VII, for which the Trustee shall be entitled to compensation in accordance with Section 8.05 hereof. During the continuance of any such Event of Default, all provisions of this Indenture relating to the utilization of Funds, including but not limited to those set out in Article IV hereof, shall be superseded by this Article. Subsequent to the curing or waiver of any such Event of Default, the provisions of this Indenture relating to utilization of Funds, including the provisions of Article IV hereof, shall be reinstated.

**Section 7.05 Trustee May File Proofs of Claim.**

(a) In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding under the Bankruptcy Code relating to the Issuer or the Borrower, any other obligor upon the Bonds or any property of the Issuer or Borrower, the Trustee (whether or not the principal of the Bonds shall then be due and payable by acceleration or otherwise, and whether or not the Trustee shall have made any demand upon the Issuer and/or the Borrower for the payment of overdue principal, redemption premium, if any, and interest) shall be entitled and empowered, by intervention in such proceeding or other means:

(i) to file and prove a claim for the whole amount of the principal, redemption premium, if any, and interest owing and unpaid in respect of the Bonds then Outstanding or for breach of the Indenture or the Loan Documents and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and of the holders allowed in such proceeding; and

(ii) collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same;

and any receiver, assignee, trustee, liquidator, sequestrator or similar official in any such judicial proceeding is hereby authorized by each Bondholder to make such payments to the Trustee, and, in the event that the Trustee shall consent to the making of such payments directly to the Bondholders, to pay to the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee pursuant to Section 8.05 hereof.

(b) No provision of this Indenture empowers the Trustee to authorize or consent to or accept or adopt on behalf of any Bondholders any plan of reorganization, arrangement, adjustment or

composition affecting any of the Bonds or the rights of any holder thereof, or to authorize the Trustee to vote in respect of the claim of any holder in any proceeding described in subsection (a).

**Section 7.06 Possession of Bonds Not Required.** All rights under the Indenture, the Loan Documents and the Bonds may be enforced by the Trustee without possession of any Bonds or the production of them at trial or other proceedings. Any proceedings instituted by the Trustee may be brought in its name for itself or as representative of the Bondholders without the necessity of joining Bondholders as parties, and any recovery resulting from such proceedings shall, subject to the provisions of Section 7.08 hereof, be for the ratable benefit of the Bondholders.

**Section 7.07 Notice and Opportunity to Cure Certain Defaults.** No default under subsection (c) of Section 7.01 hereof (other than the occurrence of a Determination of Taxability, to which this Section 7.07 shall not be applicable) shall constitute an Event of Default until written notice of such default shall have been given to the Borrower by the Trustee or by the Required Percentage of Bondholders, and the Borrower shall have had thirty (30) days after receipt of such notice to correct such default or cause such default to be corrected, and shall have failed to do so. In the event, however, that any default is such that it cannot practicably be corrected within such thirty (30) day period, it shall not constitute an Event of Default if corrective action is instituted by the Borrower within such period and thereafter diligently pursued (in the reasonable determination of the Trustee) until the default is corrected. The Trustee shall send a copy of each such notice to the Issuer, but receipt of such notice by the Issuer shall not be a condition precedent to further action by the Trustee.

**Section 7.08 Priority of Payment Following Event of Default.**

(a) If at any time after the occurrence of an Event of Default the moneys held by the Trustee under this Indenture shall not be sufficient to pay the principal of and interest on the Refunding Bonds as the same become due and payable, whether by their terms or as a result of acceleration pursuant to Section 7.02 hereof, such moneys, together with any moneys then available or thereafter becoming available for such purpose, whether through the exercise of remedies in this Article VII or otherwise, shall, subject to subsections (b) and (c) hereof, be applied by the Trustee as follows:

(i) first, to the payment of all amounts due the Trustee pursuant to the provisions of Section 8.05 hereof;

(ii) second, to the payment of all installments of interest on the Refunding Bonds then due and payable in the order in which such installments became due and payable, and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment, ratably, according to the amounts due on such installments, without discrimination or preference; and

(iii) third, to the payment of the unpaid principal amount of any of the Refunding Bonds which shall have become due and payable, in the order of due dates (other than Refunding Bonds called for redemption or contracted to be purchased for the payment of which moneys are held pursuant to the provisions of this Indenture), with interest upon the principal amount of

the Refunding Bonds from the respective dates upon which they shall have become due and payable, and, if the amount available shall not be sufficient to pay in full the principal of such Refunding Bonds due and payable on any particular due date, together with such interest, then to the payment first of such interest, ratably, according to the amount of principal due on such date, without any discrimination or preference.

(b) If the principal of all Refunding Bonds shall have become due and payable, whether by their terms or by a declaration of acceleration, and subject to subsection (a)(i) of this Section 7.08 regarding payment to the Trustee, all such moneys shall be applied to the payment of the principal and interest then due and unpaid, first, upon the Series 1999A Refunding Bonds, without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, without any discrimination or preference, and, second, upon the Series 1999B Bonds in like manner.

(c) Whenever moneys are to be applied pursuant to the provisions of this Section 7.08, the Trustee may, in its discretion, establish and maintain a reserve for future fees and expenses, and may apply moneys to be distributed at such times, and from time to time, as the Trustee shall determine, having due regard for the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall apply such funds, it shall fix a date (which shall be an Interest Payment Date unless it shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such dates, and for which moneys are available, shall cease to accrue. The Trustee shall also select a Record Date for such payment date. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any moneys and of the fixing of any such Record Date and payment date, and shall not be required to make payment to the holder of any Refunding Bond until such Refunding Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

**Section 7.09 Bondholders May Direct Proceeding.** The holders of at least fifty-one percent (51%) of the principal amount of the Outstanding Refunding Bonds shall, subject to the requirements of Section 8.02(e) hereof, have the right, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the method and place of conducting all remedial proceedings by the Trustee hereunder, provided that such direction shall not be in conflict with any rule of law or this Indenture and that the Trustee shall have the right to decline to follow any such direction which, in the opinion of the Trustee, would be unduly prejudicial to the rights of Bondholders not parties to such direction or would subject the Trustee to personal liability. Notwithstanding the foregoing, the Trustee shall have the right to select and retain counsel of its choosing to represent it in any such proceedings. The Trustee may take any other action which is not inconsistent with any direction under this Section.

**Section 7.10 Limitations on Rights of Bondholders.**

(a) No Bondholder shall have any right to pursue any other remedy under this Indenture unless: (1) an Event of Default shall have occurred and is continuing; (2) the holders of at least fifty-one percent (51%) of the principal amount of the Outstanding Bonds have requested the Trustee, in writing, to exercise the powers hereinabove granted or to pursue such remedy in its or their name or names; (3) the Trustee has been offered indemnity satisfactory to it against reasonable costs, expenses and liabilities reasonably anticipated to be incurred; (4) the Trustee has declined to comply with such request, or has failed to do so, within sixty (60) days after its receipt of such written request and offer of indemnity; and (5) no direction inconsistent with such request has been given to the Trustee during such 60-day period by the holders of at least fifty-one percent (51%) of the principal amount of the Outstanding Bonds.

(b) The provisions of subsection (a) of this Section are conditions precedent to the exercise by any Bondholder of any remedy hereunder. The exercise of such rights is further subject to the provisions of Sections 7.09, 7.11 and 7.14 hereof. No one or more Bondholders shall have any right in any manner whatever to enforce any right under this Indenture, except in the manner herein provided. All proceedings at law or in equity with respect to an Event of Default shall be instituted and maintained in the manner herein provided for the equal and ratable benefit of the Bondholders of all Bonds Outstanding.

**Section 7.11 Unconditional Right of Bondholder to Receive Payment.** Notwithstanding any other provision of this Indenture, each Bondholder shall have the absolute and unconditional right to receive payment of principal of, redemption premium, if any, and interest on the Bonds on and after the due date thereof, and to institute suit for the enforcement of any such payment.

**Section 7.12 Restoration of Rights and Remedies.** If the Trustee or any Bondholder has instituted any proceeding to enforce any right or remedy under this Indenture or the Loan Documents, and any such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or such Bondholder, then the Borrower, the Trustee and the Bondholders shall, subject to any determination in such proceeding, be restored to their former positions hereunder, and all rights and remedies of the Trustee and the Bondholders shall continue as though no such proceeding had been instituted.

**Section 7.13 Rights and Remedies Cumulative.** No right or remedy herein conferred upon or reserved to the Trustee is intended to be exclusive of any other right or remedy, but each such right or remedy shall, to the extent permitted by law, be cumulative of and in addition to every other right or remedy given hereunder or now or hereafter existing at law, in equity or otherwise. The assertion or employment of any right or remedy hereunder shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

**Section 7.14 Delay or Omission Not Waiver.** No delay or omission by the Trustee or any Bondholder to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of such Event of Default. Every right and remedy given by this Article VII or by law to the Trustee or the Bondholders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or the Bondholders, as the case may be.

**Section 7.15 Waiver of Defaults.**

(a) The holders of at least fifty-one percent (51%) of the principal amount of the Outstanding Refunding Bonds may, by written notice to the Trustee and subject to the requirements of Section 8.02(e) hereof, waive any existing default or Event of Default and its consequences, except an Event of Default described in subsections (a) or (b) of Section 7.01 hereof. Upon any such waiver, the default or Event of Default shall be deemed cured and shall cease to exist for all purposes. No waiver of any default or Event of Default shall extend to or effect any subsequent default or Event of Default or shall impair any right or remedy consequent thereto.

(b) Notwithstanding any provision of this Indenture or the Loan Agreement, in no event shall any Person, other than all of the affected Bondholders, have the ability to waive any Event of Default under this Indenture or the Loan Agreement if such event results or may result, in the opinion of Bond Counsel, in interest on any of the Bonds becoming includable in gross income for Federal income tax purposes.

**Section 7.16 Notice of Events of Default.** If an Event of Default occurs of which the Trustee has or is deemed to have notice pursuant to Section 8.02(h) hereof, the Trustee shall give Immediate Notice thereof to the Issuer, the Borrower and the Bondholders.

**Section 7.17 Right to Cure.** If the Issuer shall, for whatever reason, at any time fail to pay any amount or perform any act which it is obligated to pay or perform and, as a result, a default or Event of Default occurs or may occur, the Borrower shall have the right to perform such act or pay such amount on behalf of the Issuer and thereby cure or prevent such default or Event of Default.

## **ARTICLE VIII**

### **THE TRUSTEE**

**Section 8.01 Duties and Responsibilities of the Trustee.**

(a) Prior to the occurrence of an Event of Default of which it has or is deemed to have notice hereunder, and after the curing or waiver of any Event of Default which may have occurred:

(i) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee is under a duty to examine same to determine whether or not they conform to the requirements of this Indenture.

(b) In case an Event of Default of which the Trustee has or is deemed to have notice hereunder has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use in the conduct of such person's own affairs.

(c) No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligence, its own negligent failure to act, or its own willful misconduct, except that:

(i) this subsection shall not be construed to limit the effect of subsection (a) of this Section;

(ii) the Trustee is not liable for any error of judgment made in good faith by a Responsible Officer, unless it is proven that the Trustee was negligent in ascertaining the pertinent facts;

(iii) the Trustee is not liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Bondholders under any provision of this Indenture relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under this Indenture; and

(iv) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it has reasonable grounds for believing that the repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it;

(d) Whether or not expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee is subject to the provisions of this Section.

**Section 8.02 Certain Rights of the Trustee.** Except as otherwise provided in Section 8.01 hereof:

(a) the Trustee may rely and is protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, approval, bond, debenture or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;



(b) any request, direction, order or demand of the Borrower under this Indenture shall be sufficiently evidenced by an Officer's Certificate (unless other evidence thereof is specifically prescribed) and any resolution of the board of directors, or joint direction of the joint venture partners, of the Borrower may be sufficiently evidenced by a copy thereof certified by an Authorized Representative or the chief executive officer of the Borrower;

(c) whenever in the administration of this Indenture the Trustee deems it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence thereof is specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officer's Certificate;

(d) the Trustee may consult with Counsel and the written advice of such Counsel or an opinion of Counsel shall be full and complete authorization and protection for any action taken, suffered or omitted by it in good faith and in accordance with such advice or opinion;

(e) the Trustee is under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Bondholders unless such holders have offered to the Trustee security or indemnity reasonably satisfactory to the Trustee as to its terms, coverage, duration, amount and otherwise with respect to the reasonable costs, expenses and liabilities which may be incurred by it in compliance with such request or direction, and the provision of such indemnity shall be mandatory for any remedy taken upon direction of the holders of at least fifty-one percent (51%) of the principal amount of the Outstanding Refunding Bonds;

(f) Trustee is not required to make any inquiry or investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, approval, bond, debenture or other paper or document but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit and, if the Trustee determines to make such further inquiry or investigation, it is entitled to examine the books, records and premises of the Issuer and the Borrower, in person or by agent or attorney;

(g) the Trustee may execute any of its trusts or powers or perform any duties under this Indenture either directly or by or through agents or attorneys, and may in all cases pay, subject to reimbursement as provided in Section 8.05 hereof, such reasonable compensation as it deems proper to all such agents and attorneys reasonably employed or retained by it, and the Trustee shall not be responsible for any misconduct or negligence of any agent or attorney appointed with due care by it;

(h) the Trustee is not required to take notice or deemed to have notice of any default or Event of Default hereunder, except Events of Default described in subsections (a) or (b) of Section 7.01 hereof, unless a Responsible Officer of the Trustee has actual knowledge thereof or has received notice in writing of such default or Event of Default from the Issuer, the Borrower or from the holders of fifty-one percent (51%) of the principal amount of the Outstanding Refunding Bonds, and in the absence of any such notice, the Trustee may conclusively assume that no such default or Event of Default exists;

(i) the Trustee is not required to give any bond or surety with respect to the performance of its duties or the exercise of its powers under this Indenture;

(j) in the event the Trustee receives inconsistent or conflicting requests and indemnity from two or more groups of Bondholders, each representing less than a majority in aggregate principal amount of the Bonds Outstanding, pursuant to the provisions of this Indenture, the Trustee, in its sole discretion, may determine what action, if any, shall be taken;

(k) the Trustee's immunities and protections from liability and its right to indemnification in connection with the performance of its duties under this Indenture shall extend to the Trustee's officers, directors, agents, attorneys and employees. Such immunities and protections and right to indemnification, together with the Trustee's right to compensation, shall survive the Trustee's resignation or removal, the discharge of this Indenture and final payment of the Bonds;

(l) the permissive right of the Trustee to take the actions permitted by this Indenture shall not be construed as an obligation or duty to do so; and

(m) except for information provided by the Trustee concerning the Trustee, the Trustee shall have no responsibility for any information in any offering memorandum or other disclosure material distributed with respect to the Bonds, and the Trustee shall have no responsibility for compliance with any state or Federal securities laws in connection with the offering, sale or exchange of any Bonds authorized pursuant hereto.

(n) Anything to the contrary notwithstanding, the Trustee shall not be required to enter, take possession of, or take any other action whatsoever with respect to the Project, and shall not be required to initiate foreclosure proceedings with respect to the Project and the Deed of Trust unless the Trustee is satisfied that the Trustee will not as a consequence thereof become subject to any liability under any local, state or Federal environmental laws or regulations of any kind whatsoever or from any circumstances present at the Project relating to the presence, use, management, disposal of, or contamination by any hazardous substances or any environmentally hazardous materials or substances of any kind whatsoever.

**Section 8.03 Trustee Not Responsible.** The recitals contained in this Indenture and in the Bonds (other than the certificate of authentication on the Bonds) are statements of the Issuer and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to the value, condition or sufficiency of any assets pledged or assigned as security for the Bonds, the right, title or interest of the Issuer therein, the security provided thereby or by this Indenture, the technical or financial feasibility of the Project, compliance of the Project with the Act, or the tax-exempt status of any Bonds. The Trustee is not accountable for the use or application by the Borrower of any of the Bonds or the proceeds of the Bonds, or for the use or application of any moneys paid over by the Trustee in accordance with any provision of this Indenture.

**Section 8.04 Trustee May Own Bonds.** The Trustee, in its commercial banking or in any other capacity, may in good faith buy, sell, own, hold and deal in any of the Bonds and may join in any

action which any Bondholder may be entitled to take with like effect as if it were not Trustee. The Trustee, in its commercial banking or in any other capacity, may also engage in or be interested in any financial or other transaction with the Issuer or the Borrower and may act as depository, trustee or agent for any committee of Bondholders secured hereby or other obligations of the Issuer as freely as if it were not Trustee. The provisions of this Section shall extend to affiliates of the Trustee.

**Section 8.05 Compensation and Expenses of the Trustee.** The Borrower has covenanted and agreed, pursuant to the Loan Agreement:

(a) To pay to the Trustee compensation for all services rendered by it hereunder and under the other agreements relating to the Bonds to which the Trustee is a party in accordance with terms agreed to from time to time, and, subsequent to default, in accordance with the Trustee's then-current fee schedule for default administration (the entirety of which compensation shall not be limited by any provision of law regarding compensation of a trustee of an express trust);

(b) To reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture, any other agreement relating to the Bonds to which it is a party or in complying with any request by the Borrower, the Issuer or any Rating Service with respect to the Bonds, including the reasonable compensation, expenses and disbursements of its agents and counsel, except any such expense, disbursement or advance attributable to the Trustee's gross negligence, bad faith or willful misconduct; and

(c) To indemnify, defend and hold the Trustee harmless from and against any loss, liability or expense incurred without gross negligence, bad faith or willful misconduct on its part, arising out of or in connection with the acceptance or administration of the office of Trustee under this Indenture and the Loan Documents, including the costs of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder or thereunder.

In the event the Trustee incurs expenses or renders services in any proceedings under the Bankruptcy Code relating to the Issuer or the Borrower, the expenses so incurred and compensation for services so rendered are intended to constitute expenses of administration under the Bankruptcy Code.

As security for the performance of the obligations of the Borrower under this Section, the Trustee shall have a lien, which it may exercise through a right of setoff, prior to the Bonds upon all property or funds held or collected by the Trustee pursuant to this Indenture (other than moneys in the Rebate Fund) for the payment of principal of, redemption premium, if any, and interest on the Bonds. The obligations of the Borrower to make the payments described in this Section shall survive discharge of this Indenture and payment in full of the Bonds.

**Section 8.06 Qualifications of Trustee.** There shall at all times be a trustee hereunder which shall be a corporation or banking association organized and doing business under the laws of the United States of America or of any state, authorized under such laws to exercise corporate trust

powers, having a combined capital and surplus of at least \$50,000,000, and subject to supervision or examination by Federal or state banking authority. If such corporation or banking association publishes reports of condition at least annually, pursuant to law or the requirements of any supervising or examining authority above referred to, then for purposes of this Section, the combined capital and surplus of such corporation or banking association shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign promptly in the manner and with the effect specified in this Article.

#### **Section 8.07 Resignation or Removal of Trustee; Appointment of Successor Trustee.**

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee pursuant to Section 8.08 hereof.

(b) The Trustee may resign at any time by giving thirty (30) days' prior written notice to the Issuer, the Borrower and the Bondholders. Upon receiving such notice of resignation, the Issuer shall promptly appoint a successor Trustee by an instrument in writing. If an instrument of acceptance has not been delivered to the resigning Trustee within thirty (30) days after the giving of such notice of resignation, the resigning Trustee or any Bondholder may petition a court of competent jurisdiction for the appointment of a successor Trustee.

(c) Prior to the occurrence and continuance of an Event of Default hereunder, or after the curing or waiver of any such Event of Default, the Issuer, the holders of at least fifty-one percent (51%) of the holders of Outstanding Refunding Bonds or the Borrower may remove the Trustee and appoint a successor Trustee. In the event there shall have occurred and be continuing an Event of Default hereunder, the holders of at least fifty-one percent (51%) of the Outstanding Refunding Bonds may remove the Trustee and appoint a successor Trustee. In each instance such removal and appointment shall be accomplished by an instrument or concurrent instruments in writing signed by the Issuer or such Bondholders or the Borrower, as the case may be, and delivered to the Trustee, the Issuer, the Borrower and holders of the Outstanding Bonds.

(d) If at any time: (1) the Trustee shall cease to be eligible and qualified pursuant to Section 8.06 hereof and shall fail or refuse to resign after written request to do so by the Issuer or any Bondholder or (2) the Trustee shall become incapable of acting or shall be adjudged insolvent, or a receiver of the Trustee or its property shall be appointed, or any public officer shall take charge or control of the Trustee, its property or affairs for the purpose of rehabilitation, conservation or liquidation, then in either such case (A) the Issuer may remove the Trustee and appoint a successor Trustee in accordance with the provisions of subsection (c) of this Section, provided that, unless an Event of Default shall have occurred and be continuing hereunder, any such successor trustee must be acceptable to the Borrower (which acceptance shall not be unreasonably withheld or delayed), or (B) any Bondholder of an Outstanding Bond may, on behalf of the holders of all Outstanding Bonds, petition a court of competent jurisdiction for removal of the Trustee and appointment of a successor Trustee.

(e) The Borrower shall cause written notice of each resignation or removal of the Trustee and each appointment of a successor Trustee to be given to each Bondholder of Bonds then Outstanding as listed in the Bond Register. Each such notice shall include the name and address of the corporate trust office of the successor Trustee.

#### **Section 8.08 Acceptance of Appointment by Successor Trustee.**

(a) Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to the Issuer, the Borrower and the predecessor Trustee an instrument accepting its appointment. The resignation or removal of the retiring Trustee shall thereupon become effective, and the successor Trustee shall, without further act, deed or conveyance become vested with all the estates, properties, rights, powers and duties of the predecessor Trustee. Upon the request of the Issuer, the Borrower or the successor Trustee, the predecessor Trustee shall execute and deliver an instrument transferring to the successor Trustee all the estates, properties, rights, powers and duties of the predecessor Trustee under this Indenture, and shall duly assign, transfer, deliver and pay over to the successor Trustee all moneys and other property then held under this Indenture, subject, however, to the lien, if any, provided for in Section 8.05 hereof. The successor Trustee shall promptly give written notice of its appointment to the holders of all Bonds then Outstanding in the manner prescribed herein, unless such notice has previously been given.

(b) No successor Trustee shall accept appointment as provided in this Section 8.08 unless, as of the date of such acceptance, it is eligible and qualified under the provisions of Section 8.06 hereof.

**Section 8.09 Merger or Consolidation of Trustee.** Any corporation or association: (a) into which the Trustee is merged or with which it is consolidated; (b) resulting from any merger or consolidation to which the Trustee is a party; or (c) succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor Trustee without the execution or filing of any document or the taking of any further action. Any such successor must nevertheless be eligible and qualified under the provisions of Section 8.06 hereof.

**Section 8.10 Provision of Notices, Etc. to Bondholders.** Upon the written request of any Bondholder, or of any Beneficial Owner who provides evidence satisfactory to the Trustee of its beneficial ownership of Refunding Bonds, the Trustee will provide such Bondholder or Beneficial Owner, as the case may be, with a copy of the Borrower's Annual Operating Budget then in effect and any certificates or reports furnished to the Trustee by the Borrower, and notices sent to or received from the Borrower, pursuant to the Loan Agreement.

**Section 8.11 Co-Trustee or Separate Trustee.** At any time for the purpose of meeting any legal requirements of any jurisdiction in which any part of the trust estate may at any time be located, the Issuer and the Trustee shall have the power to appoint an additional institution or individual as a separate or co-trustee, and upon the request of the Trustee, the Issuer shall join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to appoint such institution or individual to act as co-trustee jointly with the Trustee or as a separate trustee of all or any part of the trust estate, and to vest in such person or institution, in such capacity, such title

to the trust estate, or any part thereof, or any part thereof, and such rights, powers, trusts, duties or obligations as the Trustee or Issuer may consider necessary or desirable, subject to the provisions of this Section.

If the Issuer shall fail or refuse to make such appointment within thirty (30) days following the receipt by it of a request to do so, or in case an Event of Default shall have occurred and be continuing, the Trustee alone shall have the power to make such appointment.

The Trustee, Issuer and the Borrower shall execute and deliver all such instruments as may be required by such co-trustee or separate trustee for more fully confirming such title, rights, powers, trusts, duties and obligations to such co-trustee or separate trustee.

Every co-trustee or separate trustee shall be appointed subject to the following terms:

(a) all rights, powers, trusts, duties and obligations conferred upon the Trustee may be conferred or imposed upon or exercised or performed by the Trustee, or by the Trustee and such co-trustee or separate trustee jointly, as shall be provided in the instrument appointing such separate or co-trustee, except to the extent the Trustee shall be incompetent, unqualified or otherwise unable to perform such act or acts, in which event such separate or co-trustee shall perform such act or acts;

(b) no trustee shall be liable for the acts or omissions of any other trustee hereunder;

(c) the Trustee at any time by an instrument in writing may accept the resignation of and or remove any co-trustee or separate trustee and a successor to any co-trustee or separate trustee may be appointed in the manner provided in this Section; and

(d) any co-trustee or separate trustee shall be entitled to the provisions of this Article affording compensation, protections, indemnification and limitations from liability to the Trustee.

## **ARTICLE IX**

### **DEFEASANCE**

**Section 9.01 Defeasance.** If (i) the principal of all Bonds and the interest due or to become due thereon shall be paid, or caused to be paid, or provided for in accordance with the provisions of Section 9.02 hereof, at the times and in the manner to which reference is made in such Bonds, according to the true intent and meaning thereof, or all Outstanding Bonds shall have been paid and discharged in accordance with this Article IX, and (ii) all of the covenants, agreements, obligations, terms and conditions of the Issuer under this Indenture shall have been kept, performed and observed and there shall have been paid to the Trustee, the Bond Registrar and the Paying Agents all sums of money due or to become due to them in accordance with the terms and provisions hereof, then, in such events, the right, title and interest of the Trustee in the Trust Estate shall thereupon cease and the Trustee, on request of the Issuer and at the expense of the Borrower, shall release this Indenture and the Trust Estate and shall execute such documents to evidence such release as may be reasonably required

by the Issuer and shall turn over to the Borrower, or to such other Person as may be entitled to receive the same, all balances remaining in any Funds hereunder except for amounts required to pay such Bonds or amounts held pursuant to Section 4.08 hereof.

**Section 9.02 Deposit of Funds for Payment of Bonds.** If the Issuer or the Borrower deposits with the Trustee moneys or Defeasance Obligations which, together with the earnings thereon, are sufficient to pay the principal of any particular Bond or Bonds becoming due, either at maturity or upon prior redemption or otherwise, together with all interest accruing thereon to the due date or redemption date, and all fees, costs and expenses of the Issuer and the Trustee due or to become due with respect to such Bond or Bonds have been paid or provision has been made for the payment thereof, all liability of the Issuer with respect to such Bond or Bonds shall likewise cease, except that such Bond or Bonds shall be deemed not to be Outstanding hereunder and the holder or holders of such Bond or Bonds shall be restricted exclusively to the funds or Defeasance Obligations so deposited for any claim of whatsoever nature with respect to such Bond or Bonds, and the Trustee shall hold such funds in trust for such holder or holders. In determining the sufficiency of the moneys and Defeasance Obligations deposited pursuant to this Section 9.02, the Trustee shall be entitled to receive, at the expense of the Borrower, and may rely upon (a) a verification report of a firm of nationally recognized independent certified public accountants, and (b) an opinion of Bond Counsel to the effect that (1) all conditions set forth in this Article IX, have been satisfied and (2) defeasance of the Bonds will not affect the tax-exempt status of the Bonds.

**Section 9.03 Notice of Defeasance.**

(a) In case any of the Bonds, for the payment of which Defeasance Obligations or moneys have been deposited with the Trustee pursuant to Section 9.02 hereof, are to be redeemed on any date prior to their maturity, the Issuer shall give to the Trustee in form satisfactory to it irrevocable instructions to give notice of redemption of such Bonds on the redemption date therefor as provided in Section 3.08 hereof.

(b) In addition to the foregoing notice, in the event any Bonds to be redeemed are not by their terms subject to redemption within the next succeeding 65 days, the Trustee shall give further notice in the manner set forth in Section 3.08(b) hereof to the effect that the deposit required by Section 9.02 hereof has been made with the Trustee and that said Bonds are deemed to have been paid in accordance with this Article IX hereof, and stating the maturity or redemption date upon which moneys are to be available for the payment of the principal of and redemption premium, if any, on said Bonds; such notice shall be given promptly following the making of the deposit required by Sections 9.01 or 9.02 hereof, provided that no defect in said further notice nor any failure to give all or any portion of such further notice shall in any manner defeat the effectiveness of the deposit.

(c) If the Issuer or the Borrower has retained any rights pursuant to the last sentence of Section 9.02 hereof, notice thereof shall be sent to Bondholders of such Bonds as soon as practicable and not later than any notice required by subsections (a) or (b) of this Section.

**Section 9.04 Reinstatement.** All money, Defeasance Obligations and income thereon deposited with the Trustee pursuant to this Article IX for the purpose of paying the principal of and interest on the Bonds shall be applied by the Trustee solely for such purpose. If the Trustee is unable to apply any funds held on deposit or in trust for the payment of any Bonds in accordance with this Article IX by reason of any legal proceeding relating to or affecting the Borrower or the Bonds or by reason of any order or judgment of any court or governmental authority resulting from any such proceeding relating to or affecting the Borrower or the Bonds which enjoins, restrains or otherwise prohibits such application, then the Issuer's obligations hereunder and with respect to the Bonds shall be revived and reinstated as though no deposit had occurred until such time as the Trustee is permitted to apply all such moneys to the payment of Bonds in accordance with this Article IX; provided, however, that if the Issuer has made any payment of principal of or interest on any Bonds because of the revival and reinstatement of its obligations pursuant to this Section 9.04, the Issuer shall be subrogated to the rights of the Bondholders to receive such payments from the moneys held by the Trustee after payment in full to the Bondholders.

## **ARTICLE X**

### **SUPPLEMENTAL INDENTURES AND AMENDMENTS**

**Section 10.01 Supplemental Indentures Without Bondholders' Consent.** The Issuer and the Trustee may, from time to time and at any time, enter into trust indentures supplemental hereto, with notice to the Borrower and the Bondholders but without the consent of or notice to any Bondholder, to effect any one or more of the following:

- (a) cure any ambiguity or defect or omission, correct or supplement any provision herein or in any supplemental indenture;
- (b) grant to or confer upon the Trustee for the benefit of the Bondholders any additional rights, remedies, powers, authority or security that may lawfully be granted to or conferred upon the Bondholders or the Trustee which are not contrary to or inconsistent with this Indenture as theretofore in effect or to subject to the pledge and lien of this Indenture additional revenues, properties or collateral;
- (c) add to the covenants and agreements of the Issuer in this Indenture other covenants and agreements thereafter to be observed by the Issuer or to surrender any right or power herein reserved to or conferred upon the Issuer which are not contrary to or inconsistent with this Indenture as theretofore in effect;
- (d) permit the appointment of a co-trustee under this Indenture;
- (e) modify, alter, supplement or amend this Indenture in such manner as shall permit the qualification hereof, if required, under the Trust Indenture Act of 1939 or, the Securities Act of 1993, as from time to time amended, or any similar Federal statute hereafter in effect;



(f) if a series of Bonds are all Book Entry Bonds, amend, modify, alter or replace the Letter of Representations or other provisions relating to Book Entry Bonds.

The Trustee shall not be obligated to enter into any such supplemental indenture which adversely affects the Trustee's own rights, duties or immunities under this Indenture.

**Section 10.02 Supplemental Indentures Requiring Bondholders' Consent.** The Issuer and the Trustee, at any time and from time to time, may execute and deliver a supplemental indenture for the purpose of making any modification or amendment to this Indenture, but only with the written consent, given as provided in Section 10.03 hereof, of the holders of at least fifty-one percent (51%) of the principal amount of the Outstanding Refunding Bonds at the time such consent is given, and in case less than all of the Bonds then Outstanding are affected by the modification or amendment, of the holders of at least fifty-one percent (51%) of the principal amount of the Outstanding Refunding Bonds of the Bonds so affected and Outstanding at the time such consent is given; provided, however, that if such modification or amendment will, by its terms, not take effect so long as any Bonds so affected remain Outstanding, the consent of the holders of such Bonds shall not be required and such Bonds shall not be deemed to be Outstanding for the purpose of any calculation of Outstanding Bonds for the purposes of this Section 10.02. Notwithstanding the foregoing, no modification or amendment contained in any such supplemental indenture shall permit any of the following, without the consent of each Bondholder whose rights are affected thereby: (a) a change in the terms of stated maturity or redemption of any Bond or of any installment of interest thereon; (b) a reduction in the principal amount of or redemption premium on any Bond or in the rate of interest thereon or a change in the coin or currency in which such Bond is payable; (c) the creation of a lien on or a pledge of any part of the Trust Estate, the money or assets pledged under this Indenture or any part thereof; (d) the granting of a preference or priority of any Bond or Bonds over any other Bond or Bonds; (e) a reduction in the aggregate principal amount of Bonds as to which the consent of the Bondholders is required to effect any such modification or amendment; or (f) a change in the provisions of Section 7.15 hereof. Notwithstanding the foregoing, any Bondholder may extend the time for payment of the principal of or interest on such Bond; provided, however, that upon the occurrence of an Event of Default, funds available hereunder for the payment of the principal of and interest on the Bonds shall not be applied to any payment so extended until all principal and interest payments which have not been extended have first been paid in full.

**Section 10.03 Consents of Bondholders and Opinions.** Each supplemental indenture executed and delivered pursuant to the provisions of Section 10.02 hereto shall take effect only when and as provided in this Section 10.03. A copy of such supplemental indenture (or brief summary thereof or reference thereto in form approved by the Trustee), together with a request to Bondholders for their consent thereto in form satisfactory to the Trustee, shall be sent by the Trustee to Bondholders, at the expense of the Borrower, by registered or certified mail, postage prepaid, provided that a failure to mail such request shall not affect the validity of the supplemental indenture when consented to as provided hereinafter. Such supplemental indenture shall not be effective unless and until there shall have been filed with the Trustee (a) the written consents of the holders of at least fifty-one percent (51%) of the principal amount of the Outstanding Refunding Bonds given as provided in Section 11.11 hereof, and

(b) the opinion of Counsel described in Section 10.06 hereof. Any such consent shall be binding upon the Bondholder giving such consent and upon any subsequent holder of such Bond or Bonds and of any Bond or Bonds issued in exchange therefor or in lieu thereof (whether or not such subsequent Bondholder has notice thereof), unless such consent is revoked in writing by the Bondholder giving such consent or a subsequent holder of such Bond or Bonds by filing such revocation with the Trustee prior to the date the Trustee receives the material required in clauses (a) and (b) above.

Notwithstanding anything else herein, if a supplemental indenture is to become effective pursuant to Section 10.02 hereof on the same date as the date of issuance of Additional Bonds, the consents of the underwriters or purchasers of such Additional Bonds shall be counted for purposes of Section 10.02 and this Section.

**Section 10.04 Exclusion of Certain Bonds.** Bonds owned or held by or for the account of the Issuer or the Borrower shall not be deemed Outstanding for the purposes of consent or other action or any calculation of Outstanding Bonds provided for in this Article X, and the Issuer and the Borrower shall not be entitled with respect to such Bonds to give any consent or take any other action provided for in this Article X or elsewhere in this Indenture. At the time of any consent or other action taken under this Article X or elsewhere in this Indenture, the Issuer and the Borrower shall furnish the Trustee Officer's Certificates of the Issuer and the Borrower, upon which the Trustee may rely, describing all Bonds so to be excluded.

**Section 10.05 Notation on Bonds.** Bonds authenticated and delivered after the effective date of any action taken as provided in this Article X may, and, if the Issuer so determines, shall, bear a notation by endorsement or otherwise in form approved by the Trustee as to such action, and in that case upon demand of the Bondholder of any Outstanding Bond at such effective date and presentation of such Bond for the purpose at the Principal Office of the Trustee, or upon any transfer of any Bond Outstanding at such effective date, suitable notation shall be made on such Bond or upon any Bond issued upon any such transfer by the Trustee as to any such action. If the Issuer shall so determine, new Bond forms so modified as in the opinion of the Trustee and the Issuer necessary to conform to such action shall be prepared, authenticated and delivered, and upon demand of any Bondholder of any such Bond then Outstanding shall be exchanged, without cost to such Bondholder, upon surrender of such Bond or Bonds of an equal aggregate principal amount and of the same series, maturity and interest rate, in any Authorized Denomination.

**Section 10.06 Reliance Upon Counsel's Opinion with Respect to Supplemental Indentures.** Subject to the provisions of Section 8.01 hereof, the Trustee in executing or accepting any additional trusts permitted by this Article X or the modifications thereby of the trusts created by this Indenture may rely, and shall be fully protected in relying on, an opinion of Counsel acceptable to the Trustee stating that (a) the execution of such supplemental indenture is authorized or permitted by this Indenture, (b) all conditions precedent to the execution and delivery of such supplemental indenture have been satisfied and (c) the execution and implementation of such supplemental indenture will not adversely affect the tax-exempt status of the interest payable on the Bonds. The Trustee may accept and rely upon such opinion of Counsel as conclusive evidence that any supplemental indenture executed pursuant to the provisions of this Article X complies with the requirements of this Article X.

**Section 10.07 Amendments to Loan Documents Not Requiring Bondholders' Consent.**

Without the consent of or notice to the Bondholders, the Issuer and the Trustee may consent to any amendment, change or modification of the Loan Documents as may be required (a) by the provisions of the Loan Agreement or this Indenture, (b) for the purpose of curing any ambiguity, inconsistency or defect or omission in the Loan Documents, or (c) in connection with an amendment or to effect any purpose for which there could be an amendment of this Indenture pursuant to Section 10.01 hereof.

**Section 10.08 Amendments to Loan Documents Requiring Bondholders' Consent.**

Except for the amendments, changes or modifications contemplated in Section 10.07 hereof, neither the Issuer nor the Trustee shall consent to:

(a) any amendment, change or modification of the Loan Documents which would change the amount or time as of which Loan Payments are required to be paid, without giving notice thereof as provided in this Section 10.08 and receipt of the written consent thereto of the Bondholders of all of the then Outstanding Bonds affected thereby; or

(b) any other amendment, change or modification of the Loan Documents without giving notice thereof as provided in this Section 10.08 and receipt of the written consent thereto of the holders of at least fifty-one percent (51%) of the principal amount of the Outstanding Refunding Bonds.

The consent of the Bondholders to any amendments shall be obtained as provided in Section 10.03 hereof with respect to supplemental indentures.

**Section 10.09 Reliance Upon Opinion of Counsel with Respect to Amendments.** In consenting to an amendment, change or modification to the Loan Documents permitted by this Article X, the Issuer and the Trustee shall be entitled to receive, and (subject, with respect to the Trustee, to Section 8.01 hereof) shall be fully protected in relying upon, an opinion of Counsel acceptable to each of them stating that (a) the execution of such consent, amendment, change or modification is authorized or permitted by this Indenture and the applicable Loan Document, and (b) all conditions precedent to the execution and delivery of such consent, amendment, change or modification have been satisfied. The Trustee and the Issuer may accept and rely upon such opinion of Counsel as conclusive evidence that any such consent, amendment, change or modification complies with the provisions of this Article X.

**Section 10.10 Effect of Supplemental Indentures.** Upon the execution of any supplemental indenture in accordance with the provisions of this Article X, this Indenture shall be modified in accordance therewith, such supplemental indenture shall form a part of this Indenture for all purposes, and every Bondholder of any Bond theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

## ARTICLE XI

### MISCELLANEOUS PROVISIONS

#### **Section 11.01 Appointment, Removal, Duties and Fees of Consulting Engineer.**

(a) The Trustee shall appoint the Consulting Engineer and may, from time to time, in its sole discretion, remove the Consulting Engineer and, subject to consultation with the Borrower, appoint a replacement selected by the Trustee, regardless of whether such replacement is acceptable to the Borrower. Notice of any replacement of the Consulting Engineer shall be given by the Trustee to the Borrower, the Bondholders and to the Consulting Engineer being replaced.

(b) The Consulting Engineer shall be contractually obligated to the Trustee to carry out the activities required of it pursuant to this Indenture and the Loan Agreement, and as otherwise requested by the Trustee and shall be responsible solely to the Trustee. The Consulting Engineer shall deliver to the Trustee within one-hundred twenty (120) days following the end of each Fiscal Year, commencing with the Fiscal Year ending December 31, 1999, a report or survey with respect to the status and the operation and maintenance of the Facility during such preceding Fiscal Year, including the extent to which necessary and proper renewals and replacements have or have not been made to the Facility in accordance with prudent independent power industry practices for facilities similar to the Facility in size and type and whether and to what extent any such renewals and replacements will be required in the then-current Fiscal Year and the extent to which the Borrower was in compliance with the Annual Operating Budget during such preceding Fiscal Year. The Borrower will promptly deliver to the Consulting Engineer such documents and information as the Consulting Engineer may reasonably request in order to deliver the report or survey described above to the Trustee timely.

**Section 11.02 Security Agreement; Financing Statement.** In addition to the assignment by the Issuer of its rights in the Trust Estate to the Trustee, the Issuer hereby acknowledges that, in order to more fully protect, perfect and preserve the rights of the Trustee and the Bondholders in the Trust Estate, the Issuer grants to the Trustee a security interest in the Trust Estate and the proceeds thereof. The Trustee shall file all financing statements, and continuations thereof, in such manner and in such places as may be required by law in order to perfect such security interest and the Issuer agrees to cooperate with the Trustee in connection therewith. **At the time of the closing and delivery of the Refunding Bonds and at the required intervals under applicable State law, the Trustee, at the expense of the Borrower, shall be furnished with an opinion of Counsel setting forth what, if any, actions by the Issuer or Trustee should be taken in order to protect, perfect and preserve such security interest.** The Trustee shall join in the filing of any necessary financing statements and continuations thereof.

The following information is supplied to facilitate filings under the Uniform Commercial Code of the State:

The secured party is U.S. Bank Trust National Association. Its address from which information concerning the security interest may be obtained and its mailing address is: 101 North Third Avenue,

Suite 2000, Phoenix, Arizona 85003. The debtor is Carbon County, Utah. Its mailing address is: 120 East Main, Price, Utah 84501. Attn: Chair.

**Section 11.03 Limitation of Rights.** With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Indenture or the Bonds is intended or shall be construed to give to any Person other than the parties hereto, the Borrower and the Bondholders any legal or equitable right, remedy or claim under or in respect to this Indenture. This Indenture and all of the covenants, conditions and provisions hereof are intended to be and being for the sole and exclusive benefit of the parties hereto, the Bondholders, and the Borrower as herein provided. Notwithstanding the above, the rights of the Borrower hereunder shall be construed in all cases as junior to the rights of the Bondholders.

**Section 11.04 Severability.** If any term or provision of this Indenture or the Refunding Bonds shall be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever, and such term and provision shall be valid and enforced to the fullest extent permitted by law.

**Section 11.05 Notices.** Except as otherwise provided herein, all notices, certificates or other communications hereunder shall be in writing and shall be deemed given upon receipt, by hand delivery, mail, overnight delivery, or electronic means addressed as follows:

If to the Borrower: c/o CP Sunnyside I, Inc.  
111 Market Place, Suite 200  
Baltimore, MD 21202  
Facsimile: 410-230-4849  
Attn: Secretary

With a copy to: Colmac Sunnyside, Inc.  
103 Springer Building  
3411 Silverside Road  
Wilmington, DE 19810  
Facsimile: 302-478-3667

If to the Issuer: 120 East Main Street  
Price, UT 84501  
Attn: Chair  
Facsimile: 434-636-3210

If to the Trustee: U.S. Bank Trust National Association  
101 North First Avenue, Suite 2000

Phoenix, AZ 85003  
Facsimile: (602) 514-5993

In case by reason of the suspension of regular mail service, it shall be impracticable to give notice by first class mail of any event to any Bondholder, the Issuer or the Borrower when such notice is required to be given pursuant to any provisions of this Indenture, then any manner of giving such notice as shall be reasonably satisfactory to the Trustee shall be deemed to be sufficient giving of such notice. The Issuer, the Trustee and the Borrower may, by notice pursuant to this Section 11.04, designate any different addresses to which subsequent notices, certificates or other communications shall be sent. A duplicate copy of each notice, approval, consent, request, complaint, demand or other communication given hereunder by the Issuer, the Borrower or the Trustee to any one of the others shall also be given to the other. For the purposes of this Section 11.04, "electronic means" shall mean telecopy or facsimile transmission or other similar electronic means of communication which produces evidence of transmission. Notwithstanding the foregoing, notices to the Trustee shall be effective only upon receipt.

**Section 11.06 Holidays.** If the date for making any payment or the last date for performance of any act or the exercising of any right, as provided in this Indenture, is not a Business Day, such payment may be made or act performed or right exercised on the next succeeding Business Day with the same force and effect as if done on the nominal date provided in this Indenture, and no interest shall accrue on the payment so deferred during the intervening period.

**Section 11.07 Counterparts.** This Indenture may be executed in any number of counterparts, each of which when so executed and delivered shall constitute an original, but all of which, when taken together, shall constitute but one and the same instrument, and shall become effective when copies hereof shall be delivered to each of the parties hereto, which copies, when taken together, bear the signatures of each of the parties hereto.

**Section 11.08 Applicable Law.** This Indenture shall be governed, in all respects including validity, interpretation and effect by, and shall be enforceable in accordance with, the laws of the State.

**Section 11.09 Immunity of Certain Persons; Non-Recourse Provision.** Notwithstanding anything to the contrary contained herein, for payment of the obligations of the Issuer pursuant to this Indenture and the Bonds, the Trustee, the Bondholders and any other party entitled to seek payment from the Issuer under or to enforce this Indenture and the Bonds will be entitled to look solely to amounts on deposit with and held by the Trustee for the benefit of the Bondholders, subject to the terms of this Indenture, the Project and such collateral, if any, as may now or hereafter be given to secure the payment of the obligations of the Issuer pursuant to this Indenture and the Bonds, and no other property or assets of the Issuer or any officer or director of the Issuer shall be subject to levy, execution or other enforcement procedure for the satisfaction of the remedies hereunder, or for any payment required to be made under this Indenture and the Bonds, or for the performance of any of the covenants or warranties contained herein.

**Section 11.10 Successors and Assigns.** All the covenants, promises and agreements in this Indenture contained by or on behalf of the Issuer, or by or on behalf of the Trustee, shall bind and inure to the benefit of their respective successors and assigns, whether so expressed or not.

**Section 11.11 Form of Documents Delivered to Trustee.** In any case where several matters are required to be certified by, or covered by an opinion of, any specified person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such person, or that they be so certified or covered by only one document, but one such person may certify or give an opinion with respect to some matters and one or more other such persons as to other matters, and any such person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of an official of the Issuer or an officer or representative of the Borrower may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such official or officer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion is based are erroneous. Any opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an official or officials of the Issuer or an officer or officers of the Borrower stating that the information with respect to such factual matters is in the possession of the Issuer or the Borrower, unless such counsel knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to such matters are erroneous.

Where any person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

**Section 11.12 Consent of Holders.** Any consent, request, direction, approval, objection or other instrument required by this Indenture to be signed and executed by the Bondholders may be in any number of concurrent writings of similar tenor and may be signed or executed by such Bondholders in person or by agent appointed in writing. Proof of the execution of any such consent, request, direction, approval, objection or other instrument or of the writing appointing any such agent and of the ownership of Bonds, if made in the following manner, shall be sufficient for any of the purposes of this Indenture, and shall be conclusive in favor of the Trustee with regard to any action taken by it under such request or other instrument, namely:

(a) The fact and date of the execution by any person of any such writing may be proved by the certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the person signing such writing acknowledged the execution thereof, or by an affidavit of any witness to such execution.

(c) The Borrower may establish a record date for the purpose of identifying Bondholders entitled to issue any such consent, request, direction, approval or instrument.

[Signatures on following page.]





IN WITNESS WHEREOF, the Issuer has caused this Indenture to be signed in its name by its Chief Executive Officer and attested by its Attesting Officer, and the Trustee, in acceptance of the trusts created hereunder, has caused this Indenture to be signed in its corporate name by its officer thereunder duly authorized all as of the day and year first above written.

CARBON COUNTY, UTAH

By: \_\_\_\_\_  
Chair

ATTESTED AND COUNTERSIGNED:

By: \_\_\_\_\_  
County Clerk

U.S. BANK TRUST NATIONAL ASSOCIATION,  
as trustee

By: \_\_\_\_\_  
Authorized Officer

APPENDIX A

FORM OF SERIES 1999A BOND

[FORM OF FRONT OF BOND]

R \_\_\_\_\_

UNITED STATES OF AMERICA  
STATE OF UTAH  
CARBON COUNTY  
SOLID WASTE DISPOSAL REVENUE REFUNDING BOND  
(SUNNYSIDE COGENERATION ASSOCIATES PROJECT)  
SERIES 1999A

MATURITY DATE: August 15, 20\_\_ DATED: August 31, 1999 CUSIP NO.

INTEREST RATE: \_\_\_\_\_ (\_\_\_\_\_% ) per annum

PRINCIPAL AMOUNT: \_\_\_\_\_ DOLLARS

REGISTERED OWNER:

Carbon County, Utah, a political subdivision of the State of Utah (the "Issuer"), for value received, hereby promises to pay (but only out of the Facility Revenues, as defined in the Indenture hereinafter mentioned, and other assets pledged therefor as hereinafter mentioned) to the registered owner identified above, or registered assigns, on the maturity date identified above (subject to prior redemption as hereinafter described), the principal amount identified above in lawful money of the United States of America; and to pay interest on the principal amount hereof in like lawful money from the date of initial authentication and delivery hereof until payment of such principal amount shall be discharged as provided in the Indenture, at the rate per annum set forth above, on February 15 and August 15 (or, if such day is not a Business Day, on the next succeeding Business Day) in each year, commencing February 15, 2000 (each, an "Interest Payment Date").

The principal hereof is payable upon presentation hereof upon maturity, redemption or acceleration, at the designated corporate trust office or agency of the Trustee in St. Paul, Minnesota (together with any successor as paying agent under the Indenture, the "Paying Agent"). Interest hereon is payable by check or draft mailed to the owner of Refunding Bonds (as defined in the Indenture) hereof, or by wire transfer if the owner hereof owns at least \$1,000,000 in aggregate principal amount of Refunding Bonds as provided in the Indenture. Such interest is payable to the person whose name appears on the bond registration books of the Trustee, as Bond Registrar, as the owner hereof as of the close of business on the first day of the calendar month in which the Interest Payment Date occurs, at such person's address as it appears on such registration books.

This Bond and the issue of which it is a part are special limited obligations of the Issuer, payable as to principal and interest solely from and secured by a pledge of the revenues and receipts derived from the operation of the Facility (as hereinafter defined), including moneys received by the Trustee pursuant to the Loan Agreement, which are required to be deposited in the Revenue Fund established pursuant to the Indenture. The Bonds are further secured by a pledge and assignment of the Issuer's right, title and interest in and to the Loan Agreement, except as otherwise provided therein. The obligations of the Borrower (as defined herein) pursuant to the Loan Agreement are secured by a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing, dated as of August 1, 1999 (the "Deed of Trust") from the Borrower, as grantor, to U.S. Bank Trust National Association, as trustee, for the benefit of the Trustee, as assignee of the Issuer, as beneficiary and a Security Agreement, dated as of August 1, 1999 (the "Security Agreement"), between the Borrower, as debtor, and the Trustee, as secured party..

Reference is hereby made to the reverse side of this Bond for additional provisions of this Bond.

It is hereby certified and recited that any and all conditions, things and acts required to exist, to have happened and to have been performed precedent to and in the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by the Trust Indenture, dated as of August 1, 1999 (the "Indenture") between the Issuer and the Trustee, and by the Constitution and laws of the State, and that the amount of this Bond is not in excess of the amount of Bonds permitted to be issued pursuant to the Indenture.

This Bond shall not be entitled to any benefit under the Indenture, or become valid or obligatory for any purpose, until the certificate of authentication and registration hereon endorsed shall have been signed by the Trustee.

IN WITNESS WHEREOF, the Issuer has caused this Bond to be executed in its name and on its behalf by the manual or facsimile signature of its Chief Executive Officer and attested by the manual or facsimile signature of its Attesting Officer and its seal (or a facsimile thereof) to be impressed or imprinted hereon all as of the date of initial issuance hereof.

CARBON COUNTY, UTAH

(SEAL)

By: \_\_\_\_\_  
Chair

Attested and Countersigned

\_\_\_\_\_  
County Clerk

# CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This is one of the Issuer's Solid Waste Disposal Revenue Refunding Bonds (Sunnyside Cogeneration Associates Project), Series 1999A, referred to in the within-mentioned Indenture.

TRUSTEE

Date of Authentication: \_\_\_\_\_, 1999

By: \_\_\_\_\_  
Authorized Signatory

[FORM OF REVERSE SIDE OF SERIES 1999A BONDS]

This Bond is one of a duly authorized issue of Bonds of the Issuer designated as "Carbon County, Utah, Solid Waste Disposal Revenue Refunding Bonds (Sunnyside Cogeneration Associates Project), Series 1999A" (the "Series 1999A Refunding Bonds"), issued in the aggregate principal amount of \$59,000,000 pursuant to the provisions of a resolution of the Issuer adopted on August 18, 1999 (the "Bond Legislation") and the Indenture. In addition, the Issuer is concurrently issuing its Solid Waste Disposal Revenue Refunding Bonds (Sunnyside Cogeneration Associates Project), Series 1999B (the "Series 1999B Refunding Bonds" and, together with the Series 1999A Refunding Bonds, the "Refunding Bonds") in the aggregate principal amount of \$18,000,000 pursuant to the Bond Legislation and the Indenture. The Refunding Bonds are issued for the purpose of funding a loan to Sunnyside Cogeneration Associates, a Utah joint venture (the "Borrower"), in order to refund certain prior obligations of the Borrower incurred to secure prior bonds of the Issuer to finance the acquisition, construction and operation of a solid waste disposal facility (the "Facility"). The terms and conditions of the loan to the Borrower of the proceeds of the Refunding Bonds for such purposes and the repayment of such loan are contained in a Loan Agreement, dated as of August 1, 1999 (the "Loan Agreement"), between the Issuer and the Borrower.

Reference is hereby made to the Indenture (copies of which are on file at the designated corporate trust office of the Trustee in Phoenix, Arizona) and all indentures supplemental thereto and to the Bond Legislation for a description of the rights thereunder of the registered owners of the Refunding Bonds of the nature and extent of the security, of the rights, duties and immunities of the Trustee and of the rights and obligations of the Issuer thereunder, to all the provisions of which Indenture the registered owner of this Bond, by acceptance hereof, assents and agrees.

The Refunding Bonds, and the interest thereon, are payable from and secured by a pledge and assignment of Facility Revenues pursuant to the Indenture, and of amounts held in the funds and accounts established pursuant to the Indenture, as and to the extent provided in the Indenture, subject only to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth therein.

The Refunding Bonds are further secured by an assignment to the Trustee of the rights, title and interest of the Issuer in and to the Loan Agreement and the Notes executed and delivered by the Borrower pursuant thereto. In addition, the Borrower has executed and delivered to the Trustee the Deed of Trust, which creates a lien on and security interest in certain real property (more fully described therein), including the Borrower's interest in the real estate on which the Facility is located, and the Security Agreement, which grants to the Trustee a security interest in certain personal property and contract rights.

The Refunding Bonds are special, limited obligations of the Issuer and are not a lien or charge upon the funds or property of the Issuer, except to the extent of the aforementioned pledge and assignment. Under certain circumstances set forth in the Indenture and the Loan Agreement, the Issuer may issue Additional Bonds (as defined in the Indenture) pursuant to the Indenture ranking on a parity

with the Refunding Bonds (the Refunding Bonds and any Additional Bonds are referred to herein collectively as the "Bonds"). Reference is hereby made to the Indenture, the Loan Agreement and the Deed of Trust for a description of the rights, duties and obligations of the Issuer, the Trustee, the Borrower, and the owners of the Bonds and the terms upon which the Bonds are issued and secured.

The Series 1999A Refunding Bonds maturing on August 15, 2011 are subject to mandatory sinking fund redemption, in part, by lot, at the principal amount thereof, together with interest accrued to the date of redemption, on August 15<sup>th</sup> of each year, commencing August 15, 2008, in the following amounts:

<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>
2008	\$1,370,000	2010	\$2,360,000
2009	2,360,000	2011	2,360,000

The Series 1999A Refunding Bonds maturing on August 15, 2023 are subject to mandatory sinking fund redemption, in part, by lot, at the principal amount thereof, together with interest accrued to the date of redemption, on August 15<sup>th</sup> of each of the years 2000 through 2008 and 2012 through 2023, in the following amounts:

<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>
2000	\$ 920,000	2013	\$2,360,000
2001	2,005,000	2014	2,360,000
2002	2,443,000	2015	2,507,000
2003	2,445,000	2016	2,655,000
2004	2,445,000	2017	2,655,000
2005	2,445,000	2018	2,655,000
2006	2,445,000	2019	2,655,000
2007	2,445,000	2020	2,655,000
2008	1,075,000	2021	2,655,000
2009	85,000	2022	2,655,000
2010	85,000	2023	3,540,000
2012	2,360,000		

In addition, the Refunding Bonds are subject to extraordinary mandatory redemption in whole on the first date for which timely notice of redemption can be given, at a price of 100% of the principal amount thereof, plus interest to the date of redemption, (i) in the event of a change of control of the Borrower prior to August 15, 2001 (other than as permitted by the Indenture), (ii) from the net proceeds of any casualty insurance or condemnation award for damage to or loss of the Project and (iii) upon a Determination of Taxability (as defined in the Indenture). In the event of any partial redemption, the maturities of the bonds to be redeemed will be determined by the Borrower and the Trustee will select Refunding Bonds to be redeemed within maturities by lot. The Refunding Bonds are not subject to optional redemption except with the consent of the Required Percentage of Bondholders (as defined in the Indenture).

Notice of any redemption of Refunding Bonds shall be given by mail to the registered owners of any Refunding Bonds to be redeemed at least thirty (30) days prior to the date fixed for redemption.

If this Bond is called for redemption and payment is duly provided therefor as specified in the Indenture, interest shall cease to accrue hereon from and after the date fixed for redemption.

[FORM OF ASSIGNMENT]

For value received the undersigned does) hereby sell, assign and transfer unto \_\_\_\_\_ the within-mentioned registered Bond and hereby irrevocably constitute(s) and appoint(s) \_\_\_\_\_ attorney, to transfer the same on the books of the Bond Registrar with full power of substitution in the premises.

\_\_\_\_\_  
Registered Owner

Dated: \_\_\_\_\_

NOTE: The signature on this assignment must correspond with the name as it appears the Signature guaranteed: name as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever.

NOTE: Signature must be guaranteed by a member firm of the New York Stock Exchange or a commercial bank or trust company.



APPENDIX B

FORM OF SERIES 1999B BOND

[FORM OF FRONT OF BOND]

R \_\_\_\_\_

UNITED STATES OF AMERICA  
STATE OF UTAH  
CARBON COUNTY  
SOLID WASTE DISPOSAL REVENUE REFUNDING BOND  
(SUNNYSIDE COGENERATION ASSOCIATES PROJECT)  
SERIES 1999B

MATURITY DATE: August 15, 2024 DATED: August 31, 1999 CUSIP NO.

INTEREST RATE:

PRINCIPAL AMOUNT:

DOLLARS

REGISTERED OWNER:

Carbon County, Utah, a political subdivision of the State of Utah (the "Issuer"), for value received, hereby promises to pay (but only out of the Facility Revenues, as defined in the Indenture hereinafter mentioned, and other assets pledged therefor as hereinafter mentioned) to the registered owner identified above, or registered assigns, on the maturity date identified above (subject to any right of prior redemption hereinafter mentioned), the principal amount identified above in lawful money of the United States of America; and to pay interest on the principal amount hereof in like lawful money from the date of initial authentication and delivery hereof until payment of such principal amount shall be discharged as provided in the Indenture, on February 15 and August 15 (or, if such day is not a Business Day, on the next succeeding Business Day) in each year, commencing February 15, 2000 (each, an "Interest Payment Date") in an amount equal to one-half of the Borrower's gross revenues minus budgeted expenditures for certain items and before taking into account interest (except interest on the Series 1999A Refunding Bonds (as hereinafter defined)), taxes and depreciation for the six month periods ending on the June 30 and December 31 preceding each Interest Payment Date (as more fully provided in the hereinafter defined Indenture).

The principal hereof is payable upon presentation hereof upon maturity, redemption or acceleration, at the designated corporate trust office or agency of U.S. Bank Trust National Association (the "Trustee") in St. Paul, Minnesota (together with any successor as trustee and/or paying agent under the Indenture, the "Trustee" and the "Paying Agent"). Interest hereon is payable by check or draft mailed to the owner of Refunding Bonds (as defined in the Indenture) hereof, or by wire transfer if the owner hereof owns at least \$1,000,000 in aggregate principal amount of Refunding Bonds as provided in the Indenture. Such interest is payable to the person whose name appears on the bond registration books of the Trustee, as Bond Registrar, as the owner hereof as of me close of business on the first day

of the calendar month in which the Interest Payment Date occurs, at such person's address as it appears on such registration books.

This Bond and the issue of which it is a part are special limited obligations of the Issuer, payable as to principal, redemption price, if any, and interest solely from and secured by a pledge of the revenues and receipts derived from the operation of the Facility (as hereinafter defined), including moneys received by the Trustee pursuant to the Loan Agreement (as defined herein), which are required to be deposited in the Revenue Fund established pursuant to the Indenture. The Bonds are further secured by a pledge and assignment of the Issuer's right, title and interest in and to the Loan Agreement, except as otherwise provided therein. The obligations of the Borrower (as defined herein) pursuant to the Loan Agreement are secured by a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing from the Borrower, as grantor, to St. Paul, Minnesota, as trustee, for the benefit of the Trustee, as beneficiary.

Reference is hereby made to the reverse side of this Bond for additional provisions of this Bond.

It is hereby certified and recited that any and all conditions, things and acts required to exist, to have happened and to have been performed precedent to and in the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by the Trust Indenture, dated as of August 1, 1999 (the "Indenture") between the Issuer and the Trustee, and by the Constitution and laws of the State, and that the amount of this Bond is not in excess of the amount of Bonds permitted to be issued pursuant to the Indenture.

This Bond shall not be entitled to any benefit under the Indenture, or become valid or obligatory for any purpose, until the certificate of authentication and registration hereon endorsed shall have been signed by the Trustee.

IN WITNESS WHEREOF, the Issuer has caused this Bond to be executed in its name and on its behalf by the manual or facsimile signature of its Chief Executive Officer and attested by the manual or facsimile signature of its Attesting Officer [and its corporate seal (or a facsimile thereof) to be impressed or imprinted hereon] all as of the date of original issuance hereof.

CARBON COUNTY, UTAH

(SEAL)

Attest:

By: \_\_\_\_\_  
Chief Executive Officer

\_\_\_\_\_  
Attesting Officer

[FORM OF CERTIFICATE OF AUTHENTICATION AND REGISTRATION]

This is one of the Refunding Bonds referred to in the within-mentioned Indenture, and is one of the Issuer's Solid Waste Disposal Revenue Refunding Bonds (Sunnyside Cogeneration Associates Project), Series 1999B.

U.S. Bank Trust National Association

Date of Authentication: \_\_\_\_\_

By: \_\_\_\_\_  
Authorized Signatory

[FORM OF REVERSE SIDE OF SERIES 1999B BONDS]

This Bond is one of a duly authorized issue of Bonds of the Issuer designated as "Carbon County, Utah, Solid Waste Disposal Revenue Refunding Bonds (Sunnyside Cogeneration Associates Project), Series 1999B" (the "Series 1999B Refunding Bonds"), issued in the aggregate principal amount of \$18,000,000 pursuant to the provisions of a resolution of the Issuer adopted on August \_\_, 1999 (the "Bond Legislation"), and pursuant to the Indenture. In addition, the Issuer is concurrently issuing its Solid Waste Disposal Revenue Refunding Bonds (Sunnyside Cogeneration Associates Project), Series 1999A (the "Series 1999A Refunding Bonds" and, together with the Series 1999B Refunding Bonds, the "Refunding Bonds") in the aggregate principal amount of \$59,000,000 pursuant to the Bond Legislation and the Indenture. The Series 1999A Refunding Bonds and the Series 1999B Refunding Bonds are issued for the purpose of funding a loan to Sunnyside Cogeneration Associates, a Utah joint venture (the "Borrower") in order to refund certain prior obligations of the Borrower incurred to secure prior bonds of the Issuer to finance the acquisition, construction and operation of a solid waste disposal facility (the "Facility"). The terms and conditions of the loan to the Borrower of the proceeds of the Refunding Bonds for such purposes and the repayment of such loan are contained in a Loan Agreement, dated as of August 1, 1999 (the "Loan Agreement"), between the Issuer and the Borrower.

Reference is hereby made to the Indenture (copies of which are on file at the designated corporate trust office of the Trustee in [CITY, STATE]) and all indentures supplemental thereto and to the Bond Legislation for a description of the rights thereunder of the registered owners of the Refunding Bonds of the nature and extent of the security, of the rights, duties and immunities of the Trustee and of the rights and obligations of the Issuer thereunder, to all the provisions of which Indenture the registered owner of this Bond, by acceptance hereof, assents and agrees.

The Refunding Bonds, and the interest thereon, are payable from and secured by a pledge and assignment of Facility Revenues pursuant to the Indenture, and of amounts held in the funds and accounts established pursuant to the Indenture, as and to the extent provided in the Indenture., subject only to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth therein.

The Refunding Bonds are further secured by an assignment to the Trustee of the rights, title and interest of the Issuer in and to the Loan Agreement. In addition, the Borrower has executed and delivered to the Trustee the Deed of Trust, which creates a lien on and security interest in certain real property (more fully described therein), including the Borrower's interest in the real estate on which the Project is located.

The Series 1999B Refunding Bonds are special, limited obligations of the Issuer and are not a lien or charge upon the funds or property of the Issuer, except to the extent of the aforementioned pledge and assignment. Under certain circumstances set forth in the Indenture and the Loan Agreement, the Issuer may issue Additional Bonds (as defined in the Indenture) pursuant to the Indenture ranking on a parity with the Refunding Bonds (the Refunding Bonds and any Additional Bonds are referred to herein collectively as the "Bonds"). Reference is hereby made to the Indenture, the Loan Agreement

and the Deed of Trust for a description of the rights, duties and obligations of the Issuer, the Trustee, the Borrower, and the owners of the Bonds and the terms upon which the Bonds are issued and secured.

The Refunding Bonds are subject to extraordinary mandatory redemption in whole on the first date for which timely notice of redemption can be given, at a price of 100% of the principal amount thereof, plus interest to the date of redemption, (i) in the event of a change of control of the Borrower prior to August 15, 2001 (other than as permitted by the Indenture), (ii) from the proceeds of any casualty insurance or condemnation award for damage to or loss of substantially the entire Project and (iii) upon a Determination of Taxability (as defined in the Indenture). In addition, the Refunding Bonds are subject to extraordinary mandatory redemption in part on the first Interest Payment Date for which timely notice of redemption can be given, at a price of 100% of the principal amount thereof, plus interest to the date of redemption, from the net proceeds of any casualty insurance or condemnation award for damage to or loss of any portion of the Project following any repair, restoration or replacement thereof. In the event of any partial redemption, the maturities of the Refunding Bonds to be redeemed will be determined by the Borrower, and the Trustee will select Refunding Bonds to be redeemed within maturities by lot. The Refunding Bonds are not subject to optional redemption except to the extent necessary to preserve the tax-exempt status of the interest thereon in the event of a change in use within the meaning of Section 1.142-2 of the Treasury Regulations.

Notice of any redemption of Refunding Bonds shall be given by mail to the registered owners of any such Refunding Bonds to be redeemed at least thirty (30) days prior to the date fixed for redemption.

If this Bond is called for redemption and payment is duly provided therefor as specified in the Indenture, interest shall cease to accrue hereon from and after the date fixed for redemption.

[FORM OF ASSIGNMENT]

For value received the undersigned does) hereby sell, assign and transfer unto \_\_\_\_\_ the within-mentioned registered Bond and hereby irrevocably constitute(s) and appoint(s) \_\_\_\_\_ attorney, to transfer the same on the books of the Bond Registrar with full power of substitution in the premises.

\_\_\_\_\_  
Registered Owner

Dated: \_\_\_\_\_

NOTE: The signature on this assignment must correspond with the name as it appears the Signature guaranteed: name as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever.

NOTE: Signature must be guaranteed by a member firm of the New York Stock Exchange or a commercial bank or trust company.

# APPENDIX C

## AMORTIZATION OF SERIES 1999 A REFUNDING BONDS

DATE	PRINCIPAL	INTEREST	TOTAL
February 15, 2000	0.00	1,884,401.90	1,884,401.90
August 15, 2000	920,000.00	2,063,868.75	2,983,868.75
February 15, 2001	0.00	2,031,208.75	2,031,208.75
August 15, 2001	2,005,000.00	2,031,208.75	4,036,208.75
February 15, 2002	0.00	1,960,031.25	1,960,031.25
August 15, 2002	2,443,000.00	1,960,031.25	4,403,031.25
February 15, 2003	0.00	1,873,304.75	1,873,304.75
August 15, 2003	2,445,000.00	1,873,304.75	4,318,304.75
February 15, 2004	0.00	1,786,507.25	1,786,507.25
August 15, 2004	2,445,000.00	1,786,507.25	4,231,507.25
February 15, 2005	0.00	1,699,709.75	1,699,709.75
August 15, 2005	2,445,000.00	1,699,709.75	4,144,709.75
February 15, 2006	0.00	1,612,912.25	1,612,912.25
August 15, 2006	2,445,000.00	1,612,912.25	4,057,912.25
February 15, 2007	0.00	1,526,114.75	1,526,114.75
August 15, 2007	2,445,000.00	1,526,114.75	3,971,114.75
February 15, 2008	0.00	1,439,317.25	1,439,317.25
August 15, 2008	2,445,000.00	1,439,317.25	3,884,317.25
February 15, 2009	0.00	1,357,486.00	1,357,486.00
August 15, 2009	2,445,000.00	1,357,486.00	3,802,486.00
February 15, 2010	0.00	1,279,243.50	1,279,243.50
August 15, 2010	2,445,000.00	1,279,243.50	3,724,243.50
February 15, 2011	0.00	1,201,001.00	1,201,001.00
August 15, 2011	2,360,000.00	1,201,001.00	3,561,001.00
February 15, 2012	0.00	1,125,776.00	1,125,776.00
August 15, 2012	2,360,000.00	1,125,776.00	3,485,776.00
February 15, 2013	0.00	1,041,996.00	1,041,996.00
August 15, 2013	2,360,000.00	1,041,996.00	3,401,996.00
February 15, 2014	0.00	958,216.00	958,216.00
August 15, 2014	2,360,000.00	958,216.00	3,318,216.00
February 15, 2015	0.00	874,436.00	874,436.00
August 15, 2015	2,507,000.00	874,436.00	3,381,436.00
February 15, 2016	0.00	785,437.50	785,437.50
August 15, 2016	2,655,000.00	785,437.50	3,440,437.50
February 15, 2017	0.00	691,185.00	691,185.00

DATE	PRINCIPAL	INTEREST	TOTAL
August 15, 2017	2,655,000.00	691,185.00	3,346,185.00
February 15, 2018	0.00	596,932.50	596,932.50
August 15, 2018	2,655,000.00	596,932.50	3,251,932.50
February 15, 2019	0.00	502,680.00	502,680.00
August 15, 2019	2,655,000.00	502,680.00	3,157,680.00
February 15, 2020	0.00	408,427.50	408,427.50
August 15, 2020	2,655,000.00	408,427.50	3,063,427.50
February 15, 2021	0.00	314,175.00	314,175.00
August 15, 2021	2,655,000.00	314,175.00	2,969,175.00
February 15, 2022	0.00	219,922.50	219,922.50
August 15, 2022	2,655,000.00	219,922.50	2,874,922.50
February 15, 2023	0.00	125,670.00	125,670.00
August 15 2023	3,540,000.00	125,670.00	3,665,670.00
Total	59,000,000.00	54,771,651.65	113,771,651.65



EFiled: Sep 2 2005 11:50AM EDT  
Transaction ID 6616275



## EXHIBIT B

**LOAN AGREEMENT**

**Between**

**CARBON COUNTY, UTAH**

**and**

**SUNNYSIDE COGENERATION ASSOCIATES**

**a Utah joint venture**

**relating to**

**\$59,000,0000**

**CARBON COUNTY, UTAH**

**SOLID WASTE DISPOSAL REVENUE REFUNDING BONDS**

**(SUNNYSIDE COGENERATION ASSOCIATES PROJECT)**

**SERIES 1999A**

**and**

**\$18,000,000**

**CARBON COUNTY, UTAH**

**SOLID WASTE DISPOSAL REVENUE REFUNDING BONDS**

**(SUNNYSIDE COGENERATION ASSOCIATES PROJECT)**

**SERIES 1999B**

**Dated as of August 1, 1999**

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## **LOAN AGREEMENT**

**LOAN AGREEMENT**, dated as of August 1, 1999 (the "Loan Agreement"), between **CARBON COUNTY, UTAH**, a political subdivision of the State of Utah (the "Issuer") and **SUNNYSIDE COGENERATION ASSOCIATES**, a Utah joint venture (the "Borrower").

### **ARTICLE I.**

#### **BACKGROUND, DEFINITIONS, REPRESENTATIONS AND FINDINGS**

##### **1.1 Background.**

(a) The Issuer is a political subdivision of the State of Utah and, pursuant to the Utah Industrial Facilities and Development Act, as amended, comprising Title 11, Chapter 17, Utah Code Annotated 1953 (the "Act"), is authorized to issue its revenue bonds to finance or refinance the costs of any "project" as defined in the Act in order to promote the general welfare, encourage the increase of industry and commerce, and reduce, abate, and prevent pollution within the State of Utah.

(b) Pursuant to an Indenture of Trust, dated as of December 1, 1987, between the Issuer and Bankers Trust Company, as trustee, the Issuer issued its Variable Rate Demand Resource Recovery Revenue Bonds (Sunnyside Power Corporation), 1987 Series, in the total principal amount of \$80,000,000 (the "1987 Bonds") to finance the acquisition, construction, development, and equipping of a solid waste disposal facility and related property and improvements (the "Project") for Sunnyside Power Corporation, a Utah corporation ("SPC"), and loaned the proceeds thereof to SPC pursuant to a Loan Agreement, dated as of December 1, 1987, specifying the terms and conditions of the acquisition and construction of the Project and the lending of the proceeds of the 1987 Bonds to SPC.

(c) SPC subsequently transferred all of its right, title and interest in and to the Project to the Borrower, including all of its right, title and interest in the proceeds of the 1987 Bonds.

(d) At the request of the Borrower, as successor-in-interest to SPC, the Issuer subsequently issued its \$20,000,000 Solid Waste Disposal Revenue Bonds (Sunnyside Cogeneration Project-1990 Short-term Series) (the "1990 Bonds") pursuant to a Loan and Trust Agreement, dated as of December 1, 1990, by and among the Issuer, the Borrower, and INB National Bank, as trustee, for the purpose of financing the costs of completing the Project.

(e) Pursuant to Section 11-17-6 of the Act, the Issuer thereafter refunded the 1987 Bonds by issuing its \$80,000,000 Solid Waste Disposal Refunding Revenue Bonds

(Sunnyside Cogeneration Project-1991 Short-Term Series)(the "1991 Short-term Bonds") pursuant to a Loan and Trust Agreement, dated as of February 15, 1991, by and among the Issuer, the Borrower and Zions First National Bank, as trustee.

(f) Pursuant to Section 11-17-6 of the Act, the Issuer thereafter issued its \$109,500,000 Solid Waste Disposal Refunding Revenue Bonds, Series 1991 (Sunnyside Cogeneration Associates Project)(the "1991 Refunding Bonds"), pursuant to an Indenture of Trust, dated as of March 15, 1991, by and between the Issuer and First Security Bank of Utah, N.A., as trustee, to refund the 1990 Bonds and the 1991 Short-term Bonds and to finance additional costs of the Project, and thereafter issued its \$7,000,000 Solid Waste Disposal Revenue Bonds, Series 1993 (Sunnyside Cogeneration Associates Project) (the "1993 Bonds" and, together with the 1991 Refunding Bonds, the "Prior Bonds"), pursuant to a First Supplemental Indenture of Trust, dated as of June 1, 1993, by and between the Issuer and First Security Bank of Utah, N.A., as trustee, for the purpose of financing certain additional costs of completing the Project.

(g) At the request of the Borrower and the holders of the Prior Bonds, the Issuer has agreed to issue its \$59,000,000 Solid Waste Disposal Revenue Refunding Bonds (Sunnyside Cogeneration Associates), Series 1999A (the "Series 1999A Refunding Bonds") and its \$18,000,000 Solid Waste Disposal Revenue Refunding Bonds (Sunnyside Cogeneration Associates), Series 1999B (the "Series 1999B Refunding Bonds" and, together with the Series 1999A Refunding Bonds, the "Refunding Bonds") pursuant to the Indenture (as hereinafter defined) and upon the terms and conditions set forth in this Loan Agreement, and to exchange the Refunding Bonds with the holders of the Prior Bonds in accordance with the Exchange Agreement (as hereinafter defined).

(h) The issuance and sale of the Refunding Bonds and the exchange of the Refunding Bonds for the Prior Bonds will serve the purposes of the Issuer and the Act and will in all respects conform to the provisions and requirements of the Act.

(i) The Issuer and the Borrower desire to execute and deliver this Loan Agreement pursuant to which the Issuer agrees to issue and exchange the Refunding Bonds for the Prior Bonds and the Borrower has agreed to repay the loan deemed made to the Borrower pursuant this Loan Agreement by paying amounts sufficient to pay, when due, at maturity or upon prior redemption, the principal of and interest on the Refunding Bonds, all in accordance with the requirements of the Act.

(j) The Borrower owns or has a leasehold interest in the Project Site and agrees to execute and deliver, or cause to be executed and delivered, the Deed of Trust and the Security Agreement with respect to the Project and will deliver said Deed of Trust and said Security Agreement to the Trustee as security for the obligations of the Borrower hereunder.

1.2 Definitions. All words and phrases defined in Article I of the Trust Indenture, dated as of August 1, 1999 (the "Indenture"), between the Issuer and U.S. Bank Trust National

Association, as trustee (the "Trustee"), shall have the same meanings in this Loan Agreement. All financial and accounting terms shall be construed in accordance with GAAP (as hereinafter defined). In addition, the following words and phrases shall have the following meanings:

*"Annual Operating Budget"* means the Annual Operating Budget prepared in accordance with the provisions of Section 2.6(b) and (c) hereof.

*"Base Case Facility Projections"* means the projections attached hereto and incorporated herein as Exhibit "A".

*"Constellation"* means Constellation Power, Inc., a Maryland corporation, and its successors and assigns.

*"Debt"* means (a) indebtedness of the Borrower for borrowed money or the deferred purchase price of property or services (excluding obligations under agreements for the purchase of goods and services in the normal course of business that are not more than 30 days past due, or, if more than 30 days past due, are being contested in good faith by the Borrower with adequate moneys or security provided for the payment thereof, but including obligations under agreements relating to the issuance of performance letters of credit or acceptance financing), (b) contingent obligations of the Borrower, and (c) obligations under any agreement providing for a swap, ceiling and/or floor rate, contingent participation, or other hedging mechanism with respect to any debt of the Borrower.

*"ERISA"* means the Employee Retirement Income Security Act of 1974, as amended, including, when applicable, the regulations promulgated pursuant thereto.

*"Event of Default"* means any of the events specified in Section 6.1 hereof to be an Event of Default. A "default" means any event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default.

*"Exchange Agreement"* means the Exchange Agreement, dated as of August 31, 1999, among the Issuer and the holders of the Prior Bonds

*"Facility Documents"* means the Power Purchase Agreement and the Operations and Maintenance Agreement, as such agreements may be amended or modified from time to time as permitted hereby or in the Indenture.

*"GAAP"* means generally-accepted accounting principles applied on a consistent basis in the United States.

*"Indenture"* means the Trust Indenture, dated as of August 1, 1999, between the Issuer and U.S. Bank Trust National Association, as trustee, as amended or supplemented from time to time.



*"Joint Venture Partners"* means the joint venture partners of the Borrower, which are Sunnyside Holdings I, Inc., a Delaware corporation and Sunnyside II, L.P., a Delaware limited partnership.

*"Operations and Maintenance Agreement"* means the Operations and Maintenance Agreement, dated as of March 1, 1995, by and between the Borrower and COSI Sunnyside, Inc., a Maryland corporation (as assignee of Sunnyside Operations Associates, L.P., a Delaware limited partnership), as amended by the First Amendment thereto, dated as of June 8, 1999, as thereafter amended.

*"Permitted Encumbrances"* means the permitted encumbrances set forth in the Deed of Trust.

*"Power Purchase Agreement"* means the Power Purchase Agreement, dated as of January 30, 1987, by and between the Borrower and Utah Power & Light Company, as thereafter amended.

*"Reference Rate"* means that rate which from time to time is publicly announced by the Trustee (or, if the Trustee does not maintain such a rate, its principal banking affiliate) as its prime or other similar rate, with any change in such reference rate to take effect at the opening of business on the day specified in the public announcement of a change in such reference rate. The Trustee or its principal banking affiliate, as the case may be, may, as its customary practice, make loans at rates per annum which are greater than, equal to, or less than the reference rate.

*"Trustee"* means U.S. Bank Trust National Association, or its successor in trust as trustee pursuant to the Indenture.

*"Unassigned Issuer's Rights"* means the rights of the Issuer to receive notices and reimbursement for its expenses incurred in connection with the Indenture, the Loan Documents and the Refunding Bonds and to be indemnified against liabilities in connection therewith, as more fully provided in Sections 5.4 and 5.5 hereof.

**1.3 Borrower Representations and Covenants.** The Borrower represents and covenants that:

(a) It is a joint venture duly organized, validly existing and in good standing under the laws of the State of Utah with full power and authority to enter into this Loan Agreement, the Deed of Trust, the Security Agreement and the Facility Documents and to perform its obligations hereunder and thereunder. The Joint Venture Partners are the only partners of the Borrower. The execution and delivery of this Loan Agreement, the Deed of Trust, the Security Agreement, and the Facility Documents by the Borrower have been duly authorized and approved by all necessary action and will not violate or conflict with the Borrower's joint venture agreement or any material agreement, indenture or other

instrument, or any regulation or order by which the Borrower or its properties, or the Joint Venture Partners of the Borrower or their properties, are bound.

(b) The Facility complies in all material respects with all applicable Federal, state and local laws or ordinances (including rules and regulations) relating to zoning, building, safety and environmental quality.

(c) The Borrower (i) has entered into or will promptly enter into and thereafter maintain in effect all contracts and agreements reasonably required for the operation and maintenance of the Facility in a manner consistent with prudent independent power industry practices for facilities similar to the Facility in size and type and (ii) subject to the filing by the Borrower of a Notice of Self-Recertification as a Qualifying Small Power Production Facility with the Federal Energy Regulatory Commission pursuant to 18 C.F.R. §292.207(b), possesses all permits and other authorizations from any applicable government authority necessary to own, maintain, and operate the Facility, and the Borrower is not in violation of or in default under any thereof in any material respect. To the best of the Borrower's knowledge, without independent investigation, each other party to the Facility Documents possesses all licenses, permits, franchises, patents, copyrights, trademarks and trade names, or rights thereto required to perform its duties pursuant thereto, and such party is not in violation of any valid rights of others with respect to any of the foregoing.

(d) All utility services and water rights necessary for the maintenance and operation of the Facility for its intended purposes as contemplated herein have been obtained and are available at the Project Site, provided that the Borrower expects to install an additional well at the Project Site within two years following the date hereof.

(e) All roads or other rights of access necessary for the full utilization of the Facility have been completed or obtained, or the necessary rights-of-way therefor have been acquired by the appropriate governmental authority or others, and dedicated to public use and accepted by such governmental authority.

(f) The Borrower has good and marketable fee or leasehold title to the Project Site, free and clear of all liens, encumbrances, trusts or charges (other than Permitted Encumbrances), and has the power and authority to subject the same to the Deed of Trust.

(g) No portion of the proceeds from the sale of the Refunding Bonds will be used to provide working capital or to finance inventory for the Borrower.

(h) There is no action, suit or proceeding pending or, to the knowledge of the Borrower or its Joint Venture Partners, threatened, against the Borrower or its Joint Venture Partners or affecting any of its or their respective properties or assets before any court or arbitrator or any governmental body, agency or official which, if determined adversely, could materially adversely affect the business of the Borrower or its Joint Venture Partners or which in any manner questions the validity of, or the Borrower's

performance of, this Loan Agreement, the Deed of Trust, the Security Agreement, or the Facility Documents.

(i) Neither the representations of the Borrower contained in this Loan Agreement, the Deed of Trust or the Security Agreement, nor any written statement furnished by the Borrower to the Issuer in connection with the transactions contemplated hereby, contain any untrue statement of material fact or omit to state a material fact necessary to make the statements contained herein or therein, in light of the circumstances under which they were made, not misleading. There is no fact that the Borrower has not disclosed to the Bondholders that materially and adversely affects the ability of the Borrower to perform its obligations pursuant to this Loan Agreement, the Deed of Trust, the Security Agreement, the Facility Documents, or any other documents or transactions contemplated hereby and thereby.

(j) The Borrower and each of its Joint Venture Partners has filed or caused to be filed all Federal, state and local tax returns which are required to be filed and has paid all taxes shown on such returns and on all assessment notices received by it to the extent that such taxes and assessments have become due, except to the extent the same are being contested in good faith in appropriate proceedings and for which adequate reserves have been provided. All Federal and state income taxes and all other taxes and assessments of any nature with respect to which the Borrower and each Joint Venture Partner of the Borrower are obligated have been paid or adequate accruals and/or reserves have been set up therefor in accordance with GAAP.

(k) This Loan Agreement, the Deed of Trust, the Security Agreement, and the Facility Documents to which it is a party are valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with their respective terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium, or other laws from time to time in effect or that affect creditor's rights generally or by limitation upon the availability of equitable remedies (whether considered in a proceeding at law or in equity).

(l) The execution, delivery and performance by the Borrower of this Loan Agreement, the Deed of Trust, the Security Agreement, and the Facility Documents to which it is a party are not subject to the approval or consent of any Federal, state or local governmental authority, except as may heretofore have been obtained.

(m) Subject to the consent of Utah Power & Light Company pursuant to the Power Purchase Agreement, none of the execution, delivery and performance of this Loan Agreement, the Deed of Trust, the Security Agreement, and the Facility Documents to which it is a party, nor the consummation of the transactions contemplated hereby or thereby, will result in the breach of any of the terms, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any lien or encumbrance (except for Permitted Encumbrances) upon the Facility pursuant to any material contract or agreement (other than this Loan Agreement, the Deed of Trust, the

Security Agreement, and the Facility Documents) to which the Borrower or any of its Joint Venture Partners is a party, or by which any of them may be bound.

(n) Any material reports and forms required to be filed with the Internal Revenue Service, the Securities and Exchange Commission and any applicable state regulatory authorities by the Borrower or any of its Joint Venture Partners have been filed.

(o) After giving effect to the transactions contemplated hereby, the Borrower will not be in material default in the performance, observance or fulfillment of any of its obligations, covenants or conditions contained in any debenture, note or other evidence of indebtedness of the Borrower or in any indenture or agreement of the Borrower.

(p) There are no ERISA plans for the Borrower or any Joint Venture Partner of the Borrower and neither the Borrower nor any Joint Venture Partner of the Borrower has maintained, contributed to, or been obligated to contribute to any ERISA plan at any time within the preceding five (5) years.

(q) The Borrower has not conducted any business other than the business contemplated by this Loan Agreement and, except for certain liabilities to be satisfied or reserved for on the delivery date of the Refunding Bonds, it has no outstanding debt or other material liabilities other than pursuant to or permitted by this Loan Agreement, the Deed of Trust, the Security Agreement, and the Facility Documents, and it is not a party to or bound by any material contract other than this Loan Agreement, the Deed of Trust, the Security Agreement and the Facility Documents.

(r) Neither the Borrower nor any of its Joint Venture Partners is an investment company or a company "controlled by" an investment company, within the meaning of the Investment Company Act of 1940, as amended.

(s) The Borrower will not, solely as a result of the ownership, maintenance, or operation of the Facility, the sale of electricity therefrom or the execution and delivery of any Facility Document or any transaction contemplated hereby or thereby, be subject to financial, organizational or rate regulation as an "electric utility", "electric corporation", "electrical company", "public utility", "public utility holding company" or similar entity under the Public Utility Holding Company Act of 1935 or the Federal Power Act.

(t) The Borrower makes each of the representations and warranties made by the Borrower in any of the Facility Documents to which the Borrower is a party to and for the benefit of the Issuer and Trustee as if the same were set forth in full herein.

(u) Except as and to the extent resulting from the presence of "bee hive kilns" on the Project Site or from fugitive dust emissions, to the best of the Borrower's knowledge, there has been no generation, use, handling, storage or disposition of any Hazardous Materials (as defined below) at the Project Site, in violation of any applicable

law, rule or regulation, nor, to the best of the Borrower's knowledge, has there been or is there threatened any release of any Hazardous Materials on or at the Project Site in violation of any applicable law, rule or regulation or which created or will create an obligation to report or remediate such release. For the purposes hereof, "Hazardous Materials" means any "hazardous substance", including all "hazardous wastes", as defined in the Resource Conservation and Recovery Act, as amended, or regulations adopted pursuant thereto, and any "hazardous substances" or "hazardous materials", as defined in the Federal Comprehensive Environmental Response, Compensation and Liability Act, as amended, or regulations adopted pursuant thereto.

1.4 Issuer Findings and Representations. The Issuer hereby confirms its findings and represents that:

(a) The Issuer is a political subdivision of the State and is authorized pursuant to the Act to enter into the transactions contemplated by this Loan Agreement, the Indenture and the Exchange Agreement and to carry out its obligations hereunder and thereunder.

(b) The Issuer has the necessary power under the Act, and has duly taken all action on its part required, to execute and deliver this Loan Agreement, the Indenture and the Exchange Agreement and to undertake the refinancing of the Project. The execution and performance of this Loan Agreement, the Indenture and the Exchange Agreement by the Issuer will not violate or conflict with any restriction or agreement or instrument by which the Issuer or any of its properties are bound or constitute a default under any of the foregoing.

(c) The undertaking of the refinancing of the Project by the Issuer will promote the public welfare of the Issuer and the State.

(d) Neither this Loan Agreement nor any of the payments to be received by the Issuer hereunder have been assigned or pledged by the Issuer in any manner or for any purpose other than as provided in the Indenture as security for the payment of the Refunding Bonds.

(e) A public hearing relating to the issuance of the Refunding Bonds was held on August 18, 1999, following reasonable public notice thereof, and following such public hearing, the Refunding Bonds were approved by the governing body of the Issuer, which is the applicable elected representative of the Issuer for the purposes of Section 147(f) of the Code.

(f) Within the meaning of the Utah Public Officers' and Employees' Ethics Act (Title 67, Chapter 16, Utah Code Annotated 1953, as amended) to the best knowledge of the Issuer, after due inquiry, no "public officer" or "public employee", as defined in said act, has a "substantial interest" in or is an officer, director, agent, employee, investor in or owner of the Borrower or its Joint Venture Partners.

## ARTICLE II.

### OWNERSHIP AND OPERATION OF FACILITY

2.1 Ownership of the Facility. As between the Issuer and the Borrower, the Borrower shall be the sole owner of the Facility and the Borrower will be entitled to physical possession and control of the Facility at all times prior to the occurrence of an Event of Default, and will be liable at all times for all risk, loss and damage with respect to the Facility and the taking of possession of the Facility by the Trustee in accordance with the Indenture, the Deed of Trust and the Security Agreement.

2.2 Specification of Project; Additions and Changes. Pursuant to the Act, the Issuer and the Borrower agree that the Borrower shall own, operate and maintain the Project, as generally described in Exhibit "B" hereto and as defined in the Indenture, in the manner solely determined by the Borrower. Subject to the applicable provisions of the Act, this Loan Agreement, the Deed of Trust, the Security Agreement and the Facility Documents, the Borrower, in its discretion, may make additions to, deletions from and changes in the Project from time to time and, in connection therewith, will supplement the information contained in Exhibit "B" hereto by filing with the Issuer and the Trustee such supplemental information as is necessary to reflect the same so that the Issuer and the Trustee will be able to ascertain the nature of the facilities covered by this Loan Agreement; provided, however, the Borrower shall not make additions to, deletions from or changes in the Project without the prior written consent of the Trustee and the Consulting Engineer, provided that the consent of the Trustee shall not be required for additions to, deletions from or changes in the Project made by the Borrower pursuant to the provisions of Section 5.17 hereof. Notwithstanding the foregoing, with respect to material changes in the use of the Project, including changes resulting from additions to or deletions from the Project, the Borrower shall in each instance obtain an opinion of Bond Counsel to the effect that such changes shall not adversely affect the exclusion from gross income of interest on the Refunding Bonds and shall deliver to the Trustee a certificate of an Authorized Representative of the Borrower to the effect that such change will not materially adversely affect the security of the holders of the Refunding Bonds. Nothing contained in this Section 2.2 shall limit the Borrower's right to acquire and develop any additional facilities not financed by the Issuer, which do not adversely affect the exclusion from gross income of interest on the Refunding Bonds or the security of the holders of the Refunding Bonds.

2.3 Refunding Bonds Not to Become Arbitrage Bonds. As provided in the Indenture, the Trustee will invest moneys held by the Trustee as directed in writing by an Authorized Representative of the Borrower. The Issuer and the Borrower hereby covenant to each other and to the Bondholders that, notwithstanding any other provision of this Loan Agreement or any other instrument, neither of them will make or instruct the Trustee to make any investment or other use of the Project Fund, the Revenue Fund, the Bond Fund, the Debt Service Reserve Fund, the Working Capital Fund or other proceeds of the Refunding Bonds which would cause the Refunding Bonds to be arbitrage bonds within the meaning of Section 148(a) of the Code and the Treasury regulations thereunder, and that they will comply with the requirements of such Section and Treasury regulations so long as any Refunding Bonds are Outstanding.

2.4 Solid Waste Disposal Facilities. The Borrower will not take or permit to be taken any action, including any change in the use or design of the Project, which would have the effect, and will not omit to take any action the omission of which would have the effect, directly or indirectly, of causing interest on the Refunding Bonds to be included in gross income for Federal income tax purposes. In accordance with the foregoing, the Borrower will assure that at least 65% by weight or by volume of the total materials introduced into the Project each year will constitute "solid waste", in accordance with the provisions of Section 1.103-8(f)(2)(ii)(b) of the Treasury Regulations as of the date of delivery of the Refunding Bonds. So long as any of the Refunding Bonds are Outstanding, the Borrower will operate or cause any of its permitted successors in interest to operate the Project as a solid waste disposal facility within the meaning of Section 142(a)(6) of the Code and Section 1.103-8(f)(2)(ii) of the Treasury Regulations thereunder, unless an opinion of Bond Counsel is furnished to the Borrower and the Trustee to the effect that the operation of the Project as other than a solid waste disposal facility will not adversely affect the exclusion from gross income for Federal income tax purposes of interest on the Refunding Bonds.

2.5 Projections. To the best of Borrower's knowledge, the Base Case Facility Projections (i) are based on reasonable assumptions as to all legal and factual matters material to the estimates set forth therein, and (ii) are consistent with the provisions of the Facility Documents. In the opinion of the Borrower, the textual material accompanying the Base Case Facility Projections discloses all information reasonably necessary for an understanding of the Base Case Facility Projections, and does not contain any material misstatements or omit any information necessary to make such information not materially misleading. Irrespective of the Base Case Facility Projections, the Borrower understands that it is obligated, and expects to have the ability, to pay and discharge its obligations hereunder in full in accordance with the terms hereof and does not expect the obligations represented hereby to be forgiven in any respect. The Borrower's ability to pay and discharge its obligations hereunder in full does not depend upon the Borrower's receipt of any Federal income tax benefit from interest deductions for any amount of original issue discount on the Series 1999B Refunding Bonds.

2.6 Operation of Facility and Annual Operating Budget.

(a) The Borrower agrees to keep the Facility, or cause the same to be kept, in good operating condition consistent with prudent independent power industry operating practices for facilities similar to the Facility in size and type (as contemplated in the Operations and Maintenance Agreement), all applicable permits and applicable legal requirements and all applicable requirements of the Facility Documents, and make or cause to be made all repairs (structural and nonstructural, extraordinary or ordinary) necessary to keep the Facility in such condition; and (ii) operate the Facility, or cause the same to be operated, in a manner consistent with prudent independent power industry operating practices for facilities similar to the Facility in size and type (as contemplated in the Operations and Maintenance Agreement) and in compliance in all material respects with the terms of the applicable Facility Documents so as to assure, to the extent reasonably possible, the maximum uninterrupted output of electric energy consistent with the Power Purchase Agreement.

(b) Not less than sixty (60) days prior to the beginning of each of its Fiscal Years, commencing with the Fiscal Year beginning on January 1, 2000, the Borrower will draft an Annual Operating Budget, detailing, by month, the anticipated revenues, debt service, maintenance, repair and operation expenses (including a reasonable allowance for contingencies), major maintenance reserves, if any, and all other anticipated Operation and Maintenance Costs for the Facility for such Fiscal Year, it being expressly understood that the Annual Operating Budgets for the Fiscal Years ending December 31, 2000 and 2001 will provide for an amount not to exceed an aggregate of \$750,000 for the purpose of drilling a new water well. The Operation and Maintenance Costs in each such Annual Operating Budget which are subject to escalation limitations in the Facility Documents shall not, absent extraordinary circumstances, confirmed by the Consulting Engineer, be increased by more than the amounts provided in such Facility Documents.

(c) Copies of the Borrower's draft of the Annual Operating Budget for each such Fiscal Year shall be promptly furnished to the Consulting Engineer to determine whether the proposed Annual Operating Budget is consistent with prudent operating and engineering standards and practices in the independent power industry for facilities similar to the Facility in size and type. In addition, if, during any of the Borrower's Fiscal Years ending on or before December 31, 2004, the Facility Revenues reflected in the Base Case Facility Projections for such Fiscal Year exceed by fifteen percent (15%) or more the Facility Revenues reflected in the Borrower's draft of the Annual Operating Budget for such Fiscal Year, or the gross expenditures reflected in the Borrower's draft of the Annual Operating Budget for such Fiscal Year exceed by fifteen percent (15%) or more the gross expenditures reflected in the Base Case Facility Projections for such Fiscal Year, the Borrower shall submit to the Consulting Engineer, concurrently with its draft of the Annual Operating Budget, a variance report setting forth the reason or reasons for such deviation and the Borrower's proposed actions, if any, in respect thereof. The Borrower shall incorporate such reasonable suggestions and recommendations as may be made by the Consulting Engineer, which are not objected to by the Trustee, into a final Annual Operating Budget, which shall then be prepared, approved by the Consulting Engineer and filed with the Trustee not less than thirty (30) days prior to the beginning of each of its Fiscal Years. If a final Annual Operating Budget for a given Fiscal Year of the Borrower is not established by the process described in this section by the end of the preceding Fiscal Year of the Borrower, the Annual Operating Budget for such Fiscal Year shall, until a final Annual Operating Budget for such Fiscal Year is so established, be deemed to be the same as the Annual Operating Budget for the preceding Fiscal Year.

(d) The Borrower will operate and maintain the Facility, or cause the Facility to be operated and maintained, within the final Annual Operating Budget for each Fiscal Year, as approved by the Consulting Engineer and filed with the Trustee; provided, however, that the Annual Operating Budget may be amended as hereinafter provided to account for contingencies which could not reasonably have been foreseen and, in such event, the Borrower shall operate and maintain the Facility, or cause the Facility to be operated and maintained, within the Annual Operating Budget as so amended.



(e) The Borrower shall review the final Annual Operating Budget for each Fiscal Year quarterly during such Fiscal Year and if the estimated revenues and expenditures set forth therein do not substantially correspond to the actual revenues and expenses of the Facility, the Borrower shall prepare and present an amended Annual Operating Budget for the remainder of such Fiscal Year to the Consulting Engineer and the Trustee, which shall be subject to the approval of the Consulting Engineer, which approval will not be unreasonably withheld or delayed, and not objected to by the Trustee, and upon receipt of such approval shall file such amended Annual Operating Budget with the Trustee.

2.7 Borrower Has No Claim Against Trustee or Consulting Engineer. The Borrower acknowledges that it will not have any cause of action or claim against the Trustee or any Consulting Engineer resulting from any decision made or not made, any action taken or not taken or any advice given or not given by the Trustee or such Consulting Engineer in the performance in good faith of their duties hereunder and pursuant to the Indenture except in the case of the Trustee's or the Consulting Engineer's negligence or willful misconduct. In addition, the Borrower shall provide such documents and information to the Trustee or the Consulting Engineer as the Trustee or the Consulting Engineer may reasonably require and request in order to perform their responsibilities hereunder and pursuant to the Indenture.

### ARTICLE III.

#### REFINANCING THE PROJECT AND ADDITIONAL COVENANTS

##### 3.1 Issuance of Refunding Bonds.

(a) The Refunding Bonds are being issued for the purpose of refunding the Prior Bonds and to refinance the Borrower's obligations with respect to the Project. In order to refinance the Borrower's obligations with respect to the Project, the Issuer, at the request of the Borrower, and with the consent of the holders of the Prior Bonds, will issue and deliver the Refunding Bonds to the holders of the Prior Bonds in accordance with the Exchange Agreement.

(b) The proceeds of the Refunding Bonds will be deemed to be loaned to the Borrower in accordance with the provisions of Section 4.1 hereof to repay in full the Borrower's obligations with respect to the Prior Bonds. The Refunding Bonds will be issued pursuant to the Indenture, will be payable solely from the sources described in the Indenture and may be exchanged with the holders of the Prior Bonds at the times, in the amounts and otherwise on the terms set forth in the Exchange Agreement.

3.2 Security for Refunding Bonds. The Borrower agrees that the principal of or the redemption price and interest on the Refunding Bonds shall be payable in accordance with the Indenture and the right, title and interest of the Issuer hereunder and in and to the payments and other amounts paid or payable by the Borrower hereunder, other than reasonable fees and expenses payable or reimbursable to the Issuer or payment made in respect to indemnification of

the Issuer, shall be assigned and pledged by the Issuer to the Trustee to secure the payment of the Refunding Bonds. The Borrower agrees that all of the rights accruing to or vested in the Issuer hereunder may be exercised, protected and enforced by the Trustee for or on behalf of the Bondholders in accordance with the provisions hereof and of the Indenture.

3.3 No "Same Issue" Bonds. Neither the Borrower nor any other principal user of the Project, nor any "related person" within the meaning of section 144(a)(3) of the Code, has participated, or will participate, in the offering for sale or sale of any issue of "private activity bonds" within the meaning of Section 141 of the Code, which are or will be required to be aggregated with the Refunding Bonds as part of the "same issue" within the meaning of Section 144(a) of the Code.

3.4 Prohibited Activities. The Borrower covenants that no portion of the proceeds of the Refunding Bonds shall be used (directly or indirectly) to provide an airplane, or a skybox or other luxury box, a health club facility, a facility used primarily for gambling or a store, the principal business of which is the sale of alcoholic beverages for consumption off premises, within the meaning of Section 147(e) of the Code.

#### ARTICLE IV.

#### LOAN AND REPAYMENT

4.1 Amount and Source of Loan. Concurrently with the issuance and delivery of the Refunding Bonds, the Issuer will, upon the terms and conditions of this Loan Agreement, be deemed to have loaned to the Borrower an amount equal to the aggregate principal amount of the Refunding Bonds for application (as provided in Article III hereof) to refinance the Project. As evidence of the Borrower's indebtedness pursuant to this Loan Agreement, the Borrower will execute and deliver to the Issuer its Notes substantially in the form attached hereto as Exhibit "C", which Notes shall be pledged to the Trustee as security for the Refunding Bonds.

4.2 Repayment of Loan.

(a) The Borrower shall repay the loan of the Refunding Bond proceeds made hereunder with payments which, as to amounts and due dates, correspond to the payments of principal of and interest on the Refunding Bonds, whether at maturity or upon redemption or acceleration. Pursuant to Section 4.6 hereof, the Borrower authorizes and consents to the deposit of the Facility Revenues in the Revenue Fund and the disbursement thereof as provided in Section 4.03 of the Indenture.

(b) The unpaid principal amount of the Notes is prepayable in the amounts and under the circumstances set forth in Article VII hereof and will be mandatorily prepaid in whole or in part as provided in Article VII hereof and at the times and in amounts corresponding to the mandatory redemption of the Bonds in accordance with Article III of the Indenture. All payments of principal and interest shall be made to the Trustee at its designated corporate trust

office at St. Paul, Minnesota or at such other office as may be designated by the Trustee in such coin or currency of the United States of America as at the time of payments shall be legal tender for the payment of public and private debts.

(c) It is intended and agreed by the Borrower that the total payments of principal and interest on the Notes will be sufficient to enable the Issuer to pay, in full, as the same become due, the total amount of principal and interest (whether at maturity or upon redemption or acceleration) payable with respect to the Refunding Bonds or the redemption price, if applicable, on each Interest Payment Date or otherwise, as the case may be; provided that any amounts held by the Trustee in the Debt Service Reserve Fund established pursuant to the Indenture with respect to any Interest Payment Date shall be credited against the payment due on such date; and, provided further, that, subject to the provisions of the next succeeding sentence, if at any time the amount held by the Trustee should be sufficient (and remain sufficient) to pay at the times required the total aggregate principal of and interest on the Refunding Bonds then remaining unpaid, the Borrower shall not be obligated to make any further payments hereunder. Notwithstanding the provisions of the preceding sentence, if on any date the amount held by the Trustee is insufficient to make the required payments of principal (whether at maturity or upon redemption or acceleration) and interest on the Refunding Bonds on such date, the Borrower shall forthwith pay such deficiency hereunder to the Trustee who shall deposit the same into the Bond Fund. Whenever payment has been made in respect of the principal of (whether at maturity or upon redemption or acceleration) or interest on all or any portion of the Refunding Bonds in accordance with the Indenture and, in particular, Article IX thereof, the payment obligation of the Borrower pursuant to this Loan Agreement shall be deemed paid to the extent of such payment or provision therefor and is considered to be a payment of principal of or interest on the Refunding Bonds. If the Refunding Bonds are thereby deemed to be paid in full, this Loan Agreement shall terminate and the Borrower shall have no further obligations hereunder except as provided in Sections 5.3, 5.4 and 5.5 hereof, Section 9.04 of the Indenture and those obligations which, by their terms, expressly survive the termination hereof. Subject to the foregoing or unless the Borrower is entitled to a credit under this Loan Agreement or the Indenture, all payments shall be in the full amount required by this Loan Agreement.

(d) If an "Event of Default" described in Section 6.1 hereof occurs, the unpaid principal of the Notes may be declared or may become due and payable in the manner and to the effect provided in Article VI hereof.

(e) In addition, the Borrower agrees as follows:

(1) on or before the delivery of any series of Additional Bonds pursuant to the Indenture to the purchasers thereof, the Borrower shall pay to the Trustee for deposit, as set forth in the Indenture, such amounts as shall be required to bring the Borrower current on its monthly payment obligations as described in subsection (c) above;

(2) on or before any redemption date for the Refunding Bonds occurring or provided for pursuant to the Indenture, to the extent moneys are not already available

therefor in the Bond Fund and the Debt Service Reserve Fund, the Borrower shall pay to the Trustee a sum equal to the redemption price of the Refunding Bonds;

(3) upon the acceleration of all or any portion of the Refunding Bonds Outstanding pursuant to the Indenture, the Borrower shall pay to the Trustee for the account of the Issuer for deposit in the Bond Fund, as a prepayment installment hereunder, an amount equal to the principal amount of the Refunding Bonds so accelerated and interest accrued thereon to the date of payment; and

(4) concurrently therewith, the Borrower shall pay to the Trustee compensation for its services and reimbursement for its costs in accordance with the provisions of Section 8.05 of the Indenture.

(f) Each payment made into the Bond Fund pursuant to the Indenture shall be deemed to be a credit against the corresponding obligation of the Borrower pursuant to this Section 4.2.

(g) In the event the Borrower should fail to make any of the payments required by Section 4.2(a), Section 5.3 or Section 5.4 hereof, the item or installment so in default shall continue as an obligation of the Borrower until the amount in default shall have been fully paid, and the Borrower agrees to pay the same on demand with interest thereon, or with respect to payments to the Trustee with interest thereon, as a delinquency charge for the extra expense incurred in the administration of such payments, pursuant to Section 7.02 of the Indenture, from the date on which such amount became overdue until paid in full at a fluctuating rate equal to the Reference Rate plus two percent (2%) per annum. Payments made pursuant to this subsection with respect to installments or items payable pursuant to Sections 4.2(a), 5.3, or 5.4 hereof shall be deemed to be made, respectively, pursuant to said Sections 4.2(a), 5.3, or 5.4.

(h) In the event the due date of any installment payment due pursuant to Section 4.2(a) hereof is not a Business Day, such installment shall be due on the next succeeding Business Day, and no interest shall accrue for the period between such date and such succeeding Business Day.

(i) In addition to the amounts described above, the Borrower agrees as follows:

(1) Facility Revenues shall be used to the extent necessary to maintain the Required Reserve in the Debt Service Reserve Fund in accordance with the provisions of Section 4.03(a)(iii) of the Indenture. In the event that amounts are transferred from the Debt Service Reserve Fund to the Bond Fund to pay debt service on the Refunding Bonds, the amount available in the Debt Service Reserve Fund (including any Debt Service Reserve Fund Guarantee(s)) shall be replenished up to the Required Reserve from Facility Revenues deposited in the Revenue Fund, in the manner and to the extent required by Section 4.03(a)(iii) of the Indenture and any Debt Service Reserve Guarantee.

(2) Facility Revenues shall be applied to the extent necessary to replenish the Working Capital Fund at the times and in the amounts provided in Section 4.03(d) of the Indenture.

(3) The Borrower shall also pay amounts required for deposit to the Rebate Fund as provided in Section 5.12 hereof.

4.3 Delivery of Borrower Certificates. Within ninety (90) days following the end of each of its Fiscal Years, the Borrower shall deliver to the Trustee a certificate stating to the best knowledge of the Authorized Representative of the Borrower that the Borrower is not in default under this Loan Agreement, the Deed of Trust, the Security Agreement, or any Facility Agreement, or, if the Borrower shall be in default of its obligations under any such agreement or instrument, specifying the particulars of such default. The Trustee shall provide copies thereof to any Bondholder upon request therefor.

4.4 No Defense or Setoff. The obligations of the Borrower to make payments required by Section 4.2 hereof and to perform and observe the other agreements on its part contained herein shall be absolute and unconditional without defense or setoff by reason of any default by the Issuer under this Loan Agreement or under any other agreement between the Borrower and the Issuer or for any other reason, including without limitation, damage to or loss or destruction of all or any part of the Project and any acts or circumstances that may constitute or give rise to failure of consideration, impossibility of performance, commercial frustration of purpose, or failure of the Issuer to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Loan Agreement, it being the intention of the parties that the payments required hereunder will be paid in full when due without any delay or diminution whatsoever.

4.5 Revenue Fund. The Borrower hereby authorizes the creation and establishment of the Revenue Fund by the Trustee pursuant to the Indenture for the purpose of receiving for deposit therein all Facility Revenues (except investment earnings on the Funds held by the Trustee and pledged to secure the Refunding Bonds, which shall remain on deposit in each respective Fund and be applied as provided in the Indenture). The Revenue Fund shall constitute a fund of the Borrower to be held and administered as provided in Section 4.03 of the Indenture, and is pledged as security for the payment of principal of and interest on the Refunding Bonds. The Borrower hereby consents to and approves those provisions of the Indenture affecting the operation and administration of the Revenue Fund.

4.6 Lien on Facility and Pledge of Facility Revenues. The Notes and obligations of the Borrower hereunder shall be secured by, and the Borrower hereby grants to the Issuer and the Trustee as security therefor, (i) a lien on and a security interest in the Facility, which shall be evidenced by the Borrower's execution and delivery to the Trustee of the Deed of Trust and the Security Agreement concurrently herewith, and (ii) a lien on, a security interest in and a pledge of the Facility Revenues and any interest of the Borrower in the Funds and accounts (except the Rebate Fund) held from time to time by the Trustee pursuant to the Indenture.

4.7 Assignment of Issuer's Rights. As security for payment for the Bonds, the Issuer will, in the Indenture, pledge and assign to the Trustee all of the Issuer's rights under this Loan Agreement and the Notes (except the Unassigned Issuer's Rights). The Borrower consents to such pledge and assignment and agrees to make payments hereunder directly to the Trustee without defense or setoff by reason of any dispute between the Borrower and the Trustee. As a consequence of such pledge and assignment, the Borrower acknowledges that the Trustee shall be permitted to act in the place and stead of the Issuer with respect to this Loan Agreement, the Deed of Trust and the Security Agreement, whether or not the Refunding Bonds are then in default.

## ARTICLE V.

### COVENANTS OF THE BORROWER

5.1 Borrower to Maintain its Legal Existence. The Borrower will maintain its legal existence and its qualification to do business in the State and will not dissolve, liquidate or otherwise dispose of or pledge any of the assets comprising the Facility (except as contemplated by the Loan Documents or the Facility Documents or with the consent of the Required Percentage of Bondholders); provided, however, that the Borrower shall be permitted to dispose of obsolete equipment and assets not exceeding \$500,000 in any Fiscal Year subject to notice thereof to the Trustee. In addition, the Borrower will give prompt written notice to the Trustee of any change of control of the Borrower, including as described in Section 3.03 of the Indenture.

#### 5.2 Maintenance of Insurance.

(a) The Borrower shall maintain or cause to be maintained on its behalf in effect at all times the types of insurance required by the following provisions together with any other types of insurance required hereunder, with insurance companies rated "A" or better by Best's Insurance Guide and Key Ratings (or an equivalent rating by another nationally recognized insurance rating agency of similar standing if Best's Insurance Guide and Key Ratings shall no longer be published) or other insurance companies of recognized responsibility which are not objected to by the Trustee, the following insurance coverage until all obligations of the Borrower pursuant to this Loan Agreement have been fully discharged.

1. Comprehensive or commercial general liability insurance for the Facility on an "claims made" basis, including, but not limited to, coverage for premises/operations, explosion, collapse and underground hazards, products/completed operations, broad form property damage, blanket contractual liability for both oral and written contracts, independent contractor's and personal injury, for the Borrower and for contractors, with primary coverage limits of no less than \$1,000,000 for injuries or death to one or more persons or damage to property resulting from any one occurrence and a \$1,000,000 aggregate limit.

The comprehensive or commercial general liability policy shall also include a cross-liability or severability of interest clause. Policy exclusions which are not standard to the general liability coverage form or which are added by manuscript endorsements

must first be approved by the Trustee or an independent insurance consultant engaged by the Trustee. Any work performed on the Facility by others shall not commence until a certificate of insurance has been delivered verifying coverage outlined above to be in place and naming as additional insured the Borrower and the Trustee. Deductibles in excess of \$100,000 shall be subject to annual review and approval by the Trustee or an independent insurance consultant retained by the Trustee.

2. Automobile liability insurance, including, without limitation coverage for owned, non-owned and hired automobiles for both bodily injury and property damage with limits of no less than \$1,000,000 per occurrence with respect to bodily injury or death and containing appropriate no-fault insurance provisions or other endorsements as in accordance with state legal requirements;

3. Workers' compensation insurance, and such other forms of insurance which the Borrower is required by law to provide for the Facility, providing statutory benefits and other states' endorsement and USL&H Act coverage (if any exposure exists), covering losses resulting from injury, sickness, disability, or death of the employees of the Borrower performing work with respect to the Facility. The Borrower shall require that all said contractors and subcontractors maintain all forms or types of insurance with respect to their employees as are required by law with limits of not less than \$1,000,000 per accident, \$1,000,000 for disease, and \$1,000,000 for each employee.

4. "All risk" property insurance coverage in the full amount of the insurable value of the Project, naming the Trustee as a "loss payee", and including a full replacement cost endorsement on an "agreed amount" basis (with no deduction for depreciation), providing coverage against loss or damage by fire, lightning, windstorm, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, other risk from time to time included under "all risk" or "extended coverage" policies, earthquake, flood (provided, however, that earthquake and flood coverage shall be subject to annual aggregate limits of \$100,000,000 or such lower limit as may be agreed to by the Trustee, or an independent insurance consultant engaged by the Trustee, which in the Trustee's or such consultant's reasonable discretion is commercially feasible), collapse, sinkhole, subsidence and other perils as the Trustee or such insurance consultant may from time to time require to be insured, and the Borrower shall also maintain or cause to be maintained with respect to the Project boiler and machinery coverage on a "comprehensive" basis including breakdown and repair with limits not less than full replacement cost of the insured objects. The Borrower shall also maintain or cause to be maintained with respect to the Facility business interruption insurance on both property and boiler policies, in an amount sufficient to satisfy any policy coinsurance conditions, but not less than the greater of \$24,000,000, or the continuing expenses and profits for a period of twelve (12) months. The Borrower shall also maintain or cause to be maintained, expediting or extra expense coverage in an amount not less than \$1,000,000 with respect to the policies required by this section, all such policies shall have a deductible of not greater than \$100,000 per loss (except for turbine generator and key equipment identified by endorsement which is subject to a per loss deductible of \$100,000); except earthquake

and flood coverage shall have a deductible of not greater than five percent (5%) of values at the time of loss, and business interruption insurance shall have a deductible of not greater than thirty (30) days. The policy/policies shall include increased cost of construction coverage, debris removal, and building ordinance coverage to pay for loss of "undamaged" property which may be required to be replaced due to enforcement of local, state, or Federal ordinances.

5. Umbrella Excess Liability Insurance of not less than \$10,000,000 for the Borrower, which shall be on a per occurrence basis and over and above coverage provided by the policies described in (1), (2), and (3) above. The umbrella and/or excess policies shall not contain endorsements which restrict coverage as set forth in paragraphs (1), (2), and (3) above and which are provided in the underlying policies. If the policy or policies provided under this subsection (5) contain(s) aggregate limits applying to other operations of the Borrower other than the Facility, and such limits are diminished by ten percent (10%) or more by any incident, occurrence, claim, settlement, or judgment against such insurance, the Borrower shall take immediate steps to restore such aggregate limits or shall provide other equivalent insurance protection for such aggregate limits. In the event the aggregate policy limits hereunder are not restored within thirty (30) days of any such reduction, an authorized representative of the insurer shall immediately verify in writing that the aggregate on the policy is renewable, and the Trustee will be notified any time during the policy period that the aggregate limit is reduced.

6. Environmental impairment liability coverage with limits and a deductible to be mutually determined by the Consulting Engineer and Borrower's insurance consultant in consultation with the Trustee and the Borrower.

7. Such other insurance (as to risks covered, policy amounts, policy provisions or otherwise) as, under prudent independent power industry practices, are customarily procured for property and facilities similar in nature, use, and location to the Facility, which the Trustee, the Consulting Engineer or an independent insurance consultant engaged by the Trustee may reasonably require.

8. Such increased insurance (as to risks covered, policy amounts and policy provisions or otherwise) relating to the Project as the Trustee, the Consulting Engineer or an independent insurance consultant engaged by the Trustee may from time to time reasonably request and shall be obtainable at commercially reasonable rates.

Policies issued pursuant hereto shall contain the following unless waived by the Trustee or by an independent insurance consultant engaged by the Trustee:

(A) Unintentional Errors and Omissions - It is hereby understood and agreed that the coverage afforded by this policy shall not be invalidated or affected by any unintentional errors, omissions, or improper description of premises, hoists, escalators, or otherwise mentioned in this policy, provided the error, omission, and/or description is reported as soon as practical after discovery.



(B) Notice of Injurious Exposure to Conditions - It is agreed that failure of any agent, servant, or employee of the insured other than the owner, partner of any partnership, or an officer of the insured to notify the Borrower of any occurrence of which he has knowledge shall not invalidate the insurance afforded by this policy as respects the named insured.

(C) Knowledge of Injurious Exposure to Conditions - It is hereby understood and agreed that knowledge of an occurrence by the agent, servant, or employee of the insured shall not in itself constitute knowledge by the insured, unless an executive officer of any corporation insured or the owner or a partner of any partnership insured shall have received such notice from its or their agent, servant, or employee.

All insurance coverage shall be on a "no coinsurance basis" and in such form (including the form of the loss payable clauses) as shall be acceptable to Trustee or an independent insurance consultant engaged by the Trustee (which acceptance shall not be unreasonably withheld).

All such policies shall name the Trustee as an additional insured. The all risk property insurance described in Section 5.2(a)(4) and any other property insurance covering loss or damage to the Facility shall name the Trustee as lender, mortgagee and loss payee and shall provide that any payment thereunder for any loss or damage with respect to the Facility shall be made to the Trustee, except that such policies may provide that any payments of less than \$1,000,000 (not to exceed \$1,000,000 in any year) made in respect of any single casualty or other occurrence may be paid solely to the Borrower, unless the Trustee shall have notified the respective insurer that an Event of Default has occurred hereunder and is continuing.

(b) All policies except worker's compensation shall insure the interests of the Borrower and shall name the Trustee as a loss payee or an additional insured, as appropriate, as well as the Borrower. All policies covering real or personal property or business interruption shall name the Trustee as loss payee in accordance with Lender's Loss Payable Endorsement 438 BFU. Upon payment and satisfaction of all of the Borrower's obligations under and termination of this Loan Agreement, the Trustee will instruct the insurers to name the Borrower, or such successor credit provider or other Person as the Borrower shall specify, as loss payee or additional insured as appropriate. Each such policy shall expressly provide that all provisions thereof, except the limits of liability (which shall be applicable to all insureds as a group) and liability for premiums (which shall be solely a liability of the Borrower) shall operate in the same manner as if there were a separate policy covering each such insured. Each such policy shall waive subrogation against the Trustee or the Borrower and shall waive any right of the insurers to any setoff or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of the Borrower or the Trustee. Each such policy shall provide that if any premium, or installment is not paid when due, or if such insurance is to be cancelled, terminated, or materially changed for any reason whatsoever, the insurers (or their representatives) will promptly notify the Borrower and the Trustee, and any such cancellation, termination, or change shall not be effective until 30 days (10 days for non-payment) after receipt of such notice by the

Trustee, and that appropriate certification shall be made to the Borrower by each insurer with respect thereto. The all-risk policy described in Section 5.2(a)(4) hereof shall further provide that the insurance shall not be invalidated by any reason of any noncompliance by the Borrower with any policy provisions and shall insure the interests of the Trustee regardless of, and any losses shall be payable notwithstanding:

1. any act of negligence, including any breach of any condition, declaration, or warranty contained in any such policy of insurance by the Borrower or any other Person;
2. the occupation, operation, or use of the Facility for purposes more hazardous than permitted by the terms of the policy, provided that if the Trustee obtains knowledge of such change in occupation, operation, or use, it will notify the insurer of such change;
3. any foreclosure or other proceeding or notice of sale relating to the Facility; or
4. any change in the title to or ownership of all or any portion of the Facility.

(c) In the event that the Borrower fails to respond in a timely and appropriate manner (as reasonably determined by the Trustee) to take any steps necessary or reasonably requested by the Trustee to collect from any insurers for any loss covered by any Insurance required to be maintained by subsections (a)(1) or (a)(4) of this Section 5.2, the Trustee shall have the right to make all proofs of loss, adjust all claims and/or receive all or any part of the proceeds of the foregoing insurance policies, either in its own name or the name of the Borrower; provided, however, that the Borrower shall, at the Borrower's own cost and expense, make all proofs of loss and take all other steps necessary or reasonably requested by the Trustee to collect from insurers for any loss covered by any insurance required to be obtained by this Section 5.2.

(d) On or before the renewal date for all such policies, the Borrower shall furnish to the Trustee a certificate signed by a duly Authorized Representative of the Borrower, showing the insurance then maintained by or on behalf of the Borrower pursuant to this Section 5.2 and stating that such insurance complies in all material aspects with the terms hereof, together with evidence of payment of the premiums thereon. In the event that at any time the insurance as herein provided shall be reduced or cease to be maintained, then (without limiting the rights of the Trustee hereunder in respect of the Event of Default which arises as a result of such failure) the Trustee may at its option maintain the insurance required hereby and, in such event, the Borrower shall reimburse the Trustee upon demand for the cost thereof together with interest thereon at a rate equal to the Reference Rate plus an additional two percent (2%) per annum, but in no event in excess of the maximum rate permitted by applicable law.

(e) In the event any insurance (including the limits or deductibles thereof) hereby required to be maintained, other than insurance required by law to be maintained, shall not be reasonably available and commercially feasible in the commercial insurance market, the

Borrower shall not be obligated to comply with such requirement; provided, however, that (i) the Borrower shall first file with the Trustee written reports prepared by two independent insurance advisers of recognized national standing certifying that such insurance is not reasonably available and commercially feasible in the commercial insurance market for electric and steam (if appropriate) generating plants of similar type and capacity (and, in any case where the required amount is not so available, certifying as to the maximum amount which is so available) and explaining in full the basis for such conclusions; (ii) at any time thereafter, but not more often than twice a year, the Trustee may request, and the Borrower shall furnish to the Trustee within fifteen (15) days following any such request, supplemental reports updating such prior reports and reaffirming such conclusions; and (iii) any such waiver shall be effective only so long as such insurance shall not be reasonably available and commercially feasible in the commercial insurance market, it being understood that the failure of the Borrower to timely furnish any such supplemental report shall be conclusive evidence that such waiver is no longer effective because such condition no longer exists, but that such failure is not the only way to establish such non-existence. Failure at any time to satisfy the conditions for any waiver of an insurance requirement set forth in the proviso to the preceding sentence shall not impair or be construed as a relinquishment of the Borrower's ability to obtain a waiver of an insurance requirement pursuant to the preceding sentence at any other time upon satisfaction of such conditions.

(f) Each time any policy written on a "claims-made" basis is not renewed or the retroactive date of such policy is to be changed, the Borrower shall obtain for each such policy or policies the broadest basic and supplemental extended reporting period, or "tail", coverage reasonably available in the commercial insurance market for each such policy or policies and shall provide the Trustee with proof that such basic and supplemental extended reporting period, or "tail", coverage has been obtained.

5.3 Payment of Trustee's, Paying Agent's and Consulting Engineer's Compensation and Expenses. The Borrower agrees to pay, and will pay when due, the reasonable compensation and expenses of the Trustee, the Paying Agent, and the Consulting Engineer under the Indenture and hereunder, excluding, however, all of their fees and costs incurred in exchanging the Prior Bonds pursuant thereto and the Exchange Agreement and in the preparation of any official statement, offering memorandum or other disclosure materials relating to the Refunding Bonds, but including their fees and costs incurred in connection with payment and redemption of the Refunding Bonds thereunder. Upon the acceptance by a successor Trustee of the duties and obligations of the Trustee under the Indenture, the Borrower shall pay the fees and expenses then due and payable to the former Trustee.

5.4 Payment of Issuer's Expenses. Except to the extent payment is provided from another source, the Borrower will pay the Issuer's reasonable expenses, including legal and accounting fees, incurred in connection with the issuance of the Refunding Bonds and the performance by the Issuer of any and all of its functions and duties under this Loan Agreement or the Indenture, including, but not limited to, all duties which may be required of the Issuer by the Trustee and the Bondholders.

#### 5.5 Release and Indemnification Covenant.

(a) The Borrower agrees to indemnify and hold the Issuer, the Trustee, the Consulting Engineer and the Bondholders, and their respective successors, assigns, agents, officers, directors and employees harmless from and against any liability for, or expense from, any loss or damage to property or any injury to or death of any person that arises out of any claim in connection with the transactions contemplated by this Loan Agreement, the ownership, financing, maintenance, operation, or use of the Project, or the authorization, offering, issuance or exchange of any Refunding Bond; provided, however, that the foregoing indemnity shall not extend to any loss or claim imposed on, incurred by or asserted against the Issuer, the Trustee, the Consulting Engineer, the Bondholders, or their respective successors, assigns, agents, officers, directors or employees, to the extent the same relates to or arises out of the willful misconduct or gross negligence of the party seeking such indemnification, as the case may be, or of their respective successors, assigns, agents, officers, directors, or employees. The Act prescribes and the parties intend that no general obligation or liability or charge against the general credit or taxing power of the Issuer shall occur by reason of executing this Loan Agreement, the issuance and exchange of the Refunding Bonds, or the performance of any act requested of it by the Borrower. Nevertheless, if the Issuer shall incur any such pecuniary liability in such event, the Borrower shall indemnify and hold the Issuer harmless by reason thereof.

(b) Without limiting the foregoing, the Borrower further agrees to pay, and to indemnify the Issuer, the Trustee, the Consulting Engineer, the Bondholders, and their respective successors, assigns, agents, officers, directors and employees, against, any and all liabilities, losses, damages, claims or actions of any nature whatsoever (including any reasonable attorneys' fees and expenses), incurred by the Issuer, the Trustee, the Consulting Engineer or the Bondholders without bad faith, gross negligence, or willful misconduct arising from or in connection with the performance or observance by it of the terms and conditions of this Loan Agreement, including, without limitation, (1) any injury to, or the death of, any person or any damage to property of the Project or in any manner growing out of or connected with the use, nonuse, condition or occupation of the Project or any part thereof or resulting from the condition of the Project or any part thereof, (2) any other act or event occurring upon, or affecting, any part of the Project, (3) violation by the Borrower of any contract, agreement or restriction affecting the Project or the use thereof of which the Borrower has notice and which shall have existed at the date hereof or shall have been approved by the Borrower or of any law, ordinance or regulation affecting the Project or any part thereof or the ownership or use thereof, (4) liability, losses, damages, claims or actions arising out of the offer and sale of the Bonds or a subsequent sale or distribution of the Bonds, or (5) any certification made or certificate executed and delivered by the Issuer in connection with the issuance of the Refunding Bonds or the exchange of the Refunding Bonds for the Prior Bonds. The Borrower hereby further agrees that the Issuer, the Trustee, the Consulting Engineer and the Bondholders, and their respective successors, assigns, agents, officers, directors and employees shall not incur any liability to the Borrower, and shall be indemnified against all liabilities, in exercising or refraining from asserting, maintaining or exercising any right, privilege or power given to the Issuer, the Trustee, or the Consulting Engineer pursuant to this Loan Agreement if the Issuer, the Trustee or the Consulting Engineer, as the case may be, is acting in good faith and without gross negligence or willful

misconduct or in reliance upon a written request of the Borrower. The covenants of indemnity by the Borrower contained in this paragraph shall extend to the Issuer, the Trustee, the Consulting Engineer, and their respective present and former officers, employees, attorneys and agents and shall survive the termination of this Loan Agreement.

The Borrower's duties under Sections 5.3 and 5.4 hereof and this Section 5.5 shall survive the payment of the Refunding Bonds and the termination of this Loan Agreement.

The foregoing provisions of this Section 5.5 relate to the Issuer in its capacity as Issuer of the Refunding Bonds and not to any activities or actions based on or relating to the performance of the Issuer's other governmental functions.

**5.6 Payments of Ad Valorem Taxes, Other Governmental Charges and Utility Charges.** The Borrower will pay or cause to be paid during the term of this Loan Agreement, as the same respectively become due, (i) all taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Facility, or any machinery, equipment or other property acquired by the Borrower in substitution for, as a renewal or replacement of, or a modification, improvement or addition to, the Facility (including, without limiting the generality of the foregoing, any taxes levied upon the Facility which, if not paid, will become a charge on the Facility or the Facility Revenues therefrom prior to or on a parity with the security interest of the Trustee thereon and the pledge or assignment to be created and made in the Indenture, the Deed of Trust or the Security Agreement), or any interest therein or the Facility Revenues derived therefrom or hereunder, (ii) all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Facility and (iii) all assessments and charges lawfully made by any governmental body for public improvements that may be secured by a lien on the Facility; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Borrower shall be obligated to pay only such installments as are required to be paid during the term of this Loan Agreement.

The Borrower may, at the Borrower's expense and in the Borrower's name, in good faith, by proper proceedings and with adequate reserves being provided therefor, in accordance with GAAP, contest any such taxes, assessments and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless by nonpayment of any such items the security interest afforded pursuant to the terms of the Indenture, the Deed of Trust or the Security Agreement will be materially endangered or the Facility or any essential part thereof will be subject to loss or forfeiture, in which event such taxes, assessments or charges shall be paid forthwith. The Issuer will, upon the reasonable request and at the expense of the Borrower, cooperate fully with the Borrower in any such contest. In the event that the Borrower shall fail to pay any of the foregoing items required by this Section to be paid by the Borrower (except if the Borrower is contesting any such items by appropriate proceedings and has provided adequate reserves therefor), the Issuer or the Trustee may (but shall be under no obligation to) pay the same and any amounts so advanced therefor by the Issuer or the Trustee shall become an additional obligation of the Borrower to the party making the advancement, which amounts,

together with interest thereon to the extent permitted by law at a fluctuating interest rate equal to the Reference Rate plus an additional two percent (2%) per annum, the Borrower hereby agrees to pay.

5.7 Borrower's Leasing of Portions of Facility. The Borrower may, with the consent of the Required Percentage of Bondholders, at any time lease any portions of the Facility, upon compliance with the following conditions:

- (a) No Event of Default shall have occurred and be continuing hereunder;
- (b) No such lease shall relieve the Borrower of or in any way limit or otherwise affect its obligation to make the payments required pursuant to Article IV hereof or for the performance of all other covenants hereunder and under the Deed of Trust or the Security Agreement, for all of which the Borrower shall remain primarily liable; and
- (c) The leasing of such portions of the Facility by the Borrower for the purposes set forth in the lease shall not affect the classification of the Project as a "Project" under the Act and shall not in the opinion of Bond Counsel materially adversely affect the security of the Bondholders or cause interest on the Refunding Bonds to be included in gross income of the Bondholders for Federal income tax purposes.

5.8 Damage or Condemnation. Damage to, or destruction or condemnation of all or a portion of the Facility or the use thereof shall not terminate this Loan Agreement, or cause any abatement of or reduction in the payments to be made by the Borrower under this Loan Agreement or otherwise affect the respective obligations of the Issuer or the Borrower hereunder, unless (i) such damage, destruction or condemnation is such that, in the reasonable judgment of the Borrower, it will be impractical to repair, restore or replace the portions damaged, destroyed or condemned, (ii) the insurance or condemnation proceeds, together with any moneys provided by the Borrower, will be sufficient to redeem and pay in full all of the Outstanding Refunding Bonds, including any interest accrued thereon to the date of redemption, in accordance with the provisions of Section 3.04 of the Indenture and (iii) the Borrower notifies the Trustee, within sixty (60) days following the occurrence of such damage, destruction or condemnation, of the Borrower's election to prepay all amounts due or to become due hereunder and to cause the redemption of all of the Outstanding Refunding Bonds in accordance with the provisions of Section 3.04 of the Indenture and delivers to the Trustee the insurance or condemnation proceeds and any other moneys necessary for such purpose within sixty (60) days thereafter.

In any event, the proceeds of any casualty insurance or condemnation award shall be paid to the Trustee, and shall be applied to redeem the Refunding Bonds in full, as provided above, or to repair, restore or replace the Facility, or the portion(s) thereof damaged, destroyed or condemned, within a period of six (6) months following the event giving rise to the need for such repair, restoration or replacement, at the end of which period any insurance or condemnation proceeds not used for such purpose shall be applied, to the extent thereof, to redeem Refunding Bonds in accordance with the provisions of Section 3.04 of the Indenture, with a corresponding credit against the amount due under this Loan Agreement. As a condition of making any

payment of such moneys for the repair, restoration or replacement of the Facility, the Borrower shall provide evidence to the Trustee that, or deposit with the Trustee sufficient moneys so that, there will be adequate moneys available to complete such repair, restoration or replacement.

Moneys deposited with the Trustee for any redemption of Refunding Bonds pursuant to Section 3.04 of the Indenture shall be deposited in the Bond Fund established pursuant to Section 4.01 of the Indenture, provided that, if the Borrower intends to repair, restore or replace the Facility, or the portion (s) thereof damages, destroyed or condemned, the Trustee shall deposit such moneys in the Project Fund established pursuant to Section 4.01 of the Indenture and thereafter disburse such moneys in accordance with the provisions thereof. The Borrower shall promptly notify the Trustee of the institution of any proceedings for the condemnation or taking of any portion of the Facility.

5.9 Determination of Taxability. The Borrower shall give prompt written notice to the Issuer and the Trustee of its receipt of any oral or written notice or advice from the Internal Revenue Service that a Determination of Taxability is under consideration or has occurred. In the event a Determination of Taxability occurs, the Borrower shall accelerate payment of any amounts due pursuant to Section 4.2(a) of this Loan Agreement and shall pay to the Trustee, not later than sixty (60) days following the Determination of Taxability, for deposit in the Bond Fund, and for application by the Trustee to the redemption of Outstanding Refunding Bonds at the date fixed for redemption thereof, as provided in Section 3.05 of the Indenture, an amount equal to the portion of the principal amount of such Outstanding Refunding Bonds required, in accordance with the Determination of Taxability, to be redeemed, plus accrued interest thereon to such redemption date.

Said accelerated prepayments shall also include the reasonable expenses of redemption and payment of the Refunding Bonds, including the reasonable fees and expenses of the Trustee and any Paying Agents in connection therewith.

5.10 Borrower's Performance Under Indenture. The Borrower agrees, for the benefit of the Bondholders from time to time, to do and perform all acts and things contemplated in the Indenture to be done or performed by it.

5.11 Financial Statements. The Borrower will deliver to the Trustee (who shall deliver a copy to any Bondholder who so requests):

(a) As soon as available but in no event more than forty-five (45) days following the close of each fiscal quarter of the Borrower, unaudited financial statements and operating data of a type customary for facilities similar to the Facility (including the capacity factor, megawatt hours produced and availability) and as soon as available but in no event more than one hundred twenty (120) days following the end of each Fiscal Year of the Borrower, audited financial statements of the Borrower for such Fiscal Year, prepared in accordance with GAAP, setting forth in comparative form the corresponding figures for the previous Fiscal Year.

(b) Simultaneously with the delivery of each set of the audited annual financial statements referred to in clause (a) above, a certificate of an Authorized Representative responsible for the Borrower's financial matters (i) certifying that the representations and warranties contained in Section 1.3 hereof are true, correct and complete in all material respects as of the date thereof, (ii) setting forth in reasonable detail the calculations required to establish whether the Borrower was in compliance with the requirements of Sections 5.2, 5.6, 5.11, 5.12, 5.16, 5.17 and 5.19 hereof on the date of such financial statements, and (iii) stating that he or she has caused an investigation to be made concerning the Borrower's performance of its duties and obligations hereunder for such Fiscal Year and based on such investigation there exists on the date of such certificate no Event of Default or other event which, with the giving of notice or the passage of time or both, would become an Event of Default hereunder, or, if any Event of Default or other such event then exists, setting forth the details thereof and the action the Borrower is taking or proposes to take with respect thereto;

(c) Promptly upon becoming aware of any Determination of Taxability relating to the Refunding Bonds, a notice of such Determination of Taxability setting forth the details thereof;

(d) Forthwith upon the occurrence of any Event of Default, or any event which, with the giving of notice or the passage of time or both, would constitute an Event of Default, a certificate of an Authorized Representative of the Borrower setting forth the details thereof and the action which the Borrower is taking or proposes to take with respect thereto; and

(e) From time to time, such additional information regarding the financial position or business operations of the Borrower as the Trustee may reasonably request.

5.12 Arbitrage Rebate. The Borrower shall calculate or cause to be calculated any required rebate amount and deliver to the Trustee any moneys required to be deposited in the Rebate Fund in accordance with the Tax Certificate and Agreement. At the request of the Borrower, the provisions of this Section 5.12 may be varied as provided in an opinion of Bond Counsel delivered by the Borrower to the Issuer and the Trustee and as set forth in an amendment to this Loan Agreement pursuant to Section 9.5 of this Loan Agreement and, upon receipt of such opinion of Bond Counsel and compliance with the provisions of Section 9.5 hereof, the Issuer shall enter into any such amendment. The Borrower shall provide the Trustee with copies of all such calculations, within thirty (30) days following completion thereof, and shall retain records of such calculations for six (6) years following the retirement of the last of the Refunding Bonds. The Trustee shall not be responsible for calculating rebate amounts or for the adequacy or correctness of any rebate amount or rebate calculations. The Trustee shall be deemed conclusively to have complied with the provisions of this Loan Agreement, the Indenture and any other agreement relating to the Refunding Bonds regarding the calculation and payment of rebate if it follows the directions of the Borrower and it shall have no independent duty to review or verify such calculations or enforce compliance with such rebate requirements.

5.13 Discharge of Obligations. The Borrower shall promptly pay or otherwise satisfy and discharge all of its obligations and indebtedness and all demands and claims against it as and



when the same become due and payable, other than any thereof whose validity, amount or collectibility is being contested in good faith and by proper proceedings if the Borrower shall have set aside on its books and shall maintain adequate reserves for the payment of the same in conformity with GAAP; provided, however, that no such contest of obligations of the Borrower incurred pursuant to the Indenture, this Loan Agreement, the Deed of Trust or the Security Agreement shall forgive the requirement of prompt payment hereunder.

5.14 Compliance with Covenants. At all times, the Borrower shall comply with all material terms, conditions, covenants and provisions of any liens at such time existing upon its properties or any part thereof or securing any of its indebtedness; provided, however, that the Borrower may in good faith and by appropriate proceedings contest any of such liens, with adequate reserves being maintained therefore in accordance with GAAP.

5.15 No Further Encumbrances. Except for liens or security interests permitted by this Loan Agreement, the Deed of Trust or the Security Agreement, and those contemplated by the Facility Documents, the Borrower will not, without the prior written consent of the Trustee, create, place, suffer, or permit to be created or placed or, through any act or failure to act, acquiesce in the placing of or allow to remain, any mortgage, pledge, lien (statutory, constitutional, or contractual), security interest, encumbrance or charge on, or conditional sale or other title retention agreement (all of which shall be referred to herein as a "Lien"), regardless of whether the same are expressly subordinate to the liens and security interests of the Deed of Trust and the Security Agreement, with respect to the Facility or any part thereof, other than the Permitted Encumbrances. The Borrower will hold the Trustee harmless from and against all costs of protecting its interests created under the Deed of Trust and the Security Agreement. The Borrower may contest the imposition of any Lien imposed by operation of law as provided by the Deed of Trust or the Security Agreement, and during the period of such contest the Borrower shall not be deemed to be in violation of this Section 5.15; provided, however, that no such contest shall be permitted unless the Borrower properly secures and adequately indemnifies the Trustee, to the extent that it, in its sole discretion, deems appropriate to protect its interest; and provided, further, that during the pendency of such proceedings, the Borrower, shall maintain adequate reserves therefor in accordance with GAAP and shall certify to the Trustee annually that adequate reserves are being maintained where so required.

5.16 Additional Indebtedness. The Borrower will not create or incur or suffer to exist any Debt except:

(a) Debt arising or permitted under this Loan Agreement, the Indenture, or any Facility Documents;

(b) Debt which is junior and subordinate to the Refunding Bonds in an amount not exceeding \$2,000,000 at any time.

5.17 Required Capital Expenditures. Prior to August 31, 2001, the Borrower will either (a) make capital expenditures with respect to the Project for the items identified in Exhibit "D" hereto at a direct cost of not less than \$5,000,000 (with notices of such expenditures to the

Trustee at the end of each quarter of the Borrower's Fiscal Years during such period) or (b), to the extent the Borrower's capital expenditures for such items prior to such date aggregate less than \$5,000,000, will, on August 31, 2001, establish a capital reserve fund with the Trustee and deposit therein the difference, to be used solely to fund capital improvements (other than ordinary repair and maintenance costs and expenses) with respect to the Project subsequent to such date. Concurrently with the execution and delivery of this Loan Agreement, the Borrower will provide satisfactory evidence to the Trustee of (i) its receipt of an irrevocable Constellation guarantee of such obligation in the amount of \$2,500,000 and (ii) its receipt of an irrevocable guarantee of such obligation in the amount of \$2,500,000 issued by American Consumer Industries Inc. The Borrower may withdraw moneys from such cash deposit, together with any moneys provided pursuant to such guarantee, *pro rata*, solely to make any of the capital expenditures described on Exhibit "D" hereto (or as otherwise approved by the Required Percentage of the Bondholders) by providing to the Trustee a request therefor and a statement of the purpose to which such moneys will be applied. No such withdrawal shall duplicate amounts paid by withdrawals from the Revenue Fund pursuant to the Annual Operating Budget. The amount on deposit in any such account or in any such fund will not be part of the Trust Estate or available to pay debt service on the Refunding Bonds, provided that upon an Event of Default hereunder such moneys will nevertheless remain available thereafter to fund capital expenditures to the Facility.

5.18 Required Working Capital Contribution. Concurrently with the execution and delivery of this Loan Agreement, the Borrower is depositing in the Working Capital Fund established with the Trustee in accordance with provisions of Section 4.01 of the Indenture, or contributing as working capital for the Project, the aggregate sum of \$2,000,000. The Borrower covenants to withdraw and use moneys contained in the Working Capital Fund solely to fund working capital for the Project whenever and to whatever extent necessary, in the absence of other moneys, to fund working capital for the Facility. Any withdrawal of such moneys by the Borrower shall be accompanied by notice thereof to the Trustee as to the purpose for which such moneys will be applied, shall not duplicate amounts paid by withdrawals from the Revenue Fund pursuant to the Annual Operating Budget and shall be replenished as provided in the Indenture.

5.19 Borrower's Report of Series B Amount.

(a) So long as any Refunding Bonds are Outstanding, the Borrower will provide to the Trustee, not later than February 10, or if such day is not a Business Day, on the next succeeding Business Day, of each February, commencing with February 10, 2000, a report of the Series B Amount for the twelve (12) months ending on the preceding December 31, which report shall be certified to be complete and correct by an Authorized Representative responsible for the Borrower's financial matters.

(b) Simultaneously with the delivery of the statement described in subsection (c) of Section 5.11 hereof, the Borrower will deliver to the Trustee a statement of the independent certified public accountant or firm thereof providing such statement in which is determined and set forth the Series B Amount for the twelve (12) months ending on the

preceding December 31, and any difference between the amount determined and set forth in the Borrower report provided pursuant to subsection (a) of this Section 5.19 and the amount determined and set forth in the accountant's statement described in this subsection (b). If the Series B Amount set forth in the Borrower's report exceeds the Series B Amount set forth in the accountant's statement, an amount equal to one half of the excess shall be disbursed to the Borrower from the first moneys thereafter to be deposited in the Series 1999B Account of the Bond Fund. If the Series B Amount set forth in the Borrower's report is less than the Series B Amount set forth in the accountant's statement, the Trustee shall deposit to the Series 1999B Account of the Bond Fund, from the next moneys available for such purpose under the Indenture, an amount equal to one-half of such deficiency.

## ARTICLE VI.

### EVENTS OF DEFAULT AND REMEDIES

6.1 Events of Default. Each of the following events is hereby defined as, and is declared to be and to constitute, an "Event of Default":

(a) failure by the Borrower to pay when due, which failure continues for five (5) days thereafter, any amount required to be paid pursuant to this Loan Agreement or the Notes (including, without limitation, Article V hereof), unless such amount shall be available in the Debt Service Reserve Fund (including any Debt Service Fund Guarantee(s)) as provided in Section 4.05(b) of the Indenture, unless upon the occurrence thereof the Borrower shall convey, assign and transfer to the Trustee for the benefit of the Bondholders all of its right, title and interest in and to the Facility and the Trust Estate; or

(b) failure by the Borrower to observe and perform any covenant, condition or agreement on its part to be observed or performed in this Loan Agreement, the Notes, the Deed of Trust, the Security Agreement or any Facility Document, other than as described in (a) above, for a period of sixty (60) days following the Borrower's receipt of written notice thereof from the Issuer or the Trustee, specifying such failure and requesting that it be remedied, unless the Trustee shall agree in writing to an extension of such time prior to its expiration; provided, however, that if the failure stated in the notice cannot be corrected within the applicable period, the Trustee will not unreasonably withhold its consent to an extension of such time if corrective action is instituted within the applicable period and thereafter diligently pursued until the default is corrected; or

(c) an Event of Default described in the Indenture; or

(d) any party to a Facility Document other than the Borrower or its affiliates (herein the "Facility Participant") shall have failed to observe or perform any covenant or agreement contained in such Facility Document and such failure shall continue after the expiration of any grace period and opportunity to cure, specified therein and could reasonably be expected to have a material adverse effect upon the Facility, or the security provided to the

Trustee by the Deed of Trust or the Security Agreement, or the ability of the Borrower to perform its obligations as set forth in the Facility Documents; provided that an event specified in the preceding clause shall not constitute an Event of Default under this paragraph if the Borrower shall have given written notice to the Trustee that it is diligently attempting and reasonably expects to replace such Facility Participant with another person with comparable qualifications under another agreement having terms substantially similar to or more favorable than such Facility Document acceptable to the Trustee unless (A) a period of one hundred eighty (180) days shall have elapsed (or such longer grace period or opportunity to cure as may be provided in such Facility Document) from the earlier of (1) the receipt by the Trustee of such written notice from the Borrower and (2) thirty (30) days following the Borrower's becoming aware of such default by such Facility Participant, during which period the Borrower shall not have found a Person reasonably acceptable to the Trustee and the Consulting Engineer that is willing to enter into a written agreement to perform the obligations of the defaulting party under the applicable agreement on terms and conditions reasonably acceptable to the Trustee and (B) such failure to observe or perform such covenant or agreement remains uncured at the end of such period; or

(e) failure of any Debt Service Reserve Fund Guarantor to perform fully and timely its obligations pursuant to any Debt Service Reserve Fund Guarantee or failure of Constellation or American Consumer Industries Inc. to perform fully and timely their respective obligations pursuant to the guarantees delivered pursuant to the provisions of Section 5.17(i) hereof; or

(f) the Borrower shall at any time, (i) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property, (ii) generally admit to its creditors in writing its inability, or be generally unable, to pay its debts as such debts become due, (iii) make a general assignment for the benefit of its creditors, (iv) commence a voluntary case under the Federal Bankruptcy Code, (v) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts, (vi) fail to controvert in a timely and appropriate manner, or acquiesce in writing to, any petition filed against such person in an involuntary case under the Federal Bankruptcy Code, or (vii) take any corporate or other action for the purpose of effecting any of the foregoing and the result of the foregoing is a material interference with the Borrower's ability to use the Project Site or the fuel located thereon; or

(g) a proceeding or case shall be commenced against and without the application or consent of the Borrower at any time, in any court of competent jurisdiction, seeking (i) its liquidation, reorganization, dissolution, winding up, or the composition or readjustment of debts, (ii) the appointment of a trustee, receiver, custodian, liquidator or the like of such person under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts, or a warrant of attachment, execution or similar process shall be issued against property of such person having a value of (or original cost, if higher) in excess of \$500,000 and such proceeding, case, warrant or process shall continue undismissed or unreserved against, or any order, judgment or decree approving or ordering any of the foregoing

shall be entered and continue unstayed and in effect, for a period of sixty (60) or more consecutive days; or

(h) a judgment or judgments for the payment of money in excess of \$500,000 (other than a judgment which is fully covered by insurance) shall be rendered against the Borrower or the Facility, and the same shall remain in effect and unstayed for period of sixty (60) or more consecutive days; or

(i) either the Deed of Trust or the Security Agreement shall cease, for any reason, to be in full force and effect or the Borrower shall so assert in writing, or either the Deed of Trust or the Security Agreement shall cease to be effective to grant a perfected lien to the Trustee with respect to the collateral described therein with the priority purported to be created thereby; or

(j) the Borrower, or any Joint Venture Partner shall dissolve or be dissolved whether by an act or omission or by reason of law other than as contemplated by Section 5.1 hereof; or

(k) the Facility, as designed and owned, shall cease to meet, or shall be unable to meet, the requirements for a qualifying facility under the Public Utility Regulatory Policies Act of 1978, as amended; provided that the failure to satisfy such requirements shall not be an Event of Default as long as such failure will not have a material adverse effect on the Facility and the Borrower is, in the reasonable judgment of the Trustee, making a diligent effort either to cure such failure or inability (provided that a period of not more than sixty (60) days has elapsed from the date of such non-qualification) or to qualify as an exempt wholesale generator within the meaning of the Public Utility Holding Company Act of 1935, as amended; or

(l) any material representation or warranty on the part of the Borrower to the Issuer, the Trustee or the Bondholders contained herein or in any agreement or instrument executed and delivered by the Borrower in connection with the Refunding Bonds shall prove to be untrue or incorrect in any material respect when made.

6.2 Remedies on Default. Whenever any Event of Default shall have occurred and is continuing, the Trustee on behalf of the Issuer may, by notice in writing given to the Issuer and the Borrower, declare the outstanding principal and all accrued and unpaid interest due hereunder and under the Notes to be immediately due and payable. The Trustee may waive, rescind and annul such declaration and the consequences thereof, provided that any declaration of acceleration on the Refunding Bonds pursuant to Section 7.02(a) of the Indenture has been waived, rescinded and annulled in accordance with Sections 7.02(b) or 7.15 of the Indenture. Such waiver, rescission, or annulment shall be binding upon the Issuer, the Trustee, and all of Bondholders, but no annulment shall extend to or affect any subsequent default or imply any right or remedy consequent thereto. In addition, the Trustee may upon the occurrence and continuation of an Event of Default take one or more of the following remedial steps:

(a) The Trustee may exercise any right, power or remedy permitted to it by law as assignee of the Issuer's rights hereunder; or

(b) The Trustee, as assignee of the Issuer, may take whatever action at law or in equity may appear necessary or desirable to collect the payments and other amounts then due and thereafter to become due or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Loan Agreement, including the exercise of any and all remedies available to the Trustee under the Deed of Trust or the Security Agreement.

In case the Trustee's declaration of acceleration (if any) shall have been annulled in accordance with Sections 7.02(b) or 7.15 of the Indenture, or in case the Trustee shall have proceeded to enforce any right under this Loan Agreement and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Issuer or the Trustee, then and in every such case the Borrower, the Issuer and the Trustee shall be restored to their respective positions and rights hereunder, and all rights, remedies and powers of the Borrower, the Issuer and the Trustee shall continue as though no such proceeding had been taken, but subject to the limitations of any such adverse determination.

The Borrower covenants that, in case an Event of Default shall occur with respect to the payment of any amount due under this Loan Agreement as and when the same shall become due and payable, whether at maturity or by declaration or otherwise, then, upon demand of the Trustee, the Borrower will pay to the Trustee the whole amount that shall then have become due and payable and interest at the rates provided in the Refunding Bonds and, in addition thereto, such further amount as shall be sufficient to cover the reasonable costs and expenses of collection, including a reasonable compensation to the Trustee, the Bondholders, and their respective agents, attorneys and counsel in connection therewith, and any other reasonable expenses or liabilities incurred by the Issuer, the Trustee or the Bondholders other than through their willful misconduct or gross negligence.

In case the Borrower shall fail forthwith to pay such amounts upon such demand, the Trustee shall be entitled and empowered to institute any actions or proceedings at law or in equity for the collection of the sums so due and unpaid, and may prosecute any such action or proceeding to judgment or final decree, and may enforce any such judgment or final decree against the Borrower and collect in the manner provided by law out of the property of the Borrower the moneys adjudged or decreed to be payable.

In case there shall be pending proceedings for the bankruptcy or for the reorganization of the Borrower under the Federal bankruptcy laws or any other applicable law, or in case a receiver or trustee shall have been appointed for the property of the Borrower or in the case of any other similar judicial proceedings relative to the Borrower, or to the creditors or property of the Borrower, the Trustee shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount owing and unpaid pursuant to this Loan Agreement and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Issuer or the Trustee allowed in such judicial proceedings relative to the Borrower, its creditors

or its property, and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute the same after the deduction of its charges and expenses; and any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized to make such payments to the Trustee, and to pay to the Trustee any amount due it for compensation and expenses, including counsel fees incurred by it up to the date of such distribution.

6.3 Cumulative Rights. No remedy conferred upon or reserved to the Issuer or the Trustee by this Loan Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement, the Indenture, the Deed of Trust or the Security Agreement, or now or hereafter existing at law or in equity or by statute provided there is no duplication of recovery. No waiver by the Issuer or the Trustee of any breach by the Borrower of any of its obligations, agreements or covenants hereunder shall be a waiver of any subsequent breach, and no delay or omission to exercise any right or power shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

## ARTICLE VII.

### PREPAYMENT OF LOAN

7.1 Acceleration of Loan Repayments to Redeem Refunding Bonds. Whenever the Refunding Bonds are subject to mandatory redemption pursuant to the Indenture, the Borrower will cooperate with the Issuer and the Trustee in effecting such redemption. In the event of any mandatory redemption of the Refunding Bonds, the Borrower will pay or cause to be paid on or before the date of redemption an amount equal to the applicable redemption price, including accrued interest to the date of redemption, as prepayment of its loan repayment obligations pursuant to the provisions of Section 4.2 hereof corresponding to the Refunding Bonds to be redeemed and, if all Refunding Bonds then Outstanding are to be redeemed on such date, all reasonable and necessary fees and expenses of the Trustee and any Paying Agents accrued or to accrue thereon through final payment of the Refunding Bonds and all other liabilities of the Borrower accrued and to accrue under this Loan Agreement.

In the event of the redemption of any Refunding Bonds as a result of a change of control, as described in Section 3.03 of the Indenture, or a Determination of Taxability, as contemplated by Section 3.05 of the Indenture, the Borrower covenants and agrees to pay to the Trustee the amounts required to redeem the Refunding Bonds pursuant to Section 3.03 or Section 3.05 of the Indenture, as applicable, not more than sixty (60) days following the change of control or the Determination of Taxability, as applicable.

If an event described in Section 5.8 hereof occurs and the Borrower elects to prepay amounts due hereunder and to cause some or all of the Refunding Bonds to be redeemed as consequence thereof, the Borrower shall within sixty (60) days following the occurrence of such event deliver to the Trustee a certificate of an Authorized Representative of the Borrower setting forth in reasonable detail (i) the event giving rise to the exercise of its election to prepay amounts

payable by the Borrower hereunder (which exercise shall cause the Refunding Bonds to be redeemed as set forth in the Indenture) and (ii), if the Refunding Bonds are to be redeemed in whole, that, as a result of such event, the Borrower has discontinued, or will discontinue at the earliest practicable date, its use of the Project.

## ARTICLE VIII.

### ASSIGNMENT

8.1 Assignment by Borrower. Neither this Loan Agreement nor the Borrower's rights hereunder may be assigned by the Borrower without the prior written consent of the Issuer, the Trustee and the Required Percentage of Bondholders, provided that (i) there shall first have been furnished to the Issuer and the Trustee an opinion of Bond Counsel acceptable to the Issuer and the Trustee to the effect that any such proposed assignment will not impair the validity of the Bonds under the Act or the exclusion of the interest thereon from gross income for Federal income tax purposes and (ii) not less than thirty (30) days before the effective date thereof, the Borrower shall notify the Issuer and the Trustee of the proposed assignment pursuant to this Section 8.1 and shall furnish or cause to be furnished to the Issuer and the Trustee a true and complete copy of the proposed assignment.

No assignment of the Loan Agreement by the Borrower other than in accordance with the provisions of this Section 8.1 shall relieve the Borrower of its obligations hereunder, including without limitation its obligations pursuant to Section 4.2 hereof.

8.2 Assignment by Issuer. The Issuer will assign its rights under and interest in this Loan Agreement (except for the Unassigned Issuer's Rights) and the Notes to the Trustee pursuant to the Indenture as security for the payment of the Bonds. Otherwise, the Issuer will not sell, assign or otherwise dispose of its rights under or interest in this Loan Agreement nor create or permit to exist any lien, encumbrance or other security interest thereon.

## ARTICLE IX.

### MISCELLANEOUS

9.1 Notices. Notice hereunder shall be given in writing, either by registered mail, to be deemed effective three (3) days after mailing, or by telegram, by confirmed telefax, facsimile transmission or by telephone, confirmed in writing, to be deemed effective immediately, addressed as follows:

The Issuer:	Carbon County
	120 East Main Street
	Price, UT 84501
	Attention: Chair



The Borrower: Sunnyside Cogeneration Associates  
c/o CP Sunnyside I, Inc.  
111 Market Place, Suite 200  
Baltimore, MD 21202  
Facsimile: 410-230-4849  
Attn: Secretary

With a copy to: Colmac Sunnyside, Inc.  
103 Springer Building  
3411 Silverside Road  
Wilmington, DE 19810  
Facsimile: 302-478-3667

The Trustee: U.S. Bank Trust National Association  
101 North First Avenue, Suite 2000  
Phoenix, AZ 85003  
Facsimile: 602-514-5994

or at such other address as may be filed in writing with the parties to this Loan Agreement and with the Trustee. A duplicate copy of each notice, certificate or other communication given hereunder by either the Issuer or the Borrower to the other shall also be given to the Trustee.

9.2 Illegal, Etc., Provisions Disregarded. In case any provision of this Loan Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, this Loan Agreement shall be construed as if such provision had never been contained herein and such invalidity, illegality or unenforceability shall not invalidate the balance of this Loan Agreement or such provision to the extent it is not.

9.3 Applicable Law. This Loan Agreement has been delivered in the State and shall be deemed to be governed by, and interpreted under, the laws of the State.

9.4 Amendments, Changes, and Modifications. Subsequent to the initial issuance and delivery of the Refunding Bonds and prior to their payment in full (or provision for payment thereof having been made in accordance with the provisions of Article IX of the Indenture), this Loan Agreement may not be amended, changed, modified or altered except as provided in Section 10.07 of the Indenture or by an instrument in writing signed by the Issuer and the Borrower and consented to by the Trustee and the Required Percentage of Bondholders. In addition, except as otherwise permitted or provided by the Deed of Trust or the Security Agreement, the Borrower agrees that it will not terminate or amend in any material respect or permit any termination or material amendment of any of the Facility Documents without the prior written consent of the Trustee and the Required Percentage of Bondholders, which consent shall not be unreasonably withheld or delayed.

9.5 Amounts Remaining in Funds. It is agreed by the parties hereto that after payment of (i) the Refunding Bonds (or provision for payment thereof having been made in

accordance with the provisions of Article IX of the Indenture), (ii) the fees, charges and expenses of the Issuer, the Trustee and any Paying Agents in accordance with the Indenture, and (iii) all other amounts required to be paid under this Loan Agreement and the Indenture (including the payment of any arbitrage rebate to the United States), any amounts remaining in the Project Fund, the Revenue Fund, the Bond Fund, the Debt Service Reserve Fund, the Working Capital Fund and the Rebate Fund shall be the property of and shall be paid to the Borrower by the Trustee.

9.6 Term of the Loan Agreement. This Loan Agreement shall be in full force and effect until the latest of the date on which (i) no Refunding Bonds are Outstanding under the Indenture, (ii) the Trustee holds any moneys pursuant to Article IX of the Indenture, and (iii) any required rebate is paid to the United States of America in accordance with the provisions of Section 148(f) of the Code, subject to the provisions of Section 4.2(c) hereof.

9.7 Binding Effect. This Loan Agreement shall inure to the benefit of and shall be binding upon the Issuer, the Borrower and their respective successors and assigns; subject, however, to the limitations contained in Sections 4.6 and 5.1 hereof.

9.8 Authorized Representative of the Borrower. Whenever under the provisions of this Loan Agreement the approval of the Borrower is required or the Borrower is required to take some action at the request of the Issuer, such approval or such request shall be given for the Borrower by its Authorized Representative, and the Issuer and the Trustee shall be authorized to act on any such approval or request and neither party hereto shall have any complaint against the other or against the Trustee as a result of any such action taken in reliance thereon.

9.9 Execution of Counterparts. This Loan Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instruments.

9.10 Pledge and Undertaking of the State of Utah. In entering into this Loan Agreement and otherwise providing for the issuance of the Bonds, the Issuer and the Borrower have specifically relied upon Section 11-17-13 of the Act, which provides:

The State of Utah does hereby pledge to and agree with the holders of any bonds issued under this act and with those parties who may enter into contracts with any county or municipality under this act, that the State will not alter, impair or limit the rights thereby vested until the bonds, together with applicable interest, are fully met and discharged and such contracts are fully performed. Nothing contained in this act shall preclude such alteration, impairment or limitation if and when adequate provision shall be made by law for the protection of the holders of the bonds or persons entering into contracts with any county or municipality. Each county and municipality is authorized to include this pledge and undertaking for the state in such bonds or contracts.

9.11 Limited Obligation of Issuer. Notwithstanding anything else to the contrary herein any obligation of the Issuer created by or arising out of this Loan Agreement shall be a limited obligation of the Issuer, payable solely out of the revenues arising hereunder and the other funds held or set aside in trust under the Indenture and shall not constitute a pledge of the faith and credit of the Issuer or an indebtedness or a charge against the general credit or taxing powers of the Issuer or the State or any political subdivision thereof within the meaning of any constitutional or statutory provision of the State whatsoever.

Neither the issuance and exchange of the Refunding Bonds nor the delivery of this Loan Agreement shall, directly or indirectly or contingently, obligate the State, the Issuer, or any political subdivision, or agency thereof to levy any form of taxation therefor or to make any appropriation for their payment. Nothing in the Refunding Bonds or in the Indenture or this Loan Agreement, or the proceedings of the Issuer authorizing the Refunding Bonds or in the Act shall be construed to authorize the Issuer to create a debt of the State, the Issuer, or any political corporation, subdivision, or agency thereof within the meaning of any constitutional or statutory provision of the State. The principal of and interest on the Refunding Bonds shall be payable solely from the funds pledged for their payment in accordance with the Indenture. Neither the State, the Issuer, or any political corporation, subdivision, or agency thereof shall be obligated to pay the principal of or interest on the Refunding Bonds or be liable for the performance of any pledge, obligation, or agreement of any kind whatsoever which may be undertaken by the Issuer. Neither the general credit nor the taxing power of the State, the Issuer, or any other political corporation, subdivision, or agency thereof is pledged to the payment of the principal of, premium, if any, or interest on the Refunding Bonds. No breach of any such pledge, obligation, or agreement or the withdrawal by the Issuer from any of the foregoing may impose or give rise to any pecuniary liability or general obligation or liability upon the State, the Issuer, or any political corporation, subdivision, or agency thereof, or any charge upon the general credit or against the taxing power of the State, the Issuer, or any political corporation, subdivision, or agency thereof.

9.12 Limitation on Borrower Liability. Neither of the joint venture partners of the Borrower nor their shareholders, partners, members, directors or officers or any of their respective affiliates shall be personally liable for payments due pursuant to this Loan Agreement or for the performance of any obligation pursuant to this Loan Agreement and the sole recourse of the Issuer, the Trustee, and the Bondholders for satisfaction of the obligations of the Borrower pursuant to this Loan Agreement shall be against the Borrower as an entity and to the remedies provided pursuant to this Loan Agreement, the Deed of Trust, the Security Agreement and the Indenture. If a default occurs in connection with such obligations, no action shall be brought against either of the joint venture partners of the Borrower nor their shareholders, partners, members, directors or officers or any of their respective affiliates and any judicial proceedings the Issuer, the Trustee, or the Bondholders may institute against the Borrower shall be limited to seeking the preservation, enforcement, foreclosure, or other sale or disposition of the liens and security interest securing the repayment of the Borrower's obligations and the performance of its covenants set forth in this Loan Agreement. In the event of foreclosure or other sale or disposition of properties, no judgment for any deficiency upon the obligations set forth herein shall be obtainable by the Issuer, the Trustee, or the Bondholders against any joint venture

partner of the Borrower or its shareholders, partners, members, directors or officers of the Borrower or any affiliate thereof.

9.13 Complete Loan Agreement. This Loan Agreement, the Notes, the Deed of Trust, the Security Agreement and the Tax Certificate and Agreement represent the entire agreement between the Issuer and the Borrower with respect to the subject matter hereof.

[Signatures on following page]

IN WITNESS WHEREOF, the Issuer has caused this Loan Agreement to be executed in the Issuer's name and attested, and the Borrower has caused this Loan Agreement to be executed in the Borrower's name and attested, by its duly authorized officers.

CARBON COUNTY, UTAH

By William D. Krompel  
Chair

ATTESTED AND COUNTERSIGNED:

Robert P. Dew  
Clerk

SUNNYSIDE COGENERATION ASSOCIATES, a  
Utah joint venture

By: SUNNYSIDE HOLDINGS I, INC., a  
Delaware corporation, its joint venture  
partner

By R.S. McEese  
President

By: SUNNYSIDE II, L.P., a Delaware limited  
partnership, its joint venture partner

By SUNNYSIDE II, INC., a Delaware  
corporation, its general partner

By Charles R. Lenthum  
Senior Vice President

**EXHIBIT A**

**Base Case Facility Projections**

[illegible]

Constellation Summary  
Projected Statement of Operations - GAAP Basis

Description	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
<b>REVENUE:</b>													
Energy - Base	1,897	0,001	7,230	7,000	7,797	6,000	6,200	6,421	6,640	6,865	6,086	6,332	6,515
Energy - Excess	0	0	0	0	0	0	0	0	0	0	0	0	0
Energy - Additional	715	1,136	1,106	1,255	1,267	1,371	1,356	1,390	1,420	1,463	1,501	1,541	1,581
Capacity - Base	2,776	0,117	0,117	0,117	0,117	0,117	0,117	0,117	0,117	0,117	0,117	0,117	0,117
Capacity - Additional	0	0	0	0	0	0	0	0	0	0	0	0	0
Capacity Adjustment (per monthly analysis)	(59)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)
Restructured PP&A Asset Sale	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>TOTAL REVENUE</b>	<b>4,142</b>	<b>17,061</b>	<b>18,220</b>	<b>18,007</b>	<b>19,004</b>	<b>18,369</b>	<b>19,063</b>	<b>19,941</b>	<b>20,275</b>	<b>20,505</b>	<b>20,823</b>	<b>21,202</b>	<b>21,811</b>
<b>COST OF SALES:</b>													
Fuel Usage	219	622	669	1,817	1,931	1,606	1,665	1,112	1,060	1,109	1,440	1,521	1,596
Admin Expenses	150	630	662	694	706	722	741	760	736	757	776	790	810
Ref. Media	233	1,163	1,250	1,316	1,334	1,346	1,404	1,440	1,387	1,434	1,471	1,486	1,505
<b>TOTAL COST OF SALES</b>	<b>702</b>	<b>2,745</b>	<b>2,861</b>	<b>3,827</b>	<b>3,868</b>	<b>3,148</b>	<b>3,230</b>	<b>3,214</b>	<b>3,215</b>	<b>3,299</b>	<b>3,687</b>	<b>3,806</b>	<b>3,905</b>
<b>GROSS PROFIT</b>	<b>3,440</b>	<b>14,316</b>	<b>15,359</b>	<b>14,180</b>	<b>15,136</b>	<b>15,221</b>	<b>15,833</b>	<b>16,727</b>	<b>17,060</b>	<b>17,206</b>	<b>17,136</b>	<b>17,396</b>	<b>17,906</b>
<b>PLANT OPERATING EXPENSES:</b>													
Lease	641	2,210	2,277	2,236	2,297	2,456	2,523	2,560	2,600	2,735	2,790	2,849	2,903
Operating Expenses	161	741	766	776	789	819	840	861	883	905	926	947	968
Maintenance Expenses	344	1,416	1,464	1,523	1,562	1,642	1,692	1,644	1,607	1,711	1,776	1,822	1,870
Major Maintenance	146	573	567	603	618	634	651	668	685	702	721	740	759
Management Expenses	66	260	269	297	305	312	321	329	338	346	355	363	372
Capital Improvements	30	123	124	130	132	136	140	144	147	151	155	159	163
Refinancing and Leased Equipment	27	110	113	116	119	122	125	128	131	135	138	142	145
Plant General & Admin. exp.	66	282	272	261	261	261	261	261	261	261	261	261	261
<b>TOTAL PLANT OPERATING EXPENSES</b>	<b>1,410</b>	<b>5,820</b>	<b>5,871</b>	<b>6,125</b>	<b>6,264</b>	<b>6,417</b>	<b>6,514</b>	<b>6,380</b>	<b>6,381</b>	<b>6,445</b>	<b>6,526</b>	<b>6,602</b>	<b>6,680</b>
<b>INCOME FROM OPERATIONS</b>	<b>2,030</b>	<b>8,496</b>	<b>9,488</b>	<b>8,055</b>	<b>8,872</b>	<b>8,804</b>	<b>9,319</b>	<b>10,347</b>	<b>10,679</b>	<b>10,761</b>	<b>10,609</b>	<b>10,794</b>	<b>11,226</b>
<b>INDIRECT OPERATING EXPENSES:</b>													
Insurance	66	240	400	410	431	432	443	456	467	479	491	504	517
Property Taxes	150	601	601	601	601	601	601	601	601	601	601	601	601
Depreciation	426	1,824	1,824	1,824	1,824	1,824	1,824	1,824	1,824	1,824	1,824	1,824	1,824
Amortization	126	600	600	600	600	600	600	600	600	600	600	600	600
<b>TOTAL INDIRECT OPERATING EXPENSES</b>	<b>828</b>	<b>3,305</b>	<b>3,275</b>	<b>3,365</b>	<b>3,396</b>	<b>3,407</b>	<b>3,419</b>	<b>3,426</b>	<b>3,442</b>	<b>3,456</b>	<b>3,487</b>	<b>3,519</b>	<b>3,542</b>
<b>TOTAL GENERAL AND ADMINISTRATIVE</b>	<b>66</b>	<b>240</b>	<b>242</b>	<b>249</b>	<b>257</b>	<b>265</b>	<b>272</b>	<b>271</b>	<b>279</b>	<b>286</b>	<b>294</b>	<b>298</b>	<b>305</b>
<b>OTHER INCOME (EXPENSE):</b>													
Interest Expense	(1,064)	(4,437)	(4,516)	(4,311)	(4,186)	(4,116)	(4,049)	(3,984)	(3,919)	(3,854)	(3,789)	(3,724)	(3,659)
Interest Income	29	57	56	56	56	56	56	56	56	56	56	56	56
Debt Forgiveness	0	0	0	0	0	0	0	0	0	0	0	0	0
LC Fee (Fuel Services Reserve Fund)	(45)	(179)	(178)	(178)	(178)	(178)	(178)	(178)	(178)	(178)	(178)	(178)	(178)
<b>TOTAL OTHER INCOME (EXPENSE)</b>	<b>(1,080)</b>	<b>(4,559)</b>	<b>(4,638)</b>	<b>(4,431)</b>	<b>(4,256)</b>	<b>(4,190)</b>	<b>(4,121)</b>	<b>(4,052)</b>	<b>(3,983)</b>	<b>(3,919)</b>	<b>(3,854)</b>	<b>(3,789)</b>	<b>(3,724)</b>
<b>NET INCOME (BT LOSS)</b>	<b>(19)</b>	<b>917</b>	<b>1,107</b>	<b>1,545</b>	<b>1,726</b>	<b>1,622</b>	<b>1,695</b>	<b>1,697</b>	<b>1,696</b>	<b>1,696</b>	<b>1,696</b>	<b>1,696</b>	<b>1,696</b>
Debt Coverage Ratio - Senior Debt	1.27	1.34	1.44	1.39	1.41	1.45	1.46	1.46	1.46	1.46	1.46	1.46	1.46
Debt Coverage Ratio - All Debt	1.27	1.31	1.34	1.32	1.32	1.34	1.34	1.34	1.34	1.34	1.34	1.34	1.34
Return on Equity - BT ROE	-0.1%	0.7%	1.1%	1.0%	1.0%	1.0%	1.0%	1.0%	1.0%	1.0%	1.0%	1.0%	1.0%
<b>NET INCOME (AT LOSS)</b>	<b>(6)</b>	<b>287</b>	<b>649</b>	<b>811</b>	<b>918</b>	<b>1,026</b>	<b>1,092</b>	<b>1,144</b>	<b>1,196</b>	<b>1,248</b>	<b>1,299</b>	<b>1,350</b>	<b>1,401</b>
Return on Equity - AT ROE	-0.1%	1.2%	2.3%	2.4%	2.5%	2.6%	2.7%	2.8%	2.9%	3.0%	3.1%	3.2%	3.3%



Constellation Sunnyside  
Projected Statement of Operations - GAAP Basis

11/14/19

DISPOSITION	2017	2018	2019	2020	2021	2022	2023	2024	Total
<b>REVENUES:</b>									
Energy - Base	16,079	10,241	10,000	11,157	12,083	12,776	12,898	13,076	75%
Energy - Encast	0	0	0	0	0	0	0	0	10,075
Energy - Addendum	1,044	1,797	1,797	1,844	1,997	2,043	2,098	2,151	2,207
Capacity - Base	0,117	0,117	0,117	0,117	0,117	0,117	0,117	0,117	41,373
Capacity - Addendum	1,000	1,756	1,825	1,918	2,006	2,093	2,180	2,267	27,034
Capacity Adjustment (per monthly analysis)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	41,410
Restructured PPA Asset Sale	0	0	0	0	0	0	0	0	(5,000)
<b>TOTAL REVENUES</b>	<b>21,071</b>	<b>22,249</b>	<b>22,221</b>	<b>23,114</b>	<b>23,810</b>	<b>24,384</b>	<b>24,110</b>	<b>24,258</b>	<b>24,700</b>
<b>COST OF SALES:</b>									
Fuel Usage	1,036	2,316	2,006	2,730	3,000	3,170	3,261	3,332	3,414
Ash Disposal	831	863	876	894	917	941	965	989	1,012
Bed Media	1,575	1,810	1,830	1,893	1,937	1,982	2,026	2,070	2,114
<b>TOTAL COST OF SALES</b>	<b>3,442</b>	<b>4,989</b>	<b>4,712</b>	<b>5,423</b>	<b>5,954</b>	<b>6,193</b>	<b>6,352</b>	<b>6,491</b>	<b>6,539</b>
<b>GROSS PROFIT</b>	<b>17,629</b>	<b>17,260</b>	<b>17,509</b>	<b>17,690</b>	<b>17,856</b>	<b>18,191</b>	<b>17,758</b>	<b>17,767</b>	<b>18,161</b>
<b>PLANT OPERATING EXPENSES:</b>									
Lease	2,099	2,099	2,170	2,291	2,423	2,575	2,746	2,908	3,087
Operating Expenses	1,000	1,070	1,070	1,100	1,130	1,160	1,190	1,220	1,250
Maintenance Expenses	1,916	1,980	2,010	2,072	2,134	2,196	2,258	2,320	2,382
Major Maintenance	770	790	810	830	850	870	890	910	930
Management Expenses	304	304	304	304	304	304	304	304	304
Capital Improvements	140	172	170	161	160	160	160	160	160
Renovations and Landfill Expenses	140	153	157	161	164	167	170	174	177
Plant General & Administrative	482	500	519	532	546	560	575	590	605
<b>TOTAL PLANT OPERATING EXPENSES</b>	<b>7,811</b>	<b>8,110</b>	<b>8,328</b>	<b>8,542</b>	<b>8,764</b>	<b>8,991</b>	<b>9,224</b>	<b>9,464</b>	<b>9,707</b>
<b>INCOME FROM OPERATIONS</b>	<b>10,018</b>	<b>9,150</b>	<b>9,181</b>	<b>9,148</b>	<b>9,092</b>	<b>9,018</b>	<b>8,934</b>	<b>8,803</b>	<b>8,654</b>
<b>NON-CURRENT OPERATING EXPENSES:</b>									
Insurance	831	844	850	873	890	903	919	931	941
Property Taxes	0	0	0	0	0	0	0	0	0
Depreciation	1,024	1,024	1,024	1,024	1,024	1,024	1,024	1,024	1,024
Amortization	0	0	0	0	0	0	0	0	0
<b>TOTAL NON-CURRENT OPERATING EXPENSES</b>	<b>1,855</b>	<b>1,868</b>	<b>1,874</b>	<b>1,897</b>	<b>1,914</b>	<b>1,927</b>	<b>1,943</b>	<b>1,955</b>	<b>1,965</b>
<b>TOTAL OPERATING AND ADMINISTRATIVE</b>	<b>9,663</b>	<b>7,282</b>	<b>7,307</b>	<b>7,251</b>	<b>7,178</b>	<b>7,091</b>	<b>7,011</b>	<b>6,848</b>	<b>6,689</b>
<b>OTHER INCOME (EXPENSES):</b>									
Interest Expense	(1,575)	(2,295)	(2,006)	(2,810)	(3,000)	(3,170)	(3,261)	(3,332)	(3,414)
Interest Income	84	87	86	89	91	94	96	98	101
Debt Forgiveness	0	0	0	0	0	0	0	0	0
UC Fee (Child Services Reserve Fund)	(170)	(170)	(170)	(170)	(170)	(170)	(170)	(170)	(170)
<b>TOTAL OTHER INCOME (EXPENSES)</b>	<b>(1,561)</b>	<b>(2,278)</b>	<b>(2,090)</b>	<b>(2,891)</b>	<b>(3,079)</b>	<b>(3,246)</b>	<b>(3,335)</b>	<b>(3,404)</b>	<b>(3,483)</b>
<b>NET INCOME - NET LOSS</b>	<b>2,400</b>	<b>2,240</b>	<b>2,240</b>	<b>2,240</b>	<b>2,240</b>	<b>2,240</b>	<b>2,240</b>	<b>2,240</b>	<b>2,240</b>
Debt Coverage Ratio - Senior Debt	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
Debt Coverage Ratio - All Debt	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
Return on Equity - EBT (PUE)	45.7%	46.7%	46.9%	47.0%	47.1%	47.2%	47.3%	47.4%	47.5%
<b>NET INCOME - NET LOSS</b>	<b>1,201</b>	<b>1,201</b>	<b>1,201</b>	<b>1,201</b>	<b>1,201</b>	<b>1,201</b>	<b>1,201</b>	<b>1,201</b>	<b>1,201</b>
Return on Equity - EBT (PUE)	45.7%	46.7%	46.9%	47.0%	47.1%	47.2%	47.3%	47.4%	47.5%

Constellation Sunnyside  
Projected Statement of Operations - GAAP Basis (LESSEE)

11/24/99

Description	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
<b>INCOME FROM OPERATIONS</b>	2,071	8,766	9,466	9,834	9,732	9,774	9,819	9,863	10,099	10,155	9,909	9,940	9,995
<b>INDIRECT OPERATING EXPENSES:</b>													
Insurance	95	390	400	410	421	432	443	455	467	479	491	504	517
Property Taxes	150	601	601	601	601	601	601	601	601	601	601	601	601
Rent Expense	2,816	5,232	5,232	5,232	5,232	5,232	5,232	5,232	5,232	5,232	5,232	5,232	5,232
<b>TOTAL INDIRECT OPERATING EXPENSES</b>	2,061	6,223	6,233	6,243	6,254	6,265	6,276	6,287	6,299	6,311	6,324	6,337	6,350
<b>TOTAL GENERAL AND ADMINISTRATIVE</b>	89	366	282	269	297	305	313	321	328	338	348	355	365
<b>OTHER INCOME (EXPENSE):</b>													
LC Fee (Dom Service Reserve Fund)	(45)	(178)	(178)	(178)	(178)	(178)	(178)	(178)	(178)	(178)	(178)	(178)	(178)
<b>TOTAL OTHER INCOME (EXPENSE)</b>	(45)	(178)	(178)	(178)	(178)	(178)	(178)	(178)	(178)	(178)	(178)	(178)	(178)
<b>NET INCOME - BT (LOSS)</b>	(844)	2,678	3,178	3,306	3,359	3,383	3,408	3,434	3,468	3,484	3,417	3,478	3,459
<b>NET INCOME - IAT (LOSS)</b>	(964)	1,648	1,784	1,882	1,918	1,929	1,944	1,959	1,981	1,991	1,849	1,954	1,873
<b>Rent Payments:</b>													
March	1,316	2,909	2,847	3,050	3,050	3,050	2,950	2,950	2,950	2,950	2,950	2,950	2,750
September	2,940	2,878	3,050	3,050	3,050	2,950	2,950	2,950	2,950	2,950	2,950	2,950	2,750
<b>Annual Totals</b>	4,256	5,787	5,897	6,100	6,100	6,000	5,900	5,900	5,900	5,900	5,900	5,900	5,500
<b>Levelized Rent Expense</b>	2,616	5,232	5,232	5,232	5,232	5,232	5,232	5,232	5,232	5,232	5,232	5,232	5,232
<b>After-Tax Book Income Comparison</b>													
Base Case Plan B	(15)	977	1,187	1,545	1,729	1,822	1,915	2,007	2,189	2,281	2,220	2,294	2,377
Lease	(504)	1,840	1,784	1,882	1,918	1,929	1,944	1,959	2,081	2,101	1,949	1,954	1,973
<b>Lease Better (worse)</b>	(489)	863	617	337	187	107	28	(48)	(109)	(180)	(212)	(340)	(404)

11-Feb-99

Constellation Sunnyside  
Projected Statement of Operations - GAAP Basis

Description	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	Total
<b>INCOME FROM OPERATIONS</b>	10,019	9,538	9,270	9,246	9,003	9,042	9,065	9,035	9,176	9,227	9,281	9,338	7,601	238,574
<b>INDIRECT OPERATING EXPENSES:</b>														
Insurance	531	541	558	573	588	603	619	635	651	668	686	704	341	13,400
Property Taxes	601	601	601	601	601	601	601	601	601	601	601	601	451	15,025
Rent Expense	5,232	5,232	5,232	5,232	5,232	5,232	5,232	5,232	5,232	5,232	5,232	5,232	5,232	133,407
<b>TOTAL INDIRECT OPERATING EXPENSES</b>	6,363	6,373	6,391	6,406	6,421	6,436	6,451	6,466	6,484	6,501	6,518	6,536	6,224	181,838
<b>TOTAL GENERAL AND ADMINISTRATIVE</b>	374	384	394	404	415	425	436	448	459	471	484	496	509	9,690
<b>OTHER INCOME (EXPENSE):</b>														
L/C Fee (Debt Service Reserve Fund)	(178)	(178)	(178)	(178)	(178)	(178)	(178)	(178)	(178)	(178)	(178)	(178)	(178)	(4,450)
<b>TOTAL OTHER INCOME (EXPENSE)</b>	(178)	(178)	(178)	(178)	(178)	(178)	(178)	(178)	(178)	(178)	(178)	(178)	(178)	(4,450)
<b>NET INCOME - BT (LOSS)</b>	3,480	2,555	2,683	2,615	2,345	2,356	2,375	2,297	2,416	2,432	2,457	2,464	1,901	71,690
<b>NET INCOME - AT (LOSS)</b>	1,973	1,465	1,510	1,481	1,338	1,345	1,355	1,310	1,374	1,387	1,401	1,418	571	46,776
<b>Rent Payments:</b>														
March	2,750	2,750	2,750	2,750	2,750	2,500	2,500	2,500	2,500	2,500	2,500	2,500	900	66,872
September	2,750	2,750	2,750	2,750	2,750	2,500	2,500	2,500	2,500	2,500	2,500	2,500	900	88,918
Annual Totals	5,500	5,500	5,500	5,500	5,500	5,000	5,000	5,000	5,000	5,000	5,000	5,000	1,800	137,740
<b>Levelized Rent Expense</b>	5,232	5,232	5,232	5,232	5,232	5,232	5,232	5,232	5,232	5,232	5,232	5,232	5,232	
<b>After-tax Book Income Comparison</b>														
Base Case Plan B	2,440	2,248	2,598	2,702	2,895	2,753	2,806	2,805	2,892	2,925	2,951	3,428	5,138	60,869
Lease	1,973	1,665	1,518	1,491	1,338	1,345	1,355	1,310	1,374	1,387	1,401	1,418	571	40,770
<b>Lease better (worse)</b>	(467)	(683)	(1,080)	(1,211)	(1,259)	(1,409)	(1,451)	(1,485)	(1,517)	(1,539)	(1,550)	(2,011)	(4,567)	(20,119)

Constellation Sunnyside  
Ending Yearly Balance Sheets

Description	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
<b>Current Assets</b>													
Cash and Cash Equivalents	2,000	1,817	1,133	1,108	1,105	1,103	1,100	1,096	1,092	1,084	1,050	1,086	1,079
Accounts Receivable	1,000	1,381	1,488	1,527	1,567	1,590	1,614	1,639	1,664	1,690	1,716	1,772	1,801
Fuel Inventory	0	0	0	0	0	0	0	0	0	0	0	0	0
Prepaid Expenses	0	123	495	501	506	511	517	522	528	534	540	552	559
Other Current Assets	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>Total Current Assets</b>	<b>3,400</b>	<b>3,126</b>	<b>3,116</b>	<b>3,135</b>	<b>3,178</b>	<b>3,205</b>	<b>3,231</b>	<b>3,257</b>	<b>3,284</b>	<b>3,288</b>	<b>3,314</b>	<b>3,379</b>	<b>3,439</b>
<b>Non-Current Assets</b>													
Land	100	100	100	100	100	100	100	100	100	100	100	100	100
Property, Plant And Equipment	55,041	55,041	55,041	55,041	55,041	55,041	55,041	55,041	55,041	55,041	55,041	55,041	55,041
Less: Accumulated Depreciation	(458)	(2,280)	(4,105)	(5,829)	(7,753)	(9,577)	(11,401)	(13,226)	(15,050)	(16,874)	(18,698)	(20,523)	(22,347)
Deferred Transaction Costs	14,304	14,187	13,617	13,087	12,516	11,966	11,416	10,866	10,316	9,765	9,215	8,665	8,115
Restricted Assets	0	0	0	0	0	0	0	0	0	0	0	0	0
Other Non-Current Assets	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>Total Non-Current Assets</b>	<b>69,446</b>	<b>66,478</b>	<b>64,103</b>	<b>61,729</b>	<b>59,354</b>	<b>56,980</b>	<b>54,606</b>	<b>52,231</b>	<b>49,857</b>	<b>47,483</b>	<b>45,108</b>	<b>42,734</b>	<b>40,359</b>
<b>Total Assets</b>	<b>72,846</b>	<b>71,972</b>	<b>69,594</b>	<b>67,239</b>	<b>64,906</b>	<b>62,559</b>	<b>60,211</b>	<b>57,863</b>	<b>55,515</b>	<b>53,145</b>	<b>50,797</b>	<b>48,487</b>	<b>46,144</b>
<b>Current Liabilities</b>													
Accounts Payable	580	707	714	738	763	779	800	820	842	848	870	918	944
Interest Payable	(381)	(271)	(371)	(359)	(349)	(343)	(337)	(337)	(334)	(334)	(330)	(313)	(307)
<b>Total Current Liabilities</b>	<b>300</b>	<b>346</b>	<b>343</b>	<b>361</b>	<b>403</b>	<b>436</b>	<b>457</b>	<b>483</b>	<b>510</b>	<b>514</b>	<b>540</b>	<b>605</b>	<b>637</b>
<b>Non-Current Liabilities</b>													
Term Loan	60,916	60,668	59,090	57,511	55,516	53,399	51,202	49,230	47,104	45,169	43,185	41,237	39,327
<b>Total Non-Current Liabilities</b>	<b>60,916</b>	<b>60,668</b>	<b>59,090</b>	<b>57,511</b>	<b>55,516</b>	<b>53,399</b>	<b>51,202</b>	<b>49,230</b>	<b>47,104</b>	<b>45,169</b>	<b>43,185</b>	<b>41,237</b>	<b>39,327</b>
<b>Total Liabilities</b>	<b>61,496</b>	<b>61,012</b>	<b>59,422</b>	<b>57,872</b>	<b>55,922</b>	<b>53,828</b>	<b>51,758</b>	<b>49,713</b>	<b>47,694</b>	<b>45,682</b>	<b>43,725</b>	<b>41,842</b>	<b>39,964</b>
<b>Partners' Capital</b>													
Constellation Power	11,350	10,960	10,172	9,367	8,985	8,730	8,452	8,150	7,821	7,462	7,072	6,645	6,181
Partner 1													
Partner 2													
Partner 3													
<b>Total Partners' Capital</b>	<b>11,350</b>	<b>10,960</b>	<b>10,172</b>	<b>9,367</b>	<b>8,985</b>	<b>8,730</b>	<b>8,452</b>	<b>8,150</b>	<b>7,821</b>	<b>7,462</b>	<b>7,072</b>	<b>6,645</b>	<b>6,181</b>
<b>Total Liabilities And Partners' Capital</b>	<b>72,846</b>	<b>71,972</b>	<b>69,594</b>	<b>67,239</b>	<b>64,906</b>	<b>62,559</b>	<b>60,211</b>	<b>57,863</b>	<b>55,515</b>	<b>53,145</b>	<b>50,797</b>	<b>48,487</b>	<b>46,144</b>

Constellation Sunnyside  
Ending Yearly Balance Sheets

Description	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
<b>Current Assets</b>													
Cash and Cash Equivalents	1,076	1,135	1,167	1,174	1,209	1,201	1,193	1,195	1,173	1,162	1,149	1,172	2,874
Accounts Receivable	1,831	1,862	1,893	1,928	1,960	1,994	2,030	2,059	2,105	2,144	2,184	2,226	0
Fuel Inventory	0	0	0	0	0	0	0	0	0	0	0	0	0
Prepaid Expenses	568	573	580	587	594	602	610	618	626	635	643	652	0
Other Current Assets	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>Total Current Assets</b>	<b>3,472</b>	<b>3,569</b>	<b>3,640</b>	<b>3,687</b>	<b>3,763</b>	<b>3,788</b>	<b>3,833</b>	<b>3,873</b>	<b>3,904</b>	<b>3,940</b>	<b>3,976</b>	<b>4,050</b>	<b>2,874</b>
<b>Non-Current Assets</b>													
Land	100	100	100	100	100	100	100	100	100	100	100	100	0
Property, Plant And Equipment	55,041	55,041	55,041	55,041	55,041	55,041	55,041	55,041	55,041	55,041	55,041	55,041	55,041
Less: Accumulated Depreciation	(24,171)	(25,995)	(27,379)	(28,763)	(30,147)	(31,531)	(32,915)	(34,299)	(35,682)	(37,066)	(38,450)	(39,834)	(55,041)
Deferred Transaction Costs	7,015	8,464	9,914	5,364	4,814	4,264	3,714	3,163	2,613	2,063	1,513	963	0
Restricted Assets	0	0	0	0	0	0	0	0	0	0	0	0	0
Other Non-Current Assets	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>Total Non-Current Assets</b>	<b>37,985</b>	<b>35,611</b>	<b>33,676</b>	<b>31,742</b>	<b>29,808</b>	<b>27,874</b>	<b>25,940</b>	<b>24,006</b>	<b>22,072</b>	<b>20,138</b>	<b>18,204</b>	<b>16,270</b>	<b>0</b>
<b>Total Assets</b>	<b>41,457</b>	<b>39,180</b>	<b>37,316</b>	<b>35,429</b>	<b>33,571</b>	<b>31,672</b>	<b>29,773</b>	<b>27,879</b>	<b>25,977</b>	<b>24,078</b>	<b>22,180</b>	<b>20,320</b>	<b>2,874</b>
<b>Current Liabilities</b>													
Accounts Payable	996	1,067	1,121	1,158	1,210	1,241	1,273	1,306	1,340	1,375	1,411	1,447	0
Interest Payable	(290)	(272)	(255)	(243)	(231)	(217)	(214)	(209)	(210)	(209)	(209)	(171)	0
<b>Total Current Liabilities</b>	<b>886</b>	<b>795</b>	<b>866</b>	<b>915</b>	<b>979</b>	<b>1,024</b>	<b>1,059</b>	<b>1,098</b>	<b>1,130</b>	<b>1,166</b>	<b>1,202</b>	<b>1,276</b>	<b>0</b>
<b>Non-Current Liabilities</b>													
Term Loan	35,639	33,868	32,153	30,350	28,466	26,655	24,922	23,276	21,725	20,277	18,942	16,846	0
<b>Total Non-Current Liabilities</b>	<b>35,639</b>	<b>33,868</b>	<b>32,153</b>	<b>30,350</b>	<b>28,466</b>	<b>26,655</b>	<b>24,922</b>	<b>23,276</b>	<b>21,725</b>	<b>20,277</b>	<b>18,942</b>	<b>16,846</b>	<b>0</b>
<b>Total Liabilities</b>	<b>36,537</b>	<b>34,663</b>	<b>33,010</b>	<b>31,263</b>	<b>29,485</b>	<b>27,679</b>	<b>25,981</b>	<b>24,375</b>	<b>22,955</b>	<b>21,443</b>	<b>20,144</b>	<b>18,122</b>	<b>0</b>
<b>Partners' Capital</b>													
Consolidation Power	5,120	4,517	4,298	4,166	4,116	3,994	3,792	3,504	3,121	2,635	2,036	2,198	2,874
Partner 1													
Partner 2													
Partner 3													
<b>Total Partners' Capital</b>	<b>5,120</b>	<b>4,517</b>	<b>4,298</b>	<b>4,166</b>	<b>4,116</b>	<b>3,994</b>	<b>3,792</b>	<b>3,504</b>	<b>3,121</b>	<b>2,635</b>	<b>2,036</b>	<b>2,198</b>	<b>2,874</b>
<b>Total Liabilities And Partners' Capital</b>	<b>41,457</b>	<b>39,180</b>	<b>37,316</b>	<b>35,429</b>	<b>33,571</b>	<b>31,672</b>	<b>29,773</b>	<b>27,879</b>	<b>25,977</b>	<b>24,078</b>	<b>22,180</b>	<b>20,320</b>	<b>2,874</b>

**Constellation Sunnyside  
Projected Statement of Cash Flow**

11-Feb-99

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Book Income (Loss)	(15)	977	1,167	1,545	1,729	1,822	1,915	2,007	2,109	2,281	2,220	2,294	2,377
Depreciation	456	1,824	1,824	1,824	1,824	1,824	1,824	1,824	1,824	1,824	1,824	1,824	1,824
Amortization	138	550	550	550	550	550	550	550	550	550	550	550	550
Debt Forgiveness (non-cash)	0	0	0	0	0	0	0	0	0	0	0	0	0
Change in Receivables	18	(107)	(39)	(41)	(23)	(24)	(24)	(25)	(26)	(27)	(27)	(28)	(29)
Change in Payables	(234)	(3)	19	42	27	28	26	27	4	27	65	31	29
Change in Inventory & Other	0	0	0	0	0	0	0	0	0	0	0	0	0
Change in Prepaid Expenses	(123)	(373)	(5)	(5)	(5)	(5)	(6)	(6)	(6)	(6)	(6)	(6)	(7)
Cash Flow From Operations	241	2,868	3,517	3,916	4,102	4,194	4,286	4,377	4,536	4,648	4,626	4,865	4,744
Additional Debt Incurred	0	0	0	0	0	0	0	0	0	0	0	0	0
Financing Fees	0	0	0	0	0	0	0	0	0	0	0	0	0
Scheduled Debt Repayment	(295)	(1,770)	(1,770)	(2,213)	(2,360)	(2,360)	(2,360)	(2,360)	(2,360)	(2,360)	(2,360)	(2,360)	(2,360)
Other Deferred Interest on "Cash Flow" Bt	45	184	201	220	241	263	286	315	344	377	412	450	493
Cash from Financing Activities	(250)	(1,506)	(1,569)	(1,993)	(2,119)	(2,097)	(2,072)	(2,045)	(2,018)	(1,983)	(1,946)	(1,910)	(1,867)
Capital Expenditures	0	0	0	0	0	0	0	0	0	0	0	0	0
Cash Generated During Period	(9)	1,262	1,948	1,923	1,983	2,097	2,214	2,332	2,520	2,666	2,678	2,755	2,877
DSR Withdrawals (Payments)	0	0	0	0	0	0	0	0	0	0	0	0	0
Op Reserve Withdrawals (Payments)	0	0	0	0	0	0	0	0	0	0	0	0	0
Excess Earnings Withdrawals (Payments)	0	0	0	0	0	0	0	0	0	0	0	0	0
Beginning Cash Balance	2,000	1,617	1,133	1,106	1,105	1,103	1,100	1,098	1,092	1,084	1,058	1,060	1,086
Cash Balance Before Distribution	1,992	2,898	3,061	3,032	3,067	3,200	3,314	3,428	3,612	3,730	3,736	3,845	3,953
Cash (Distributions) Calls	(378)	(1,765)	(1,873)	(1,927)	(1,964)	(2,100)	(2,217)	(2,336)	(2,548)	(2,672)	(2,647)	(2,750)	(2,864)
Ending Cash Balance	1,617	1,133	1,106	1,105	1,103	1,100	1,098	1,092	1,064	1,058	1,060	1,086	1,079

**Assumptions:**

Bond issue date	25%	3.00%	3.00%	3.75%	4.00%	4.00%	4.00%	4.00%	4.00%	4.00%	4.00%	4.00%	4.00%	4.00%	4.00%	4.00%	4.00%	4.00%	4.00%
Principal Repayment %s	0.50%																		
Beginning Balance	59,000	58,705	56,935	55,165	52,953	50,593	48,233	45,873	43,513	41,153	38,793	36,433	34,073	31,713	29,353	26,993	24,633	22,273	19,913
Less: Principal Repayments	(295)	(1,770)	(1,770)	(2,213)	(2,360)	(2,360)	(2,360)	(2,360)	(2,360)	(2,360)	(2,360)	(2,360)	(2,360)	(2,360)	(2,360)	(2,360)	(2,360)	(2,360)	(2,360)
Ending Balance	58,000	56,705	54,835	52,853	50,593	48,233	45,873	43,513	41,153	38,793	36,433	34,073	31,713	29,353	26,993	24,633	22,273	19,913	17,553
Average Balance	14,834	57,820	56,050	54,059	51,773	49,413	47,053	44,693	42,333	39,973	37,613	35,253	32,893	30,533	28,173	25,813	23,453	21,093	18,733
Times: Interest Rate	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%
Interest Expense - A Bonds	1,038	4,047	3,924	3,784	3,624	3,459	3,294	3,128	2,963	2,798	2,633	2,468	2,302	2,137	1,972	1,807	1,642	1,477	1,312

### Term A Bonds:

[illegible]

DEBT/EQUITY CALCULATIONS  
Constellation Sunnyside

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Plus: New Arrearages	0	0	0	0	0	0	0	0	0	0	0	0	0
Less: Arrearage repayments	0	0	0	0	0	0	0	0	0	0	0	0	0
Ending S&M Arrearage	0	0	0	0	0	0	0	0	0	0	0	0	0
Equity Distributions:													
S&M Fees Arrearage Repayments	0	0	0	0	0	0	0	0	0	0	0	0	0
S&M Fee	375	1,539	1,579	1,620	1,662	1,705	1,750	1,795	1,842	1,890	1,939	1,989	2,041
Excess Cash Flow Distribution	0	226	394	307	322	395	468	541	706	782	708	769	842
Total Equity Distributions	375	1,765	1,973	1,927	1,984	2,100	2,217	2,338	2,548	2,672	2,647	2,759	2,884
Total Equity Contributions	46	0	0	0	0	0	0	0	0	0	0	0	0

Term B Bonds - Rollforward  
Bond Issue Date

9/30/99	25%												
1,916	1,916	1,981	2,145	2,346	2,566	2,806	3,069	3,357	3,672	4,016	4,393	4,804	5,255
Plus: Accreted Interest	45	184	201	220	241	263	288	315	344	377	412	450	493
Less: Debt Forgiveness	0	0	0	0	0	0	0	0	0	0	0	0	0
Ending Balance	1,961	2,145	2,246	2,566	2,806	3,069	3,357	3,672	4,016	4,393	4,804	5,255	5,748

Interest Expense:

Series A Bonds	1,038	4,047	3,924	3,784	3,624	3,459	3,294	3,128	2,963	2,798	2,633	2,468	2,302
Series B Bonds - Accretion	45	184	201	220	241	263	288	315	344	377	412	450	493
Series B Bonds - Excess Cash	0	226	394	307	322	395	468	541	706	782	708	769	842
Total Interest Expense	1,084	4,457	4,519	4,311	4,188	4,116	4,048	3,984	4,014	3,957	3,752	3,688	3,638



Constellation Sunnyside  
Projected Statement of Cash Flow

11166-vv

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	Total
Book Income (Loss)	2,440	2,248	2,598	2,702	2,695	2,753	2,808	2,805	2,892	2,925	2,951	3,428	5,138	90,880
Depreciation	1,824	1,824	1,364	1,364	1,364	1,364	1,364	1,364	1,364	1,364	1,364	1,364	15,207	55,041
Amortization	550	550	550	550	550	550	550	550	550	550	550	550	663	14,304
Debt Forgiveness (non-cash)	0	0	0	0	0	0	0	0	0	0	0	0	0	(18,000)
Change in Receivables	(30)	(31)	(32)	(33)	(34)	(35)	(36)	(29)	(46)	(39)	(40)	(41)	2,276	1,400
Change in Payables	33	97	71	47	76	35	35	39	32	36	36	74	(1,276)	(580)
Change in Inventory & Other	0	0	0	0	0	0	0	0	0	0	0	0	0	100
Change in Prepaid Expenses	(7)	(7)	(7)	(7)	(7)	(8)	(8)	(8)	(8)	(8)	(8)	(8)	832	0
Cash Flow From Operations	4,810	4,682	4,564	4,643	4,664	4,878	4,731	4,741	4,804	4,848	4,872	5,365	5,009	113,155
Additional Debt Incurred	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Financing Fees	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Scheduled Debt Repayment	(2,360)	(2,360)	(2,360)	(2,506)	(2,655)	(2,855)	(2,855)	(2,855)	(2,855)	(2,855)	(2,855)	(3,540)	0	(59,000)
Other Deferred Interest on "Cash Flow" Bo	539	599	645	705	771	843	922	1,009	1,104	1,207	1,320	1,444	1,154	18,084
Cash from Financing Activities	(1,821)	(1,771)	(1,715)	(1,802)	(1,884)	(1,812)	(1,733)	(1,848)	(1,881)	(1,448)	(1,339)	(2,066)	1,154	(42,916)
Capital Expenditures	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Cash Generated During Period	2,989	2,911	2,849	2,841	2,780	2,868	2,999	3,095	3,252	3,400	3,537	3,299	6,163	70,239
DSR Withdrawals (Payments)	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Op Reserve Withdrawals (Payments)	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Excess Earnings Withdrawals (Payments)	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Beginning Cash Balance	1,078	1,078	1,135	1,187	1,174	1,209	1,201	1,193	1,195	1,173	1,182	1,149	1,172	2,000
Cash Balance Before Distribution	4,068	3,987	3,984	4,007	3,854	4,078	4,200	4,288	4,448	4,573	4,699	4,438	7,336	72,238
Cash (Distributions) Calls	(2,993)	(2,952)	(2,817)	(2,833)	(2,748)	(2,875)	(3,007)	(3,093)	(3,274)	(3,411)	(3,550)	(3,266)	(4,482)	(89,365)
Ending Cash Balance	1,078	1,135	1,167	1,174	1,209	1,201	1,193	1,195	1,173	1,182	1,149	1,172	2,874	2,874



DEBT/EQUITY CALCULATIONS  
Constellation Sunnyside

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	Total
Plus: New Arrearages	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Less: Arrearage repayments	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ending S&M Arrearage	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>Equity Distributions:</b>														
S&M Fees Arrearage Repayments	0	0	0	0	0	0	0	0	0	0	0	0	0	0
S&M Fee	2,094	2,148	2,204	2,262	2,321	2,381	2,443	2,506	2,571	2,638	2,707	2,777	2,850	53,630
Excess Cash Flow Distribution	899	703	613	572	425	494	564	587	703	773	844	888	1,612	15,735
Total Equity Distributions	2,993	2,852	2,817	2,833	2,746	2,875	3,007	3,093	3,274	3,411	3,550	3,665	4,462	69,365
Total Equity Contributions	0	0	0	0	0	0	0	0	0	0	0	0	0	48
<b>Term B Bonds - Rollforward</b>														
Bond Issue Date														
Beginning Balance	5,748	6,286	6,876	7,520	8,225	8,986	9,840	10,782	11,771	12,875	14,082	15,402	16,846	1,918
Plus: Accrued Interest	539	569	645	705	771	843	922	1,009	1,104	1,207	1,320	1,444	1,574	16,084
Less: Debt Forgiveness	0	0	0	0	0	0	0	0	0	0	0	0	(18,000)	(18,000)
Ending Balance	6,286	6,876	7,520	8,225	8,986	9,840	10,782	11,771	12,875	14,082	15,402	16,846	0	0
<b>Interest Expense:</b>														
Series A Bonds	2,137	1,972	1,807	1,637	1,456	1,270	1,084	898	712	527	341	124	0	53,427
Series B Bonds - Accretion	539	569	645	705	771	843	922	1,009	1,104	1,207	1,320	1,444	1,574	16,084
Series B Bonds - Excess Cash	899	703	613	572	425	494	564	587	703	773	844	888	1,612	15,735
Total Interest Expense	3,575	3,245	3,064	2,913	2,652	2,608	2,571	2,494	2,519	2,507	2,504	2,056	2,786	85,247

Constellation Sunnyside  
Projected Taxable Income and Distributions

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Book Income (Loss)	31	1,160	1,368	1,765	1,970	2,086	2,203	2,321	2,534	2,658	2,632	2,744	2,869
Plus: Book Depreciation	456	1,824	1,824	1,824	1,824	1,824	1,824	1,824	1,824	1,824	1,824	1,824	1,824
Book Amortization	138	550	550	550	550	550	550	550	550	550	550	550	550
Less: Tax Depreciation	(2,705)	(10,786)	(10,756)	(9,386)	(8,948)	(8,948)	(8,626)	(1,203)	(1,203)	(1,203)	(1,203)	(1,200)	(1,125)
Tax Amortization	(400)	(400)	(400)	(400)	(400)	(400)	(400)	(400)	(400)	(400)	0	0	0
<b>Taxable Income</b>	<b>(2,481)</b>	<b>(7,651)</b>	<b>(7,414)</b>	<b>(5,656)</b>	<b>(5,005)</b>	<b>(4,888)</b>	<b>(4,448)</b>	<b>3,092</b>	<b>3,305</b>	<b>3,429</b>	<b>3,803</b>	<b>3,919</b>	<b>4,118</b>
<b>Tax Benefits (REQMTS) at 38.250%</b>	<b>949</b>	<b>2,928</b>	<b>2,836</b>	<b>2,163</b>	<b>1,914</b>	<b>1,870</b>	<b>1,701</b>	<b>(1,183)</b>	<b>(1,264)</b>	<b>(1,311)</b>	<b>(1,455)</b>	<b>(1,499)</b>	<b>(1,575)</b>
<b>Net After-Tax Benefits To Partners</b>	<b>949</b>	<b>2,928</b>	<b>2,836</b>	<b>2,163</b>	<b>1,914</b>	<b>1,870</b>	<b>1,701</b>	<b>(1,183)</b>	<b>(1,264)</b>	<b>(1,311)</b>	<b>(1,455)</b>	<b>(1,499)</b>	<b>(1,575)</b>
Tax Benefits (REQMTS)	375	1,765	1,973	1,927	1,984	2,100	2,217	2,336	2,548	2,672	2,647	2,759	2,884
Cash Distributions (REQMTS)	(11,350)	0	0	0	0	0	0	0	0	0	0	0	0
Equity Investment	(10,028)	4,691	4,809	4,091	3,898	3,970	3,919	1,153	1,284	1,361	1,192	1,260	1,308
<b>After Tax Cash Flow</b>	<b>20 year</b>	<b>39.74%</b>	<b>27.86%</b>	<b>3.022</b>	<b>10 year</b>	<b>38.95%</b>	<b>8.173</b>						
<b>After Tax Results</b>													
Internal Rate of Return													
Net Present Value at 12.0%													
<b>Net Pre-Tax Benefits To Partners</b>													
Cash Distributions (REQMTS)	375	1,765	1,973	1,927	1,984	2,100	2,217	2,336	2,548	2,672	2,647	2,759	2,884
Equity Investment	(11,350)	0	0	0	0	0	0	0	0	0	0	0	0
<b>Pre Tax Cash Flow</b>	<b>20 year</b>	<b>19.23%</b>	<b>-12.86%</b>	<b>(4,630)</b>	<b>152</b>								
<b>Pre Tax Results</b>													
Internal Rate of Return													
Net Present Value at 12.0%													

Constellation Sunnyside  
Projected Taxable Income and Distributions

11-16-99

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Book Income (Loss)	2,976	2,836	3,243	3,407	3,467	3,596	3,728	3,814	3,995	4,132	4,271	4,872	6,292
Plus: Book Depreciation	1,824	1,824	1,384	1,384	1,384	1,384	1,384	1,384	1,384	1,384	1,384	1,384	15,207
Less: Tax Depreciation	550	550	550	550	550	550	550	550	550	550	550	550	963
Tax Amortization	(1,125)	(1,125)	(1,125)	(1,125)	(1,125)	(1,125)	(1,028)	(775)	(775)	(775)	(775)	(586)	0
	0	0	0	0	0	0	0	0	0	0	0	0	0
Taxable Income	4,227	4,087	4,052	4,215	4,275	4,405	4,633	4,972	5,154	5,291	5,430	6,220	22,462
Tax Benefits (REQMTS) at 36.250%	(1,617)	(1,563)	(1,550)	(1,811)	(1,837)	(1,893)	(1,991)	(2,137)	(2,215)	(2,274)	(2,333)	(2,673)	(9,652)
Net After-Tax Benefits To Partners													
Tax Benefits (REQMTS)	(1,617)	(1,563)	(1,550)	(1,811)	(1,837)	(1,893)	(1,991)	(2,137)	(2,215)	(2,274)	(2,333)	(2,673)	(9,652)
Cash Distributions (REQMTS)	2,993	2,852	2,817	2,833	2,746	2,875	3,007	3,093	3,274	3,411	3,550	3,266	4,462
Equity Investment	0	0	0	0	0	0	0	0	0	0	0	0	0
After Tax Cash Flow	1,376	1,289	1,267	1,022	909	982	1,016	956	1,060	1,138	1,217	593	(5,190)
After Tax Results													
Internal Rate of Return	15 year	39.63%				20 year	39.74%					25 year	26 year
Net Present Value at 12.0%		9,658					10,349					39.76%	39.75%
												10,724	10,451
Net Pre-Tax Benefits To Partners													
Cash Distributions (REQMTS)	2,993	2,852	2,817	2,833	2,746	2,875	3,007	3,093	3,274	3,411	3,550	3,266	4,462
Equity Investment	0	0	0	0	0	0	0	0	0	0	0	0	0
Pre Tax Cash Flow	2,993	2,852	2,817	2,833	2,746	2,875	3,007	3,093	3,274	3,411	3,550	3,266	4,462
Pre Tax Results													
Internal Rate of Return	15 year	17.74%				20 year	19.23%					25 year	26 year
Net Present Value at 12.0%		3,415					5,290					19.80%	19.88%
												6,524	6,759

Sunnyside Operating Assumptions		1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Feed Sites		MO	MO	MO	MO	MO	MO	MO	MO	MO	MO	MO	MO	MO
On Peak Heavy Load Hours		4,800	4,800	4,800	4,800	4,800	4,800	4,800	4,800	4,800	4,800	4,800	4,800	4,800
Other Hours		3,800	3,800	3,800	3,800	3,800	3,800	3,800	3,800	3,800	3,800	3,800	3,800	3,800
Total Hours		8,600	8,600	8,600	8,600	8,600	8,600	8,600	8,600	8,600	8,600	8,600	8,600	8,600
MW Capacity (Net)		51,000	51,000	51,000	51,000	51,000	51,000	51,000	51,000	51,000	51,000	51,000	51,000	51,000
Amounts														
On Peak Availability (Heavy Load Hours)		82.00%	84.00%	86.00%	88.00%	88.00%	88.00%	88.00%	88.00%	88.00%	88.00%	88.00%	88.00%	88.00%
On Peak Availability		83.00%	84.00%	86.00%	88.00%	88.00%	88.00%	88.00%	88.00%	88.00%	88.00%	88.00%	88.00%	88.00%
On Peak Hours (Heavy Load)		3,944.00	3,944.00	3,944.00	3,944.00	3,944.00	3,944.00	3,944.00	3,944.00	3,944.00	3,944.00	3,944.00	3,944.00	3,944.00
On Peak Hours		3,944.00	3,944.00	3,944.00	3,944.00	3,944.00	3,944.00	3,944.00	3,944.00	3,944.00	3,944.00	3,944.00	3,944.00	3,944.00
Total Hours		7,888.00	7,888.00	7,888.00	7,888.00	7,888.00	7,888.00	7,888.00	7,888.00	7,888.00	7,888.00	7,888.00	7,888.00	7,888.00
Best days July & Aug combined Heavy Load hours 32.8														
Capacity and Energy Loss Adjustment Factor		1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
Energy Information														
Base Energy mwh		323,214	310,840	327,455	325,070	325,070	325,070	325,070	325,070	325,070	325,070	325,070	325,070	325,070
Excess Energy (in excess of 417,632)		0	0	0	0	0	0	0	0	0	0	0	0	0
Additional Energy		43,090	55,430	50,750	50,070	50,070	50,070	50,070	50,070	50,070	50,070	50,070	50,070	50,070
Total Energy		366,304	366,270	378,205	375,140	375,140	375,140	375,140	375,140	375,140	375,140	375,140	375,140	375,140
Rates														
Base Energy Rate (avoided cost)		20,000	20,520	21,054	21,001	21,001	21,001	21,001	21,001	21,001	21,001	21,001	21,001	21,001
Excess Energy Rate (in excess of 417,632)		20,000	20,520	21,054	21,001	21,001	21,001	21,001	21,001	21,001	21,001	21,001	21,001	21,001
Additional Energy (avoided cost) no hour		20,000	20,520	21,054	21,001	21,001	21,001	21,001	21,001	21,001	21,001	21,001	21,001	21,001
Capacity Information														
Seasonal Capacity 1		55.76	57.12	58.40	59.64	59.64	59.64	59.64	59.64	59.64	59.64	59.64	59.64	59.64
Seasonal Capacity 2		51.00	52.80	52.80	52.80	52.80	52.80	52.80	52.80	52.80	52.80	52.80	52.80	52.80
Seasonal Capacity - Min of 10.2		51.00	52.80	52.80	52.80	52.80	52.80	52.80	52.80	52.80	52.80	52.80	52.80	52.80
Seasonal Capacity Constraints = min 52 and 5.0		51.00	52.80	52.80	52.80	52.80	52.80	52.80	52.80	52.80	52.80	52.80	52.80	52.80
Base Billing Capacity = min Cap 1, SCC, 45		45.00	45.00	45.00	45.00	45.00	45.00	45.00	45.00	45.00	45.00	45.00	45.00	45.00
Minimum Delivery Obligation to own additional Capacity		357,400	364,100	364,100	364,100	364,100	364,100	364,100	364,100	364,100	364,100	364,100	364,100	364,100
Actual Total Facility Capacity		82.00%	81.14%	83.07%	85.00%	85.00%	85.00%	85.00%	85.00%	85.00%	85.00%	85.00%	85.00%	85.00%
Additional Billing Capacity Factor = 9 for 6 hrs. 75 for 4 hrs		5.76	7.45	7.62	7.80	7.80	7.80	7.80	7.80	7.80	7.80	7.80	7.80	7.80
Additional Billing Capacity		5.76	7.45	7.62	7.80	7.80	7.80	7.80	7.80	7.80	7.80	7.80	7.80	7.80
Rates														
Base		192.90	192.90	192.90	192.90	192.90	192.90	192.90	192.90	192.90	192.90	192.90	192.90	192.90
Additional		116.26	121.56	127.00	132.72	136.72	144.96	151.56	158.20	165.40	173.02	180.50	188.70	197.20
Fuel Information														
Heat Rate		12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000
Fuel Consumption (Btu)		4,782	4,879	4,995	5,111	5,111	5,111	5,111	5,111	5,111	5,111	5,111	5,111	5,111
Higher Heating Value of Fuel														
ROM Heat Content (Btu/lb. HHV)		11,500	11,500	11,500	11,500	11,500	11,500	11,500	11,500	11,500	11,500	11,500	11,500	11,500
Waste Coal - Gross (Btu/lb. HHV)		4,777	4,777	4,777	4,777	4,777	4,777	4,777	4,777	4,777	4,777	4,777	4,777	4,777
Waste Coal - Net (Btu/lb. HHV)		9,801	9,801	9,801	9,801	9,801	9,801	9,801	9,801	9,801	9,801	9,801	9,801	9,801
Fuel Mix:														
ROM (% of Mix)		0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Waste Coal - Gross (% of Mix)		82.72%	82.72%	82.72%	81.34%	81.34%	81.34%	81.34%	81.34%	81.34%	81.34%	81.34%	81.34%	81.34%
Waste Coal - Net (% of Mix)		17.28%	17.28%	17.28%	18.66%	18.66%	18.66%	18.66%	18.66%	18.66%	18.66%	18.66%	18.66%	18.66%
Average Heat Content (Btu/lb. HHV)		5,845	5,845	5,845	5,714	5,714	5,714	5,714	5,714	5,714	5,714	5,714	5,714	5,714

Sunnyside Operating Assumptions		1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Power Sales		MO												
Fuel Consumption (% of sales)														
ROI		0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Waste Coal - Coarse		70.00%	70.00%	70.00%	70.00%	70.00%	70.00%	70.00%	70.00%	70.00%	70.00%	70.00%	70.00%	70.00%
Waste Coal - Fine		30.00%	30.00%	30.00%	30.00%	30.00%	30.00%	30.00%	30.00%	30.00%	30.00%	30.00%	30.00%	30.00%
Fuel Consumption (\$/ton)		100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
ROI		0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Waste Coal - Coarse		3.34	3.415	3.486	3.570	3.675	3.775	3.875	3.975	4.075	4.175	4.275	4.375	4.475
Waste Coal - Fine		1.428	1.464	1.498	1.532	1.565	1.595	1.625	1.655	1.685	1.715	1.745	1.775	1.805
Fuel Consumption (\$/ton)		4.768	4.879	4.984	5.102	5.240	5.370	5.500	5.630	5.760	5.890	6.020	6.150	6.280
Run-of-Mine Coal (\$/ton)		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Waste Coal		348.935	351.415	354.954	358.493	362.032	365.571	369.110	372.649	376.188	379.727	383.266	386.805	390.344
Coarse		72.887	74.085	75.283	76.481	77.679	78.877	80.075	81.273	82.471	83.669	84.867	86.065	87.263
Subtotal Waste Coal		421.822	425.500	430.237	434.974	439.711	444.448	449.185	453.922	458.659	463.396	468.133	472.870	477.607
Total		421.822	425.500	430.237	434.974	439.711	444.448	449.185	453.922	458.659	463.396	468.133	472.870	477.607
Residualing Waste Coal (000 tons)		4.777	4.728	4.679	4.630	4.581	4.532	4.483	4.434	4.385	4.336	4.287	4.238	4.189
Coarse		1.436	1.385	1.334	1.283	1.232	1.181	1.130	1.079	1.028	0.977	0.926	0.875	0.824
Fine		3.341	3.343	3.345	3.347	3.349	3.351	3.353	3.355	3.357	3.359	3.361	3.363	3.365
On-Site Waste Coal		348.935	351.415	354.954	358.493	362.032	365.571	369.110	372.649	376.188	379.727	383.266	386.805	390.344
On-Site Waste Coal - Coarse		72.887	74.085	75.283	76.481	77.679	78.877	80.075	81.273	82.471	83.669	84.867	86.065	87.263
On-Site Waste Coal - Fine		421.822	425.500	430.237	434.974	439.711	444.448	449.185	453.922	458.659	463.396	468.133	472.870	477.607
Total		421.822	425.500	430.237	434.974	439.711	444.448	449.185	453.922	458.659	463.396	468.133	472.870	477.607
Off-Site Waste Coal Consumption		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Limestone usage		11.70%	11.70%	11.70%	11.70%	11.70%	11.70%	11.70%	11.70%	11.70%	11.70%	11.70%	11.70%	11.70%
Limestone Consumption (\$/ton)		49.253	50.557	51.861	53.165	54.469	55.773	57.077	58.381	59.685	60.989	62.293	63.597	64.901
Ash (\$/ton)		51.00%	51.00%	51.00%	51.00%	51.00%	51.00%	51.00%	51.00%	51.00%	51.00%	51.00%	51.00%	51.00%
Percentage of fuel that is ash		100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
Water added to dry ash (%)		15.00%	15.00%	15.00%	15.00%	15.00%	15.00%	15.00%	15.00%	15.00%	15.00%	15.00%	15.00%	15.00%
Ash (\$/ton)		304.155	311.272	318.389	325.506	332.623	339.740	346.857	353.974	361.091	368.208	375.325	382.442	389.559
COMMODITY PRICES														
General Inflation		2.80%	2.80%	2.80%	2.80%	2.80%	2.80%	2.80%	2.80%	2.80%	2.80%	2.80%	2.80%	2.80%
Lumbering Index		100.00%	102.80%	105.60%	108.40%	111.20%	114.00%	116.80%	119.60%	122.40%	125.20%	128.00%	130.80%	133.60%
Fuel Handling (\$/ton)		1.00	1.12	1.24	1.36	1.48	1.60	1.72	1.84	1.96	2.08	2.20	2.32	2.44
On-Site Waste Coal Excavation & Transport (\$/ton)		0.71	0.73	0.75	0.77	0.79	0.81	0.83	0.85	0.87	0.89	0.91	0.93	0.95
On-Site Waste Coal Excavation & Transport (\$/ton)		0.75	0.78	0.81	0.84	0.87	0.90	0.93	0.96	0.99	1.02	1.05	1.08	1.11
On-Site Waste Coal Excavation & Transport (\$/ton)		0.89	0.92	0.95	0.98	1.01	1.04	1.07	1.10	1.13	1.16	1.19	1.22	1.25
On-Site Waste Coal Excavation & Transport (\$/ton)		3.00	3.08	3.16	3.24	3.32	3.40	3.48	3.56	3.64	3.72	3.80	3.88	3.96
On-Site Waste Coal Excavation & Transport (\$/ton)		3.71	3.81	3.91	4.01	4.11	4.21	4.31	4.41	4.51	4.61	4.71	4.81	4.91
Total On-Site Handling cost per ton		2.08	2.13	2.19	2.25	2.30	2.36	2.42	2.48	2.54	2.60	2.66	2.72	2.78
Total Off-Site Handling cost per ton		4.80	4.92	5.05	5.18	5.32	5.46	5.60	5.74	5.88	6.02	6.16	6.30	6.44
Run-of-Mine Coal (\$/ton)		24.84	25.46	26.10	26.73	27.37	28.01	28.65	29.29	29.93	30.57	31.21	31.85	32.49
Limestone (\$/ton)		10.37	9.23	8.47	8.22	8.07	7.92	7.77	7.62	7.47	7.32	7.17	7.02	6.87
Limestone (\$/ton)		18.43	14.36	14.74	15.12	15.51	15.90	16.29	16.68	17.07	17.46	17.85	18.24	18.63
Ash Transport, Disposal & Maint. (\$/ton)		1.97	2.02	2.07	2.12	2.18	2.24	2.30	2.36	2.42	2.48	2.54	2.60	2.66
DIRECT COSTS														
Fuel Handling		457.786	483.248	507.810	532.372	556.934	581.496	606.058	630.620	655.182	679.744	704.306	728.868	753.430
On-Site Waste Coal Excavation & Transport		417.604	428.912	440.220	451.528	462.836	474.144	485.452	496.760	508.068	519.376	530.684	541.992	553.300
Off-Site Waste Coal Excavation & Transport		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Run-of-Mine Coal		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Total Fuel Costs		875.390	912.160	948.030	983.900	1,019.760	1,055.620	1,091.480	1,127.340	1,163.200	1,199.060	1,234.920	1,270.780	1,306.640
Limestone		521.427	466.843	490.365	514.887	539.409	563.931	588.453	612.975	637.497	662.019	686.541	711.063	735.585
Limestone Transport, Crushing & Maintenance		811.109	720.200	762.821	805.442	848.063	890.684	933.305	975.926	1,018.547	1,061.168	1,103.789	1,146.410	1,189.031

Sunnyside Operating Assumptions		1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
		MO	MO	MO	MO	MO	MO	MO	MO	MO	MO	MO	MO	MO
Total Bid Media		1,322,536	1,193,042	1,253,708	1,315,881	1,313,545	1,368,317	1,403,181	1,440,280	1,397,393	1,433,735	1,471,002	1,405,855	1,534,747
A/R Transport, Deprecial & Maintenance		599,185	628,154	661,518	694,499	703,924	712,228	741,004	780,210	737,828	754,805	778,482	769,801	810,130
OPERATING EXPENSES														
Direct Labor		2,183,000	2,210,236	2,276,936	2,338,139	2,398,978	2,459,107	2,523,136	2,588,728	2,654,045	2,723,102	2,795,945	2,868,848	2,943,234
Chemicals		292,000	294,812	315,801	292,872	290,219	297,878	305,433	313,569	321,722	330,008	338,089	347,174	356,500
Utilities (Electricity, Water and Fuel Oil)		398,000	409,371	420,818	430,936	442,143	453,608	465,433	477,534	489,950	502,689	515,759	529,108	542,837
Testing Expenses (Water, Fuel and Limestone)		33,000	31,858	34,738	35,842	36,548	37,518	38,484	39,495	40,522	41,576	42,657	43,766	44,904
Lease Payments		23,000	23,000	23,000	23,000	23,000	23,000	23,000	23,000	23,000	23,000	23,000	23,000	23,000
Supplies and Clothing		8,000	8,134	8,318	8,460	8,618	8,782	8,950	9,121	9,296	9,474	9,655	9,839	10,026
Total Operating Expenses		3,233,000	3,285,359	3,350,813	3,399,427	3,451,164	3,506,243	3,564,000	3,624,735	3,688,350	3,755,924	3,827,481	3,903,101	3,983,000
MAINTENANCE EXPENSES														
Parts and Material		453,000	465,394	477,484	489,000	502,848	518,715	536,124	554,081	572,586	591,648	611,276	631,481	652,264
Scheduled Servicing		508,000	519,154	532,854	548,503	566,712	587,291	609,218	632,495	657,140	682,165	708,571	736,358	765,524
Unscheduled Servicing		203,400	208,088	214,114	219,081	223,783	228,253	232,746	237,425	242,284	247,326	252,551	257,960	263,564
Transmission Line Maintenance		40,000	41,040	42,167	43,382	44,685	46,078	47,560	49,132	50,795	52,548	54,391	56,324	58,348
Cable Exp (see note to FAS 121 concern)		0	0	0	0	0	0	0	0	0	0	0	0	0
Other		171,000	173,446	180,008	184,088	189,480	194,418	199,471	204,657	209,979	215,439	221,039	226,784	232,683
Total Maintenance Expenses		1,375,400	1,406,722	1,446,573	1,483,983	1,527,548	1,562,153	1,602,769	1,644,441	1,682,965	1,723,003	1,764,971	1,808,928	1,855,039
PLANT GLA EXPENSES														
Sales Tax		18,000	18,488	18,948	19,411	19,848	20,285	20,697	21,143	21,543	21,978	22,447	22,922	23,413
Emissions Fees		90,000	91,300	92,934	94,602	96,308	98,047	99,825	101,641	103,497	105,394	107,331	109,308	111,324
Outside Services		50,000	51,300	52,934	54,602	56,308	58,047	59,825	61,641	63,497	65,394	67,331	69,308	71,324
License Renewals		3,000	3,078	3,156	3,234	3,312	3,391	3,469	3,548	3,627	3,706	3,785	3,864	3,943
Home Office		0	0	0	0	0	0	0	0	0	0	0	0	0
Other		232,000	238,802	244,221	250,521	257,082	263,779	270,618	277,604	284,833	292,300	299,999	307,887	315,907
Total Plant GLA Expenses		353,000	362,118	371,256	381,258	391,188	401,189	411,174	421,180	431,185	441,235	451,286	461,341	471,401
INDIRECT OPERATING EXPENSES														
Insurance Expense		360,000	369,800	379,817	389,917	399,998	410,117	420,266	430,444	440,651	450,888	461,156	471,454	481,782
Property Tax Expense		601,000	601,000	601,000	601,000	601,000	601,000	601,000	601,000	601,000	601,000	601,000	601,000	601,000
Total Indirect Operating Expenses		961,000	970,800	980,817	990,917	1,001,000	1,011,217	1,021,266	1,031,444	1,041,651	1,051,888	1,062,156	1,072,454	1,082,782
OTHER GLA EXPENSES														
Legal		158,000	153,000	147,133	141,483	135,948	130,521	125,199	119,981	114,858	109,735	104,612	99,489	94,366
Accounting		104,000	106,784	109,478	112,172	114,866	117,560	120,254	122,948	125,642	128,336	131,030	133,724	136,418
Restructuring Expenses		0	0	0	0	0	0	0	0	0	0	0	0	0
Other		102,000	105,878	109,758	113,638	117,518	121,398	125,278	129,158	133,038	136,918	140,798	144,678	148,558
Total Other GLA Expenses		364,000	365,662	366,369	367,310	368,332	369,354	370,376	371,398	372,419	373,441	374,463	375,485	376,507
OTHER OPERATING EXPENSES														
Management Fee		213,000	212,150	211,300	210,450	209,600	208,750	207,900	207,050	206,200	205,350	204,500	203,650	202,800
Recidivation & License Expansion		187,000	187,782	188,564	189,346	190,128	190,910	191,692	192,474	193,256	194,038	194,820	195,602	196,384
Water Maintenance		554,000	572,500	591,000	609,500	628,000	646,500	665,000	683,500	702,000	720,500	739,000	757,500	776,000
Capital Improvements		120,000	123,170	126,340	129,510	132,680	135,850	139,020	142,190	145,360	148,530	151,700	154,870	158,040
Total from ops setup		8,828	8,872	8,916	8,960	9,004	9,048	9,092	9,136	9,180	9,224	9,268	9,312	9,356
Total from P & L		2,455	2,455	2,455	2,455	2,455	2,455	2,455	2,455	2,455	2,455	2,455	2,455	2,455
Total Operating Expenses		5,999,185	6,285,359	6,570,813	6,856,267	7,141,712	7,427,156	7,712,600	8,000,044	8,287,488	8,574,932	8,862,376	9,149,820	9,437,264
Total Bid Costs		1,322,536	1,193,042	1,253,708	1,315,881	1,313,545	1,368,317	1,403,181	1,440,280	1,397,393	1,433,735	1,471,002	1,405,855	1,534,747
Total Bid Costs		1,322,536	1,193,042	1,253,708	1,315,881	1,313,545	1,368,317	1,403,181	1,440,280	1,397,393	1,433,735	1,471,002	1,405,855	1,534,747
Total Bid Costs		1,322,536	1,193,042	1,253,708	1,315,881	1,313,545	1,368,317	1,403,181	1,440,280	1,397,393	1,433,735	1,471,002	1,405,855	1,534,747
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Total Bid Costs		1,322,536	1,193,042	1,253,708	1,315,881	1,313,545	1,368,317	1,403,181	1,440,280	1,397,393	1,433,735	1,471,002	1,405,855	1,534,747
Total Bid Costs		1,322,536	1,193,042	1,253,708	1,315,881	1,313,545	1,368,317	1,403,181	1,440,280	1,397,393	1,433,735	1,471,002	1,405,855	1,534,747
Total Bid Costs		1,322,536	1,193,042	1,253,708	1,315,881	1,313,545	1,368,317	1,403,181	1,440,280	1,397,393	1,433,735	1,471,002	1,405,855	1,534,747
Total Bid Costs		1,322,536	1,193,042	1,253,708	1,315,881	1,313,545	1,368,317	1,403,181	1,440,280	1,397,393	1,433,735	1,471,002	1,405,855	1,534,747
Total Bid Costs		1,322,536	1,193,042	1,253,708	1,315,881	1,313,545	1,368,317	1,403,181	1,440,280	1,397,393	1,433,735	1,471,002	1,405,855	1,534,747
Total Bid Costs		1,322,536	1,193,042	1,253,708	1,315,881	1,313,545	1,368,317	1,403,181	1,440,280	1,397,393	1,433,735	1,471,002	1,405,855	1,534,747
Total Bid Costs		1,322,536	1,193,042	1,253,708	1,315,881	1,313,545	1,368,317	1,403,181	1,440,280	1,397,393	1,433,735	1,471,002	1,405,855	1,534,747
Total Bid Costs		1,322,536	1,193,042	1,253,708	1,315,881	1,313,545	1,368,317	1,403,181	1,440,280	1,397,393	1,433,735	1,471,002	1,405,855	1,534,747
Total Bid Costs		1,322,536	1,193,042	1,253,708	1,315,881	1,313,545	1,368,317	1,403,181	1,440,280	1,397,393	1,433,735	1,471,002	1,405,855	1,534,747
Total Bid Costs		1,322,536	1,193,042	1,253,708	1,315,881	1,313,545	1,368,317	1,403,181	1,440,280	1,397,393	1,433,735	1,471,002	1,405,855	1,534,747
Total Bid Costs		1,322,536	1,193,042	1,253,708	1,315,881	1,313,545	1,368,317	1,403,181	1,440,280	1,397,393	1,433,735	1,471,002	1,405,855	1,534,747
Total Bid Costs		1,322,536	1,193,042	1,253,708	1,315,881	1,313,545	1,368,317	1,403,181	1,440,280	1,397,393	1,433,735	1,471,002	1,405,855	1,534,747
Total Bid Costs		1,322,536	1,193,042	1,253,708	1,315,881	1,313,545	1,368,317	1,403,181	1,440,280	1,397,393	1,433,735	1,471,002	1,405,855	1,534,747
Total Bid Costs		1,322,536	1,193,042	1,253,708	1,315,881	1,313,545	1,368,317	1,403,181	1,440,280	1,397,393	1,433,735	1,471,002	1,405,855	1,534,747
Total Bid Costs		1,322,536	1,193,042	1,253,708	1,315,881	1,313,545	1,368,317	1,403,181	1,440,280	1,397,393	1,433,735	1,471,002	1,405,855	1,534,747
Total Bid Costs		1,322,536	1,193,042	1,253,708	1,315,881	1,313,545	1,368,317	1,403,181	1,440,280	1,397,393	1,433,735	1,471,002	1,405,855	1,534,747
Total Bid Costs		1,322,536	1,193,042	1,253,708	1,315,881	1,313,545	1,368,317	1						



Sunnyside Operating Assumptions											
Power Sales											
Ash Transport, Debris & Maintenance											
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2010
	MO	MO	MO	MO	MO	MO	MO	MO	MO	MO	MO
OPERATING EXPENSES - LYRUP											
Direct Labor	350,000	350,100	360,437	370,016	387,844	397,970	408,274	418,890	429,781	440,855	452,120
Chemicals	75,000	76,950	78,951	81,003	83,110	85,270	87,487	89,762	92,096	94,490	96,947
Utilities (Electricity, Water and Fuel Oil)	75,000	76,950	78,951	81,003	83,110	85,270	87,487	89,762	92,096	94,490	96,947
Testing Expenses (Water, Fuel and Limestone)	75,000	76,950	78,951	81,003	83,110	85,270	87,487	89,762	92,096	94,490	96,947
Lease Payments	75,000	76,950	78,951	81,003	83,110	85,270	87,487	89,762	92,096	94,490	96,947
Supplies and Clothing	75,000	76,950	78,951	81,003	83,110	85,270	87,487	89,762	92,096	94,490	96,947
Total Operating Expenses	315,000	324,750	334,754	345,019	355,448	366,017	376,723	387,584	398,573	409,685	420,914
MAINTENANCE EXPENSES - LYRUP											
Parts and Material	50,000	51,300	52,634	54,000	55,400	56,847	58,335	59,861	61,427	63,031	64,674
Scheduled Servicing	50,000	51,300	52,634	54,000	55,400	56,847	58,335	59,861	61,427	63,031	64,674
Unscheduled Servicing	50,000	51,300	52,634	54,000	55,400	56,847	58,335	59,861	61,427	63,031	64,674
Transmission Line Maintenance	50,000	51,300	52,634	54,000	55,400	56,847	58,335	59,861	61,427	63,031	64,674
Other	50,000	51,300	52,634	54,000	55,400	56,847	58,335	59,861	61,427	63,031	64,674
Total Maintenance Expenses	250,000	256,500	263,100	270,011	277,602	285,335	293,225	301,307	309,582	317,964	326,556
PLANT O&A EXPENSES - LYRUP											
Sales Tax	100	100	100	100	111	116	117	120	123	126	129
Emission Fee	100	100	100	100	111	116	117	120	123	126	129
Outside Services	100	100	100	100	111	116	117	120	123	126	129
License Renewals	100	100	100	100	111	116	117	120	123	126	129
Relocation and Moving	100	100	100	100	111	116	117	120	123	126	129
Other	100	100	100	100	111	116	117	120	123	126	129
Total Plant O&A Expenses	100,000	100,000	100,000	100,000	111,000	116,000	117,000	120,000	123,000	126,000	129,000
INDIRECT OPERATING EXPENSES - LYRUP											
Insurance Expenses	100,000	100,000	100,000	100,000	111,000	116,000	117,000	120,000	123,000	126,000	129,000
Property Tax Expenses	1,000,000	1,000,000	1,000,000	1,000,000	1,110,000	1,160,000	1,170,000	1,200,000	1,230,000	1,260,000	1,290,000
Total Indirect Operating Expenses	1,100,000	1,100,000	1,100,000	1,100,000	1,221,000	1,276,000	1,287,000	1,320,000	1,353,000	1,386,000	1,419,000
OTHER O&A EXPENSES											
Legal	50,000	51,300	52,634	54,000	55,400	56,847	58,335	59,861	61,427	63,031	64,674
Accounting	50,000	51,300	52,634	54,000	55,400	56,847	58,335	59,861	61,427	63,031	64,674
Manufacturing Expenses	50,000	51,300	52,634	54,000	55,400	56,847	58,335	59,861	61,427	63,031	64,674
Other	50,000	51,300	52,634	54,000	55,400	56,847	58,335	59,861	61,427	63,031	64,674
Total Other O&A Expenses	200,000	204,000	208,000	212,000	216,000	220,000	224,000	228,000	232,000	236,000	240,000
Total Operating Expenses	1,465,000	1,529,750	1,598,854	1,675,029	1,751,448	1,828,362	1,905,948	1,983,884	2,062,162	2,140,845	2,219,974

Sunnyside Operating Assumptions												
Power Sales												
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
On-Peak Heavy Load Hours	4,800	4,800	4,800	4,800	4,800	4,800	4,800	4,800	4,800	4,800	4,800	4,800
Other hours	2,800	2,800	2,800	2,800	2,800	2,800	2,800	2,800	2,800	2,800	2,800	2,800
Total hours	7,600	7,600	7,600	7,600	7,600	7,600	7,600	7,600	7,600	7,600	7,600	7,600
NW Capacity (MW)	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000
Amounts												
On-Peak Availability ("Heavy Load" hours)	88.00%	88.00%	88.00%	88.00%	88.00%	88.00%	88.00%	88.00%	88.00%	88.00%	88.00%	88.00%
On-Peak Availability	88.00%	88.00%	88.00%	88.00%	88.00%	88.00%	88.00%	88.00%	88.00%	88.00%	88.00%	88.00%
On-Peak hours ("Heavy Load")	218,014	218,014	218,014	218,014	218,014	218,014	218,014	218,014	218,014	218,014	218,014	218,014
On-Peak hours	174,134	174,134	174,134	174,134	174,134	174,134	174,134	174,134	174,134	174,134	174,134	174,134
Total hours	392,148	392,148	392,148	392,148	392,148	392,148	392,148	392,148	392,148	392,148	392,148	392,148
Best days July & Aug combined Heavy Load hours 52.6	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Capacity and Energy Loss Adjustment Factor	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%
Energy Information												
Base Energy meters	335,070	335,070	335,070	335,070	335,070	335,070	335,070	335,070	335,070	335,070	335,070	335,070
Excess Energy (in excess of 417,637)	0	0	0	0	0	0	0	0	0	0	0	0
Additional Energy	58,078	58,078	58,078	58,078	58,078	58,078	58,078	58,078	58,078	58,078	58,078	58,078
Total Energy	393,148	393,148	393,148	393,148	393,148	393,148	393,148	393,148	393,148	393,148	393,148	393,148
Base Energy Rate (Avoided Cost)	27,972	29,448	29,448	29,448	29,448	29,448	29,448	29,448	29,448	29,448	29,448	29,448
Excess Energy Rate (in excess of 417,637)	27,972	29,448	29,448	29,448	29,448	29,448	29,448	29,448	29,448	29,448	29,448	29,448
Additional Energy (Avoided Cost) per hour	2.80%	2.80%	2.80%	2.80%	2.80%	2.80%	2.80%	2.80%	2.80%	2.80%	2.80%	2.80%
Seasonal Capacity	59.84	59.84	59.84	59.84	59.84	59.84	59.84	59.84	59.84	59.84	59.84	59.84
Seasonal Capacity 1	52.80	52.80	52.80	52.80	52.80	52.80	52.80	52.80	52.80	52.80	52.80	52.80
Seasonal Capacity 2	52.80	52.80	52.80	52.80	52.80	52.80	52.80	52.80	52.80	52.80	52.80	52.80
Seasonal Capacity - Min of 18.2	52.80	52.80	52.80	52.80	52.80	52.80	52.80	52.80	52.80	52.80	52.80	52.80
Seasonal Capacity Constraints - min 53 and 5 C.	52.80	52.80	52.80	52.80	52.80	52.80	52.80	52.80	52.80	52.80	52.80	52.80
Base Billing Capacity - min Cap 1, SCC, 45	45.00	45.00	45.00	45.00	45.00	45.00	45.00	45.00	45.00	45.00	45.00	45.00
Minimum Delivery Obligation to earn additional Capacity	304,100	304,100	304,100	304,100	304,100	304,100	304,100	304,100	304,100	304,100	304,100	304,100
Actual Total Facility Capacity	85.00%	85.00%	85.00%	85.00%	85.00%	85.00%	85.00%	85.00%	85.00%	85.00%	85.00%	85.00%
Additional Billing Capacity Factor .9 for 8 m .75 for 4m	85.00%	85.00%	85.00%	85.00%	85.00%	85.00%	85.00%	85.00%	85.00%	85.00%	85.00%	85.00%
Additional Billing Capacity Constraints	7.00	7.00	7.00	7.00	7.00	7.00	7.00	7.00	7.00	7.00	7.00	7.00
Additional Billing Capacity	7.00	7.00	7.00	7.00	7.00	7.00	7.00	7.00	7.00	7.00	7.00	7.00
Rate	192.94	192.94	192.94	192.94	192.94	192.94	192.94	192.94	192.94	192.94	192.94	192.94
Additional	205.16	215.4	225.12	235.32	245.86	256.92	268.06	280.54	293.16	306.36	320.16	334.56
Fuel Information												
Heat Rate	13,000	13,000	13,000	13,000	13,000	13,000	13,000	13,000	13,000	13,000	13,000	13,000
Fuel Consumption (Btu)	5,111	5,111	5,111	5,111	5,111	5,111	5,111	5,111	5,111	5,111	5,111	5,111
Higher Heating Value of Fuel	11,500	11,500	11,500	11,500	11,500	11,500	11,500	11,500	11,500	11,500	11,500	11,500
MOI Heat Content (Btu/lb, HHV)	5,100	5,100	5,100	5,100	5,100	5,100	5,100	5,100	5,100	5,100	5,100	5,100
Waste Coal - Cams (Btu/lb, HHV)	9,801	9,801	9,801	9,801	9,801	9,801	9,801	9,801	9,801	9,801	9,801	9,801
Waste Coal - Fire (Btu/lb, HHV)	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
MOI (% of lbs)	80.33%	79.71%	79.71%	79.71%	79.71%	79.71%	79.71%	79.71%	79.71%	79.71%	79.71%	79.71%
Waste Coal - Cams (% of lbs)	19.67%	20.29%	20.29%	20.29%	20.29%	20.29%	20.29%	20.29%	20.29%	20.29%	20.29%	20.29%
Waste Coal - Fire (% of lbs)	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
Average Heat Content (Btu/lb, HHV)	9,097	9,097	9,125	9,125	9,125	9,125	9,125	9,125	9,125	9,125	9,125	9,125

Summary Operating Assumptions												
Fuel Sales												
Fuel Consumption (MMBtu)												
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
ROI	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Waste Coal - Coarse	68.34%	68.34%	67.51%	67.51%	67.51%	67.51%	67.51%	67.51%	67.51%	67.51%	67.51%	67.51%
Waste Coal - Fine	31.66%	31.66%	32.49%	32.49%	32.49%	32.49%	32.49%	32.49%	32.49%	32.49%	32.49%	32.49%
Fuel Consumption (RBtu)	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
ROI	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Waste Coal - Coarse	2.49%	2.49%	2.45%	2.45%	2.45%	2.45%	2.45%	2.45%	2.45%	2.45%	2.45%	2.45%
Waste Coal - Fine	1.81%	1.81%	1.85%	1.85%	1.85%	1.85%	1.85%	1.85%	1.85%	1.85%	1.85%	1.85%
Fuel Consumption (RBtu)	5.11%	5.11%	5.11%	5.11%	5.11%	5.11%	5.11%	5.11%	5.11%	5.11%	5.11%	5.11%
Run-of-Mine Coal (Tons)	0	0	0	0	0	0	0	0	0	0	0	0
Waste Coal	0	0	0	0	0	0	0	0	0	0	0	0
Coarse	336,491	336,491	337,555	337,555	337,555	337,555	337,555	337,555	337,555	337,555	337,555	337,555
Fine	87,415	87,415	84,825	84,825	84,825	84,825	84,825	84,825	84,825	84,825	84,825	84,825
Subtotal Waste Coal	418,136	418,136	417,180	417,180	417,180	417,180	417,180	417,180	417,180	417,180	417,180	417,180
Total	418,136	418,136	417,180	417,180	417,180	417,180	417,180	417,180	417,180	417,180	417,180	417,180
Remaining Waste Coal (000 tons)	556	324	86	0	0	0	0	0	0	0	0	0
Coarse	402	226	236	153	0	0	0	0	0	0	0	0
Fine	0	0	0	0	0	0	0	0	0	0	0	0
On-Site Waste Coal	226,547	87,415	0	0	0	0	0	0	0	0	0	0
On-Site Waste Coal - Coarse	87,415	87,415	0	0	0	0	0	0	0	0	0	0
On-Site Waste Coal - Fine	0	0	0	0	0	0	0	0	0	0	0	0
Total	226,547	87,415	0	0	0	0	0	0	0	0	0	0
Off-Site Waste Coal Consumption	110,115	248,727	332,555	348,027	417,180	417,180	417,180	417,180	417,180	417,180	417,180	417,180
Limestone usage	11.70%	11.70%	11.70%	11.70%	11.70%	11.70%	11.70%	11.70%	11.70%	11.70%	11.70%	11.70%
Limestone Consumption (RBtu of fuel)	49,226	49,226	49,226	49,226	49,226	49,226	49,226	49,226	49,226	49,226	49,226	49,226
Limestone (Tons)	49,226	49,226	49,226	49,226	49,226	49,226	49,226	49,226	49,226	49,226	49,226	49,226
Percentages of Fuel that is ash	51.00%	51.00%	51.00%	51.00%	51.00%	51.00%	51.00%	51.00%	51.00%	51.00%	51.00%	51.00%
Percentages of Limestone that is ash	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
Water added to dry ash (%)	15.00%	15.00%	15.00%	15.00%	15.00%	15.00%	15.00%	15.00%	15.00%	15.00%	15.00%	15.00%
Ash (Tons)	302,218	302,218	300,815	300,815	300,815	300,815	300,815	300,815	300,815	300,815	300,815	300,815
General Indicators	2.80%	2.80%	2.80%	2.80%	2.80%	2.80%	2.80%	2.80%	2.80%	2.80%	2.80%	2.80%
Limestone Index	129.61%	142.24%	146.96%	150.79%	154.71%	158.72%	162.83%	167.04%	171.35%	175.76%	180.26%	184.86%
Fuel Handling (BTU)	1.52	1.56	1.60	1.64	1.68	1.72	1.76	1.80	1.84	1.88	1.92	1.96
On-Site Waste Coal Excavation (BTU)	0.99	1.02	1.04	1.07	1.10	1.12	1.16	1.18	1.22	1.25	1.28	1.31
On-Site Waste Coal Transport (BTU)	0.26	0.26	0.26	0.26	0.26	0.26	0.26	0.26	0.26	0.26	0.26	0.26
On-Site Waste Coal Excavation & Transport (BTU)	1.25	1.28	1.30	1.33	1.36	1.38	1.42	1.44	1.48	1.51	1.54	1.57
Off-Site Waste Coal Excavation (BTU)	4.18	4.20	4.21	4.22	4.24	4.26	4.28	4.30	4.32	4.34	4.36	4.38
Off-Site Waste Coal Excavation & Transport (BTU)	5.10	5.21	5.41	5.59	5.74	5.89	6.04	6.20	6.36	6.53	6.70	6.87
Total On-Site Handling cost per ton	2.80	2.80	2.80	2.80	2.80	2.80	2.80	2.80	2.80	2.80	2.80	2.80
Total Off-Site Handling cost per ton	6.79	6.86	7.06	7.26	7.43	7.62	7.82	8.02	8.23	8.44	8.66	8.88
Run-of-Mine Coal (BTU)	34.88	35.56	36.31	37.45	38.43	39.43	40.45	41.50	42.58	43.69	44.83	45.99
Limestone (BTU)	12.56	12.89	13.23	13.57	13.92	14.28	14.66	15.04	15.43	15.83	16.24	16.66
Limestone Transport, Crushing & Maint. (BTU)	19.56	20.05	20.37	21.11	21.86	22.62	23.39	24.06	24.82	25.58	26.35	27.10
Ash Transport, Debris & Maintenance (BTU)	2.75	2.82	2.86	2.97	3.05	3.13	3.21	3.29	3.38	3.47	3.56	3.65
Run-of-Mine Coal (BTU)	637,618	651,402	660,299	665,875	670,502	675,174	679,890	684,651	689,458	694,311	699,111	703,962
On-Site Waste Coal Excavation & Transport	427,086	241,836	123,136	102,000	0	0	0	0	0	0	0	0
Off-Site Waste Coal Excavation & Transport	576,497	1,321,836	1,915,211	2,384,490	2,458,717	2,530,822	2,601,198	2,669,396	2,735,267	2,799,109	2,861,701	2,924,302
Run-of-Mine Coal	0	0	0	0	0	0	0	0	0	0	0	0
Total Fuel Costs	1,235,283	2,217,818	2,604,645	2,726,220	2,699,463	2,699,463	2,699,463	2,699,463	2,699,463	2,699,463	2,699,463	2,699,463
Limestone	916,166	932,166	945,811	962,400	979,822	997,292	1,014,811	1,032,379	1,050,000	1,067,677	1,085,400	1,103,166
Limestone Transport, Crushing & Maintenance	954,403	983,404	1,004,204	1,020,400	1,037,180	1,054,451	1,071,811	1,089,266	1,106,811	1,124,444	1,142,166	1,159,888

Sunnyside Operating Assumptions												
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
Power Plant												
Total Fuel Costs	1,514,651	1,615,592	1,641,002	1,692,799	1,736,612	1,781,909	1,828,300	1,875,836	1,924,008	1,971,848	2,020,389	2,068,964
Ash Transport, Disposal & Maintenance	831,184	852,805	876,615	893,550	910,782	928,828	946,885	964,942	982,999	1,001,056	1,019,113	1,037,170
OPERATING EXPENSES												
Direct Labor	3,618,750	3,696,272	3,774,827	3,853,417	3,932,028	4,010,659	4,089,300	4,167,951	4,246,612	4,325,283	4,403,954	4,482,625
Chemicals	345,777	375,268	395,045	395,045	405,328	415,612	425,895	436,178	446,461	456,744	467,027	477,310
Utilities (Electricity, Water and Fuel Oil)	557,943	571,526	585,109	598,692	612,275	625,858	639,441	653,024	666,607	680,190	693,773	707,356
Fuel Option	0	0	0	0	0	0	0	0	0	0	0	0
Testing Expenses (Water, Fuel and Unions)	48,971	47,298	45,625	43,952	42,279	40,606	38,933	37,260	35,587	33,914	32,241	30,568
Lease Payments	23,000	23,000	23,000	23,000	23,000	23,000	23,000	23,000	23,000	23,000	23,000	23,000
Supplies and Clothing	8,277	8,277	8,277	8,277	8,277	8,277	8,277	8,277	8,277	8,277	8,277	8,277
Total Operating Expenses	1,000,240	1,025,917	1,051,594	1,077,271	1,102,948	1,128,625	1,154,302	1,180,000	1,205,697	1,231,394	1,257,091	1,282,788
MAINTENANCE EXPENSES												
Parts and Material	833,276	845,735	858,194	870,653	883,112	895,571	908,030	920,489	932,948	945,407	957,866	970,325
Scheduled Servicing	706,425	721,792	737,159	752,526	767,893	783,260	798,627	813,994	829,361	844,728	860,095	875,462
Unscheduled Servicing	263,000	281,348	299,696	318,044	336,392	354,740	373,088	391,436	409,784	428,132	446,480	464,828
Transmission Line Maintenance	95,844	97,290	98,736	100,182	101,628	103,074	104,520	105,966	107,412	108,858	110,304	111,750
Cap Ex (Expensed due to PAS 121 concern)	0	0	0	0	0	0	0	0	0	0	0	0
Other	238,725	244,640	250,555	256,470	262,385	268,300	274,215	280,130	286,045	291,960	297,875	303,790
Total Maintenance Expenses	1,838,226	1,886,768	1,935,310	1,983,852	2,032,394	2,080,936	2,129,478	2,178,020	2,226,562	2,275,104	2,323,646	2,372,188
PLANT G&A EXPENSES												
Salaries	25,150	25,793	26,436	27,079	27,722	28,365	29,008	29,651	30,294	30,937	31,580	32,223
Electricity	89,000	91,670	94,340	97,010	99,680	102,350	105,020	107,690	110,360	113,030	115,700	118,370
Outside Services	69,000	71,070	73,140	75,210	77,280	79,350	81,420	83,490	85,560	87,630	89,700	91,770
License Renewals	4,188	4,297	4,406	4,515	4,624	4,733	4,842	4,951	5,060	5,169	5,278	5,387
Home Office	0	0	0	0	0	0	0	0	0	0	0	0
Other	273,895	272,316	270,737	269,158	267,579	265,999	264,419	262,839	261,259	259,679	258,099	256,519
Total Plant G&A Expenses	482,828	490,036	497,244	504,452	511,660	518,868	526,076	533,284	540,492	547,699	554,907	562,115
INDIRECT OPERATING EXPENSES												
Insurance Expense	530,517	544,310	558,103	571,896	585,689	599,482	613,275	627,068	640,861	654,654	668,447	682,240
Property Tax Expense	801,000	801,000	801,000	801,000	801,000	801,000	801,000	801,000	801,000	801,000	801,000	801,000
Total Indirect Operating Expenses	1,331,517	1,345,310	1,359,103	1,372,896	1,386,689	1,400,482	1,414,275	1,428,068	1,441,861	1,455,654	1,469,447	1,483,240
OTHER G&A EXPENSES												
Legal	85,182	87,370	89,558	91,746	93,934	96,122	98,310	100,498	102,686	104,874	107,062	109,250
Accounting	165,184	168,990	172,796	176,602	180,408	184,214	188,020	191,826	195,632	199,438	203,244	207,050
Restructuring Expenses	0	0	0	0	0	0	0	0	0	0	0	0
Other	613,296	627,537	641,778	656,019	670,260	684,501	698,742	712,983	727,224	741,465	755,706	769,947
Total Other G&A Expenses	863,662	883,897	899,132	918,367	937,602	956,837	976,072	995,307	1,014,542	1,033,777	1,053,012	1,072,247
OTHER OPERATING EXPENSES												
Management Fee	383,827	393,900	404,000	414,100	424,200	434,300	444,400	454,500	464,600	474,700	484,800	494,900
Remediation & L Landfill Expense	445,382	455,266	465,150	475,034	484,918	494,802	504,686	514,570	524,454	534,338	544,222	554,106
Major Maintenance	719,022	739,277	759,532	779,787	799,042	819,297	839,552	859,807	879,062	899,317	919,572	939,827
Capital Improvements	187,532	191,880	196,228	200,576	204,924	209,272	213,620	217,968	222,316	226,664	231,012	235,360
Total Item P & L	13,456	14,332	15,208	16,084	16,960	17,836	18,712	19,588	20,464	21,340	22,216	23,092
Caution												
If in Lyrup Configuration												
DIRECT COSTS - Lyrup												
Fuel Handling Contract Modification Costs	0	0	0	0	0	0	0	0	0	0	0	0
On-Site Waste Coal Excavation & Transport	0	0	0	0	0	0	0	0	0	0	0	0
Off-Site Waste Coal Excavation & Transport	0	0	0	0	0	0	0	0	0	0	0	0
Run-of-River Coal	0	0	0	0	0	0	0	0	0	0	0	0
Total Fuel Costs	0	0	0	0	0	0	0	0	0	0	0	0
Unions	0	0	0	0	0	0	0	0	0	0	0	0
Unions Transport, Cracking & Maintenance	0	0	0	0	0	0	0	0	0	0	0	0
Total Fuel Costs	0	0	0	0	0	0	0	0	0	0	0	0

Sunnyside Operating Assumptions												
Project Data												
Ash Transport, Deposition & Maintenance												
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
MO												
OPERATING EXPENSES - Lyrup												
Direct Labor	406,834	501,336	511,373	537,747	541,486	555,547	568,961	584,811	600,016	615,818	631,822	648,044
Chemicals	104,707	107,430	110,223	113,049	116,079	119,048	122,101	125,317	128,575	131,812	135,348	138,887
Utilities (Electricity, Water and Fuel Oil)	104,707	107,430	110,223	113,049	116,079	119,048	122,101	125,317	128,575	131,812	135,348	138,887
Testing Expenses (Water, Fuel and Limestone)	104,707	107,430	110,223	113,049	116,079	119,048	122,101	125,317	128,575	131,812	135,348	138,887
Lease Payments	104,707	107,430	110,223	113,049	116,079	119,048	122,101	125,317	128,575	131,812	135,348	138,887
Supplies and Clothing	104,707	107,430	110,223	113,049	116,079	119,048	122,101	125,317	128,575	131,812	135,348	138,887
Total Operating Expenses	533,550	637,146	651,114	685,443	699,145	725,325	740,126	760,523	778,591	800,000	818,138	838,233
MAINTENANCE EXPENSES - Lyrup												
Parts and Material	99,805	71,620	71,482	75,392	77,353	79,364	81,427	83,544	85,717	87,945	90,232	92,576
Scheduled Servicing	99,805	71,620	71,482	75,392	77,353	79,364	81,427	83,544	85,717	87,945	90,232	92,576
Unscheduled Servicing	99,805	71,620	71,482	75,392	77,353	79,364	81,427	83,544	85,717	87,945	90,232	92,576
Transmission Line Maintenance	99,805	71,620	71,482	75,392	77,353	79,364	81,427	83,544	85,717	87,945	90,232	92,576
Other	99,805	71,620	71,482	75,392	77,353	79,364	81,427	83,544	85,717	87,945	90,232	92,576
Total Maintenance Expenses	348,014	285,080	285,946	303,956	312,413	325,816	335,635	350,976	360,821	372,786	385,160	398,204
PLANT O&M EXPENSES - Lyrup												
Salaries	140	143	147	151	155	159	163	167	171	176	180	185
Emulsion Fees	140	143	147	151	155	159	163	167	171	176	180	185
Outside Services	140	143	147	151	155	159	163	167	171	176	180	185
Laboratory Services	140	143	147	151	155	159	163	167	171	176	180	185
Relocation and Moving	140	143	147	151	155	159	163	167	171	176	180	185
Other	140	143	147	151	155	159	163	167	171	176	180	185
Total Plant O&M Expenses	13,981	14,324	14,696	15,078	15,471	15,873	16,285	16,706	17,143	17,589	18,046	18,516
	14,319	14,887	15,264	15,662	16,000	16,350	16,737	17,137	17,550	17,985	18,432	18,901
INDIRECT OPERATING EXPENSES - Lyrup												
Insurance Expenses	129,610	143,240	148,944	156,745	154,705	158,770	162,855	167,080	171,435	175,890	180,463	185,156
Property Tax Expense	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000
Total Indirect Operating Expenses	629,610	643,240	648,944	656,745	654,705	658,770	662,855	667,080	671,435	675,890	680,463	685,156
OTHER O&M EXPENSES												
Legal	89,805	71,620	71,482	75,392	77,353	79,364	81,427	83,544	85,717	87,945	90,232	92,576
Accounting	104,707	107,430	110,223	113,049	116,079	119,048	122,101	125,317	128,575	131,812	135,348	138,887
Restructuring Expenses	0	0	0	0	0	0	0	0	0	0	0	0
Other	13,981	14,324	14,696	15,078	15,471	15,873	16,285	16,706	17,143	17,589	18,046	18,516
Total Other O&M Expenses	108,493	93,374	96,414	100,519	102,823	105,291	107,813	110,397	113,037	115,736	118,484	121,299
	129,610	143,240	148,944	156,745	154,705	158,770	162,855	167,080	171,435	175,890	180,463	185,156
Total Operating Expenses	1,521,074	1,959,660	2,006,064	2,148,608	2,166,363	2,210,506	2,256,735	2,309,474	2,360,026	2,416,625	2,474,707	2,534,699

Constellation Sunnyside  
Depreciation Schedules

Book	Description	Allocation %	Allocated Value (\$000's)	Residual	Life in Years	Method	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
	Equipment 1	80.00%	48,436	0	35 S.L.		1,384	1,384	1,384	1,384	1,384	1,384	1,384	1,384	1,384	1,384	1,384	1,384	2,011
	Equipment 2	12.00%	6,605	0	15 S.L.		440	440	440	440	440	440	440	440	440	440	440	440	440
	Equipment 3		0	0	10 S.L.		0	0	0	0	0	0	0	0	0	0	0	0	0
	Asset 4		0	0	5 S.L.		0	0	0	0	0	0	0	0	0	0	0	0	0
	Asset 5		0	0	0 S.L.		0	0	0	0	0	0	0	0	0	0	0	0	0
	Asset 6		0	0	0 S.L.		0	0	0	0	0	0	0	0	0	0	0	0	0
	Total	100.00%	55,041	0	0 S.L.		1,824	1,824	1,824	1,824	1,824	1,824	1,824	1,824	1,824	1,824	1,824	1,824	1,824

Amortization Schedules

Trax	Description	Allocation %	Allocated Value (\$000's)	Residual	Life in Years	Method	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
	Equipment 1	0.00%	48,084	0	15 S.L.		1,836	1,745	1,745	1,745	1,745	1,745	1,745	1,745	1,745	1,745	1,745	1,745	2,011
	Equipment 2	0.00%	4,433	0	7 2000DB		444	1,773	1,774	443	0	0	0	0	0	0	0	0	0
	Equipment 3	0.00%	6,753	0	20 1500DB		112	415	393	355	350	350	350	350	350	350	350	350	350
	Asset 4	0.00%	18,771	0	28 S.L.		184	775	775	775	775	775	775	775	775	775	775	775	775
	Asset 5	0.00%	874	0	15 S.L.		18	78	78	78	78	78	78	78	78	78	78	78	78
	Asset 6	0.00%	0	0	0 S.L.		0	0	0	0	0	0	0	0	0	0	0	0	0
	Total	0.00%	78,918	0	0 S.L.		2,705	10,786	10,750	9,396	8,848	8,848	8,826	1,203	1,203	1,203	1,203	1,200	1,175

Amortization Schedules

Book	Description	Allocation %	Allocated Value (\$000's)	Residual	Life in Years	Method	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
	Good Will		10,304	0	28 S.L.		396	396	396	396	396	396	396	396	396	396	396	396	396
	Termination Costs		2,000	0	28 S.L.		77	77	77	77	77	77	77	77	77	77	77	77	77
	Transaction Costs		2,000	0	28 S.L.		77	77	77	77	77	77	77	77	77	77	77	77	77
	Asset 4		0	0	0 S.L.		0	0	0	0	0	0	0	0	0	0	0	0	0
	Asset 5		0	0	0 S.L.		0	0	0	0	0	0	0	0	0	0	0	0	0
	Asset 6		0	0	0 S.L.		0	0	0	0	0	0	0	0	0	0	0	0	0
	Total	0.00%	14,304	0	0 S.L.		550	550	550	550	550	550	550	550	550	550	550	550	550
	Balance						14,187	13,617	13,067	12,518	11,968	11,418	10,868	10,318	9,765	9,215	8,665	8,115	7,565

Amortization Schedules

Trax	Description	Allocation %	Allocated Value (\$000's)	Residual	Life in Years	Method	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
	Good Will		0	0	15 S.L.		0	0	0	0	0	0	0	0	0	0	0	0	0
	Termination Costs		2,000	0	10 S.L.		200	200	200	200	200	200	200	200	200	200	200	200	200
	Transaction Costs		2,000	0	10 S.L.		200	200	200	200	200	200	200	200	200	200	200	200	200
	Asset 4		0	0	0 S.L.		0	0	0	0	0	0	0	0	0	0	0	0	0
	Asset 5		0	0	0 S.L.		0	0	0	0	0	0	0	0	0	0	0	0	0
	Asset 6		0	0	0 S.L.		0	0	0	0	0	0	0	0	0	0	0	0	0
	Total	0.00%	4,000	0	0 S.L.		400	400	400	400	400	400	400	400	400	400	400	400	400

Consolidation Summary Depreciation Schedules																			
Book	Description	Allocation %	Allocated Value (000)'s	Residual	Life in Years	Method	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Tax	Equipment 1	88.00%	48,136	0	35 S.L.	1,384	1,384	1,384	1,384	1,384	1,384	1,384	1,384	1,384	1,384	1,384	1,384	1,384	1,384
	Equipment 2	12.00%	6,605	0	15 S.L.	440	440	0	0	0	0	0	0	0	0	0	0	0	0
	Equipment 3	0.00%	0	0	10 S.L.	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	Asset 4	0.00%	0	0	5 S.L.	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	Asset 5	0.00%	0	0	0 S.L.	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	Asset 6	0.00%	0	0	0 S.L.	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	Total	100.00%	55,041	0	0 S.L.	1,824	1,824	1,384	1,384	1,384	1,384	1,384	1,384	1,384	1,384	1,384	1,384	1,384	1,384
Amortization Schedules																			
Tax	Description	Allocation %	Allocated Value (000)'s	Life in Years	Method	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	
Tax	Equipment 1	0.00%	48,084	15	S.L.	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	Equipment 2	0.00%	4,433	7	20028	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	Equipment 3	0.00%	8,753	20	15008	350	350	350	350	350	350	254	0	0	0	0	0	0	
	Asset 4	0.00%	18,771	28	S.L.	775	775	775	775	775	775	775	775	775	775	775	568	0	0
	Asset 5	0.00%	874	15	S.L.	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	Asset 6	0.00%	0	0	0 S.L.	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	Total	0.00%	78,918	0 S.L.	1,125	1,125	1,125	1,125	1,125	1,125	1,125	1,125	1,029	775	775	775	568	0	0
Amortization Schedules																			
Book	Description	Allocation %	Allocated Value (000)'s	Life in Years	Method	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	
Tax	Good Will	0.00%	10,304	28	S.L.	398	398	398	398	398	398	398	398	398	398	398	398	398	398
	Termination Costs	0.00%	2,000	28	S.L.	77	77	77	77	77	77	77	77	77	77	77	77	77	77
	Transaction Costs	0.00%	2,000	28	S.L.	77	77	77	77	77	77	77	77	77	77	77	77	77	77
	Asset 4	0.00%	0	0 S.L.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	Asset 5	0.00%	0	0 S.L.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	Asset 6	0.00%	0	0 S.L.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	Total	0.00%	14,304	0 S.L.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Balance						528	550	550	550	550	550	550	550	550	550	550	550	550	
						7,015	6,464	5,814	5,384	4,814	4,284	3,714	3,183	2,613	2,083	1,513	983	0	
Amortization Schedules																			
Tax	Description	Allocation %	Allocated Value (000)'s	Life in Years	Method	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	
Tax	Good Will	0.00%	0	15	S.L.	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	Termination Costs	0.00%	2,000	10	S.L.	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	Transaction Costs	0.00%	2,000	10	S.L.	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	Asset 4	0.00%	0	20	S.L.	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	Asset 5	0.00%	0	0 S.L.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	Asset 6	0.00%	0	0 S.L.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	Total	0.00%	4,000	0 S.L.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

Case: 5

# CASE ANALYSIS SUMMARY

Case Description:

## BASE ASSUMPTIONS

Capacity Factor - Heavy Hours  
Other Hours

Assume Higher Fuel Rate (50¢/Gallon)

Base Fuel Rate

Original Market (10¢/Bbl) (Base)

Waste Cost - Chlorine (Bbls 100¢)

Waste Cost - Fuel (Bbls 100¢)

Waste Cost Adjuster - Chlorine (%)

Waste Cost Adjuster - Fuel (%)

Fuel Handling Labor (Hour)

On - Waste Cost Transport (11¢/G)

Incidence Amount (Base = 1, No - 0)

Incidence Percentage (%)

Incidence (1 Year)

Incidence Impact, Ongoing 1 Hour (11¢/G)

Amortized Item Fuel

Amortized Item Incidence

Water added to dry ash (%)

Reduction in Landfill Expenses

County Adjustment for Monthly Analysis

Major Maintenance

Capital Improvements

Management Fee

Management Fee Etc. (10¢/Year)

Insurance

Property Taxes

Property Taxes Etc. (10¢/Year)

CPM Quarterly Fee

Letter of Credit Fee

OPERATING EXPENSES

Direct Labor

Chemicals

Utilities Electric, Water and Fuel Oil

Fuel Oil

Trucking Expenses (Fuel, Fuel and (Lumber))

Lease Payments

Supplies and Clothing

MAINTENANCE EXPENSES

Parts and Material

Scheduled Service

Unscheduled Service

Transmission Line Maintenance

Cap Ex (Equipment due to 171¢/Gallon)

- Include Add'l Cap Ex to Original Bid

Other

PLANT GILA EXPENSES

Salaries

Embarkment Fees

Outside Services

## BASE MODEL

Original	1	2	3	4	5	6	7	8	9	10	11	12
Case	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active
Capacity Factor	85.00%	78.00%	78.00%	88.00%	88.00%	88.00%	88.00%	88.00%	88.00%	88.00%	88.00%	88.00%
Assume Higher Fuel Rate (50¢/Gallon)	1	1	1	1	1	1	1	1	1	1	1	1
Base Fuel Rate	12,750	12,750	12,750	12,750	12,750	12,750	12,750	12,750	12,750	12,750	12,750	12,750
Original Market (10¢/Bbl) (Base)	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Waste Cost - Chlorine (Bbls 100¢)	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
Waste Cost - Fuel (Bbls 100¢)	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
Waste Cost Adjuster - Chlorine (%)	0.00	0.46	0.46	0.00	0.00	0.46	0.46	0.46	0.46	0.46	0.46	0.46
Waste Cost Adjuster - Fuel (%)	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25
Fuel Handling Labor (Hour)	1	1	1	1	1	1	1	1	1	1	1	1
On - Waste Cost Transport (11¢/G)	12.0%	12.0%	12.0%	12.0%	12.0%	12.0%	12.0%	12.0%	12.0%	12.0%	12.0%	12.0%
Incidence Amount (Base = 1, No - 0)	1	1	1	1	1	1	1	1	1	1	1	1
Incidence Percentage (%)	12.0%	12.0%	12.0%	12.0%	12.0%	12.0%	12.0%	12.0%	12.0%	12.0%	12.0%	12.0%
Incidence (1 Year)	10.46	9.97	9.97	10.46	10.46	10.46	10.46	10.46	10.46	10.46	10.46	10.46
Incidence Impact, Ongoing 1 Hour (11¢/G)	11.80	11.80	11.80	11.80	11.80	11.80	11.80	11.80	11.80	11.80	11.80	11.80
Amortized Item Fuel	80.0%	80.0%	80.0%	80.0%	80.0%	80.0%	80.0%	80.0%	80.0%	80.0%	80.0%	80.0%
Amortized Item Incidence	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Water added to dry ash (%)	18.0%	18.0%	18.0%	18.0%	18.0%	18.0%	18.0%	18.0%	18.0%	18.0%	18.0%	18.0%
Reduction in Landfill Expenses	0	112	112	112	112	112	112	112	112	112	112	112
County Adjustment for Monthly Analysis	0	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)
Major Maintenance	0	536	536	536	536	536	536	536	536	536	536	536
Capital Improvements	0	120	120	120	120	120	120	120	120	120	120	120
Management Fee	0	275	275	275	275	275	275	275	275	275	275	275
Management Fee Etc. (10¢/Year)	0	1	1	1	1	1	1	1	1	1	1	1
Insurance	318	300	300	300	300	300	300	300	300	300	300	300
Property Taxes	1,000	991	991	991	991	991	991	991	991	991	991	991
Property Taxes Etc. (10¢/Year)	0	0	0	0	0	0	0	0	0	0	0	0
CPM Quarterly Fee	0.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%
Letter of Credit Fee	0.00%	1.25%	1.25%	1.25%	1.25%	1.25%	1.25%	1.25%	1.25%	1.25%	1.25%	1.25%
OPERATING EXPENSES	2,800	2,971	2,971	2,888	2,888	2,888	2,888	2,888	2,888	2,888	2,888	2,888
Direct Labor	1,070	2,204	2,204	2,183	2,183	2,183	2,183	2,183	2,183	2,183	2,183	2,183
Chemicals	291	292	292	292	292	292	292	292	292	292	292	292
Utilities Electric, Water and Fuel Oil	478	390	390	390	390	390	390	390	390	390	390	390
Fuel Oil	0	0	0	0	0	0	0	0	0	0	0	0
Trucking Expenses (Fuel, Fuel and (Lumber))	26	33	33	33	33	33	33	33	33	33	33	33
Lease Payments	23	23	23	23	23	23	23	23	23	23	23	23
Supplies and Clothing	7	0	0	0	0	0	0	0	0	0	0	0
MAINTENANCE EXPENSES	1,287	1,294	1,294	1,314	1,314	1,314	1,314	1,314	1,314	1,314	1,314	1,314
Parts and Material	308	654	654	654	654	654	654	654	654	654	654	654
Scheduled Service	538	536	536	536	536	536	536	536	536	536	536	536
Unscheduled Service	150	292	292	292	292	292	292	292	292	292	292	292
Transmission Line Maintenance	41	40	40	40	40	40	40	40	40	40	40	40
Cap Ex (Equipment due to 171¢/Gallon)	1	0	0	0	0	0	0	0	0	0	0	0
- Include Add'l Cap Ex to Original Bid	1	0	0	0	0	0	0	0	0	0	0	0
Other	140	171	171	171	171	171	171	171	171	171	171	171
PLANT GILA EXPENSES	297	292	292	292	292	292	292	292	292	292	292	292
Salaries	77	75	75	75	75	75	75	75	75	75	75	75
Embarkment Fees	0	0	0	0	0	0	0	0	0	0	0	0
Outside Services	0	0	0	0	0	0	0	0	0	0	0	0







2009	111	112	113	114	115
2009	111	112	113	114	115
2010	111	112	113	114	115
2011	111	112	113	114	115
2012	111	112	113	114	115
2013	111	112	113	114	115

Apply and to date growth to remaining years

2009	111	112	113	114	115
2010	111	112	113	114	115
2011	111	112	113	114	115
2012	111	112	113	114	115
2013	111	112	113	114	115
2014	111	112	113	114	115
2015	111	112	113	114	115
2016	111	112	113	114	115
2017	111	112	113	114	115
2018	111	112	113	114	115
2019	111	112	113	114	115
2020	111	112	113	114	115
2021	111	112	113	114	115
2022	111	112	113	114	115
2023	111	112	113	114	115
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2027	111	112	113	114	115
2028	111	112	113	114	115
2029	111	112	113	114	115
2030	111	112	113	114	115
2031	111	112	113	114	115
2032	111	112	113	114	115
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2070	111	112	113	114	115
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2081	111	112	113	114	115
2082	111	112	113	114	115
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2091	111	112	113	114	115
2092	111	112	113	114	115
2093	111	112	113	114	115
2094	111	112	113	114	115
2095	111	112	113	114	115
2096	111	112	113	114	115
2097	111	112	113	114	115
2098	111	112	113	114	115
2099	111	112	113	114	115
2100	111	112	113	114	115

Feb-05	10.00	
Mar-05	10.00	
Apr-05	10.00	
May-05	10.00	
Jun-05	10.00	
Jul-05	10.00	
Aug-05	10.00	
Sep-05	10.00	
Oct-05	10.00	
Nov-05	10.00	
Dec-05	10.00	
Jan-06	10.00	
Feb-06	10.00	
Mar-06	10.00	

# LOAN AMORTIZATION SCHEDULES - ACCRUAL BASIS

Consideration Summary

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Operating Year	1	2	3	4	5	6	7	8	9	10	11	12	13
Cash Disbursements	375	1,765	1,973	1,927	1,864	2,100	2,217	2,336	2,548	2,872	3,047	2,756	2,864
Debt Service	1,379	6,227	6,288	6,524	6,546	6,476	6,409	6,344	6,374	6,317	6,112	6,048	5,896
Cash Available for Debt Service	1,754	7,992	8,261	8,451	8,530	8,516	8,827	8,678	8,822	8,888	8,756	8,608	8,681
First year interest is prorated in P&L based on months of operations. Contract year is Sept. - Aug.													
Series A Debt Coverage Ratio	1.73	1.27	1.44	1.29	1.41	1.45	1.50	1.56	1.85	1.72	1.73	1.79	1.87
Total Debt Coverage Ratio	1.43	1.27	1.31	1.36	1.36	1.32	1.35	1.37	1.40	1.42	1.43	1.46	1.48
Avg. Life													
Working Capital Loan	0	0	0	0	0	0	0	0	0	0	0	0	0
Principal Repayment %	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Resolving Balance	0	0	0	0	0	0	0	0	0	0	0	0	0
Principal	0	0	0	0	0	0	0	0	0	0	0	0	0
Interest	0	0	0	0	0	0	0	0	0	0	0	0	0
Ending Balance	0	0	0	0	0	0	0	0	0	0	0	0	0
TAX EXEMPT - Series A													
Principal Repayment %	0.50%	3.00%	3.00%	3.75%	4.00%	4.00%	4.00%	4.00%	4.00%	4.00%	4.00%	4.00%	4.00%
Working Balance	56,000	56,795	56,935	55,165	52,853	50,593	48,233	45,873	43,513	41,153	38,793	36,433	34,073
Principal	295	1,716	1,776	2,213	2,360	2,560	2,760	2,960	3,160	3,360	3,560	3,760	3,960
Credit Enhancement	0	0	0	0	0	0	0	0	0	0	0	0	0
Good Interest	1,073	4,109	3,945	3,892	3,797	3,541	3,276	3,011	2,746	2,481	2,216	1,951	1,686
Total Interest	1,073	4,109	3,945	3,892	3,797	3,541	3,276	3,011	2,746	2,481	2,216	1,951	1,686
Total Debt Service	1,378	5,819	5,715	6,074	6,067	5,901	5,716	5,517	5,408	5,241	5,073	4,910	4,745
Ending Balance	54,705	54,075	55,165	52,853	50,593	48,233	45,873	43,513	41,153	38,793	36,433	34,073	31,712

# LOAN AMORTIZATION SCHEDULES - ACCRUAL BASIS

Consolidation Surplus

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Credit Enhancement Amount	0	0	0	0	0	0	0	0	0	0	0	0	0
Principal Repayment %	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Beginning Balance	0	0	0	0	0	0	0	0	0	0	0	0	0
Principal	0	0	0	0	0	0	0	0	0	0	0	0	0
Credit Enhancement	0	0	0	0	0	0	0	0	0	0	0	0	0
Rate	2.00%	0	0	0	0	0	0	0	0	0	0	0	0
Bond Interest	5.00%	0	0	0	0	0	0	0	0	0	0	0	0
Total Interest	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Debt Service	0	0	0	0	0	0	0	0	0	0	0	0	0
Ending Balance	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>TOTAL DEBT</b>													
Beginning Balance	60,916	60,916	59,079	57,510	55,514	53,346	51,201	48,229	47,184	45,168	43,184	41,236	39,328
Principal	0	2,294	1,776	2,212	2,340	2,340	2,340	2,340	2,340	2,340	2,340	2,340	2,340
Credit Enhancement	0	0	0	0	0	0	0	0	0	0	0	0	0
Bond Interest Accrued (Book)	0	1,077	4,293	4,537	4,728	4,158	4,090	4,075	4,055	3,998	3,744	3,729	3,879
Total Interest Paid (Cash)	0	1,077	4,293	4,537	4,728	4,158	4,090	4,075	4,055	3,998	3,744	3,729	3,879
Total Interest Accrued	0	1,077	4,293	4,537	4,728	4,158	4,090	4,075	4,055	3,998	3,744	3,729	3,879
Total Debt Service Paid	0	2,294	1,776	2,212	2,340	2,340	2,340	2,340	2,340	2,340	2,340	2,340	2,340
Ending Balance	60,916	59,079	57,510	55,514	53,346	51,201	48,229	47,184	45,168	43,184	41,236	39,328	37,459
Total Interest Expense	1,077	4,293	4,537	4,728	4,158	4,090	4,075	4,055	3,998	3,744	3,729	3,879	3,879

Debt Valuation For Book Purposes

Face value of Bonds

Rate on Bonds

Years

Balance

Principal

Interest

Total Payment

Total Payment if mortgage style

Present Value at

• Book value of Loan

Bond A: Principal Repayment Schedule

(7% "Original", 1 = Year)

0.50%

3.462

5.951

7.00%

15,232

15,232

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## Calculation of Cash & Bond Distribution

Cash Shortfall Spm Calculation

Percentage of Cash Available to be used for Series B

50%

50%

50%

50%

50%

50%

50%

50%

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LOAN AMORTIZATION SCHEDULES - ACCRUAL BASIS  
Consolidated Summary

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
TAX-EXEMPT - Series B Zero Coupon Avg. Life	1,751	0	0	0	0	0	0	0	0	0	0	0	0
Beginning Balance	1,916	1,901	2,144	2,345	2,545	2,800	3,009	3,237	3,471	4,015	4,392	4,804	5,254
Bond Accretion	45	144	201	220	240	263	286	315	344	376	412	450	493
Ending Balance	1,961	2,144	2,345	2,565	2,800	3,069	3,297	3,552	3,815	4,392	4,804	5,254	5,748
Cash Paid to Bondholders (see above)	0	0	250	266	280	293	315	344	376	412	450	493	0
Bond Accretion (see above)	45	144	201	220	240	263	286	315	344	376	412	450	493
Total Interest Paid (Cash)	0	0	250	266	280	293	315	344	376	412	450	493	0
Total Interest Expense (Bond, cash paid + accretion)	45	144	551	486	521	516	514	514	500	417	376	344	315
Total Interest "delivered"	45	144	201	220	240	263	286	315	344	376	412	450	493

LOAN AMORTIZATION SCHEDULES - ACCRUAL BASIS		2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Consolidated Summary		14	15	16	17	18	19	20	21	22	23	24	25	26
Operating Year		0												
Cash Distributions		2,083	2,052	2,017	2,033	2,746	2,075	2,007	2,093	2,274	3,411	3,550	3,208	4,482
Debt Service		5,035	5,075	5,024	5,421	5,207	5,283	5,278	5,148	5,174	5,182	5,158	5,508	2,704
Cash Available for Debt Service		8,827	6,477	8,241	8,254	8,053	8,138	8,233	8,242	8,448	8,573	8,710	8,863	7,228
First year interest is prorated in P/L based on months of operations														
Series A Debt Coverage Ratio		1.73	1.85	1.82	1.84	1.85	1.92	2.03	2.15	2.26	2.44	2.82	2.34	8.00
Total Debt Coverage Ratio		1.43	1.50	1.51	1.52	1.52	1.52	1.55	1.58	1.80	1.83	1.88	1.58	2.81
Working Capital Loan														
Principal Repayment %		0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Beginning Balance		0	0	0	0	0	0	0	0	0	0	0	0	0
Principal		0	0	0	0	0	0	0	0	0	0	0	0	0
Interest		7.50%	0	0	0	0	0	0	0	0	0	0	0	0
Ending Balance		0	0	0	0	0	0	0	0	0	0	0	0	0
TAX-EXEMPT - Series A														
Principal Repayment %		4.00%	4.00%	4.00%	4.25%	4.50%	4.50%	4.50%	4.50%	4.50%	4.50%	4.50%	4.50%	8.00%
Beginning Balance		54,000	51,715	20,253	24,993	24,933	22,175	18,478	16,815	14,180	11,505	8,850	6,199	3,540
Principal		2,300	2,300	2,300	2,508	2,508	2,855	2,855	2,855	2,855	2,855	2,855	2,855	3,540
Credit Enhancement		0	0	0	0	0	0	0	0	0	0	0	0	0
Bond Interest		2,270	2,053	1,989	1,724	1,519	1,363	1,177	991	805	620	434	248	0
Total Interest		4,570	4,053	3,989	3,228	2,519	2,220	1,932	1,646	1,460	1,275	1,069	793	0
Total Debt Service		54,000	54,115	24,533	27,125	27,125	24,018	20,413	17,535	14,180	11,505	8,850	6,199	3,540
Ending Balance		54,000	20,253	20,993	24,933	22,175	18,478	16,815	14,180	11,505	8,850	6,199	3,540	0



**LOAN AMORTIZATION SCHEDULES - ACCRUAL BASIS**

Consolidation Summary

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
<b>Credit Enhancement Amount</b>													
Other	0	0	0	0	0	0	0	0	0	0	0	0	0
Principal Repayment %	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Beginning Balance	0	0	0	0	0	0	0	0	0	0	0	0	0
Principal	0	0	0	0	0	0	0	0	0	0	0	0	0
Credit Enhancement	0	0	0	0	0	0	0	0	0	0	0	0	0
Bond Interest	2.00%	0	0	0	0	0	0	0	0	0	0	0	0
Bond Interest	5.00%	0	0	0	0	0	0	0	0	0	0	0	0
Total Debt Service	0	0	0	0	0	0	0	0	0	0	0	0	0
Ending Balance	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>TOTAL DEBT</b>													
Beginning Balance	60,916	37,459	35,639	32,867	32,151	30,249	29,485	28,653	27,874	27,122	26,374	25,626	24,878
Principal	0	2,360	2,360	2,360	2,360	2,360	2,360	2,360	2,360	2,360	2,360	2,360	2,360
Credit Enhancement	0	0	0	0	0	0	0	0	0	0	0	0	0
Bond Interest Accrued (Book)	0	3,916	3,308	3,195	2,957	2,968	2,854	2,817	2,640	2,562	2,381	2,116	1,157
Bond Interest Paid (Cash)	0	3,917	2,717	2,481	2,252	2,027	1,807	1,581	1,351	1,124	892	654	418
Total Interest Accrued	0	3,916	3,308	3,195	2,957	2,968	2,854	2,817	2,640	2,562	2,381	2,116	1,157
Total Debt Service Paid	0	3,917	2,717	2,481	2,252	2,027	1,807	1,581	1,351	1,124	892	654	418
Ending Balance	60,916	35,338	33,887	32,151	30,249	28,653	27,874	27,122	26,374	25,626	24,878	24,130	23,382
Total Interest Expense	0	3,916	3,308	3,195	2,957	2,968	2,854	2,817	2,640	2,562	2,381	2,116	1,157

Debt Valuation For Bond Purposes

Face value of Bonds

Rate on Bonds

Years

Balance

Principal

Interest

Total Payment

Total Payment if mortgage style

Present Value at

• Book value of Loan

• Bond A Principal Repayment Schedule

(70 = "higher", 1 = "lower")

7.00%

0 percent of

Principal

Calculation of Series A Bond Investment

Cash Flowing Split Calculation

Percentage of Cash Available to be used for Series B

Bond Income

Total Interest Expense

Depreciation & Amortization

Capital Expenditures

Principal on A Bonds

Interest on A Bonds

Net cash for competing Split

Cash Split Target (P/A) based on spread base case

Cash Available for Split with Series B &

80%

Cash Short Fall (Available)

Cumulative Cash Shortfall

Cash to be Distributed

Equity Share

Bond Share

Cash Flow Bond Calculation of Increasing Obligation

LOAN AMORTIZATION SCHEDULE - ACCRUAL BASIS  
 Constellation Services

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
FACE RECEIPT - Series B Zero Coupon	1,751												
Avg Life													
Beginning Balance	1,816	5,746	6,265	6,874	7,519	8,234	8,995	9,836	10,760	11,769	12,872	14,076	15,390
Revolving	0.39%	530	560	644	705	771	843	922	1,009	1,103	1,207	1,320	1,444
Ending Balance	1,816	6,285	6,874	7,519	8,234	8,995	9,836	10,760	11,769	12,872	14,076	15,390	16,834
Cash Paid to Beneficiaries (see above)		857	862	971	978	979	943	822	640	508	397	276	157
Bond Accrual (see above)		329	590	844	705	771	843	922	1,009	1,103	1,207	1,320	1,444
Total Interest Paid (Cash)		857	862	971	978	979	943	822	640	508	397	276	157
Total Interest Expensed (Cash, cash paid + amortized)		1,296	1,251	1,216	1,233	1,150	1,291	1,440	1,519	1,760	1,933	2,117	2,376
Total Interest "Deferred"		530	560	644	705	771	843	922	1,009	1,103	1,207	1,320	1,444

## **EXHIBIT B**

### **Description of Project and Project Site**

The Project is an approximately 58 MW waste coal fired electric power generating plant located in Carbon County, Utah on the real property more fully described on the following pages hereof. The principal components of the Project are (a) a single Tampella circulating fluidized bed boiler which is designed to burn waste coal, (b) a single turbine generator set designed to accept the full steam output of the Project; and (c) an interconnection line which transmits the electricity generated by the Project to the point of interconnection with the high voltage side of the step-up transformers where it is delivered to PacifiCorp, doing business as Utah Power & Light Company.

## **EXHIBIT C**

### **Form of Promissory Notes**

#### **THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED**

Note No. RA-1

Sunnyside Cogeneration Associates, a Utah joint venture (the "Borrower"), for value received, hereby promises to pay to Carbon County, Utah (the "Issuer") the principal sum of

**FIFTY NINE MILLION DOLLARS**  
(\$59,000,000)

and to pay interest on the unpaid balance of such principal sum from and after the date of this Note at the interest rate or interest rates borne by the Series 1999A Refunding Bonds (as hereinafter defined).

This promissory note (the "Note") has been executed and delivered by the Borrower pursuant to a certain Loan Agreement, dated as of August 1, 1999 (the "Loan Agreement"), by and between the Issuer and the Borrower and assigned and endorsed by the Issuer to U.S. Bank Trust National Association, as trustee (the "Trustee"), pursuant to the Trust Indenture, dated as of August 1, 1999 (the "Indenture"), between the Issuer and the Trustee. Terms used but not defined herein shall have the meanings ascribed to such terms in the Loan Agreement and the Indenture.

Pursuant to the Loan Agreement, the Issuer is deemed to have loaned to the Borrower the proceeds of \$59,000,000 in aggregate original principal amount of its Solid Waste Disposal Revenue Refunding Bonds (Sunnyside Cogeneration Associates Project), Series 1999A (the "Series 1999A Refunding Bonds"), to be applied to assist the Borrower in the refinancing of the Project. The Borrower has agreed to repay the amount of such loan by making payments at the times and in the amounts set forth in this Note. The Series 1999A Refunding Bonds have been issued, concurrently with the execution and delivery of this Note, pursuant to, and are secured by, the Indenture. The Series 1999A Refunding Bonds have been additionally secured by a Deed of Trust, dated as of August 1, 1999, from the Borrower, as grantor, to U.S. Bank Trust National Association, as trustee, for the benefit of the Trustee, as beneficiary, and a Security Agreement, dated as of August 1, 1999, between the Borrower, as debtor, and the Trustee, as secured party.

To provide funds to pay the principal and interest on the Series 1999A Refunding Bonds as and when due, the Borrower hereby agrees to and shall make payments, but solely from Facility Revenues, or as otherwise provided in the Loan Agreement, as follows: on the first day of each month commencing December 1, 1999, an amount equal to one-third, and

commencing March 1, 2000, an amount equal to one-sixth, of the interest due on the Series 1999A Refunding Bonds on each succeeding February 15 and August 15, commencing February 15, 2000, and, commencing January 1, 2000, and on the first day of each month thereafter through and including August, 2000, one-eighth and thereafter, until the loan is paid, an amount equal to one-twelfth of the principal amount of the Series 1999A Refunding Bonds which shall be due and payable at maturity or pursuant to the mandatory sinking fund redemption provisions of the Indenture.

In addition, to provide funds to pay the principal and interest on the Series 1999A Refunding Bonds, as and when due at any other time, the Borrower hereby agrees to and shall make payments, but solely from Facility Revenues, on any other date on which any such principal and interest on the Series 1999A Refunding Bonds shall be or become due and payable, whether upon extraordinary or optional redemption, acceleration or otherwise.

If payment or provision for payment in accordance with the Indenture is made in respect of the principal and interest on the Series 1999A Refunding Bonds, this Note shall be deemed paid to the extent of such payment or provision for payment. The Borrower shall receive a credit against its obligation to make payments hereon to the extent of any moneys delivered to the Trustee for the payment of principal and interest on the Series 1999A Refunding Bonds and any other amounts on deposit in the Bond Fund and available to pay principal and interest on the Series 1999A Refunding Bonds pursuant to the Indenture. Subject to the foregoing, all such payments shall be in the full amount required hereunder.

All payments pursuant to the Loan Agreement shall be payable in lawful money of the United States of America and shall be made to the Trustee at its designated corporate trust office for the account of the Issuer, deposited in the Funds and accounts created and established pursuant to the Indenture and used as provided in the Indenture.

This Note is subject to mandatory and extraordinary prepayment, in whole or in part, upon the terms and conditions set forth in Section 7.1 of the Loan Agreement. Any mandatory or extraordinary prepayment is subject to satisfaction of any applicable notice, deposit or other requirements set forth in the Loan Agreement or the Indenture.

Whenever an Event of Default under Section 6.1 of the Loan Agreement shall have occurred, and for so long as it is continuing, the unpaid principal amount of and any accrued interest on this Note may be declared or may become due and payable as provided in Section 6.2 of the Loan Agreement; provided that any annulment of a declaration of acceleration with respect to the Series 1999A Refunding Bonds under the Indenture shall also constitute an annulment of any corresponding declaration with respect to this Note.

In the event of any inconsistency between the terms of this Note and the terms of the Loan Agreement, the terms of the Loan Agreement shall control.

The Borrower hereby waives presentment for payment, demand, protest, notice of protest, notice of dishonor and all defenses on the grounds of extension of time of payment for the payment hereof which may be given (other than in writing) by the Trustee.

The Borrower hereby certifies that all conditions, acts and things required to exist, happen and be performed precedent to and in connection with the execution and delivery of this Note, exist, have happened and have been performed, and that the issuance of this Note has been duly authorized by the Borrower.

IN WITNESS WHEREOF, the Borrower has executed this Note as of the date first above written.

SUNNYSIDE COGENERATION ASSOCIATES,  
a Utah joint venture

By: SUNNYSIDE HOLDINGS I, INC., a  
Delaware corporation, its joint venture  
partner

By \_\_\_\_\_  
President

By: SUNNYSIDE II, L.P., a Delaware limited  
partnership, its joint venture partner  
By: SUNNYSIDE II, INC., a Delaware  
corporation, its general partner

By \_\_\_\_\_  
Senior Vice President

## ENDORSEMENT AND ASSIGNMENT

FOR VALUE RECEIVED, CARBON COUNTY, UTAH (the "Issuer"), hereby endorses and sells, assigns and transfers unto U.S. Bank Trust National Association, Phoenix, Arizona, as trustee under the Trust Indenture, dated as of August 1, 1999, between the Issuer and said trustee, the within Note and all rights thereunder, and hereby irrevocably constitutes and appoints said trustee to transfer the within Note on the books kept for registration thereof, with full power of substitution in the premises.

IN WITNESS WHEREOF, the undersigned has set her hand as of the 31st day of August, 1999.

CARBON COUNTY, UTAH

By \_\_\_\_\_  
Its Chair

Attested and Countersigned:

By \_\_\_\_\_  
County Clerk

**THIS NOTE HAS NOT BEEN REGISTERED  
UNDER THE SECURITIES ACT OF 1933, AS AMENDED**

Note No. RB-1

Sunnyside Cogeneration Associates, a Utah joint venture (the "Borrower"), for value received, hereby promises to pay to Carbon County, Utah (the "Issuer") the principal sum of

**EIGHTEEN MILLION DOLLARS**  
(\$18,000,000)

and to pay interest on the unpaid balance of such principal sum from and after the date of this Note in the amount payable with respect to the Series 1999B Refunding Bonds (as hereinafter defined).

This promissory note (the "Note") has been executed and delivered by the Borrower pursuant to a certain Loan Agreement, dated as of August 1, 1999 (the "Loan Agreement"), by and between the Issuer and the Borrower and assigned and endorsed by the Issuer to U.S. Bank Trust National Association, as trustee (the "Trustee"), pursuant to the Trust Indenture, dated as of August 1, 1999 (the "Indenture"), between the Issuer and the Trustee. Terms used but not defined herein shall have the meanings ascribed to such terms in the Loan Agreement and the Indenture.

Pursuant to the Loan Agreement, the Issuer is deemed to have loaned to the Borrower the proceeds of \$18,000,000 in aggregate original principal amount of its Solid Waste Disposal Revenue Refunding Bonds (Sunnyside Cogeneration Associates Project), Series 1999B (the "Series 1999B Refunding Bonds"), to be applied to assist the Borrower in the refinancing of the Project. The Borrower has agreed to repay the amount of such loan by making payments at the times and in the amounts set forth in this Note. The Series 1999B Refunding Bonds have been issued, concurrently with the execution and delivery of this Note, pursuant to, and are secured by, the Indenture. The Series 1999B Refunding Bonds have been additionally secured by a Deed of Trust, dated as of August 1, 1999, from the Borrower, as grantor, to U.S. Bank Trust National Association, as trustee, for the benefit of the Trustee, as beneficiary, and a Security Agreement, dated as of August 1, 1999, between the Borrower, as debtor, and the Trustee, as secured party.

To provide funds to pay the principal and interest on the Series 1999B Refunding Bonds as and when due, the Borrower hereby agrees to and shall make payments, but solely from Facility Revenues, or as otherwise provided in the Loan Agreement, in an amount equal to one-half the Series B Amount (as defined in the Indenture) for each Fiscal Year, commencing on August 15, 2000.



In addition, to provide funds to pay the principal and interest on the Series 1999B Refunding Bonds, as and when due at any other time, the Borrower hereby agrees to and shall make payments, but solely from Facility Revenues, on any other date on which any such principal and interest on the Series 1999B Refunding Bonds shall be or become due and payable, whether upon extraordinary or optional redemption, acceleration or otherwise.

If payment or provision for payment in accordance with the Indenture is made in respect of the principal and interest on the Series 1999B Refunding Bonds, this Note shall be deemed paid to the extent of such payment or provision for payment. The Borrower shall receive a credit against its obligation to make payments hereon to the extent of any moneys delivered to the Trustee for the payment of principal and interest on the Series 1999B Refunding Bonds and any other amounts on deposit in the Bond Fund and available to pay principal and interest on the Series 1999B Refunding Bonds pursuant to the Indenture. Subject to the foregoing, all such payments shall be in the full amount required hereunder.

All payments pursuant to the Loan Agreement shall be payable in lawful money of the United States of America and shall be made to the Trustee at its designated corporate trust office for the account of the Issuer, deposited in the Funds and accounts created and established pursuant to the Indenture and used as provided in the Indenture.

This Note is subject to mandatory and extraordinary prepayment, in whole or in part, upon the terms and conditions set forth in Section 7.1 of the Loan Agreement. Any mandatory or extraordinary prepayment is subject to satisfaction of any applicable notice, deposit or other requirements set forth in the Loan Agreement or the Indenture.

Whenever an Event of Default under Section 6.1 of the Loan Agreement shall have occurred, and for so long as it is continuing, the unpaid principal amount of and any accrued interest on this Note may be declared or may become due and payable as provided in Section 6.2 of the Loan Agreement; provided that any annulment of a declaration of acceleration with respect to the Series 1999B Refunding Bonds under the Indenture shall also constitute an annulment of any corresponding declaration with respect to this Note.

In the event of any inconsistency between the terms of this Note and the terms of the Loan Agreement, the terms of the Loan Agreement shall control.

The Borrower hereby waives presentment for payment, demand, protest, notice of protest, notice of dishonor and all defenses on the grounds of extension of time of payment for the payment hereof which may be given (other than in writing) by the Trustee.

The Borrower hereby certifies that all conditions, acts and things required to exist, happen and be performed precedent to and in connection with the execution and delivery of this Note, exist, have happened and have been performed, and that the issuance of this Note has been duly authorized by the Borrower.

IN WITNESS WHEREOF, the Borrower has executed this Note as of the date first above written.

SUNNYSIDE COGENERATION ASSOCIATES,  
a Utah joint venture

By: SUNNYSIDE HOLDINGS I, INC., a  
Delaware corporation, its joint venture  
partner

By \_\_\_\_\_  
President

By: SUNNYSIDE II, L.P., a Delaware limited  
partnership, its joint venture partner  
By: SUNNYSIDE II, INC., a Delaware  
corporation, its general partner

By \_\_\_\_\_  
Senior Vice President

## ENDORSEMENT AND ASSIGNMENT

FOR VALUE RECEIVED, CARBON COUNTY, UTAH (the "Issuer"), hereby endorses and sells, assigns and transfers unto U.S. Bank Trust National Association, Phoenix, Arizona, as trustee under the Trust Indenture, dated as of August 1, 1999, between the Issuer and said trustee, the within Note and all rights thereunder, and hereby irrevocably constitutes and appoints said trustee to transfer the within Note on the books kept for registration thereof, with full power of substitution in the premises.

IN WITNESS WHEREOF, the undersigned has set her hand as of the 31st day of August, 1999.

CARBON COUNTY, UTAH

By \_\_\_\_\_  
Its Chair

Attested and Countersigned:

By \_\_\_\_\_  
County Clerk

**EXHIBIT D**

**Borrower's Capital Expenditures**



Section 5.11(b), 5.23, and 5.24 Sunnyside Capital Cost Summary Matrix

Issue Number	Issue	Disclosure Schedule (S)	Rec Num.	Cost Action/Notes	Routine Maintenance (Note 19)	Maintenance Reserve (Note 19)	Capital Cash	Note
16	Higher than Expected Water Plant Maintenance	5.23.1	16.1	No Action Recommended				
17	Water Cost Proj Plant Interruption	5.23.9	17.1	Look at Coal Handling/Coal Treatment Options to Improve Coal Handling Characteristics During Inductively wear/flux conditions.				
18	"Hot Hot" in Yard Silos	5.23.10	18.1	Enclose front of silos and heat enclosure.			25,000	
19	High Coal Handling Cost	5.24.3	19.1	No Additional Action Recommended				
20	Limestone Silos	5.23.11	20.1	See Item 14.3				
21	High Limestone Consumption	5.23.12	21.1	See Item 16				
22	Limestone Excess/Deficiency Issues	Removed	22.1	No Additional Action Recommended				
23	High Cyclone Temperatures	5.11(b).7	23.1	See Item 16				
24	Ash Transport Systems	5.24.4	24.1	No Additional Action Recommended				
25	IO Fan Seal Fuel	Removed	25.1	No Additional Action Recommended				
26	Reverse Power Relay	Removed	26.1	No Additional Action Recommended				
27	1 TFO Sealing Discontinuity	5.23.15	27.1	Replace Lube Oil with 1,800 gallons of 68Wetex.			3,000	
28	Generator End Flng	5.23.14	28.1	No Additional Action Recommended				
29	Shut Turbine Valves	Removed	29.1	No Additional Action Recommended				
30	High Water in TFO Blend Bed	5.11(b).8	30.1	No Additional Action Recommended				
31	BFP Sealing Failures	5.24.5	31.1	Maintenance Reserve Funds are available in 2000 for rebuild.		110,000		
32	Chr Water Pump	5.24.6	32.1	Maintenance Reserve Funds are available in 1999 for rebuild.		22,000		
33	Detentioned Heat Rate	5.11(b).9	33.1	See Item 14. CPI has calculated for 13,900 Btu/kwh Heat Rate				
34	Major Maintenance Annual	5.23.18	34.1	Self adds \$120,000 to "base" Major Reserve Fund. This is in addition to the 1999 Maintenance Reserve Funding of \$572,900 which is in the CPI Performance Fund.			310,000	
35	Internal Generator Inspection	5.23.16	35.1	Conduct Generator Testing During Outage	815,000			
36	Steam Driven BFP	6.11(b).10	36.1	Mats require to BFP to make operable			20,000	
37	Acid & Caustic Outdoor Containment System Rebuild	5.23.17	37.1	Rebuild Acid and Caustic Containment	110,000			
38	Power Circuitry on Site	5.23.18	38.1	No Additional Action Required				
39	Water Inventory, Pumping, Usage	5.23.19	39.1	See Item 8.1				
<b>Additional Capital Items</b>								
<b>COV Utilization</b>								
<b>Sunnyside Recommended Project Improvement (Note 17)</b>								
					Total	91,000	637,000	2,114,000

		Disclosure Schedule (f)	Rec Num.	COB Actions/Notes	Routine Maintenance (Meb 10)	Maintenance Reserve (Meb 11)	Capital Costs	Note
Issue Number:	Issue	Cross Ref #						

1	See November 12, 1993 Foster Wheeler Report
2	See J.T. Thorpe May 5, 1993 Report
3	See September 10, 1993 Mitchell Report
4	Need more information from SCANA
5	This is a \$50,000 loan to ORG.
6	\$110,000 Budgeted in Maintenance Reserve in 2000.
7	\$22,000 Budgeted in 1993
8	COB Estimate

1	See November 18, 1998 Foster Wheeler Report	1999 MAINTENANCE R
2	See J.T. Thorpe May 5, 1998 Report	2000 Base Maintenance
3	See September 10, 1998 Milush Report	50% of Work
4	Need more information from SCARDA	199
5	This is a \$34,000 loan to OMD.	2000 MAINTENANCE R
6	\$110,000 Budgeted in Maintenance Reserve in 2000.	2000 Base Maintenance
7	\$23,000 Budgeted in 1998	50% of Work
8	COB Estimate	2000
9	Draft 12/7/98	
10	These items are covered in the 1999 Review Maintenance Budget	
11	These items are covered in the Maintenance Reserve Plan	
12	See January 18, 1999 FAX from Harold Selts to Mark Anderson.	
13	Costs estimate based on Material costs at Colstrip, MT.	
14	These are costs to improve material handling and transportation - not reduce firm.	
15	Costs to reduce fleet and improve operations that will be negotiated with GHD.	
16	Additional Water Canyon Well and Pump to be funded by Maintenance Reserve pending Hydro-Geological Engineering Findings.	
	1999 and 2000 Maintenance Reserve Pouch need to be increased in CPA Program to reflect these changes in Maintenance Reserve	

Rev. Nr.	Change Description	Date
A	Issues for Distribution	17/10/98
B	Added Auxiliary General Recommendation to Rec. Item 5.1	2/10/99
	Changed Item 5.1, 6.2, and 6.3 to include inclusion of Victor Garaga Wolfpung	
	Review Schedule Status Column	
	Added Disclaimers Schedule Cross Reference	
	Added to Comment 14 on Item 14.3	
	Elimination of "Outstanding A/R Recognition" under Additional Capital Items	
	Addition of Comments 15 and 16 on Item 6.2 and 6.3.	
	Modifications to 1999 and 2000 Maintenance Reserve Funds	

# EXHIBIT C



## **EXCHANGE AGREEMENT**

**THIS EXCHANGE AGREEMENT**, dated as of August 31, 1999, among **CARBON COUNTY, UTAH**, a political subdivision of the State of Utah (the "Issuer") and **TAX-FREE HIGH YIELD PORTFOLIO**, a portfolio of the Tax-Free Income Trust, **DREYFUS MUNICIPAL FUNDS, JOHN HANCOCK HIGH-YIELD TAX-FREE FUND**, and **UNITED MUNICIPAL HIGH INCOME FUND, INC.** (collectively, the "Bondholders"),

### **WITNESSETH:**

WHEREAS, the Issuer has previously issued and sold \$109,500,000 in aggregate original principal amount of its Solid Waste Disposal Refunding Revenue Bonds, Series 1991 (Sunnyside Cogeneration Associates Project)(the "1991 Refunding Bonds") and \$7,000,000 in aggregate original principal amount of its Solid Waste Disposal Revenue Bonds, Series 1993 (Sunnyside Cogeneration Associates Project)(the "1993 Bonds" and, together with the 1991 Refunding Bonds, the "Prior Bonds"); and

WHEREAS, the Bondholders are the beneficial owners of all of the issued and outstanding Prior Bonds; and

WHEREAS, the proceeds of the Prior Bonds were loaned to Sunnyside Cogeneration Associates, a Utah joint venture ("Borrower"), to finance the acquisition and construction of a solid waste coal disposal facility (the "Project") located in Carbon County, Utah; and

WHEREAS, the Project has encountered financial difficulties and has failed to produce sufficient revenues to pay in full the operation and maintenance costs of the Project and debt service, when due, on the Prior Bonds; and

WHEREAS, the Borrower and the holders of the Prior Bonds have applied to the Issuer, and the Issuer has agreed, to issue \$59,000,000 in aggregate original principal amount of its Solid Waste Disposal Revenue Refunding Bonds (Sunnyside Cogeneration Associates Project), Series 1999A (the "Series 1999A Bonds") and \$18,000,000 in aggregate original principal amount of its Solid Waste Disposal Revenue Refunding Bonds (Sunnyside Cogeneration Associates Project), Series 1999B (the "Series 1999B Bonds" and, together with the Series 1999A Bonds, the "Refunding Bonds") to refund the Prior Bonds; and

WHEREAS, the Refunding Bonds will be authorized, issued and delivered pursuant to a Trust Indenture, dated as of August 1, 1999 (the "Indenture"), between the Issuer and U.S. Bank Trust National Association, as trustee (the "Trustee") and the proceeds thereof will be deemed to be loaned to the Borrower pursuant to a Loan Agreement, dated as of August 1, 1999 (the "Loan Agreement"), between the Issuer and the Borrower; and,

WHEREAS, the Bondholders have indicated their agreement to surrender their Prior Bonds for cancellation in exchange for the Refunding Bonds, *pro rata*, in full and complete satisfaction and release of the rights and claims represented by the Prior Bonds,

NOW, THEREFORE, in consideration of the following covenants and agreements, the parties hereto agree as follows:

1. Issuer's Representations, Warranties and Agreements. The Issuer represents and warrants to and agrees with the Bondholders as follows:

(a) The Issuer is a political subdivision of, and is organized and existing under the laws of, the State of Utah (the "State"), and has, and at the Exchange Date will have, full legal right, power and authority (i) to enter into this Exchange Agreement, (ii) to deliver the Refunding Bonds to the Bondholders as provided herein and (iii) to carry out and to consummate the transactions contemplated by this Exchange Agreement, the Indenture and the Loan Agreement.

(b) By action of the governing board of the Issuer, the Issuer has duly authorized and approved the execution and delivery of, and the performance by the Issuer of the obligations on its part contained in, the Indenture, the Refunding Bonds, the Loan Agreement, and this Exchange Agreement.

(d) The Issuer is not in breach of or in default under any applicable law or administrative regulation of the State or the United States or any applicable judgment or decree or any loan agreement, note, resolution, agreement or other instrument to which it is a party or to which it or any of its property is otherwise subject; and the execution and delivery of the Indenture, the Refunding Bonds, the Loan Agreement and this Exchange Agreement, and compliance with the provisions of each thereof and hereof, will not conflict with or constitute a material breach of or default under any law, administrative regulation, judgment, decree, loan agreement, note, resolution, agreement or other instrument to which the Issuer is a party or to which it or any of its property is otherwise subject.

(e) The Refunding Bonds, when issued, authenticated and delivered in accordance with the Indenture and delivered to the Bondholders in accordance with the provisions hereof, will be validly issued and outstanding limited obligations of the Issuer payable in the amounts, at the times and from the sources described in the Indenture.

(f) The Indenture, the Loan Agreement and this Exchange Agreement, when duly executed by all parties thereto, will constitute legal, valid and binding obligations of the Issuer enforceable in accordance with their respective terms, except as the enforceability hereof may be limited by applicable bankruptcy, insolvency, moratorium, reorganization, or other similar laws affecting the enforcement of creditors' rights generally or principles of equity.

(g) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending or, to the knowledge of the Issuer, threatened against the Issuer affecting the existence of the Issuer or its governing body or the titles of its officers to their respective offices or seeking to prohibit, restrain or enjoin the issuance, exchange or delivery of the Refunding Bonds, or in any way contesting or affecting the validity or enforceability of the Refunding Bonds, the Indenture, the Loan Agreement or this Exchange Agreement, or contesting the powers of the Issuer or any authority for the issuance of the Refunding Bonds or the execution and delivery of the Indenture, the Loan Agreement or this Exchange Agreement.

(h) Any certificate signed by an authorized officer of the Issuer and delivered to the Bondholders at or prior to the Exchange Date shall be deemed a representation, certification and warranty by the Issuer to the Bondholders in connection with this Exchange Agreement as to the statements made therein.

2. Representations and Warranties of Bondholders. Each of the Bondholders, severally, solely as to itself, represents and warrants as follows:

(a) It is the beneficial owner of the principal amounts of the Prior Bonds set forth on Schedule A hereto.

(b) It has full power and authority to enter into and perform its agreements set forth herein, including surrender and exchange of the Prior Bonds, *pro rata*, for the Refunding Bonds.

(c) The Prior Bonds beneficially owned by such Bondholder are not subject to any lien, pledge, charge, security interest, adverse claim or other encumbrance of any nature whatsoever.

(d) The execution and delivery of this Exchange Agreement, and of any other instruments or agreements contemplated hereby to which such Bondholder will be a party, and the consummation and performance of the transactions contemplated hereby and thereby, do not and will not constitute or result in a conflict with, a breach or violation of, or a default, or an event that, with the giving of notice or the lapse of time, or both, would constitute such a conflict, breach, violation or default, or an event that would permit any party to terminate or to accelerate the maturity of or any payment pursuant to (i) any agreement, instrument, commitment or obligation to which the Bondholder is a party or by which it or any of the Prior Bonds is or may be bound, (ii)

any license, permit or other governmental authorization held by such Bondholder or (iii) any law, judgment, order, writ, injunction, decree of any court, arbitrator, or other agency or body, governmental or otherwise.

(e) It has received and read the Indenture pursuant to which the Refunding Bonds are being issued.

3. Exchange. On the basis of the representations, warranties and covenants, and subject to the terms and conditions, set forth herein, each of the Bondholders agrees to surrender and exchange all (but not less than all) of the Prior Bonds beneficially owned by it, as set forth on Schedule A hereto, for Refunding Bonds of the series and maturities and in the principal amounts set forth on Schedule B hereto, on August 31, 1999, or such later date as may be mutually agreed upon (the "Exchange Date"), among the Issuer, the Borrower and the Bondholders holding eighty percent (80%) or more in aggregate principal amount of the Prior Bonds (the "Required Bondholder Vote"). At 9:00 a.m. MDT, on the Exchange Date, the Issuer will deliver, or cause to be delivered, in book-entry form, to each Bondholder, Refunding Bonds of the series and the maturities and in the principal amounts set forth on Schedule B hereto, together with any other documents required by this Exchange Agreement to be delivered to such Bondholder, at The Depository Trust Company, New York, New York, or at such other place as may be mutually agreed upon. Concurrently therewith, each Bondholder will surrender or be deemed to have surrendered the Prior Bonds owned by it, as set forth on Schedule A hereto, together with any necessary endorsements or bond powers, and to accept or be deemed to have accepted delivery of the Refunding Bonds issued to it.

The Refunding Bonds will be dated the Exchange Date, will mature on the dates and in the amounts, bear interest at the rate or rates or in the amounts, and be subject to redemption prior to maturity, all as set forth in the Indenture. Interest on the Refunding Bonds will be payable semiannually on each February 15 and August 15, commencing February 15, 2000, until maturity or prior redemption. The Refunding Bonds are being issued pursuant to the authority contained in Title 11, Chapter 17, Utah Code Annotated 1953 (the "Act"), a resolution adopted by the Board of Commissioners of the Issuer on August 18, 1999 and the Indenture. The Refunding Bonds shall have such other terms and conditions as are set forth in the Indenture.

The surrender of the Prior Bonds in exchange for the Refunding Bonds, as contemplated herein, shall constitute a full and complete release and discharge of any and all liability of the Issuer, the trustee for the Prior Bonds and the Borrower with respect to the principal indebtedness represented by the Prior Bonds and the rights and entitlements of the holders of the Prior Bonds shall, subsequent to the Exchange Date, be limited solely to the Refunding Bonds and the security provided therefor by the Indenture.

4. Conditions to Exchange. The agreement of each Bondholder to surrender the Prior Bonds beneficially owned by it and to accept the Refunding Bonds to be issued to it on the Exchange Date, as provided herein, is subject to the performance by the Issuer of its agreements set forth herein, the accuracy of the representations and

warranties of the Issuer and the Borrower herein and in the Indenture and the Loan Agreement as of the date hereof and as of the Exchange Date, and the delivery of the following:

(a) Executed counterparts of the Indenture, the Loan Agreement, the Notes, the Deed of Trust and the Security Agreement (as such terms are defined in the Indenture), and the other agreements and instruments contemplated therein.

(b) An opinion or opinions of (i) Snell & Wilmer LLP., as Bond Counsel, addressed to the Issuer, the Borrower, the Trustee, and Bondholders, substantially to the effects (1) that the Refunding Bonds are valid and binding limited obligations of the Issuer, enforceable in accordance with their respective terms, (2) that interest payable with respect to the Refunding Bonds is excluded from the gross income of the owners thereof for Federal income tax purposes pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), except for interest payable during any period to any holder of the Refunding Bonds who is a "substantial user" of the Project or a "related person" within the meaning of Section 147(a) of the Code during such period (as to which opinion such firm may rely on the below-described opinion of Ballard, Spahr, Andrews & Ingersoll, LLP, as Special Tax Counsel) and (3) that it is not necessary in connection with the issuance and the exchange of the Refunding Bonds to register the Refunding Bonds pursuant to the Securities Act of 1933, as amended, or to qualify any document pursuant to the Trust Indenture Act of 1939, as amended, and (ii) Ballard Spahr Andrews & Ingersoll, LLP, as Special Tax Counsel, addressed to the Issuer and Snell & Wilmer L.L.P., substantially to the effect that interest payable with respect to the Refunding Bonds is excluded from the gross income of the owners thereof for Federal income tax purposes pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), except for interest payable during any period to any holder of the Refunding Bonds who is a "substantial user" of the Project or a "related person" within the meaning of Section 147(a) of the Code during such period.

(c) The opinions of Ballard Spahr Andrews & Ingersoll, LLP and the Carbon County (Utah) Attorney, as counsel to the Issuer, in form and substance satisfactory to the Bondholders' counsel.

(d) The opinions of Callister, Nebeker & McCullough and Paul, Hastings, Janofsky & Walker LLP., as counsel to the Borrower, in form and substance satisfactory to the Bondholders' counsel.

(e) A certificate, dated the Closing Date, signed on behalf of the Issuer by the Chair or other authorized officer of its Board of County Commissioners, and in form and substance satisfactory to the Bondholders, to the effect that no litigation is pending or, to the best of the signer's knowledge, threatened (i) seeking to restrain or enjoin the issuance or delivery of any of the Refunding Bonds or the collection and application of the revenues pledged for the payment

thereof pursuant to the Indenture, (ii) in any way contesting or affecting any authority for the issuance of the Refunding Bonds or the validity of the Refunding Bonds, the Indenture, the Loan Agreement or this Exchange Agreement or (iii) in any way contesting the existence or powers of the Issuer with regard to the Refunding Bonds or to any agreement, document, duty or covenant of the Issuer pertaining thereto.

(f) An executed counterpart of the Tax Certificate and Agreement of the Issuer and the Borrower, in form and substance acceptable to Bond Counsel and Special Tax Counsel.

(g) An executed counterpart of a certificate of the Trustee certifying to the authentication and registration of the Bonds, together with a resolution evidencing the authority of the Trustee, in form and substance acceptable to counsel for the Bondholders.

(h) Five original transcripts of all proceedings relating to the authorization, issuance and exchange of the Refunding Bonds.

(i) A policy of title insurance insuring the Trustee's interest in the Project Site (as defined in the Indenture) in an amount not less than the aggregate principal amount of the Refunding Bonds.

(j) Such additional legal opinions, certificates, instruments, receipts and other documents and agreements as Bond Counsel, Special Tax Counsel or counsel to the Bondholders may reasonably request to enable such counsel to render their opinions or to evidence compliance with legal requirements, the truth and accuracy, as of the date hereof and as of the Exchange Date, of the representations and warranties contained herein and the due performance or satisfaction of all conditions to be performed or satisfied on or prior to the Exchange Date.

All the opinions, letters, certificates, instruments and other documents mentioned above or elsewhere in this Exchange Agreement shall be deemed to be in compliance with the provisions hereof if, but only if, they are in form and substance satisfactory to the Bondholders or their counsel, and the Bondholders shall have the right to waive any condition set forth in this Section. The Bondholders' surrender of the Prior Bonds and acceptance of the Refunding Bonds shall be conclusive evidence of the satisfaction of the conditions set forth herein.

In addition, the Bondholders shall receive their respective pro rata shares (after payment of certain agreed upon fees and expenses in the amount of approximately \$770,665) of:

(i) any and all moneys held by the trustee for the Prior Bonds, including in the Bond Fund (\$478,328.87), and the Revenue Fund (\$1,162,723.18),

- (ii) any and all moneys held by the trustee in the escrow account for the Bondholders (\$1,758,261.29),
- (iii) the payment in the amount of \$1,000,000 to be made by or on behalf of the Borrower pursuant to the Restructuring Agreement, dated as of February 22, 1999, between Sunnyside Generation LLC and the Bondholders,
- (iv) the payment to be made in September, 1999, by PacifiCorp for electricity delivered pursuant to the Power Purchase Agreement, dated January 30, 1987, between PacifiCorp and the Borrower in August, 1999, in the amount of approximately \$1,617,245.54; and
- (v) any moneys remaining in the accounts held by First Security Bank as reserves against any MDO liability of the Borrower to PacifiCorp (in the amount of approximately \$925,000.00) and liabilities for disputed contract claims of PacifiCorp and Parsons Main in the aggregate amount of approximately \$464,808.00 after payment of any ultimate liability of the Borrower in respect thereof.

5. Termination.

(a) If the Issuer does not, or is unable to, satisfy the conditions set forth herein, or if the Bondholders' obligations hereunder are terminated for any reason permitted by this Exchange Agreement, this Exchange Agreement may be canceled by the Required Bondholder Vote at any time on or prior to the Exchange Date. Notice of any such cancellation shall be given to the Issuer and the Trustee by the Bondholders in writing or by telephone, telegraph or facsimile transmission or similar means confirmed in writing. Notwithstanding any provisions herein to the contrary, performance of any and all conditions contained herein for the benefit of the Bondholders may be waived by the Required Bondholder Vote.

(b) The Bondholders may terminate their obligations hereunder by written notice to the Issuer at any time subsequent to the date hereof and on or prior to the Exchange Date if:

- (i) legislation shall have been enacted by the Congress, or introduced in the Congress, or recommended to the Congress for passage by the President of the United States or the United States Department of the Treasury or the Internal Revenue Service or any member of the United States Congress, or favorably reported for passage to either House of Congress by any Committee of such House to which such legislation has been referred for consideration, or (ii) a decision shall have been rendered by a court established under Article III of the Constitution of the United

States, or the United States Tax Court, or (iii) an order, ruling, regulation or communication (including a press release) shall have been issued by the United States Department of the Treasury or the Internal Revenue Service, or (iv) any action shall be taken or statement made by or on behalf of the President of the United States or the United States Department of the Treasury or the Internal Revenue Service or any member of the United States Congress which indicates or implies that legislation will be introduced in the current or next scheduled session of the United States Congress, in each case referred to in clauses (i), (ii), and (iii) and (iv) above with the purpose or effect, directly or indirectly, of imposing Federal income taxation upon interest to be received by any owners of the Refunding Bonds; or

(ii) legislation shall be enacted or any action shall be taken by the Securities and Exchange Commission which, in the reasonable opinion of the Bondholders, has the effect of requiring the offer or sale of the Bonds to be registered pursuant to the Securities Act of 1933, as amended; or

(iii) in the reasonable judgment of the Bondholders, it is impractical or inadvisable for the Bondholders to acquire the Refunding Bonds because (i) trading in securities generally has been suspended on the New York Stock Exchange, Inc., or a general banking moratorium has been ordered or declared by Federal, New York or Utah authorities, or (ii) Federal or Utah authorities shall have taken any action, whether administrative, legislative, judicial or otherwise which materially, adversely affects the ability of the Bondholders to market or sell the Refunding Bonds, or (iii) a war involving the United States or other national calamity shall have occurred; or

(iv) there shall have occurred, in the reasonable judgment of the Bondholders, a material adverse change in the assets or financial condition of the Borrower or the Project or any change which, in the reasonable judgment of the Bondholders, makes unreasonable or unreliable any of the assumptions upon which payment of debt service on the Refunding Bonds is predicated; or

(v) the issuance of the Refunding Bonds and the exchange thereof for the Prior Bonds has not been accomplished prior to September 15, 1999.

6. Payment of Costs and Expenses.

(a) The Bondholders shall cause to be paid, and the Issuer shall be under no obligation to pay, the expenses incident to the performance of the obligations of the Issuer hereunder, including but not limited to: (i) the cost of the



preparation, printing and execution of the Refunding Bonds; (ii) the fees and disbursements of Bond Counsel and Special Tax Counsel; (iii) the fees and disbursements of the Trustee, registrar and paying agent and any others retained by the Issuer; (iv) the fees for bond ratings, if any; and (v) other reasonable, normally occurring expenses incurred by the Bondholders in connection with the authorization, issuance and exchange of the Refunding Bonds. In order to facilitate the sale and delivery of the Refunding Bonds, the Bondholders are authorized by the Issuer to advance any such fees or expenses, but the Bondholders are under no obligation to advance or to bear any such fees or expenses.

(b) In the event the Refunding Bonds are not delivered to the Bondholders for any reason, the Bondholders shall nevertheless pay the reasonable fees, costs and expenses of the parties (other than the Borrower) in connection therewith.

7. Notices. Any notice or other communication to be given pursuant to this Exchange Agreement may be given by delivering the same in writing as follows:

To the Issuer: Carbon County, Utah  
120 East Main Street  
Price, UT 84501  
Attn: Chair  
Telephone: 435-636-3266  
Facsimile: 435-636-3210

To the Bondholders: c/o J.T. Atkins  
CIBC World Markets  
425 Lexington Avenue  
New York, NY 10017  
Telephone: 212-885-4754  
Facsimile: 212-885-4998

To the Trustee: U.S. Bank Trust National Association  
101 North First Avenue, Suite 2000  
Phoenix, AZ 85003  
Telephone: 602-514-5999  
Facsimile: 602-514-5994

8. Survival of Representations. This Exchange Agreement is made solely for the benefit of the Issuer and the Bondholders (including their successors or assigns), and no other person shall acquire or have any right hereunder or by virtue hereof. All the representations, warranties, covenants and agreements contained herein shall remain operative and in full force and effect and shall survive delivery of and payment for the Bonds hereunder, regardless of any investigation made by the Bondholders or on its behalf.

9. Governing Law. This Exchange Agreement shall be governed by the substantive, internal laws of the State of Utah, without regard to conflict of law principles, except to the extent such laws are preempted by the federal laws of the United States of America, in which event such federal laws shall govern.

10. Liability. No recourse shall be had for any claim based on this Exchange Agreement, the Indenture or any resolution, certificate, document or instrument delivered pursuant hereto, against any member of the governing board of the Issuer, officer, agent or representative, past, present or future, of the Issuer or any successor party, either directly or through the Issuer or any such successor.

11. Severability. If any section, paragraph, subdivision, sentence, clause or phrase hereof shall for any reason be held illegal or unenforceable, such decision shall not affect the validity of the remaining portions hereof. The parties hereto declare that they would have executed this Exchange Agreement and each and every other section, paragraph, subdivision, sentence, clause and phrase hereof, irrespective of the fact that any one or more sections, paragraphs, subdivisions, sentences, or clauses or phrases hereof may be held to be illegal, invalid, or unenforceable. If any provision hereof contains any ambiguity which may be construed as either valid or invalid, the valid construction shall be adopted.

12. Entire Agreement; Counterparts. This Exchange Agreement expresses the entire understanding and all agreements of the parties hereto with each other with respect to the subject matter hereof and no party hereto has made or shall be bound by any agreement or any representation to any other party which is not expressly set forth herein. This Exchange Agreement may be executed in one or more counterparts and, when so executed, all such executed counterparts shall constitute a single, binding agreement between and among all persons who have executed this Exchange Agreement.

13. Effective Date. This Exchange Agreement shall become effective upon the execution of the acceptance hereof by the Issuer.

IN WITNESS WHEREOF, the parties have executed and delivered this Exchange Agreement as of the date first set forth above.

CARBON COUNTY, UTAH

By William D. Krompel  
Chair

ATTESTED AND COUNTERSIGNED:

Robert P. Dew  
County Clerk

DREYFUS MUNICIPAL FUNDS

By \_\_\_\_\_

TAX-FREE HIGH YIELD PORFOLIO

By Leslie L. Ogg  
Vice President + General Counsel  
UNITED MUNICIPAL HIGH INCOME  
FUND, INC.

By \_\_\_\_\_

JOHN HANCOCK HIGH-YIELD TAX  
FREE FUND

By \_\_\_\_\_

IN WITNESS WHEREOF, the parties have executed and delivered this Exchange Agreement as of the date first set forth above.

CARBON COUNTY, UTAH

By \_\_\_\_\_  
Chair

ATTESTED AND COUNTERSIGNED:

\_\_\_\_\_  
County Clerk

DREYFUS MUNICIPAL FUNDS

By Thomas P. Hamblin

TAX-FREE HIGH YIELD PORFOLIO

By \_\_\_\_\_

UNITED MUNICIPAL HIGH INCOME  
FUND, INC.

By \_\_\_\_\_

JOHN HANCOCK HIGH-YIELD TAX  
FREE FUND

By \_\_\_\_\_

IN WITNESS WHEREOF, the parties have executed and delivered this Exchange Agreement as of the date first set forth above.

CARBON COUNTY, UTAH

By \_\_\_\_\_  
Chair

ATTESTED AND COUNTERSIGNED:

\_\_\_\_\_  
County Clerk

DREYFUS MUNICIPAL FUNDS

By \_\_\_\_\_

TAX-FREE HIGH YIELD PORTFOLIO

By \_\_\_\_\_

UNITED MUNICIPAL HIGH INCOME  
FUND, INC.

By 

JOHN HANCOCK HIGH-YIELD TAX  
FREE FUND

By \_\_\_\_\_

IN WITNESS WHEREOF, the parties have executed and delivered this Exchange Agreement as of the date first set forth above.

CARBON COUNTY, UTAH

By \_\_\_\_\_  
Chair

ATTESTED AND COUNTERSIGNED:

\_\_\_\_\_  
County Clerk

DREYFUS MUNICIPAL FUNDS

By \_\_\_\_\_

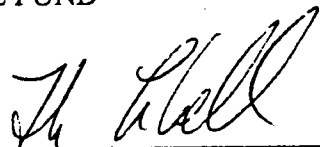
TAX-FREE HIGH YIELD PORTFOLIO

By \_\_\_\_\_

UNITED MUNICIPAL HIGH INCOME  
FUND, INC.

By \_\_\_\_\_

JOHN HANCOCK HIGH-YIELD TAX  
FREE FUND

By 

**SCHEDULE A**

**Prior Bond Holdings**  
(Dollars in millions)

	<u>1991 Bonds</u>		<u>1993 Bonds</u>
	<u>Maturity</u> <u>7-1-06</u>	<u>Maturity</u> <u>7-1-18</u>	
Dreyfus Municipal Funds	\$ 9.75	\$70.00	\$7.00
Tax-Free High Yield Portfolio		25.35	
United Municipal High Income Fund, Inc.		2.50	
John Hancock High-Yield Tax-Free Fund	<u>          </u>	<u>1.90</u>	<u>          </u>
Totals	\$ 9.75	\$99.75	\$7.00

**SCHEDULE B**

**Refunding Bond Holdings**  
(Dollars in millions)

	<u>Series 1999A Bonds</u>		<u>Series 1999B Bonds</u>
	<u>Maturity</u> <u>8-15-11</u>	<u>Maturity</u> <u>8-15-23</u>	
Dreyfus Municipal Funds	\$ 8.45	\$35.48	\$13.40
Tax-Free High Yield Portfolio		12.84	3.92
United Municipal High Income Fund, Inc.		1.27	.39
John Hancock High-Yield Tax-Free Fund	<u>          </u>	<u>.96</u>	<u>.29</u>
Totals	\$ 8.45	\$50.55	\$18.00



## **SCHEDULE C**

### **Refunding Bonds**

\$59,000,000 Carbon County, Utah, Solid Waste Disposal Revenue Refunding Bonds (Sunnyside Cogeneration Associates), Series 1999A (the "Series 1999A Refunding Bonds"), consisting of:

\$8,450,000 Series 1999A Refunding Bonds maturing August 15, 2011, subject to prior mandatory, extraordinary and optional redemptions as provided in the Indenture, and bearing interest at the rate of six and three-eighths percent (6.375%) per annum, payable on February 15, 2000 and each February 15 and August 15 thereafter prior to maturity or prior redemption.

\$50,550,000 Series 1999A Refunding Bonds maturing August 15, 2023, subject to prior mandatory, extraordinary and optional redemptions as provided in the Indenture, and bearing interest at the rate of seven and one-tenth percent (7.10%) per annum, payable on February 15, 2000 and each February 15 and August 15 thereafter prior to maturity or prior redemption; and

\$18,000,000 Carbon County, Utah, Solid Waste Disposal Revenue Refunding Bonds (Sunnyside Cogeneration Associates), Series 1999B maturing August 15, 2024, subject to prior extraordinary and optional redemptions as provided in the Indenture and bearing contingent interest in an amount equal to one-half of the Series B Amount (as defined in the Indenture), payable on August 15, 2000 and each February 15 and August 15 thereafter prior to maturity or prior redemption.

# EXHIBIT D

**Sunnyside Cogeneration Associates  
Series B Bond Amount Report  
January 1, 2001 through December 31, 2001**

**Term B Bonds**

Income from Operations	42,495,125
Less: Insurance	(299,682)
Less: Property Taxes	(530,498)
Less: G&A	(424,579)
EBITDA (A)	41,240,367
Less:	
Capital Expenditures	(5,360,552)
Interest on A Bonds & Pacific Corp. Note	(4,148,011)
Principal Repayments on A Bonds	(2,005,000)
Principal on Pacific Corp. Note	(203,672)
LOC Fees	0
S&M Fees (min. distribution)	(1,552,350)
S&M Fees in arrears	0
Add: Interest Income	543,455
Less: Interest Income due Bondholders	(33,631)
Excess	28,480,606

**Annual Distributable Cash**

**Cash Split**

Equity	14,240,303
Debt	14,240,303

Note: The Series B Bond Amount Calculation is based upon the enclosed unaudited 2001 Income Statement for Sunnyside Cogeneration Associates.

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# EXHIBIT E

REVISED  
Sunnyside Cogeneration Associates  
Series B Bond Amount Report  
January 1, 2002 through December 31, 2002

**Term B Bonds**

Income from Operations	7,869,051
Less: Insurance	(349,466)
Less: Property Taxes	(576,197)
Less: G&A	(411,993)
EBITDA (A)	6,531,395
Less:	
Capital Expenditures	(1,766,717)
Interest on A Bonds & Pacific Corp. Note	(3,959,780)
Principal Repayments on A Bonds	(2,443,000)
Principal on Pacific Corp. Note	(249,547)
LC Fees on DSR	0
S&M Fees (min. distribution)	(1,609,166)
S&M Fees in arrears	0
Add: Interest Income and Gain on the Sale of Treasury Strips	656,293
Less: Interest Income Due or Paid to Bondholders	(121,125)
Excess (Deficit)	(2,961,647)

**Annual Distributable Cash**

**Cash Split**

Equity	0
Debt	0

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# EXHIBIT F

**Series B Bond Amount Report**  
**January 1, 2003 through December 31, 2003**

**Term B Bonds**

Income from Operations	9,599,574.47
Less: Insurance	(419,535.47)
Less: Property Taxes	(627,560.17)
Less: G&A	(856,001.38)
EBITDA (A)	7,696,477.46
Less:	
Capital Expenditures	1,328,522.71 ***
Interest on A Bonds & Pacific Corp. Note	(3,786,326.50)
Principal Repayments on A Bonds	(2,445,000.00)
Principal on Pacific Corp. Note	(249,547.00)
LC Fees on DSR	0.00
S&M Fees (min. distribution)	(1,640,248.12)
S&M Fees in arrears	(804,583.00)
Add: Interest Income	90,263.00
Less: Interest Income Payable to Bondholders	(8,219.66)
Less: Interest Income Earned on Debt Reserve Fund	(278.00)
Excess	181,060.89

**Annual Distributable Cash**

**Cash Split**

Equity	90,530.44
Debt	90,530.44

\*\*\* Includes \$1,350,788 that was drawn in 2001 for the Starpoint Reclamation Trust Fund. These Funds are no longer needed based upon the recent settlement with the Utah Department of Oil, Gas and Mining.

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# EXHIBIT G

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**B Bond**  
**Interest Calculation**  
**January 1, 2004 through December 31, 2004**

**Term B Bonds**

Income from Operations	12,995,266
Less: Insurance	(410,514)
Less: Property Taxes	(583,672)
Less: G&A	(683,511)
EBITDA (A)	11,317,568
Less:	(372,468)
Capital Expenditures	(3,586,053)
Interest on A Bonds & Pacific Corp. Note	(2,445,000)
Principal Repayments on A Bonds	(252,119)
Principal on Pacific Corp. Note	0
LC Fees on DSR	(1,689,456)
S&M Fees (min. distribution)	(2,444,831)
S&M Fees in arrears	105,863
Add: Interest Income	
Excess (Deficit)	633,505

**Annual Distributable Cash**

<u>Cash Split</u>	316,752
Equity	316,752
Debt	

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## EXHIBIT H

## SUNNYSIDE COGENERATION ASSOCIATES

Dear Bondholders:

Attached hereto are three documents relating to Sunnyside Cogeneration Associates ("SCA"). We are requesting your expedited review and approval of these documents as required by Section 9.4 of the Loan Agreement Between Carbon County, Utah, and Sunnyside Cogeneration Associates.

The attached documents (namely the "Fourth Amendment to the Power Purchase Agreement Between Sunnyside Cogeneration Associates and Utah Power & Light," and the "Settlement Agreement Between Sunnyside Cogeneration Associates and Utah Power") are fundamental to the future financial health and stability of SCA. Utah Power is an assumed name of PacifiCorp. They are the result of an extensive negotiation period between the partners of SCA and Utah Power and must be approved by the SCA Bondholders prior to their subsequent approval by the Public Service Commission of Utah ("Commission"). Attached also please find a copy of a presentation regarding the reasons for entering into these agreements.

Over an extended period of about two years, there has been a growing fundamental dispute between SCA and Utah Power regarding the price paid for energy delivered by the SCA plant (in this regard, the dispute did not involve the contractual Capacity Payments made to SCA). The result of this dispute and resulting negotiation period is a revised formula for the calculation of the monthly Energy Price. Whereas SCA has been (and continues to be paid) for energy under a previously Commission-approved avoided energy costs referred to as the Realized Marginal Energy Cost ("RMEC") calculation, the attached Fourth Amendment replaces the RMEC with a published energy indexed price based on the readily verifiable Palo Verde Index, a regional energy bid index published monthly by Dow Jones. We were also able to negotiate "floor" and "ceiling" energy prices (that escalate over future years) that assures there will be a minimum and maximum revenue portion earned from energy delivered. Other than this formula for energy delivered, all other terms of the Power Purchase Agreement remain unchanged.

The attached Settlement Agreement is a companion document to the new Fourth Amendment. It simply allows that for all of the energy payments that have been made during calendar year 2004 to be re-calculated using the new indexed formula. This results in back payments to be made by PacifiCorp to SCA for this period (a total of approximately \$340,000 is to be made). Note that these two documents are inter-dependent (i.e., they must be approved concurrently).

The revisions to the Power Purchase Agreement triggered by these documents cure a very contentious dispute over the price paid to SCA for energy delivered. The "floor" energy pricing helps SCA maintain its ability to service the operating and bond interest costs of the venture far into the future. The "ceiling" energy price serves to give some stability to PacifiCorp while at the same time providing some "upside" to SCA.

Letter to Bondholders  
July 19, 2005  
Page 2

We would be pleased to meet with some or all of the SCA Bondholders or have a conference call on or before December 23, 2004 to discuss in detail these important changes to the Power Purchase Agreement. Please let me know when a convenient time and place can be scheduled. SCA invites the indulgence of the Bondholders to expedite the approvals for these documents.

SUNNYSIDE COGENERATION ASSOCIATES

Robert McLeese

# **SETTLEMENT AGREEMENT**

**BETWEEN**

**SUNNYSIDE COGENERATION ASSOCIATES**

**AND**

**UTAH POWER & LIGHT COMPANY**

THIS SETTLEMENT AGREEMENT is entered into this \_\_\_\_ day of November, 2004, by and between SUNNYSIDE COGENERATION ASSOCIATES, a joint venture (partnership) organized and existing under the laws of the State of Utah and the owner of a qualifying facility as defined in 18 CFR § 292.101(b)(1), hereinafter referred to as "Seller," and UTAH POWER & LIGHT COMPANY, an assumed business name of PACIFICORP, a corporation organized and existing under the laws of the State of Oregon, hereinafter referred to as "Buyer." Seller and Buyer are sometimes referred to collectively as "Parties" and individually as "Party." The term "Power Purchase Agreement" as used in Settlement Agreement, shall refer to the January 30, 1987, power purchase agreement between the Parties, as amended on April 28, 1987, May 3, 1989, and February 16, 1993, as amended as of the date of this Settlement Agreement, together with Appendices A through M and Exhibits 1 through 14. All capitalized terms not defined herein shall have the meaning ascribed to them in the Power Purchase Agreement.

## **BACKGROUND**

Whereas, the Parties have entered into the Power Purchase Agreement; and

Whereas, a dispute developed between the Parties regarding certain matters under the Power Purchase Agreement including the calculation of avoided energy prices; and

Whereas, on March 29, 1996, Seller filed a Petition for Contract Enforcement with the Commission seeking enforcement of the provisions of the Power Purchase Agreement. This matter was assigned Commission Docket No. 96-2018-01; and

Whereas, the Parties have now conditionally reached agreement on a settlement of their dispute in accordance with the terms and conditions set forth in that certain Term Sheet dated June 3, 2004. The Buyer and Seller enter into this Settlement Agreement to fully settle all outstanding claims, demands and causes of action of any kind whatsoever arising out of the Power Purchase Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the Parties agree as follows:

- I. Simultaneously with the execution of this Settlement Agreement, the Parties shall execute the Fourth Amendment to the Power Purchase Agreement, by and between Sunnyside Cogeneration Associates and Utah Power & Light Company, dated as of November \_\_, 2004 (the "Fourth Amendment"), in the form attached hereto and made a part hereof as Exhibit A.
- II. Within thirty (30) days following approval by the Commission of the Fourth Amendment, Buyer will make a billing adjustment reflecting the terms and conditions of the Fourth Amendment with such adjustment effective on and after January 1, 2004 which will result in the revised payment invoices for the time period beginning January 1, 2004 and ending on the last day of the month immediately preceding the date on which the Commission approves the Fourth Amendment, or if the Commission approves the Fourth Amendment on the last day of a month, ending on that day. This billing adjustment shall be calculated according to the methodology

specified in the Fourth Amendment and as set forth on Appendix A, attached hereto and made a part hereof. For purposes of illustration, if the Commission approved the Agreement on April 30, 2004, or any day of May other than May 31, the billing adjustment would be \$246,017.65. Payment will be made in the amount of the revised invoice within fifteen (15) days after issuance of the invoice.

- III. Approval by the Commission of the Fourth Amendment shall release and discharge both parties from any and all claims, demands and causes of action of any kind whatsoever, whether or not known, suspected or claimed, which either Party ever had, now has, or claims to have had relating to or connected to or arising out of the Agreement as of the effective date of the Fourth Amendment.

IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement to be executed by their duly authorized representatives as of the first date hereinabove set forth.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

SELLER:

SUNNYSIDE COGENERATION ASSOCIATES,  
a Utah joint venture, composed of:

By: SUNNYSIDE HOLDINGS I, INC.,  
a Delaware corporation, a joint venture partner

By: \_\_\_\_\_  
Name: Greg B. Lawyer  
Title: President

By: SUNNYSIDE II, L.P.  
a Delaware limited partnership, a joint venture partner

By: SUNNYSIDE II, INC.,  
Delaware corporation, the general partner of  
Sunnyside II, L.P.

By: \_\_\_\_\_  
Name: Robert V. Escalante  
Title: Vice President

BUYER:

PACIFICORP, operating under the assumed name of UTAH  
POWER & LIGHT COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**EXHIBIT A**

**FOURTH AMENDMENT TO THE POWER PURCHASE AGREEMENT**

**BETWEEN**

**SUNNYSIDE COGENERATION ASSOCIATES**

**AND**

**UTAH POWER & LIGHT COMPANY**

[attach final copy]

**Appendix A**

**January through April 2004 Billing Adjustments**

**FOURTH AMENDMENT TO THE POWER PURCHASE AGREEMENT BETWEEN  
SUNNYSIDE COGENERATION ASSOCIATES**

**AND**

**UTAH POWER & LIGHT COMPANY**

THIS FOURTH AMENDMENT is entered into this \_\_\_\_ day of November, 2004, by and between SUNNYSIDE COGENERATION ASSOCIATES, a joint venture (partnership) organized and existing under the laws of the State of Utah and the owner of a qualifying facility as defined in 18 CFR § 292.101(b)(1), hereinafter referred to as "Seller," and UTAH POWER & LIGHT COMPANY, an assumed business name of PACIFICORP, a corporation organized and existing under the laws of the State of Oregon, hereinafter referred to as "Buyer", and effective after execution by both Parties and after the order approving this Fourth Amendment by the Public Service Commission of Utah (the "Commission") is no longer subject to judicial review (the "Effective Date"). Seller and Buyer are sometimes referred to collectively as "Parties" and individually as "Party." The term "Power Purchase Agreement" as used in this Fourth Amendment, shall refer to the January 30, 1987, power purchase agreement between the Parties, as amended on April 28, 1987, May 3, 1989, and February 16, 1993, together with Appendices A through K and Exhibits 1 through 14.

**BACKGROUND**

Whereas, on January 16, 1987, the Commission issued an order in Case No. 86-2018-01 setting the prices for capacity and energy purchases by Buyer, from Seller, approving the terms

of a draft power purchase agreement to be entered into between Seller and Buyer and directing Buyer to enter into the power purchase agreement ("Order"); and

Whereas, on January 30, 1987, Buyer and Seller executed the power purchase agreement and on April 28, 1987, May 3, 1989, and February 16, 1993, Seller and Buyer executed the First Amendment, Second Amendment and Third Amendment, respectively, to the Power Purchase Agreement; and

Whereas, a dispute developed between the Parties regarding certain matters under the Power Purchase Agreement including the calculation of avoided energy prices;

Whereas, on March 29, 1996, Seller filed a Petition for Contract Enforcement with the Commission seeking enforcement of the provisions of the Power Purchase Agreement. This matter was assigned Commission Docket No. 96-2018-01.

Whereas, the Parties have now conditionally reached agreement on a settlement of their dispute in accordance with the terms and conditions set forth in that certain Term Sheet dated June 3, 2004. The Buyer and Seller enter into this Fourth Amendment to the Power Purchase Agreement incorporating the terms thereof.

NOW, THEREFORE, in order to effectuate the Term Sheet and in consideration of the mutual covenants and agreements hereinafter set forth, the Parties agree as follows:

I. The first paragraph of Section 1 (Definitions) of the Power Purchase Agreement shall be amended to read as follows:

When used herein, the term "Agreement" shall mean the January 30, 1987, power purchase agreement between the Parties, as amended on April 28, 1987, May 3, 1989, February 15, 1993, and November \_\_, 2004, together with Appendices A

through M and the Exhibits to those Appendices which are incorporated herein by this reference. When used in this Agreement, the terms "month", "months", and "monthly" shall refer to a calendar month or months as appropriate. When used in this Agreement, the following terms shall have the respective meanings set forth below (such definition to be applicable to both the singular and plural forms of the terms defined).

II. Section 2.1 (Term) of the Power Purchase Agreement shall be amended to read as follows:

2.1 The provisions of this Agreement shall be in effect through August 31, 2023. At the end of said initial term, this Agreement can be renewed for additional five (5) year periods upon mutual agreement of the Parties.

III. Section 3.1 (Definitions) of the Power Purchase Agreement shall be amended by adding the following to the end of the section:

3.1(p) On-Peak Energy – On-Peak Energy shall be that physical energy delivered between hours ending 0700 – 2200 (6:00 AM – 10:00 PM where such time shall be determined in accordance with Pacific Prevailing Time) for Monday through Saturday but excluding Sundays and holidays designated by the North American Electric Reliability Council ("NERC").

3.1(q) Off-Peak Energy – Off-Peak Energy shall be that physical energy delivered between hours ending 2300 – 0600 (10:00 PM – 6:00 AM where such

time shall be determined in accordance with Pacific Prevailing Time) for Monday through Saturday but excluding Sundays and NERC holidays.

3.1(r) 24-Hour Energy – 24-Hour Energy shall be that physical energy delivered between hours ending 0100 – 2400 (12:00 AM – 12:00 AM where such time shall be determined in accordance with Pacific Prevailing Time) for Sundays and NERC holidays.

3.1(s) Monthly Floor Price – The Monthly Floor Price shall be the minimum price Buyer shall pay Seller for Base Energy and Additional Energy delivered in any month. The Monthly On-Peak Energy Floor Price shall be set at \$32.33/MWh for calendar year 2004 and escalate as specified in Appendix L. The Monthly Off-Peak Energy Floor Price shall be set at \$25.40/MWh for calendar year 2004 and escalate as specified in Appendix L. The Monthly 24-Hour Energy Floor Price shall be set at \$30.02/MWh for calendar year 2004 and escalate as specified in Appendix L.

3.1(t) Monthly Ceiling Price – The Monthly Ceiling Price shall be the maximum price Buyer shall pay Seller for Base Energy and Additional Energy delivered in any month. The On-Peak Energy Ceiling Price shall be \$41.98/MWh for calendar year 2004 and escalate as specified in Appendix M. The Off-Peak Energy Ceiling Price shall be \$32.35/MWh for calendar year 2004 and escalate as specified in Appendix M. The Monthly 24-Hour Energy Ceiling Price shall be \$38.77/MWh for calendar year 2004 and escalate as specified in Appendix M.

3.1(u) Base Energy Factor, Additional Energy Factor, and Excess Energy Factor – Base Energy Factor, Additional Energy Factor, and Excess Energy

Factor are respectively the relevant calculated percentages of Base Energy, Additional Energy and Excess Energy produced in any month versus the total energy produced in that month.

IV. A new Section 3.5 shall be added to the Power Purchase Agreement as follows:

If any Dow Jones Palo Verde index applicable to this Power Purchase Agreement ceases to be published during the Term of the Agreement, Buyer shall select as a replacement a substantially equivalent index that, after any appropriate or necessary adjustments, provides a reasonable substitute for the index. Buyer's selection shall be subject to Seller's consent, which Seller shall not unreasonably withhold, condition or delay.

V. Section 3A.2 (Sale of Power – Base Energy) of the Power Purchase Agreement shall be amended by:

(1) Adding to the ninth line, after the phrase, "third anniversary of the Operating Date" the phrase "and to, but not including, the Effective Date;

(2) Adding the following language to the end of Section 3A.2.

For any month (or part thereof) commencing on the Effective Date, Buyer shall pay Seller monthly for Base Energy at the rate as follows:

(a) On-Peak Energy – Buyer shall pay Seller for Base Energy produced in a month as On-Peak Energy an amount equal to the product of the On-Peak Energy delivered multiplied by the Base Energy Factor multiplied by .85 multiplied by the simple average for the month of the Dow Jones Palo Verde

Electricity Price Index for Firm Daily On-Peak power, excluding Sundays and NERC holidays.

(b) Off-Peak Energy – Buyer shall pay Seller for Base Energy produced in a month as Off-Peak Energy an amount equal to the product of the Off-Peak Energy delivered multiplied by the Base Energy Factor multiplied by .85 multiplied by the simple average for the month of the Dow Jones Palo Verde Electricity Price Index for Firm Daily Off-Peak power, excluding Sundays and NERC holidays.

(c) 24-Hour – Buyer shall pay Seller for Base Energy produced in a month as 24-Hour Energy an amount equal to the product of the 24-Hour Energy delivered multiplied by the Base Energy Factor multiplied by .85 multiplied by the simple average for the month of the Dow Jones Palo Verde Electricity Price Index for 24-Hour Firm power applicable to Sundays and NERC holidays.

(d) In all cases, the calculations set forth in Sections 3A.2(a), (b) and (c) for On-Peak Energy, Off-Peak Energy and 24-Hour Energy, respectively, shall be completed prior to the application of the Monthly Floor Price or the Monthly Ceiling Price.

(e) For Base Energy delivered as On-Peak Energy, Off-Peak Energy or 24-Hour Energy, Buyer shall pay Seller at least the Monthly Floor Price, but not more than the Monthly Ceiling Price in any given month for each of the energy products respectively.

VI. Section 3A.3 of the Agreement is deleted and the following language is substituted:



Seller's Base Monthly Revenues, including Base Energy, shall be increased by 5% to reflect capacity and energy loss savings to Buyer; provided, however, the energy prices paid for the Additional and Excess Energy are not subject to the application of the 5% increase.

VII. Section 3B.2 (Sale of Power – Additional Energy) of the Power Purchase Agreement shall be amended by:

- (1) Adding to the beginning of the first sentence, "Before the Effective Date"
- (2) Adding the following language to the end of Section 3B.2

For any month (or part thereof) commencing on the Effective Date, Buyer shall pay Seller monthly for Additional Energy at the rate as follows:

(a) On-Peak Energy – Buyer shall pay Seller for Additional Energy produced in a month as On-Peak Energy an amount equal to the product of the On-Peak Energy delivered multiplied by the Additional Energy Factor multiplied by .85 multiplied by the simple average for the month of the Dow Jones Palo Verde Electricity Price Index for Firm Daily On-Peak power, excluding Sundays and NERC holidays.

(b) Off-Peak Energy – Buyer shall pay Seller for Additional Energy produced in a month as Off-Peak Energy an amount equal to the product of the Off-Peak Energy delivered multiplied by the Additional Energy Factor multiplied by .85 multiplied by the simple average for the month of the Dow Jones Palo Verde Electricity Price Index for Firm Daily Off-Peak power, excluding Sundays and NERC holidays.

(c) 24-Hour – Buyer shall pay Seller for Additional Energy produced in a month as 24-Hour Energy an amount equal to the product of the 24-Hour Energy delivered multiplied by the Additional Energy Factor multiplied by .85 multiplied by the simple average for the month of the Dow Jones Palo Verde Electricity Price Index for 24-Hour Firm power applicable to Sundays and NERC holidays.

(d) In all cases, the calculations set forth in Sections 3A.2(a), (b) and (c) for On-Peak Energy, Off-Peak Energy and 24-Hour Energy, respectively, shall be completed prior to the application of the Monthly Floor Price or the Monthly Ceiling Price.

(e) For Additional Energy delivered as On-Peak Energy, Off-Peak Energy or 24-Hour Energy, Buyer shall pay Seller at least the Monthly Floor Price, but not more than the Monthly Ceiling Price in any given month for each of the energy products respectively.

VIII. Section 3C.1 (Sale of Power – Excess Energy) of the Power Purchase Agreement shall be amended by:

- (1) Adding at the beginning of the first sentence “Before the Effective Date,
- (2) Adding the following language at the end of Section 3C.1

For any month (or part thereof) on and after the Effective Date, Buyer shall pay Seller monthly for Excess Energy at the rate that is the lower of 1) \$10/MWh, or 2) at the rate calculated below for such hour using the Dow Jones Palo Verde Electricity Index:

(a) On-Peak Energy – Buyer shall pay Seller for Excess Energy produced in a month as On-Peak Energy an amount equal to the product of the On-Peak Energy delivered multiplied by the Excess Energy Factor multiplied by .85 multiplied by the simple average for the month of the Dow Jones Palo Verde Electricity Price Index for Firm Daily On-Peak power, excluding Sundays and NERC holidays.

(b) Off-Peak Energy – Buyer shall pay Seller for Excess Energy produced in a month as Off-Peak Energy an amount equal to the product of the Off-Peak Energy delivered multiplied by the Excess Energy Factor multiplied by .85 multiplied by the simple average for the month of the Dow Jones Palo Verde Electricity Price Index for Firm Daily Off-Peak power, excluding Sundays and NERC holidays.

(c) 24-Hour – Buyer shall pay Seller for Excess Energy produced in a month as 24-Hour Energy an amount equal to the product of the 24-Hour Energy delivered multiplied by the Excess Energy Factor multiplied by .85 multiplied by the simple average for the month of the Dow Jones Palo Verde Electricity Price Index for 24-Hour Firm power applicable to Sundays and NERC holidays.

IX. Section 20 (Entire Agreement) of the Power Purchase Agreement shall be amended by adding the following appendices at the end thereto:

Appendix L – Monthly Floor Price

Appendix M – Monthly Ceiling Price

X. A new Appendix L – Monthly Floor Price is added to the Power Purchase Agreement which is attached hereto and incorporated by reference herein.

XI. A new Appendix M – Monthly Ceiling Price is added to the Power Purchase Agreement which is attached hereto and incorporated by reference herein.

XII. Base Billing Capacity and Additional Billing Capacity shall continue to be paid for as set forth in Section 3 of the Agreement. Seller agrees it will take no actions to increase the generating capacity of Seller's facility above the amount set forth in the Agreement.

XIII. This Fourth Amendment to the Power Purchase Agreement shall become effective on the Effective Date; provided, however, this Agreement shall not become effective until the Commission has determined that the prices to be paid for energy and capacity are just and reasonable, and in the public interest. In the event that the Commission order approving this Agreement contains any condition, that is materially adverse to either party, the party adversely impacted by the condition may terminate this Agreement by providing the other party notice within thirty (30) days of the entry of the Commission's order.

XIV. Approval by the Commission of this Fourth Amendment to the Power Purchase Agreement shall release and discharge both parties from any and all claims, demands and causes of action of any kind whatsoever, whether or not known, suspected or claimed, which either Party ever had, now has, or claims to have had relating to or connected to or arising out of the Agreement as of the Effective Date of the Fourth Amendment to the Power Purchase Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Fourth Amendment to the Power Purchase Agreement to be executed by their duly authorized representatives as of the first date hereinabove set forth.

**SELLER:**

SUNNYSIDE COGENERATION ASSOCIATES,  
a Utah joint venture, composed of:

By: SUNNYSIDE HOLDINGS I, INC.,  
a Delaware corporation, a joint venture partner

By: \_\_\_\_\_  
Name: Greg B. Lawyer  
Title: President

By: SUNNYSIDE II, L.P.  
a Delaware limited partnership, a joint venture partner

By: SUNNYSIDE II, INC.,  
Delaware corporation, the general partner of  
Sunnyside II, L.P.

By: \_\_\_\_\_  
Name: Robert V. Escalante  
Title: Vice President

**BUYER:**

PACIFICORP, operating under the assumed name of UTAH  
POWER & LIGHT COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Appendix L**

**Monthly Floor Price**

	<i>Floor \$ per MWH</i>					
			On- Peak		Off- Peak	24-Hour
Year			Rate		Rate	Rate
2004			32.33		25.40	30.02
2005			33.14		26.04	30.77
2006			33.97		26.69	31.54
2007			34.82		27.35	32.33
2008			35.69		28.04	33.14
2009			36.58		28.74	33.97
2010			37.49		29.46	34.81
2011			38.43		30.19	35.68
2012			39.39		30.95	36.58
2013			40.38		31.72	37.49
2014			41.39		32.51	38.43
2015			42.42		33.33	39.39
2016			43.48		34.16	40.37
2017			44.57		35.01	41.38
2018			45.68		35.89	42.42
2019			46.82		36.79	43.48
2020			47.99		37.71	44.56
2021			49.19		38.65	45.68
2022			50.42		39.62	46.82
2023			51.68		40.61	47.99

## Appendix M

### Monthly Ceiling Price

	<i>Cap \$ per MWH</i>				
			On-Peak	Off-Peak	24-Hour
Year			Rate	Rate	Rate
2004			41.98	32.35	38.77
2005			41.82	32.31	38.65
2006			41.67	32.25	38.53
2007			41.51	32.74	38.59
2008			42.31	33.37	39.33
2009			43.13	34.02	40.09
2010			43.98	34.68	40.88
2011			44.85	35.37	41.69
2012			45.74	36.07	42.52
2013			46.65	36.78	43.36
2014			47.58	37.52	44.23
2015			48.54	38.27	45.12
2016			49.52	39.04	46.03
2017			50.53	39.83	46.96
2018			51.56	40.64	47.92
2019			52.62	41.47	48.90
2020			53.70	42.32	49.91
2021			54.81	43.20	50.94
2022			55.95	44.09	52.00
2023			57.12	45.01	53.08

# Sunnyside Cogeneration Associates

## Power Purchase Agreement Presentation

December 15, 2004



# Overview

◆ Sunnyside Cogeneration Associates (SCA) has a 30 year 53 MW Power Purchase Agreement (PPA) with PacificCorp that ends on March 19, 2023

- ◆ The PPA has two major components
- 45 MW Base Contract
  - 8 MW Additional Contract

# PPA Components

## ◆ Base Contract

- Capacity Payment – \$759,780/month (fixed) which includes a 5% adder to reflect capacity loss savings to utility (must achieve 75% of 45 MW during On-Peak generation period)
- Energy Payment – Avoided Energy Cost (RMEC) plus a 5% adder to reflect energy loss savings to utility

## ◆ Additional Contract – 8 MW

- Capacity Payment - \$101,040/month in 2004, escalates at approximately 4.5% annually (must achieve 90% of 8 MW for eight months and 75% of 8 MW for four months during On-Peak generation period)
- Energy Payment – Avoided Energy Cost (RMEC)

# Avoided Energy Cost

## ◆ Avoided Energy Cost (RMEC) Calculation

- Represents the utility's "hour-by-hour" avoided energy cost which is the highest system generation or purchase cost each hour
- Includes all electricity sources in the utility's system
- Is recalculated every six months, Jan-June and July-Dec
- Is a very complex calculation that is extremely difficult to verify
- Results in erratic pricing, ranging from \$12.59/MWH to \$422.86/MWH since the project's inception in 1993
- Is not tied to any verifiable or published energy index
- Has been a source of dispute between SCA and PacificCorp concerning proper calculation because all sources have not been included.

## Negotiation with PacificCorp

- ◆ SCA met with PacificCorp in March 2003
  - SCA notified PacificCorp that the avoided energy cost rate historically paid to the SCA project was too low
  - SCA informed PacificCorp that the avoided energy cost rate calculation did not include certain expensive sources of electricity as required, thereby unjustly lowering the avoided energy cost rate

## Proposed PPA Amendment

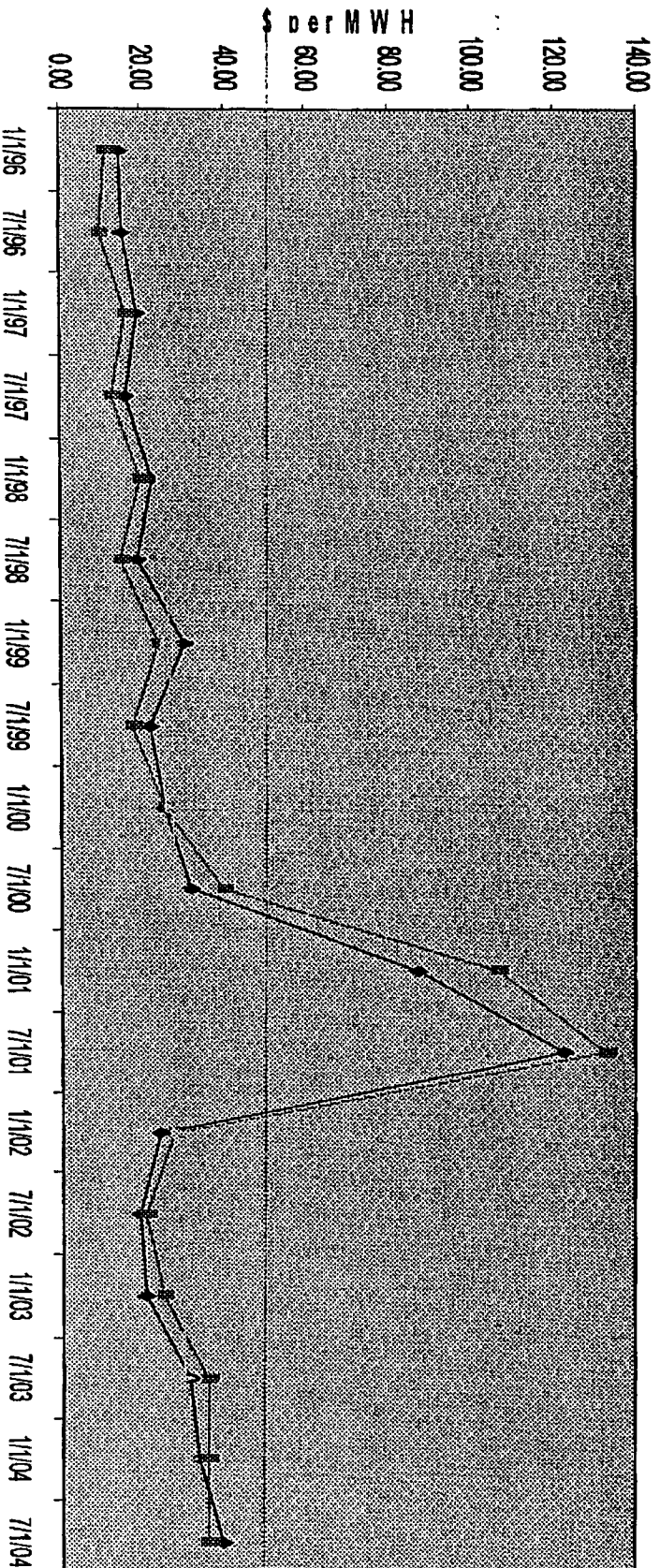
- ◆ PacificCorp and SCA negotiated new methodology to determine the energy rate paid to SCA
  - 85% of On-Peak, Off-Peak and 24 Hour Palo Verde rate
  - Floor rate that escalates at 2.5% per year (floor rate applicable if 85% of the Palo Verde rate dips below the floor)
  - Ceiling rate (ceiling rate applicable if 85% of the Palo Verde rate exceeds the ceiling)
  - Floor and Ceiling rates are defined in Appendices L and M of the PPA Amendment
- ◆ No change to the capacity payments is being proposed

# Proposed PPA Amendment

- ◆ SCA believes the new energy rate methodology works for the project
  - Provides a floor that helps ensure all project obligations can be paid
  - Provides a basis that can be readily verified
  - Provides upside energy rate potential to project
- ◆ The following graph illustrates historical energy rate information from 1996 forward
  - Shows the actual rate SCA was paid
  - Shows 85% of Palo Verde Rates
  - Shows a floor rate escalated at 2.5%

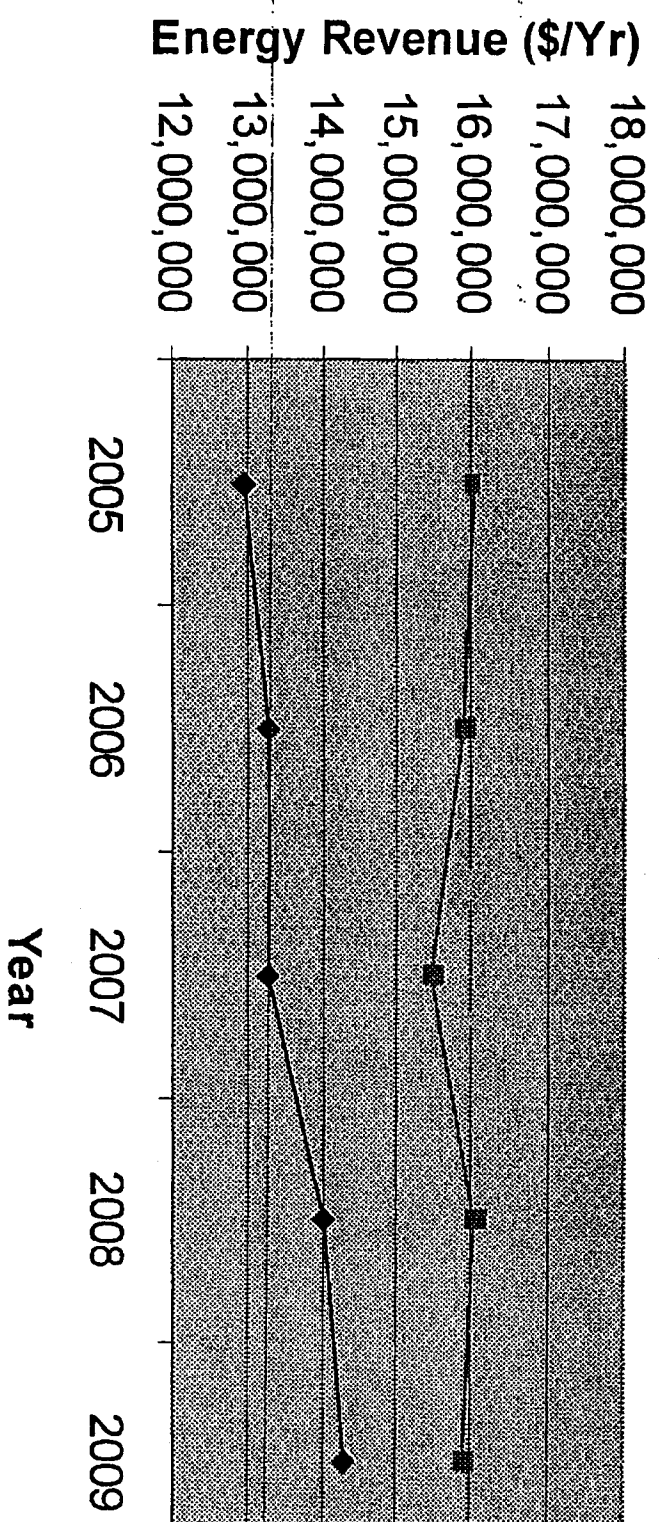
# Energy Rate Graph

Sunnyside Energy Rate Analysis



# Predicted Revenues under new PPA

## PPA Amendment Energy Revenue Analysis





## PPA Amendment Benefits

- ◆ SCA may realize projected upside revenues from the floor rate upon finalization of PPA Amendment due to 85% of currently forecasted Palo Verde rates being higher than the floor

- 2005 - \$3.1 Million
- 2006 - \$2.6 Million
- 2007 - \$2.2 Million
- 2008 - \$2.0 Million
- 2009 - \$1.6 Million

## PPA Amendment Benefits

- ◆ SCA will receive capacity and energy payments that total approximately \$13.4 Million during a five month PPA extension from March 19, 2023 to August 31, 2023
  - Capacity - \$5.0 Million
  - Energy (using floor rate) - \$8.4 Million

## Next Steps

- ◆ SCA is seeking Bondholder approval of PPA Amendment by January 7, 2005
- ◆ PPA Amendment will then be submitted to the Utah Public Service Commission (PSC)
- ◆ PSC approval expected 60 to 90 days from submission

# EXHIBIT I

**Corporate Trust Services**

U.S. Bank Center  
101 North First Avenue  
Suite 1600  
Phoenix, AZ 85003

Dated: July 12, 2005

**NOTICE TO BONDHOLDERS**

*VIA UPS OVERNIGHT DELIVERY*

Dreyfus  
Attn: Tom Gamello  
200 Park Ave, 55<sup>th</sup> Floor  
New York, NY 10166

American Express  
Attn: Tim Masek  
25624 AXP Financial Center  
Minneapolis, MN 55474

Waddell & Reed  
Attn: Michael Walls  
6300 Lamar Ave  
Shawnee Mission KS 66202

John Hancock  
Attn: Diane Sales  
101 Huntington Ave  
Boston MA 02199-7603

Cypress Associates  
Attn: JT Atkins  
52 Vanderbilt Ave, Ste 902  
New York, NY 10017

Re: Carbon County, Utah Solid Waste Disposal Revenue Refunding Bonds  
(Sunnyside Cogeneration Associates Project), Series 1999A and Series 1999B  
Bonds (the "Bonds")

Dear Sirs and Madams:

This notice is provided to the Beneficial Owners of the above-captioned Bonds. U.S. Bank National Association, as Trustee under the Trust Indenture with respect to the Bonds has received a letter dated July 1, 2005 from Mr. Brian Burnett of Callister Nebeker & McCullough detailing the documents enclosed and requesting this information be distributed to the Bondholders.

By: U.S. Bank National Association as Trustee

**CALLISTER NEBEKER & McCULLOUGH**

A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW  
GATEWAY TOWER EAST SUITE 900  
10 EAST SOUTH TEMPLE  
SALT LAKE CITY, UTAH 84133  
TELEPHONE 801-530-7300  
FAX 801-364-9127

BRIAN W. BURNETT

TO CONTACT WRITER DIRECTLY  
(801) 530-7428  
E-MAIL ADDRESS  
brianburnett@cnmlaw.com

July 1, 2005

**VIA FEDERAL EXPRESS**

Deborah Scherer  
Assistant Vice President  
U.S. Bank National Association  
Corporate Trust Services (LM-AZ-X16P)  
101 North First Avenue, Suite 1600  
Phoenix, AZ 85003

Re: Sunnyside Cogeneration Associates – Fourth Amendment to PPA – Settlement Agreement

Dear Debbie:

Enclosed please find the following documents:

1. Fourth Amendment to the Power Purchase Agreement Between Sunnyside Cogeneration Associates and Utah Power & Light Company dated May 11, 2005 ("Fourth Amendment").
2. Settlement Agreement between Sunnyside Cogeneration Associates and Utah Power & Light Company dated May 11, 2005 ("Settlement Agreement").
3. Consent letters from the bondholders to U.S. Bank as Trustee.
4. Letter from U.S. Bank to Sunnyside Cogeneration Associates ("SCA") dated April 15, 2005 consenting to SCA entering into the Fourth Amendment and the Settlement Agreement.

SCA entered into the Fourth Amendment and the Settlement Agreement with Utah Power & Light Company ("PacifiCorp"). PacifiCorp filed the Fourth Amendment with the Public Service Commission of Utah ("Commission") on June 20, 2005, requesting that the Commission approve the

Deborah Scherer  
July 1, 2005  
Page 2

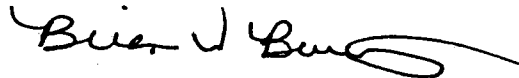
Fourth Amendment. The Fourth Amendment is effective after the Commission's Order approving the Fourth Amendment is no longer subject to judicial review, which we anticipate will be in the next 90 days.

Please distribute this information to all of the bondholders.

Thank you for your cooperation in this regard. If you have any questions, please feel free to contact me.

Sincerely,

CALLISTER NEBEKER & McCULLOUGH

A handwritten signature in black ink, appearing to read "Brian W. Burnett", with a stylized flourish at the end.

Brian W. Burnett

BWB:ias  
Enclosures

EFiled: Sep 2 2005 11:50AM  
Transaction ID 6616275



## EXHIBIT I



**FOURTH AMENDMENT TO THE POWER PURCHASE AGREEMENT BETWEEN**

**SUNNYSIDE COGENERATION ASSOCIATES**

**AND**

**UTAH POWER & LIGHT COMPANY**

THIS FOURTH AMENDMENT is entered into this 11<sup>th</sup> day of May, 2005, by and between SUNNYSIDE COGENERATION ASSOCIATES, a joint venture (partnership) organized and existing under the laws of the State of Utah and the owner of a qualifying facility as defined in 18 CFR § 292.101(b)(1), hereinafter referred to as "Seller," and UTAH POWER & LIGHT COMPANY, an assumed business name of PACIFICORP, a corporation organized and existing under the laws of the State of Oregon, hereinafter referred to as "Buyer", and effective after execution by both Parties and after the order approving this Fourth Amendment by the Public Service Commission of Utah (the "Commission") is no longer subject to judicial review (the "Effective Date"). Seller and Buyer are sometimes referred to collectively as "Parties" and individually as "Party." The term "Power Purchase Agreement" as used in this Fourth Amendment, shall refer to the January 30, 1987, power purchase agreement between the Parties, as amended on April 28, 1987, May 3, 1989, and February 16, 1993, together with Appendices A through K and Exhibits 1 through 14.

**BACKGROUND**

Whereas, on January 16, 1987, the Commission issued an order in Case No. 86-2018-01 setting the prices for capacity and energy purchases by Buyer, from Seller, approving the terms

of a draft power purchase agreement to be entered into between Seller and Buyer and directing Buyer to enter into the power purchase agreement ("Order"); and

Whereas, on January 30, 1987, Buyer and Seller executed the power purchase agreement and on April 28, 1987, May 3, 1989, and February 16, 1993, Seller and Buyer executed the First Amendment, Second Amendment and Third Amendment, respectively, to the Power Purchase Agreement; and

Whereas, a dispute developed between the Parties regarding certain matters under the Power Purchase Agreement including the calculation of avoided energy prices;

Whereas, on March 29, 1996, Seller filed a Petition for Contract Enforcement with the Commission seeking enforcement of the provisions of the Power Purchase Agreement. This matter was assigned Commission Docket No. 96-2018-01.

Whereas, the Parties have now conditionally reached agreement on a settlement of their dispute in accordance with the terms and conditions set forth in that certain Term Sheet dated June 3, 2004. The Buyer and Seller enter into this Fourth Amendment to the Power Purchase Agreement incorporating the terms thereof.

NOW, THEREFORE, in order to effectuate the Term Sheet and in consideration of the mutual covenants and agreements hereinafter set forth, the Parties agree as follows:

I. The first paragraph of Section 1 (Definitions) of the Power Purchase Agreement shall be amended to read as follows:

When used herein, the term "Agreement" shall mean the January 30, 1987, power purchase agreement between the Parties, as amended on April 28, 1987, May 3, 1989, February 15, 1993, and May 11, 2005, together with Appendices A through

M and the Exhibits to those Appendices which are incorporated herein by this reference. When used in this Agreement, the terms “month”, “months”, and “monthly” shall refer to a calendar month or months as appropriate. When used in this Agreement, the following terms shall have the respective meanings set forth below (such definition to be applicable to both the singular and plural forms of the terms defined).

II. Section 2.1 (Term) of the Power Purchase Agreement shall be amended to read as follows:

2.1 The provisions of this Agreement shall be in effect through August 31, 2023. At the end of said initial term, this Agreement can be renewed for additional five (5) year periods upon mutual agreement of the Parties.

III. Section 3.1 (Definitions) of the Power Purchase Agreement shall be amended by adding the following to the end of the section:

3.1(p) On-Peak Energy – On-Peak Energy shall be that physical energy delivered between hours ending 0700 – 2200 (6:00 AM – 10:00 PM where such time shall be determined in accordance with Pacific Prevailing Time) for Monday through Saturday but excluding Sundays and holidays designated by the North American Electric Reliability Council (“NERC”).

3.1(q) Off-Peak Energy – Off-Peak Energy shall be that physical energy delivered between hours ending 2300 – 0600 (10:00 PM – 6:00 AM where such

time shall be determined in accordance with Pacific Prevailing Time) for Monday through Saturday but excluding Sundays and NERC holidays.

3.1(r) 24-Hour Energy – 24-Hour Energy shall be that physical energy delivered between hours ending 0100 – 2400 (12:00 AM – 12:00 AM where such time shall be determined in accordance with Pacific Prevailing Time) for Sundays and NERC holidays.

3.1(s) Monthly Floor Price – The Monthly Floor Price shall be the minimum price Buyer shall pay Seller for Base Energy and Additional Energy delivered in any month. The Monthly On-Peak Energy Floor Price shall be set at \$32.33/MWh for calendar year 2004 and escalate as specified in Appendix L. The Monthly Off-Peak Energy Floor Price shall be set at \$25.40/MWh for calendar year 2004 and escalate as specified in Appendix L. The Monthly 24-Hour Energy Floor Price shall be set at \$30.02/MWh for calendar year 2004 and escalate as specified in Appendix L.

3.1(t) Monthly Ceiling Price – The Monthly Ceiling Price shall be the maximum price Buyer shall pay Seller for Base Energy and Additional Energy delivered in any month. The On-Peak Energy Ceiling Price shall be \$41.98/MWh for calendar year 2004 and escalate as specified in Appendix M. The Off-Peak Energy Ceiling Price shall be \$32.35/MWh for calendar year 2004 and escalate as specified in Appendix M. The Monthly 24-Hour Energy Ceiling Price shall be \$38.77/MWh for calendar year 2004 and escalate as specified in Appendix M.

3.1(u) Base Energy Factor, Additional Energy Factor, and Excess Energy Factor – Base Energy Factor, Additional Energy Factor, and Excess Energy

Factor are respectively the relevant calculated percentages of Base Energy, Additional Energy and Excess Energy produced in any month versus the total energy produced in that month.

IV. A new Section 3.5 shall be added to the Power Purchase Agreement as follows:

If any Dow Jones Palo Verde index applicable to this Power Purchase Agreement ceases to be published during the Term of the Agreement, Buyer shall select as a replacement a substantially equivalent index that, after any appropriate or necessary adjustments, provides a reasonable substitute for the index. Buyer's selection shall be subject to Seller's consent, which Seller shall not unreasonably withhold, condition or delay.

V. Section 3A.2 (Sale of Power – Base Energy) of the Power Purchase Agreement shall be amended by:

(1) Adding to the ninth line, after the phrase, "third anniversary of the Operating Date" the phrase "and to, but not including, the Effective Date;

(2) Adding the following language to the end of Section 3A.2.

For any month (or part thereof) commencing on the Effective Date, Buyer shall pay Seller monthly for Base Energy at the rate as follows:

(a) On-Peak Energy – Buyer shall pay Seller for Base Energy produced in a month as On-Peak Energy an amount equal to the product of the On-Peak Energy delivered multiplied by the Base Energy Factor multiplied by .85 multiplied by the simple average for the month of the Dow Jones Palo Verde

Electricity Price Index for Firm Daily On-Peak power, excluding Sundays and NERC holidays.

(b) Off-Peak Energy – Buyer shall pay Seller for Base Energy produced in a month as Off-Peak Energy an amount equal to the product of the Off-Peak Energy delivered multiplied by the Base Energy Factor multiplied by .85 multiplied by the simple average for the month of the Dow Jones Palo Verde Electricity Price Index for Firm Daily Off-Peak power, excluding Sundays and NERC holidays.

(c) 24-Hour – Buyer shall pay Seller for Base Energy produced in a month as 24-Hour Energy an amount equal to the product of the 24-Hour Energy delivered multiplied by the Base Energy Factor multiplied by .85 multiplied by the simple average for the month of the Dow Jones Palo Verde Electricity Price Index for 24-Hour Firm power applicable to Sundays and NERC holidays.

(d) In all cases, the calculations set forth in Sections 3A.2(a), (b) and (c) for On-Peak Energy, Off-Peak Energy and 24-Hour Energy, respectively, shall be completed prior to the application of the Monthly Floor Price or the Monthly Ceiling Price.

(e) For Base Energy delivered as On-Peak Energy, Off-Peak Energy or 24-Hour Energy, Buyer shall pay Seller at least the Monthly Floor Price, but not more than the Monthly Ceiling Price in any given month for each of the energy products respectively.

VI. Section 3A.3 of the Agreement is deleted and the following language is substituted:

Seller's Base Monthly Revenues, including Base Energy, shall be increased by 5% to reflect capacity and energy loss savings to Buyer; provided, however, the energy prices paid for the Additional and Excess Energy are not subject to the application of the 5% increase.

VII. Section 3B.2 (Sale of Power – Additional Energy) of the Power Purchase Agreement shall be amended by:

- (1) Adding to the beginning of the first sentence, "Before the Effective Date"
- (2) Adding the following language to the end of Section 3B.2

For any month (or part thereof) commencing on the Effective Date, Buyer shall pay Seller monthly for Additional Energy at the rate as follows:

(a) On-Peak Energy – Buyer shall pay Seller for Additional Energy produced in a month as On-Peak Energy an amount equal to the product of the On-Peak Energy delivered multiplied by the Additional Energy Factor multiplied by .85 multiplied by the simple average for the month of the Dow Jones Palo Verde Electricity Price Index for Firm Daily On-Peak power, excluding Sundays and NERC holidays.

(b) Off-Peak Energy – Buyer shall pay Seller for Additional Energy produced in a month as Off-Peak Energy an amount equal to the product of the Off-Peak Energy delivered multiplied by the Additional Energy Factor multiplied by .85 multiplied by the simple average for the month of the Dow Jones Palo Verde Electricity Price Index for Firm Daily Off-Peak power, excluding Sundays and NERC holidays.

(c) 24-Hour – Buyer shall pay Seller for Additional Energy produced in a month as 24-Hour Energy an amount equal to the product of the 24-Hour Energy delivered multiplied by the Additional Energy Factor multiplied by .85 multiplied by the simple average for the month of the Dow Jones Palo Verde Electricity Price Index for 24-Hour Firm power applicable to Sundays and NERC holidays.

(d) In all cases, the calculations set forth in Sections 3A.2(a), (b) and (c) for On-Peak Energy, Off-Peak Energy and 24-Hour Energy, respectively, shall be completed prior to the application of the Monthly Floor Price or the Monthly Ceiling Price.

(e) For Additional Energy delivered as On-Peak Energy, Off-Peak Energy or 24-Hour Energy, Buyer shall pay Seller at least the Monthly Floor Price, but not more than the Monthly Ceiling Price in any given month for each of the energy products respectively.

VIII. Section 3C.1 (Sale of Power – Excess Energy) of the Power Purchase Agreement shall be amended by:

- (1) Adding at the beginning of the first sentence “Before the Effective Date,
- (2) Adding the following language at the end of Section 3C.1

For any month (or part thereof) on and after the Effective Date, Buyer shall pay Seller monthly for Excess Energy at the rate that is the lower of 1) \$10/MWh, or 2) at the rate calculated below for such hour using the Dow Jones Palo Verde Electricity Index:



(a) On-Peak Energy – Buyer shall pay Seller for Excess Energy produced in a month as On-Peak Energy an amount equal to the product of the On-Peak Energy delivered multiplied by the Excess Energy Factor multiplied by .85 multiplied by the simple average for the month of the Dow Jones Palo Verde Electricity Price Index for Firm Daily On-Peak power, excluding Sundays and NERC holidays.

(b) Off-Peak Energy – Buyer shall pay Seller for Excess Energy produced in a month as Off-Peak Energy an amount equal to the product of the Off-Peak Energy delivered multiplied by the Excess Energy Factor multiplied by .85 multiplied by the simple average for the month of the Dow Jones Palo Verde Electricity Price Index for Firm Daily Off-Peak power, excluding Sundays and NERC holidays.

(c) 24-Hour – Buyer shall pay Seller for Excess Energy produced in a month as 24-Hour Energy an amount equal to the product of the 24-Hour Energy delivered multiplied by the Excess Energy Factor multiplied by .85 multiplied by the simple average for the month of the Dow Jones Palo Verde Electricity Price Index for 24-Hour Firm power applicable to Sundays and NERC holidays.

IX. Section 20 (Entire Agreement) of the Power Purchase Agreement shall be amended by adding the following appendices at the end thereto:

Appendix L – Monthly Floor Price

Appendix M – Monthly Ceiling Price

X. A new Appendix L – Monthly Floor Price is added to the Power Purchase Agreement which is attached hereto and incorporated by reference herein.

XI. A new Appendix M – Monthly Ceiling Price is added to the Power Purchase Agreement which is attached hereto and incorporated by reference herein.

XII. Base Billing Capacity and Additional Billing Capacity shall continue to be paid for as set forth in Section 3 of the Agreement. Seller agrees it will take no actions to increase the generating capacity of Seller's facility above the amount set forth in the Agreement.

XIII. This Fourth Amendment to the Power Purchase Agreement shall become effective on the Effective Date; provided, however, this Agreement shall not become effective until the Commission has determined that the prices to be paid for energy and capacity are just and reasonable, and in the public interest. In the event that the Commission order approving this Agreement contains any condition, that is materially adverse to either party, the party adversely impacted by the condition may terminate this Agreement by providing the other party notice within thirty (30) days of the entry of the Commission's order.

XIV. Approval by the Commission of this Fourth Amendment to the Power Purchase Agreement shall release and discharge both parties from any and all claims, demands and causes of action of any kind whatsoever, whether or not known, suspected or claimed, which either Party ever had, now has, or claims to have had relating to or connected to or arising out of the Agreement as of the Effective Date of the Fourth Amendment to the Power Purchase Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Fourth Amendment to the Power Purchase Agreement to be executed by their duly authorized representatives as of the first date hereinabove set forth.

SELLER:


SUNNYSIDE COGENERATION ASSOCIATES,  
a Utah joint venture, composed of:

By: SUNNYSIDE HOLDINGS I, INC.,  
a Delaware corporation, a joint venture partner

By:   
Name: Greg B. Lawyer  
Title: President


By: SUNNYSIDE II, L.P.  
a Delaware limited partnership, a joint venture partner

By: SUNNYSIDE II, INC.,  
Delaware corporation, the general partner of  
Sunnyside II, L.P.

By:   
Name: Robert V. Escalante  
Title: Vice President

BUYER:

PACIFICORP, operating under the assumed name of UTAH  
POWER & LIGHT COMPANY

By:   
Name: Stan Watters  
Title: Senior Vice President

Appendix L

Monthly Floor Price

	<i>Floor \$ per MWH</i>				
			On- Peak	Off- Peak	24-Hour
Year			Rate	Rate	Rate
2004			32.33	25.40	30.02
2005			33.14	26.04	30.77
2006			33.97	26.69	31.54
2007			34.82	27.35	32.33
2008			35.69	28.04	33.14
2009			36.58	28.74	33.97
2010			37.49	29.46	34.81
2011			38.43	30.19	35.68
2012			39.39	30.95	36.58
2013			40.38	31.72	37.49
2014			41.39	32.51	38.43
2015			42.42	33.33	39.39
2016			43.48	34.16	40.37
2017			44.57	35.01	41.38
2018			45.68	35.89	42.42
2019			46.82	36.79	43.48
2020			47.99	37.71	44.56
2021			49.19	38.65	45.68
2022			50.42	39.62	46.82
2023			51.68	40.61	47.99

Appendix M

Monthly Ceiling Price

	<i>Cap \$ per MWH</i>				
		On-Peak	Off-Peak	24-Hour	
Year		Rate	Rate	Rate	
2004		41.98	32.35	38.77	
2005		41.82	32.31	38.65	
2006		41.67	32.25	38.53	
2007		41.51	32.74	38.59	
2008		42.31	33.37	39.33	
2009		43.13	34.02	40.09	
2010		43.98	34.68	40.88	
2011		44.85	35.37	41.69	
2012		45.74	36.07	42.52	
2013		46.65	36.78	43.36	
2014		47.58	37.52	44.23	
2015		48.54	38.27	45.12	
2016		49.52	39.04	46.03	
2017		50.53	39.83	46.96	
2018		51.56	40.64	47.92	
2019		52.62	41.47	48.90	
2020		53.70	42.32	49.91	
2021		54.81	43.20	50.94	
2022		55.95	44.09	52.00	
2023		57.12	45.01	53.08	

II

# **SETTLEMENT AGREEMENT**

**BETWEEN**

**SUNNYSIDE COGENERATION ASSOCIATES**

**AND**

**UTAH POWER & LIGHT COMPANY**

THIS SETTLEMENT AGREEMENT is entered into this 11<sup>th</sup> day of May, 2005, by and between SUNNYSIDE COGENERATION ASSOCIATES, a joint venture (partnership) organized and existing under the laws of the State of Utah and the owner of a qualifying facility as defined in 18 CFR § 292.101(b)(1), hereinafter referred to as "Seller," and UTAH POWER & LIGHT COMPANY, an assumed business name of PACIFICORP, a corporation organized and existing under the laws of the State of Oregon, hereinafter referred to as "Buyer." Seller and Buyer are sometimes referred to collectively as "Parties" and individually as "Party." The term "Power Purchase Agreement" as used in Settlement Agreement, shall refer to the January 30, 1987, power purchase agreement between the Parties, as amended on April 28, 1987, May 3, 1989, and February 16, 1993, as amended as of the date of this Settlement Agreement, together with Appendices A through M and Exhibits 1 through 14. All capitalized terms not defined herein shall have the meaning ascribed to them in the Power Purchase Agreement.

## **BACKGROUND**

Whereas, the Parties have entered into the Power Purchase Agreement; and

Whereas, a dispute developed between the Parties regarding certain matters under the Power Purchase Agreement including the calculation of avoided energy prices; and

Whereas, on March 29, 1996, Seller filed a Petition for Contract Enforcement with the Commission seeking enforcement of the provisions of the Power Purchase Agreement. This matter was assigned Commission Docket No. 96-2018-01; and

Whereas, the Parties have now conditionally reached agreement on a settlement of their dispute in accordance with the terms and conditions set forth in that certain Term Sheet dated June 3, 2004. The Buyer and Seller enter into this Settlement Agreement to fully settle all outstanding claims, demands and causes of action of any kind whatsoever arising out of the Power Purchase Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the Parties agree as follows:

- I. Simultaneously with the execution of this Settlement Agreement, the Parties shall execute the Fourth Amendment to the Power Purchase Agreement, by and between Sunnyside Cogeneration Associates and Utah Power & Light Company, dated as of May 11, 2005 (the "Fourth Amendment"), in the form attached hereto and made a part hereof as Exhibit A.
- II. Within five (5) days following the Effective Date of the Fourth Amendment, Buyer will make a billing adjustment reflecting the terms and conditions of the Fourth Amendment with such adjustment effective on and after January 1, 2004 which will result in the revised payment invoices for the time period beginning January 1, 2004 and ending on the last day of the month immediately preceding the Effective Date of the Fourth Amendment, or if the Effective Date of the Fourth Amendment is on the last day of a month, ending on that day. This billing adjustment shall be calculated according to the methodology specified in the Fourth Amendment and as set forth on



Appendix A, attached hereto and made a part hereof. For purposes of illustration, if the Effective Date of the Fourth Amendment is on April 30, 2004, or any day of May other than May 31, the billing adjustment would be \$246,017.65. Payment will be made in the amount of the revised invoice within fifteen (15) days after issuance of the invoice.

- III. Upon the Effective Date of the Fourth Amendment, the Fourth Amendment shall release and discharge both parties from any and all claims, demands and causes of action of any kind whatsoever, whether or not known, suspected or claimed, which either Party ever had, now has, or claims to have had relating to or connected to or arising out of the Power Purchase Agreement as of the Effective Date of the Fourth Amendment.

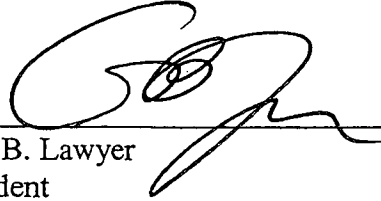
IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement to be executed by their duly authorized representatives as of the first date hereinabove set forth.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

SELLER:

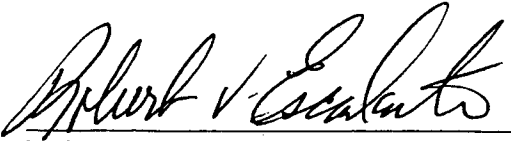
SUNNYSIDE COGENERATION ASSOCIATES,  
a Utah joint venture, composed of:

By: SUNNYSIDE HOLDINGS I, INC.,  
a Delaware corporation, a joint venture partner

By:   
Name: Greg B. Lawyer  
Title: President


By: SUNNYSIDE II, L.P.  
a Delaware limited partnership, a joint venture partner

By: SUNNYSIDE II, INC.,  
Delaware corporation, the general partner of  
Sunnyside II, L.P.

By:   
Name: Robert V. Escalante  
Title: Vice President

BUYER:

PACIFICORP, operating under the assumed name of UTAH  
POWER & LIGHT COMPANY

By:   
Name: Stan Watters  
Title: Senior Vice President

**EXHIBIT A**

**FOURTH AMENDMENT TO THE POWER PURCHASE AGREEMENT**

**BETWEEN**

**SUNNYSIDE COGENERATION ASSOCIATES**

**AND**

**UTAH POWER & LIGHT COMPANY**

[Attached final copy]

**FOURTH AMENDMENT TO THE POWER PURCHASE AGREEMENT BETWEEN**

**SUNNYSIDE COGENERATION ASSOCIATES**

**AND**

**UTAH POWER & LIGHT COMPANY**

THIS FOURTH AMENDMENT is entered into this 11<sup>th</sup> day of May, 2005, by and between SUNNYSIDE COGENERATION ASSOCIATES, a joint venture (partnership) organized and existing under the laws of the State of Utah and the owner of a qualifying facility as defined in 18 CFR § 292.101(b)(1), hereinafter referred to as "Seller," and UTAH POWER & LIGHT COMPANY, an assumed business name of PACIFICORP, a corporation organized and existing under the laws of the State of Oregon, hereinafter referred to as "Buyer", and effective after execution by both Parties and after the order approving this Fourth Amendment by the Public Service Commission of Utah (the "Commission") is no longer subject to judicial review (the "Effective Date"). Seller and Buyer are sometimes referred to collectively as "Parties" and individually as "Party." The term "Power Purchase Agreement" as used in this Fourth Amendment, shall refer to the January 30, 1987, power purchase agreement between the Parties, as amended on April 28, 1987, May 3, 1989, and February 16, 1993, together with Appendices A through K and Exhibits 1 through 14.

**BACKGROUND**

Whereas, on January 16, 1987, the Commission issued an order in Case No. 86-2018-01 setting the prices for capacity and energy purchases by Buyer, from Seller, approving the terms

of a draft power purchase agreement to be entered into between Seller and Buyer and directing Buyer to enter into the power purchase agreement (“Order”); and

Whereas, on January 30, 1987, Buyer and Seller executed the power purchase agreement and on April 28, 1987, May 3, 1989, and February 16, 1993, Seller and Buyer executed the First Amendment, Second Amendment and Third Amendment, respectively, to the Power Purchase Agreement; and

Whereas, a dispute developed between the Parties regarding certain matters under the Power Purchase Agreement including the calculation of avoided energy prices;

Whereas, on March 29, 1996, Seller filed a Petition for Contract Enforcement with the Commission seeking enforcement of the provisions of the Power Purchase Agreement. This matter was assigned Commission Docket No. 96-2018-01.

Whereas, the Parties have now conditionally reached agreement on a settlement of their dispute in accordance with the terms and conditions set forth in that certain Term Sheet dated June 3, 2004. The Buyer and Seller enter into this Fourth Amendment to the Power Purchase Agreement incorporating the terms thereof.

NOW, THEREFORE, in order to effectuate the Term Sheet and in consideration of the mutual covenants and agreements hereinafter set forth, the Parties agree as follows:

I. The first paragraph of Section 1 (Definitions) of the Power Purchase Agreement shall be amended to read as follows:

When used herein, the term “Agreement” shall mean the January 30, 1987, power purchase agreement between the Parties, as amended on April 28, 1987, May 3, 1989, February 15, 1993, and May 11, 2005, together with Appendices A through

M and the Exhibits to those Appendices which are incorporated herein by this reference. When used in this Agreement, the terms “month”, “months”, and “monthly” shall refer to a calendar month or months as appropriate. When used in this Agreement, the following terms shall have the respective meanings set forth below (such definition to be applicable to both the singular and plural forms of the terms defined).

II. Section 2.1 (Term) of the Power Purchase Agreement shall be amended to read as follows:

2.1 The provisions of this Agreement shall be in effect through August 31, 2023. At the end of said initial term, this Agreement can be renewed for additional five (5) year periods upon mutual agreement of the Parties.

III. Section 3.1 (Definitions) of the Power Purchase Agreement shall be amended by adding the following to the end of the section:

3.1(p) On-Peak Energy – On-Peak Energy shall be that physical energy delivered between hours ending 0700 – 2200 (6:00 AM – 10:00 PM where such time shall be determined in accordance with Pacific Prevailing Time) for Monday through Saturday but excluding Sundays and holidays designated by the North American Electric Reliability Council (“NERC”).

3.1(q) Off-Peak Energy – Off-Peak Energy shall be that physical energy delivered between hours ending 2300 – 0600 (10:00 PM – 6:00 AM where such

time shall be determined in accordance with Pacific Prevailing Time) for Monday through Saturday but excluding Sundays and NERC holidays.

3.1(r) 24-Hour Energy – 24-Hour Energy shall be that physical energy delivered between hours ending 0100 – 2400 (12:00 AM – 12:00 AM where such time shall be determined in accordance with Pacific Prevailing Time) for Sundays and NERC holidays.

3.1(s) Monthly Floor Price – The Monthly Floor Price shall be the minimum price Buyer shall pay Seller for Base Energy and Additional Energy delivered in any month. The Monthly On-Peak Energy Floor Price shall be set at \$32.33/MWh for calendar year 2004 and escalate as specified in Appendix L. The Monthly Off-Peak Energy Floor Price shall be set at \$25.40/MWh for calendar year 2004 and escalate as specified in Appendix L. The Monthly 24-Hour Energy Floor Price shall be set at \$30.02/MWh for calendar year 2004 and escalate as specified in Appendix L.

3.1(t) Monthly Ceiling Price – The Monthly Ceiling Price shall be the maximum price Buyer shall pay Seller for Base Energy and Additional Energy delivered in any month. The On-Peak Energy Ceiling Price shall be \$41.98/MWh for calendar year 2004 and escalate as specified in Appendix M. The Off-Peak Energy Ceiling Price shall be \$32.35/MWh for calendar year 2004 and escalate as specified in Appendix M. The Monthly 24-Hour Energy Ceiling Price shall be \$38.77/MWh for calendar year 2004 and escalate as specified in Appendix M.

3.1(u) Base Energy Factor, Additional Energy Factor, and Excess Energy Factor – Base Energy Factor, Additional Energy Factor, and Excess Energy

Factor are respectively the relevant calculated percentages of Base Energy, Additional Energy and Excess Energy produced in any month versus the total energy produced in that month.

IV. A new Section 3.5 shall be added to the Power Purchase Agreement as follows:

If any Dow Jones Palo Verde index applicable to this Power Purchase Agreement ceases to be published during the Term of the Agreement, Buyer shall select as a replacement a substantially equivalent index that, after any appropriate or necessary adjustments, provides a reasonable substitute for the index. Buyer's selection shall be subject to Seller's consent, which Seller shall not unreasonably withhold, condition or delay.

V. Section 3A.2 (Sale of Power – Base Energy) of the Power Purchase Agreement shall be amended by:

(1) Adding to the ninth line, after the phrase, "third anniversary of the Operating Date" the phrase "and to, but not including, the Effective Date;

(2) Adding the following language to the end of Section 3A.2.

For any month (or part thereof) commencing on the Effective Date, Buyer shall pay Seller monthly for Base Energy at the rate as follows:

(a) On-Peak Energy – Buyer shall pay Seller for Base Energy produced in a month as On-Peak Energy an amount equal to the product of the On-Peak Energy delivered multiplied by the Base Energy Factor multiplied by .85 multiplied by the simple average for the month of the Dow Jones Palo Verde



Electricity Price Index for Firm Daily On-Peak power, excluding Sundays and NERC holidays.

(b) Off-Peak Energy – Buyer shall pay Seller for Base Energy produced in a month as Off-Peak Energy an amount equal to the product of the Off-Peak Energy delivered multiplied by the Base Energy Factor multiplied by .85 multiplied by the simple average for the month of the Dow Jones Palo Verde Electricity Price Index for Firm Daily Off-Peak power, excluding Sundays and NERC holidays.

(c) 24-Hour – Buyer shall pay Seller for Base Energy produced in a month as 24-Hour Energy an amount equal to the product of the 24-Hour Energy delivered multiplied by the Base Energy Factor multiplied by .85 multiplied by the simple average for the month of the Dow Jones Palo Verde Electricity Price Index for 24-Hour Firm power applicable to Sundays and NERC holidays.

(d) In all cases, the calculations set forth in Sections 3A.2(a), (b) and (c) for On-Peak Energy, Off-Peak Energy and 24-Hour Energy, respectively, shall be completed prior to the application of the Monthly Floor Price or the Monthly Ceiling Price.

(e) For Base Energy delivered as On-Peak Energy, Off-Peak Energy or 24-Hour Energy, Buyer shall pay Seller at least the Monthly Floor Price, but not more than the Monthly Ceiling Price in any given month for each of the energy products respectively.

VI. Section 3A.3 of the Agreement is deleted and the following language is substituted:

Seller's Base Monthly Revenues, including Base Energy, shall be increased by 5% to reflect capacity and energy loss savings to Buyer; provided, however, the energy prices paid for the Additional and Excess Energy are not subject to the application of the 5% increase.

VII. Section 3B.2 (Sale of Power – Additional Energy) of the Power Purchase Agreement shall be amended by:

- (1) Adding to the beginning of the first sentence, "Before the Effective Date"
- (2) Adding the following language to the end of Section 3B.2

For any month (or part thereof) commencing on the Effective Date, Buyer shall pay Seller monthly for Additional Energy at the rate as follows:

(a) On-Peak Energy – Buyer shall pay Seller for Additional Energy produced in a month as On-Peak Energy an amount equal to the product of the On-Peak Energy delivered multiplied by the Additional Energy Factor multiplied by .85 multiplied by the simple average for the month of the Dow Jones Palo Verde Electricity Price Index for Firm Daily On-Peak power, excluding Sundays and NERC holidays.

(b) Off-Peak Energy – Buyer shall pay Seller for Additional Energy produced in a month as Off-Peak Energy an amount equal to the product of the Off-Peak Energy delivered multiplied by the Additional Energy Factor multiplied by .85 multiplied by the simple average for the month of the Dow Jones Palo Verde Electricity Price Index for Firm Daily Off-Peak power, excluding Sundays and NERC holidays.

(c) 24-Hour – Buyer shall pay Seller for Additional Energy produced in a month as 24-Hour Energy an amount equal to the product of the 24-Hour Energy delivered multiplied by the Additional Energy Factor multiplied by .85 multiplied by the simple average for the month of the Dow Jones Palo Verde Electricity Price Index for 24-Hour Firm power applicable to Sundays and NERC holidays.

(d) In all cases, the calculations set forth in Sections 3A.2(a), (b) and (c) for On-Peak Energy, Off-Peak Energy and 24-Hour Energy, respectively, shall be completed prior to the application of the Monthly Floor Price or the Monthly Ceiling Price.

(e) For Additional Energy delivered as On-Peak Energy, Off-Peak Energy or 24-Hour Energy, Buyer shall pay Seller at least the Monthly Floor Price, but not more than the Monthly Ceiling Price in any given month for each of the energy products respectively.

VIII. Section 3C.1 (Sale of Power – Excess Energy) of the Power Purchase Agreement shall be amended by:

- (1) Adding at the beginning of the first sentence “Before the Effective Date,
- (2) Adding the following language at the end of Section 3C.1

For any month (or part thereof) on and after the Effective Date, Buyer shall pay Seller monthly for Excess Energy at the rate that is the lower of 1) \$10/MWh, or 2) at the rate calculated below for such hour using the Dow Jones Palo Verde Electricity Index:

(a) On-Peak Energy – Buyer shall pay Seller for Excess Energy produced in a month as On-Peak Energy an amount equal to the product of the On-Peak Energy delivered multiplied by the Excess Energy Factor multiplied by .85 multiplied by the simple average for the month of the Dow Jones Palo Verde Electricity Price Index for Firm Daily On-Peak power, excluding Sundays and NERC holidays.

(b) Off-Peak Energy – Buyer shall pay Seller for Excess Energy produced in a month as Off-Peak Energy an amount equal to the product of the Off-Peak Energy delivered multiplied by the Excess Energy Factor multiplied by .85 multiplied by the simple average for the month of the Dow Jones Palo Verde Electricity Price Index for Firm Daily Off-Peak power, excluding Sundays and NERC holidays.

(c) 24-Hour – Buyer shall pay Seller for Excess Energy produced in a month as 24-Hour Energy an amount equal to the product of the 24-Hour Energy delivered multiplied by the Excess Energy Factor multiplied by .85 multiplied by the simple average for the month of the Dow Jones Palo Verde Electricity Price Index for 24-Hour Firm power applicable to Sundays and NERC holidays.

IX. Section 20 (Entire Agreement) of the Power Purchase Agreement shall be amended by adding the following appendices at the end thereto:

Appendix L – Monthly Floor Price

Appendix M – Monthly Ceiling Price

X. A new Appendix L – Monthly Floor Price is added to the Power Purchase Agreement which is attached hereto and incorporated by reference herein.

XI. A new Appendix M – Monthly Ceiling Price is added to the Power Purchase Agreement which is attached hereto and incorporated by reference herein.

XII. Base Billing Capacity and Additional Billing Capacity shall continue to be paid for as set forth in Section 3 of the Agreement. Seller agrees it will take no actions to increase the generating capacity of Seller's facility above the amount set forth in the Agreement.

XIII. This Fourth Amendment to the Power Purchase Agreement shall become effective on the Effective Date; provided, however, this Agreement shall not become effective until the Commission has determined that the prices to be paid for energy and capacity are just and reasonable, and in the public interest. In the event that the Commission order approving this Agreement contains any condition, that is materially adverse to either party, the party adversely impacted by the condition may terminate this Agreement by providing the other party notice within thirty (30) days of the entry of the Commission's order.

XIV. Approval by the Commission of this Fourth Amendment to the Power Purchase Agreement shall release and discharge both parties from any and all claims, demands and causes of action of any kind whatsoever, whether or not known, suspected or claimed, which either Party ever had, now has, or claims to have had relating to or connected to or arising out of the Agreement as of the Effective Date of the Fourth Amendment to the Power Purchase Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Fourth Amendment to the Power Purchase Agreement to be executed by their duly authorized representatives as of the first date hereinabove set forth.

SELLER:

SUNNYSIDE COGENERATION ASSOCIATES,  
a Utah joint venture, composed of:

By: SUNNYSIDE HOLDINGS I, INC.,  
a Delaware corporation, a joint venture partner

By: \_\_\_\_\_  
Name: Greg B. Lawyer  
Title: President

By: SUNNYSIDE II, L.P.  
a Delaware limited partnership, a joint venture partner

By: SUNNYSIDE II, INC.,  
Delaware corporation, the general partner of  
Sunnyside II, L.P.

By: \_\_\_\_\_  
Name: Robert V. Escalante  
Title: Vice President

BUYER:

PACIFICORP, operating under the assumed name of UTAH  
POWER & LIGHT COMPANY

By: \_\_\_\_\_  
Name: Stan Watters  
Title: Senior Vice President

**Appendix L**

**Monthly Floor Price**

	<i>Floor \$ per MWH</i>					
			On- Peak		Off- Peak	24-Hour
Year			Rate		Rate	Rate
2004			32.33		25.40	30.02
2005			33.14		26.04	30.77
2006			33.97		26.69	31.54
2007			34.82		27.35	32.33
2008			35.69		28.04	33.14
2009			36.58		28.74	33.97
2010			37.49		29.46	34.81
2011			38.43		30.19	35.68
2012			39.39		30.95	36.58
2013			40.38		31.72	37.49
2014			41.39		32.51	38.43
2015			42.42		33.33	39.39
2016			43.48		34.16	40.37
2017			44.57		35.01	41.38
2018			45.68		35.89	42.42
2019			46.82		36.79	43.48
2020			47.99		37.71	44.56
2021			49.19		38.65	45.68
2022			50.42		39.62	46.82
2023			51.68		40.61	47.99

# Appendix M

## Monthly Ceiling Price

	<i>Cap \$ per MWH</i>				
			On-Peak	Off-Peak	24-Hour
Year			Rate	Rate	Rate
2004			41.98	32.35	38.77
2005			41.82	32.31	38.65
2006			41.67	32.25	38.53
2007			41.51	32.74	38.59
2008			42.31	33.37	39.33
2009			43.13	34.02	40.09
2010			43.98	34.68	40.88
2011			44.85	35.37	41.69
2012			45.74	36.07	42.52
2013			46.65	36.78	43.36
2014			47.58	37.52	44.23
2015			48.54	38.27	45.12
2016			49.52	39.04	46.03
2017			50.53	39.83	46.96
2018			51.56	40.64	47.92
2019			52.62	41.47	48.90
2020			53.70	42.32	49.91
2021			54.81	43.20	50.94
2022			55.95	44.09	52.00
2023			57.12	45.01	53.08



**Appendix A**

**January through April 2004 Billing Adjustments**  
(Attached four (4) pages)

APPENDIX A  
To  
Settlement Agreement Between Sunnyside Cogeneration Associates And Utah Power & Light Company

**PACIFICORP**  
**ELECTRIC OPERATIONS**

Sunnyside Cogeneration Associates  
c/o Constellation Power, Inc.  
Attention: Karen Dolezal  
825 N Downs Street Suite A  
Ridgecrest, CA 93555

Generation Statement for the Calendar month of: January-04

Capacity:

Base Billing	45.0 MW @	\$16.08	x	1.05	\$	759,780.00
Additional	8.0 MW @	\$12.63			\$	101,040.00
Adjustment	0.0 MW @	\$12.63			\$	-
<b>Total</b>	<b>53.0</b>				<b>\$</b>	<b>860,820.00</b>

Energy:

Total MWH	35,754.820	Total On-Peak MWH	20,071.900
Total Base Energy	30,479.282	Total Off-Peak MWH	10,035.080
Base Energy Factor (a)	0.852	Total Sun & Hol MWH	5,647.840

			PV * .85	FLOOR (c)	CAP (c)					
<b>On-Peak (6x16)</b>										
Base Billing	(b) 17,110.339 MWH @	\$39.82	\$32.33	\$41.98	\$39.82	x	1.05	\$	715,400.38	
Additional	2,961.561 MWH @							\$	117,929.36	
<b>Off-Peak (6x8)</b>										
Base Billing	8,554.428 MWH @	\$28.89	\$25.40	\$32.35	\$28.89	x	1.05	\$	259,494.30	
Additional	1,480.652 MWH @							\$	42,776.04	
<b>Sun &amp; Hol (1x24)</b>										
Base Billing	4,814.515 MWH @	\$31.21	\$30.02	\$38.77	\$31.21	x	1.05	\$	157,774.06	
Additional	833.325 MWH @							\$	26,008.07	
<b>Total</b>	<b>35,754.820</b>							<b>\$</b>	<b>1,319,382.21</b>	

Power Factor:

Outside Margin Allowance						
Kilovar	0.00	@	\$	0.30		\$ -

Amount due Sunnyside for	January-04	\$	2,180,202.21
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Amount Paid Sunnyside for	January-04	\$	(2,083,548.24)
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<b>Total amount due Sunnyside:</b>	<b>\$</b>	<b>96,653.97</b>
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- (a) Base Energy Factor = Total Base Energy / Total MWH. Note: Base Energy Factor is NOT rounded.  
 (b) Base Billing = Total [On-Peak, Off-Peak, or Sun & Hol] MWH x Base Energy Factor  
 (c) Subject to adjustment per cap and floor prices as seen in Appendix L & M of the fourth amendment to the PPA

APPENDIX A  
To  
Settlement Agreement Between Sunnyside Cogeneration Associates And Utah Power & Light Company

## PACIFICORP

### ELECTRIC OPERATIONS

Sunnyside Cogeneration Associates  
c/o Constellation Power, Inc.  
Attention: Karen Dolezal  
825 N Downs Street Suite A  
Ridgecrest, CA 93555

Generation Statement for the Calendar month of: February-04

**Capacity:**

Base Billing	45.0 MW @	\$16.08	x	1.05	\$	759,780.00
Additional	8.0 MW @	\$12.63			\$	101,040.00
Adjustment	0.0 MW @	\$12.63			\$	-
<b>Total</b>	<b>53.0</b>				<b>\$</b>	<b>860,820.00</b>

**Energy:**

Total MWH	33,912.030	Total On-Peak MWH	18,711.370
Total Base Energy	28,795.210	Total Off-Peak MWH	9,376.800
Base Energy Factor (a)	0.849	Total Sun & Hol MWH	5,823.860

**On-Peak (6x16)**

			PV * .85	FLOOR (c)	CAP (c)				
Base Billing	(b)	15,888.103 MWH @	\$36.96	\$32.33	\$41.98	\$36.96	x	1.05	\$ 616,585.50
Additional		2,823.267 MWH @							\$ 104,347.95

**Off-Peak (6x8)**

Base Billing	7,961.981 MWH @	\$30.72	\$25.40	\$32.35	\$30.72	x	1.05	\$ 256,821.66
Additional	1,414.819 MWH @							\$ 43,463.24

**Sun & Hol (1x24)**

Base Billing	4,945.126 MWH @	\$33.30	\$30.02	\$38.77	\$33.30	x	1.05	\$ 172,906.33
Additional	878.734 MWH @							\$ 29,261.84

<b>Total</b>	<b>33,912.030</b>							<b>\$</b>	<b>1,223,386.52</b>
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**Power Factor:**

Outside Margin Allowance									
Kilovar	0.00	@	\$	0.30				\$	-

Amount due Sunnyside for February-04 \$ 2,084,206.52

Amount Paid Sunnyside for February-04 \$ (2,022,278.73)

**Total amount due Sunnyside:** **\$ 61,927.79**

(a) Base Energy Factor = Total Base Energy / Total MWH. Note: Base Energy Factor is NOT rounded.

(b) Base Billing = Total [On-Peak, Off-Peak, or Sun & Hol] MWH x Base Energy Factor

(c) Subject to adjustment per cap and floor prices as seen in Appendix L & M of the fourth amendment to the PPA

APPENDIX A  
To  
Settlement Agreement Between Sunnyside Cogeneration Associates And Utah Power & Light Company

**PACIFICORP**  
**ELECTRIC OPERATIONS**

Sunnyside Cogeneration Associates  
c/o Constellation Power, Inc.  
Attention: Karen Dolezal  
825 N Downs Street Suite A  
Ridgecrest, CA 93555

Generation Statement for the Calendar month of: March-04

Capacity:

Base Billing	38.1 MW @	\$16.08	x	1.05	\$	643,280.40
Additional	5.8 MW @	\$12.63			\$	73,254.00
Adjustment	0.0 MW @	\$12.63			\$	-
<b>Total</b>	<b>43.9</b>				<b>\$</b>	<b>716,534.40</b>

Energy:

Total MWH	20,674.190	Total On-Peak MWH	12,342.590
Total Base Energy	15,280.747	Total Off-Peak MWH	6,106.960
Base Energy Factor (a)	0.739	Total Sun & Hol MWH	2,224.640
<b>On-Peak (6x16)</b>		PV * .85 FLOOR (c) CAP (c)	
Base Billing (b)	9,122.679 MWH @	\$35.94 \$32.33 \$41.98	\$35.94 x 1.05 \$ 344,262.54
Additional	3,219.911 MWH @		\$ 115,723.60
<b>Off-Peak (6x8)</b>			
Base Billing	4,513.788 MWH @	\$26.60 \$25.40 \$32.35	\$26.60 x 1.05 \$ 126,070.10
Additional	1,593.172 MWH @		\$ 42,378.38
<b>Sun &amp; Hol (1x24)</b>			
Base Billing	1,644.280 MWH @	\$28.93 \$30.02 \$38.77	\$30.02 x 1.05 \$ 51,829.35
Additional	580.360 MWH @		\$ 17,422.41
<b>Total</b>	<b>20,674.190</b>		<b>\$ 697,686.38</b>

Power Factor:

Outside Margin Allowance						
Kilovar	27.75	@	\$ 0.30		\$	(8.33)

Amount due Sunnyside for March-04 \$ 1,414,212.45

Amount Paid Sunnyside for March-04 \$ (1,420,772.25)

Total amount due Sunnyside: \$ (6,559.80)

(a) Base Energy Factor = Total Base Energy / Total MWH. Note: Base Energy Factor is NOT rounded.

(b) Base Billing = Total [On-Peak, Off-Peak, or Sun & Hol] MWH x Base Energy Factor

(c) Subject to adjustment per cap and floor prices as seen in Appendix L & M of the fourth amendment to the PPA

APPENDIX A  
To  
Settlement Agreement Between Sunnyside Cogeneration Associates And Utah Power & Light Company

**PACIFICORP**  
**ELECTRIC OPERATIONS**

Sunnyside Cogeneration Associates  
c/o Constellation Power, Inc.  
Attention: Karen Dolezal  
825 N Downs Street Suite A  
Ridgecrest, CA 93555

Generation Statement for the Calendar month of: April-04

**Capacity:**

Base Billing	45.0 MW @	\$16.08		x	1.05	\$	759,780.00
Additional	7.6 MW @	\$12.63				\$	95,988.00
Adjustment	0.1 MW @	\$12.63				\$	1,263.00
<b>Total</b>	<b>52.7</b>					<b>\$</b>	<b>857,031.00</b>

**Energy:**

Total MWH	31,769.160	Total On-Peak MWH	18,898.430						
Total Base Energy	27,733.069	Total Off-Peak MWH	9,341.270						
Base Energy Factor (a)	0.873	Total Sun & Hol MWH	3,529.460						
<b>On-Peak (6x16)</b>									
Base Billing	(b) 16,497.492 MWH @	PV * .85	FLOOR (c)	CAP (c)					
Additional	2,400.938 MWH @	\$39.88	\$32.33	\$41.98	\$39.88	x	1.05	\$	690,815.98
								\$	95,749.41
<b>Off-Peak (6x8)</b>									
Base Billing	8,154.515 MWH @	\$28.39	\$25.40	\$32.35	\$28.39	x	1.05	\$	243,082.01
Additional	1,186.755 MWH @							\$	33,691.97
<b>Sun &amp; Hol (1x24)</b>									
Base Billing	3,081.062 MWH @	\$32.53	\$30.02	\$38.77	\$32.53	x	1.05	\$	105,238.29
Additional	448.398 MWH @							\$	14,586.39
<b>Total</b>	<b>31,769.160</b>							<b>\$</b>	<b>1,183,164.05</b>

**Power Factor:**

Outside Margin Allowance									
Kilovar	262.75	@	\$	0.30				\$	(78.83)

Amount due Sunnyside for April-04 \$ 2,040,116.22

Amount Paid Sunnyside for April-04 \$ (1,946,120.53)

**Total amount due Sunnyside:** \$ 93,995.69

(a) Base Energy Factor = Total Base Energy / Total MWH. Note: Base Energy Factor is NOT rounded.

(b) Base Billing = Total [On-Peak, Off-Peak, or Sun & Hol] MWH x Base Energy Factor

(c) Subject to adjustment per cap and floor prices as seen in Appendix L & M of the fourth amendment to the PPA

III

April 4, 2005

Ms. Deborah Scherer  
U.S. Bank N.A., formerly known as U.S. Bank Trust N.A.,  
as Trustee  
7310 North 16<sup>th</sup> Street, Suite 275  
Phoenix, AZ 85020

Re: Sunnyside Cogeneration Associates – Fourth Amendment to the Power Purchase Agreement and Settlement Agreement

Dear Ms. Scherer:

Reference is hereby made to the Trust Indenture as amended or modified (the "Indenture"), dated as of August 1, 1999, between Carbon County, Utah (the "Issuer") and U.S. Bank N.A., formerly known as U.S. Bank Trust N.A., as Trustee (the "Trustee") relating to \$59,000,000 Carbon County, Utah Solid Waste Disposal Revenue Refunding Bonds (Sunnyside Cogeneration Associates Project) Series 1999A (the "Series 1999A Bonds") and \$18,000,000 Carbon County, Utah Solid Waste Disposal Revenue Refunding Bonds (Sunnyside Cogeneration Associates Project) Series 1999B (the "Series 1999B Bonds" and together with the Series 1999A Bonds, the "Bonds"). Capitalized terms used herein without definition shall have the meaning provided for such terms in the Indenture.

1. Holders. The undersigned beneficial owners of the Bonds (the "Consenting Holders") in the aggregate hold a majority of the outstanding principal amount of the Bonds.
2. Consent. Pursuant to this letter, each of the Consenting Holders consents to your execution and delivery of a letter consenting to the execution by Sunnyside Cogeneration Associates, a Utah joint venture comprised of Sunnyside Holdings I, Inc., and Sunnyside II, L.P. (by its general partner Sunnyside II, Inc.) ("SCA") of (i) the Fourth Amendment to the Power Purchase Agreement and (ii) the Settlement Agreement, both between SCA and Utah Power & Light Company, which letter shall be substantially in the form attached hereto. Utah Power & Light Company is an assumed business name of PacifiCorp. The Consenting Holders provide this letter to the Trustee consenting to this action pursuant to Section 7(h) of the Security Agreement between SCA and the Trustee relating to the Bonds and amendments to Facility Documents. You have previously received copies of a letter from the Consenting Holders regarding their willingness to consent, under the circumstances therein described, to this action pursuant to Section 9.4 of the Loan Agreement between Issuer and SCA relating to the Bonds and amendments to Facility Documents.
3. Transferees. This letter shall be binding upon all transferees, successors and assigns of the parties to the letter including any party to whom a Consenting Holder transfers all or a portion of its Bonds.

4. Execution and Counterparts. This letter may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same letter.

Please indicate your acceptance of this letter as indicated below.

DREYFUS MUNICIPAL FUNDS

By: A Paul D...  
Director of Municipal Securities

TAX FREE HIGH YIELD PORTFOLIO

By: \_\_\_\_\_

UNITED MUNICIPAL HIGH INCOME FUND,  
INC.

By: \_\_\_\_\_

JOHN HANCOCK HIGH-YIELD TAX-FREE  
FUND

By: \_\_\_\_\_

ACCEPTED AND AGREED TO  
this 15<sup>th</sup> of April, 2005

U.S. Bank N.A. formerly known as U.S. Bank Trust N.A.,  
As Trustee

By: [Signature]



April 4, 2005

Ms. Deborah Scherer  
U.S. Bank N.A., formerly known as U.S. Bank Trust N.A.,  
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7310 North 16<sup>th</sup> Street, Suite 275  
Phoenix, AZ 85020

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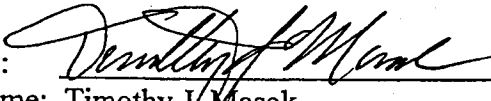
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Please indicate your acceptance of this letter as indicated below.

DREYFUS MUNICIPAL FUNDS

By: \_\_\_\_\_

TAX-FREE HIGH YIELD PORTFOLIO, a series  
of Tax-Free Income Trust

By:   
Name: Timothy J. Masek  
Title: Assistant Vice President - Tax-Free  
Income Trust

UNITED MUNICIPAL HIGH INCOME FUND,  
INC.

By: \_\_\_\_\_

JOHN HANCOCK HIGH-YIELD TAX-FREE  
FUND

By: \_\_\_\_\_

ACCEPTED AND AGREED TO  
this 15th April, 2005

U.S. Bank N.A. formerly known as U.S. Bank Trust N.A.,  
As Trustee

By: 



MARK J. OTTERSTROM, CFA

Vice President



WADDELL & REED INVESTMENT MANAGEMENT COMPANY

6300 Lamar Avenue  
Post Office Box 29217  
Shawnee Mission, KS 66201-9217  
913-236-1814 Fax 913-236-1885  
mottstrom@waddell.com

April 5, 2005

Ms. Deborah Scherer  
U.S. Bank N.A., formerly known as U.S. Bank Trust N.A.,  
as Trustee  
7310 North 16<sup>th</sup> Street, Suite 275  
Phoenix, AZ 85020

Re: Sunnyside Cogeneration Associates – Fourth Amendment to the Power Purchase Agreement and Settlement Agreement

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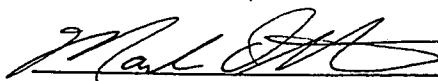
DREYFUS MUNICIPAL FUNDS

By: \_\_\_\_\_

TAX FREE HIGH YIELD PORTFOLIO

By: \_\_\_\_\_

WADDELL & REED ADVISORS MUNICIPAL  
HIGH INCOME FUND, INC.

By:   
VICE PRESIDENT

JOHN HANCOCK HIGH-YIELD TAX-FREE  
FUND

By: \_\_\_\_\_

ACCEPTED AND AGREED TO  
this 15<sup>th</sup> of April, 2005

U.S. Bank N.A. formerly known as U.S. Bank Trust N.A.,  
As Trustee

By: 

April 4, 2005

Ms. Deborah Scherer  
U.S. Bank N.A., formerly known as U.S. Bank Trust N.A.,  
as Trustee  
7310 North 16<sup>th</sup> Street, Suite 275  
Phoenix, AZ 85020

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DREYFUS MUNICIPAL FUNDS

By: \_\_\_\_\_

TAX FREE HIGH YIELD PORTFOLIO

By: \_\_\_\_\_

UNITED MUNICIPAL HIGH INCOME FUND,  
INC.

By: \_\_\_\_\_

JOHN HANCOCK HIGH-YIELD TAX-FREE  
FUND

By: \_\_\_\_\_

ACCEPTED AND AGREED TO  
this 15<sup>th</sup> of April, 2005

Ismail Guner  
VICE PRESIDENT

U.S. Bank N.A. formerly known as U.S. Bank Trust N.A.,  
As Trustee

By: \_\_\_\_\_

December 20, 2004

Ms. Deborah Scherer  
U.S. Bank N.A., formerly known as U.S. Bank Trust N.A.,  
as Trustee  
7310 North 16<sup>th</sup> Street, Suite 275  
Phoenix, AZ 85020

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Please indicate your acceptance of this letter as indicated below.

DREYFUS MUNICIPAL FUNDS

By: A Paul Duran

TAX FREE HIGH YIELD PORTFOLIO

By: \_\_\_\_\_

UNITED MUNICIPAL HIGH INCOME FUND,  
INC.

By: \_\_\_\_\_

JOHN HANCOCK HIGH-YIELD TAX-FREE  
FUND

By: \_\_\_\_\_

CYPRESS ASSOCIATES LLC.

By: \_\_\_\_\_

ACCEPTED AND AGREED TO  
this 15<sup>th</sup> of April, 20015

U.S. Bank N.A. formerly known as U.S. Bank Trust N.A.,  
As Trustee

By: [Signature]



December 20, 2004

Ms. Deborah Scherer  
U.S. Bank N.A., formerly known as U.S. Bank Trust N.A.,  
as Trustee  
7310 North 16<sup>th</sup> Street, Suite 275  
Phoenix, AZ 85020

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DREYFUS MUNICIPAL FUNDS

By: \_\_\_\_\_

TAX-FREE HIGH YIELD PORTFOLIO, a series  
of Tax-Free Income Trust

By:  \_\_\_\_\_

Name: Timothy J. Masek  
Title: Assistant Vice President  
Tax-Free Income Trust

UNITED MUNICIPAL HIGH INCOME FUND,  
INC.

By: \_\_\_\_\_

JOHN HANCOCK HIGH-YIELD TAX-FREE  
FUND

By: \_\_\_\_\_

CYPRESS ASSOCIATES LLC.

By: \_\_\_\_\_

ACCEPTED AND AGREED TO  
this 15<sup>th</sup> of April, 2004

U.S. Bank N.A. formerly known as U.S. Bank Trust N.A.,  
As Trustee

By:  \_\_\_\_\_

December 20, 2004

Ms. Deborah Scherer  
U.S. Bank N.A., formerly known as U.S. Bank Trust N.A.,  
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DREYFUS MUNICIPAL FUNDS

By: \_\_\_\_\_

TAX FREE HIGH YIELD PORTFOLIO

By: \_\_\_\_\_

UNITED MUNICIPAL HIGH INCOME FUND,  
INC.

By: 

JOHN HANCOCK HIGH-YIELD TAX-FREE  
FUND

By: \_\_\_\_\_

CYPRESS ASSOCIATES LLC.

By: \_\_\_\_\_

ACCEPTED AND AGREED TO  
this 15<sup>th</sup> April, 2004<sup>5</sup>

U.S. Bank N.A. formerly known as U.S. Bank Trust N.A.,  
As Trustee

By: 

December 20, 2004

Ms. Deborah Scherer  
U.S. Bank N.A., formerly known as U.S. Bank Trust N.A.,  
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Please indicate your acceptance of this letter as indicated below.

DREYFUS MUNICIPAL FUNDS

By: \_\_\_\_\_

TAX FREE HIGH YIELD PORTFOLIO

By: \_\_\_\_\_

UNITED MUNICIPAL HIGH INCOME FUND,  
INC.

By: \_\_\_\_\_

JOHN HANCOCK HIGH-YIELD MUNICIPAL  
BOND FUND (formerly the John Hancock High  
Yield Tax-Free Fund)\*

By: Barry H. Evans

Barry Evans, Chief Fixed Income Officer

CYPRESS ASSOCIATES LLC.

By: \_\_\_\_\_

\* A copy of the Declaration of Trust of John Hancock Tax Free Bond Trust (the "Trust") is on file with the Secretary of State of The Commonwealth of Massachusetts. You acknowledge that the obligations of or arising out of this instrument are not binding upon any of the Trust's trustees, officers, employees, agents, or shareholders individually, but are binding solely upon the assets and property of the Trust in accordance with its proportionate interest hereunder. If this instrument is executed by the Trust on behalf of one or more series of the Trust, you further acknowledge that the assets and liabilities of each series of the Trust are separate and distinct and that the obligations of or arising out of this instrument are binding solely upon the assets or property of the series on whose behalf of the Trust has executed this instrument.

ACCEPTED AND AGREED TO

this 15<sup>th</sup> April, 2007

U.S. Bank N.A. formerly known as U.S. Bank Trust N.A.,  
As Trustee

By: [Signature]

# IV



**Corporate Trust Services**

U.S. Bank Center  
101 North First Avenue  
Suite 1600  
Phoenix, AZ 85003

April 15, 2005

Sunnyside Cogeneration Associates  
c/o Constellation Power  
P.O. Box 1179  
Ridgecrest, CA 93556

Re: Sunnyside Cogeneration Associates – Fourth Amendment to the Power Purchase Agreement and Settlement Agreement

Dear Ladies and Gentlemen:

Reference is made to (a) the Trust Indenture (the "Indenture"), dated August 1, 1999, by and between Carbon County, Utah and U.S. Bank National Association (also known as U.S. Bank, N.A.) successor to U.S. Bank Trust National Association, as trustee (in such capacity, the "Trustee"), (b) the Loan Agreement, dated as of August 31, 1999 (the "Loan Agreement") between Sunnyside Cogeneration Associates, a Utah joint venture ("SCA"), and Carbon County, Utah, and (c) the Security Agreement, dated as of August 31, 1999 (the "Security Agreement"), by and between SCA and U.S. Bank National Association as successor to U.S. Bank Trust National Association, as Trustee. Capitalized terms used herein and not otherwise defined shall have the respective meanings assigned thereto in the Indenture. Reference is also hereby made to Section 7(h) of the Security Agreement and Section 9.4 of the Loan Agreement relating to amendments to Facility Documents.

With the consent of, and in accordance with the direction of, a majority of the beneficial owners in the outstanding principal amount of Series 1999A and 1999B bonds (the "Directing Holders") issued under the Indenture, the Trustee is executing and delivering this letter.

The Trustee has been advised by the Directing Holders that SCA proposes to enter into (i) the Fourth Amendment to the Power Purchase Agreement and (ii) the Settlement Agreement, both between SCA and Utah Power & Light Company, an assumed business name of PacifiCorp, substantially in the forms attached hereto. The Trustee hereby consents to SCA entering into the Fourth Amendment to the Power Purchase Agreement and Settlement Agreement.

Sincerely,

U.S. Bank National Association, as Trustee

Name: Deborah M. Scherer

Title: Assistant Vice President