

Portland, Oregon  
**FINANCIAL IMPACT and PUBLIC INVOLVEMENT STATEMENT**  
**For Council Action Items**

(Deliver original to Financial Planning Division. Retain copy.)

1. Name of Initiator David Tooze		2. Telephone No. 503-823.7582	3. Bureau/Office/Dept. BPS/Energy
4a. To be filed (date): December 7, 2011	4b. Calendar (Check One)  Regular <input checked="" type="checkbox"/> Consent <input type="checkbox"/> 4/5ths <input type="checkbox"/>		5. Date Submitted to Commissioner's office and FPD Budget Analyst: 11/28/2011
6a. Financial Impact Section: <input checked="" type="checkbox"/> Financial impact section completed		6b. Public Involvement Section: <input checked="" type="checkbox"/> Public involvement section completed	

**1) Legislation Title:**

\*Authorize the City of Portland to execute a Contract-Specific Procurement agreement to purchase electricity from an Energy Service Supplier, if in the City's best interest.  
(Ordinance)

**2) Purpose of the Proposed Legislation:**

Portland bureaus pay approximately \$19 million per year on electricity. The electricity product that the City purchases is a bundling of three electricity industry components: power generation (power plant or wind farm); high voltage transmission (the big towers); and local distribution (the substations, poles and wires seen along city streets). This Ordinance would empower the Chief Procurement officer to obtain lower electricity rates by purchasing the generation and transmission parts of the City's electricity service from competitive marketers (called Energy Service Suppliers/ESSs) rather than from the distribution utility (PGE/PP&L). That process takes place during a five day enrollment window where ESSs offer a market based price for the generation/electricity supply part of the power bill. PGE/PP&L will continue to deliver the electricity over the local poles and wires at the same set of rates paid for a bundled electricity product. The City can choose to buy from an ESS on a year to year basis or long term.

A second purpose is to allow bureaus to purchase some or all of the power as renewable generated electricity using Renewable Energy Certificates (sometimes called Green Tags).

**3) Which area(s) of the city are affected by this Council item? (Check all that apply—areas are based on formal neighborhood coalition boundaries)?**

- |   |                                    |                                    |                                |
|---|------------------------------------|------------------------------------|--------------------------------|
| <input checked="" type="checkbox"/> City-wide/Regional                | <input type="checkbox"/> Northeast | <input type="checkbox"/> Northwest | <input type="checkbox"/> North |
| <input type="checkbox"/> Central Northeast                            | <input type="checkbox"/> Southeast | <input type="checkbox"/> Southwest | <input type="checkbox"/> East  |
| <input type="checkbox"/> Central City                                 |                                    |                                    |                                |
| <input checked="" type="checkbox"/> Internal City Government Services |                                    |                                    |                                |

## FINANCIAL IMPACT

**4) Revenue:** Will this legislation generate or reduce current or future revenue coming to the City? If so, by how much? If so, please identify the source.

The accounts participating in Open Access will have lower electricity bills for the generation part of their power bill. If ESS prices don't offer savings, then the City chooses not to enroll and remain a generation customer of PGE/PP&L.

Bureaus may also achieve goals for renewable power if that option is chosen.

The city's utility franchise revenue will DECREASE slightly as the ESSs DO NOT pay the city's 5% utility franchise /utility license fees. Only the larger utility accounts (Portland Bldg, Street Lights, Sewer pumping, Water pumping) are likely to participate. These accounts represent about 40% of our purchased electricity. If 40% is bought from an ESS, utility franchise revenue will decrease by approximately \$210,000/year. (70 MWh of load x \$60/MW = \$4.2 contract x 5% = \$210,000) Those bill reductions are passed through to the purchasing bureau as additional savings.

**5) Expense:** What are the costs to the City related to this legislation? What is the source of funding for the expense? *(Please include costs in the current fiscal year as well as costs in future years. If the action is related to a grant or contract please include the local contribution or match required. If there is a project estimate, please identify the level of confidence.)*

City franchise fees will drop by +/- \$210,000 (see explanation above). Purchases, BPS and the City Attorney's office will all have staff involvement.

### **6) Staffing Requirements:**

- Will any positions be created, eliminated or re-classified in the current year as a result of this legislation? *(If new positions are created please include whether they will be part-time, full-time, limited term, or permanent positions. If the position is limited term please indicate the end of the term.)*

None.

- Will positions be created or eliminated in *future years* as a result of this legislation?

None.

*(Complete the following section only if an amendment to the budget is proposed.)*

**7) Change in Appropriations** *(If the accompanying ordinance amends the budget please reflect the dollar amount to be appropriated by this legislation. Include the appropriate cost elements that are to be loaded by accounting. Indicate "new" in Fund Center column if new center needs to be created. Use additional space if needed.)*

None.

Fund	Fund Center	Commitment Item	Functional Area	Funded Program	Grant	Sponsored Program	Amount

**[Proceed to Public Involvement Section – REQUIRED as of July 1, 2011)**

## PUBLIC INVOLVEMENT

8) Was public involvement included in the development of this Council item (e.g. ordinance, resolution, or report)? Please check the appropriate box below:

☐ YES: Please proceed to Question #9.

☒ NO: Please, explain why below; and proceed to Question #10.

Open Access for purchasing electricity is an internal purchasing process that has potential impact citywide as a means to lower electricity bills.

9) If "YES," please answer the following questions:

a) What impacts are anticipated in the community from this proposed Council item?

b) Which community and business groups, under-represented groups, organizations, external government entities, and other interested parties were involved in this effort, and when and how were they involved?

c) How did public involvement shape the outcome of this Council item?

d) Who designed and implemented the public involvement related to this Council item?

e) Primary contact for more information on this public involvement process (name, title, phone, email):

10) Is any future public involvement anticipated or necessary for this Council item? Please describe why or why not.

This is an internal purchasing process. The City Council hearing provides the opportunity for public input.

Susan Anderson/Michael Armstrong



BUREAU DIRECTOR (Typed name and signature)



Bureau of Planning and Sustainability  
Innovation. Collaboration. Practical Solutions.

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## MEMO

DATE: November 28, 2011  
TO: Mayor Sam Adams  
FROM: Susan Anderson, Director

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1. Ordinance Title: \*Authorize the City of Portland to execute a Contract-Specific Procurement agreement to purchase electricity from an Energy Service Supplier, if in the City's best interest. (Ordinance)

2. Contact: Dave Tooze, BPS-Energy, 503-823.7582

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3. Requested Council Date: December 7, 2011

4. ☐ Consent Agenda Item ☒ Regular Agenda Item

☒ Emergency Item (explain below) ☐ Non-Emergency Item

5. Purpose of Agenda Item:

Portland bureaus pay approximately \$19 million per year on electricity. The electricity product that the City purchases is a bundling of three electricity industry components: power generation (power plant or wind farm); high voltage transmission (the big towers); and local distribution (the substations, poles and wires seen along city streets). This Ordinance would empower the Chief Procurement officer to obtain lower electricity rates by purchasing the generation and transmission parts of the City's electricity service from competitive marketers (called Energy Service Suppliers/ESSs) rather than from the distribution utility (PGE/PP&L). That process takes place during a five day enrollment window where ESSs offer a market based price for the generation/electricity supply part of the power bill. PGE/PP&L will continue to deliver the electricity over the local poles and wires at the same set of rates paid for a bundled electricity product. The City can choose to buy from an ESS on a year to year basis or long term.

A second purpose is to allow bureaus to purchase some or all of the power as renewable generated electricity using Renewable Energy Certificates (sometimes called Green Tags).



City of Portland, Oregon | Bureau of Planning and Sustainability | [www.portlandonline.com/bps](http://www.portlandonline.com/bps)  
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6. **History of Agenda Item/Background:** BPS, the City Attorney and Procurement investigated using an ESS back in 2007, and Council authorized the Chief Procurement Officer to enter into similar contracts. This authority wasn't used, however, because the power markets were too volatile with no significant bill savings. City staff believe that the market conditions are more stable now, and it may be possible to save some money. Also, use of an ESS opens a new avenue to purchase renewable power. Staff recommend investigating this option as well.
7. **Legal Issues:** None known.
8. **What individuals or groups are or would be supportive or opposed to this action?**  
Most of the community is likely to support this because it's good stewardship and fiscally responsible. Non-public opposition might come from PGE, who would lose some revenue.  
OMF may oppose due to loss of franchise fee income. The city's utility franchise revenue will DECREASE slightly as the ESSs DO NOT pay the city's 5% utility franchise /utility license fees. Only the larger utility accounts (Portland Bldg, Street Lights, Sewer pumping, Water pumping) are likely to participate. These accounts represent about 40% of the City's purchased electricity. If 40% is bought from an ESS, utility franchise revenue will decrease by approximately \$210,000/year. (70 MWh of load x \$60/MW = \$4.2 contract x 5% = \$210,000) Those bill reductions are passed through to the purchasing bureau as additional savings.
9. **How does this relate to current City policies?** The renewables component is related to the Climate Action Plan 2009.



**ELECTRICITY SALES AND PURCHASE AGREEMENT**  
 Between NOBLE AMERICAS ENERGY SOLUTIONS LLC ("Seller")  
 And <COMPANY LEGAL NAME> ("Buyer")  
 As of <Month, Day, Year> (the "Effective Date")

This Agreement is made by and between Seller and Buyer (referred to collectively as the "Parties" and individually as a "Party"). For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**ARTICLE 1. SCOPE OF THE AGREEMENT**

(a) Electricity Supply. Upon enrollment of Buyer's Facilities, Seller shall sell and deliver, or cause a third party (including Buyer's Local Utility) to deliver, and Buyer shall purchase and receive, 100% of Buyer's Electricity requirements for Buyer's Facilities at the Delivery Point(s) solely for use at Buyer's Facilities.

(b) Transactions. From time to time, the Parties may, but shall not be obligated to, enter into one or more Transactions. Transactions will ordinarily be entered into by the execution of an Addendum. The Parties may also enter into Transactions orally or through the use of Electronic Communication and in those cases Buyer shall execute, promptly upon Seller's request, an Addendum confirming the terms of such Transaction. The Parties agree that an Addendum may take the form of a facsimile or an Imaged Document. Notwithstanding the foregoing, the failure of either Party to execute an Addendum shall not invalidate an otherwise valid Transaction. Each Party agrees not to contest, or assert any defense to, the validity or enforceability of a Transaction entered into in accordance with this Agreement based on any Law requiring agreements to be in writing or to be signed by the Parties or based on any lack of authority of the Party or any lack of authority of any employee of the Party to enter into a Transaction.

**ARTICLE 2. TERM OF AGREEMENT**

This Agreement shall be in effect as of the Effective Date and shall continue until terminated by either Party with thirty (30) days written notice to the other Party, or in accordance with the other provisions contained herein; provided, that this Agreement shall remain in effect with respect to the Transaction(s) entered into prior to such termination until both Parties have fulfilled all of their obligations with respect to such Transaction(s) or such Transaction(s) shall have each been terminated under Articles 6 or 7 of this Agreement, provided that all obligations of the Parties which must survive such termination in order to give full force and effect to the intent of the Parties as expressed herein shall so survive.

**ARTICLE 3. PRICING**

(a) Contract Price. The price that Buyer pays for Electricity shall be set forth in each Transaction. In the event that Seller delivers and Buyer receives Electricity and there is no Transaction in effect with respect to such deliveries (including, without limitation, for any deliveries made subsequent to termination of this Agreement), then the Contract Price shall be the Base Price.

(b) Taxes. As between the Parties, Seller shall be responsible for all Taxes incurred up to the Delivery Point and Buyer shall be responsible for all Taxes incurred at and after the Delivery Point whether imposed on Buyer or Seller. Seller may recoup such Taxes as a separate line item on Seller's invoice to the extent allowed by Law. Seller will recognize a sales tax exemption of Buyer upon receipt of proper documentation.

**ARTICLE 4. SERVICE OBLIGATIONS**

(a) Enrollment. Buyer shall timely provide Seller with all information (including account information) and documentation required to appoint Seller as Buyer's Electricity service provider and to allow Seller to receive information from Buyer's Local Utility which Seller requires to perform its obligations hereunder. Seller shall enroll Buyer's Facilities upon: (i) execution of a Transaction; (ii) receipt of an executed Enrollment Form (attached hereto as Appendix II) from Buyer and (iii) a designated active switch date from Buyer's Local Utility.

(b) Seller shall reimburse Buyer for all costs and losses incurred by Buyer resulting from a delayed or unsuccessful enrollment or de-enrollment that is a direct result of a negligent act or omission by Seller. Buyer shall reimburse Seller for all costs and losses incurred by Seller resulting from a delayed or unsuccessful enrollment or de-enrollment that is not a direct result of a negligent act or omission by Seller.

(c) Operational Requirements. Buyer shall use commercially reasonable efforts to operate Buyer's Facilities such that Electricity consumption is consistent with Buyer's Baseline. Buyer shall notify Seller as soon as practicable of: (i) any revised monthly consumption forecast; (ii) all scheduled or unscheduled outages or anticipated changes in usage; (iii) changes in Buyer's Baseline; and (iv) any removal of a Buyer's Facility from service hereunder during the effective period of an Addendum or a Transaction. Buyer shall be responsible to Seller for any additional costs and losses incurred by Seller arising from (i), (ii), (iii) or (iv); provided that Seller shall use commercially reasonable efforts to mitigate any such costs after receipt of such notice. Buyer may participate in curtailment or demand response programs, provided that Buyer provides prior written notice to Seller. Buyer shall be responsible for any costs incurred by Seller associated with Buyer's participation in such programs.

(d) Metering. Buyer or Buyer's Local Utility shall be responsible for the cost of installing meters and related equipment (including any telemetry and associated telephonic connections) at Buyer's Facilities that are required by Buyer's Local Utility for Seller to perform its obligations under this Agreement. Such meters shall measure all Electricity at Buyer's Facilities. Buyer shall provide Seller with reasonable access to Buyer's Facilities to install any additional metering equipment reasonably required by Seller. Seller shall be responsible for any costs associated with such additional metering equipment.

(e) Delivery and Title. As between the Parties, Seller will be in exclusive control, hold title to, and be responsible for any damage or injury caused by Electricity before the Delivery Point(s). Seller shall have no further obligation or responsibility relating to the Electricity at and after the Delivery Point(s). Buyer acknowledges that Seller does not own or control any of the transmission or distribution facilities used to deliver Electricity to the Delivery Points and that this function is solely the responsibility of the RTO and/or Buyer's Local Utility, and accordingly that Seller shall have no liability on account of any acts or omissions of these parties or for any interruption or failure to deliver arising therefrom.

**ARTICLE 5. BILLING, PAYMENT AND CREDIT**

(a) Invoices. Seller shall invoice Buyer each month in a manner consistent with Seller's billing cycle and at the address set forth on Appendix I. Seller shall calculate the amount(s) due based upon Buyer's actual usage information. Seller may reasonably estimate usage and charges at the time of invoicing; provided, that Seller shall adjust subsequent invoices to reflect actual usage and charges after such information is received by Seller.

(b) Payment Terms. All invoices under this Agreement shall be immediately due and payable by Buyer to Seller, without Set-off, in accordance with Seller's invoice instructions on or before the tenth (10<sup>th</sup>) day following the date of invoice. All past due payments shall accrue interest at the Interest Rate calculated from the due date until the date payment is received in full by Seller.

(c) LDC Invoice. Where applicable, Buyer will receive a separate invoice from Buyer's Local Utility for the services it provides in delivering Electricity to Buyer's Facilities. Buyer shall be solely responsible for payment of such invoice(s) and of any other charges billed by Buyer's Local Utility in connection herewith.

(d) Billing Disputes. If there is a good faith dispute regarding any invoice, Buyer shall pay to Seller the undisputed amount of such invoice. If any part of the dispute is resolved in Seller's favor, Buyer shall pay the resolved amount within two (2) Business Days of such resolution and shall include interest at the Interest Rate calculated as of the due date specified in the invoice. Buyer's right to dispute an invoice will be deemed waived if not made within one (1) year after the date of invoice.

(e) Credit. Upon any request from time to time by Seller, Buyer shall promptly provide to Seller such financial statements and other information as Seller may reasonably require to adequately assess Buyer's creditworthiness. If Seller has reasonable grounds for insecurity regarding the performance, whether or not then due, of any obligation of Buyer under this Agreement (including, without limitation on account of the occurrence of a material change in Buyer's creditworthiness or any Default), Seller may demand Adequate Assurances in an amount determined by Seller in a commercially reasonable manner, which Adequate Assurances shall be provided by Buyer within two (2) Business Days of such demand. In the event that Adequate Assurances are provided in the form of cash collateral, Buyer shall be deemed to have granted Seller a continuing first priority security interest in, lien on, and right of Set-off against such collateral.

#### ARTICLE 6. FORCE MAJEURE

Except for payment obligations, if either Party is rendered unable, wholly or in part, to perform its obligations under this Agreement due to Force Majeure, to the extent affected by the Force Majeure the obligations of each Party will be suspended for the duration of such Force Majeure. A Party claiming Force Majeure shall promptly notify the other Party by telephone and confirm within a reasonable period of time by a written notice describing in reasonable detail the nature and estimated duration of such Force Majeure. The Party claiming Force Majeure shall remedy the Force Majeure with all reasonable dispatch. If the duration of the Force Majeure event exceeds twenty (20) days, the Party not claiming Force Majeure may terminate the affected portions of any Transaction upon written notice to the other Party. Any termination due to Force Majeure will not be subject to an early termination payment.

#### ARTICLE 7. DEFAULT AND TERMINATION

(a) If a Default with respect to a Party shall have occurred and be continuing, the non-defaulting Party shall have the right to suspend its delivery obligations and/or designate a date upon which all outstanding Transactions will liquidate and terminate and all amounts owing will accelerate and be netted into a single amount in accordance with Article 7(c) as of such date ("Early Termination Date").

(b) The non-defaulting Party shall calculate in a commercially reasonable manner a Settlement Amount for each terminated Transaction as of the Early Termination Date. For purposes of calculating such Settlement Amount for any terminated Transaction for which the Contract Quantity thereunder is not a fixed quantity, the Contract Quantity shall be the estimated baseline quantity set forth in the Addendum.

(c) The non-defaulting Party shall calculate a termination payment owed by the defaulting Party to the non-defaulting Party by: netting out (i) all Settlement Amounts that would be due to the defaulting Party, plus, at the option of the non-defaulting Party, any cash or other form of security then available to the non-defaulting Party, plus any or all other amounts due to the defaulting Party under this Agreement against (ii) all Settlement Amounts that would be due to the non-defaulting Party, plus any or all other amounts due to the non-defaulting Party under this Agreement, so that all such amounts shall be netted to a single amount, which shall not be less than zero (the "Termination Payment"). The Termination Payment shall be due and payable by the defaulting Party to the non-defaulting Party within three (3) Business Days after receipt of a Termination Payment invoice.

(d) Notwithstanding any provision to the contrary, in the event that Seller is required under Law to continue to make deliveries to Buyer under this Agreement or any Transaction after the Early Termination

Date ("Post-Termination Deliveries"), the Parties agree that such obligation shall in no event prohibit, limit or otherwise impair Seller's rights under this Article 7 (including, without limitation, the right to terminate and liquidate any Transaction and accelerate any amounts owing).

#### ARTICLE 8. LIMITATION OF LIABILITY

FOR BREACH OR DEFAULT ARISING FROM ANY PROVISION FOR WHICH AN EXPRESS REMEDY IS PROVIDED HEREIN, SUCH REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, LIABILITY SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY, SUCH DIRECT, ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS MAY BE INCLUDED IN AN EXPRESS REMEDY PROVIDED FOR HEREIN, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING LOST PROFITS OR BUSINESS INTERRUPTION DAMAGES, WHETHER BASED ON STATUTE, CONTRACT, TORT, UNDER ANY INDEMNITY OR OTHERWISE, WITHOUT REGARD TO CAUSE OR THE NEGLIGENCE OF ANY PARTY, WHETHER SOLE, JOINT, ACTIVE OR PASSIVE, AND EACH PARTY HEREBY RELEASES THE OTHER PARTY FROM ANY SUCH LIABILITY, EVEN IF DURING THE TERM HEREOF IT ADVISES THE OTHER OF THE POSSIBILITY OF SUCH DAMAGES. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

#### ARTICLE 9. REPRESENTATIONS AND WARRANTIES

(a) Each Party represents and warrants to the other that: (i) it is validly existing and in good standing in the jurisdiction of its formation; (ii) the execution, delivery and performance of this Agreement and each Transaction are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents or any agreements to which it is a party or any Law applicable to it; (iii) it has not filed, does not plan to file, nor has it had filed against it, any bankruptcy proceeding; (iv) this Agreement and each Transaction constitutes its legally valid and binding obligation enforceable against it in accordance with its terms (subject to any equitable defenses); (v) it is not a party to or subject to any commitment that may restrict or interfere with the delivery or receipt of Electricity under this Agreement; and (vi) it is a "forward contract merchant" (within the meaning of such term as used in the U.S. Bankruptcy Code) and each Party is acting in its capacity as a forward contract merchant in entering into this Agreement.

(b) Buyer represents to Seller that: (i) Seller is not acting as Buyer's advisor, expert, fiduciary, representative or consultant and has not provided, and nothing herein will be claimed by Buyer as the provision of, advice regarding the value or advisability of trading in commodities; (ii) Buyer shall be solely responsible for retaining adequate advisors and counsel to advise it with respect to the obligations assumed hereunder regardless of any information provided by Seller; (iii) it has knowledge and experience in business matters sufficient to enable it to evaluate the risks associated with this Agreement and this Agreement is entered into by Buyer at Buyer's sole election and in the exercise of



its independent judgment without duress; (iv) it is not relying on any representations of Seller other than those expressly set forth herein; (v) Buyer owns or controls Buyer's Facilities or has control over the purchase and receipt of Electricity therefor; (vi) all of the information furnished by Buyer concerning Buyer's Facilities (including applicable load factors, Buyer's Local Utility rate classes and schedules, time of use, and service information) is, to the best of Buyer's information and belief, true and accurate when furnished to Seller; (vii) it is a producer, processor, commercial user of or merchant handling the commodity subject hereto and has entered into this Agreement and any Transactions solely for non-speculative purposes related to such business; (viii) it shall not resell any Electricity received from Seller to a third party; (ix) each of Buyer's Facilities can be enrolled on the Start Date specified for each Transaction; and (x) Buyer's total aggregate Electricity usage exceeds 800 MWhs annually.

(c) NEITHER PARTY GIVES NOR RECEIVES ANY WARRANTY REGARDING THE SALE, PURCHASE OR DELIVERY OF ELECTRICITY, WHETHER EXPRESS, IMPLIED, OR STATUTORY, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT. SELLER DISCLAIMS ANY AND ALL IMPLIED WARRANTIES AND SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS OF ELECTRICITY FOR A PARTICULAR PURPOSE OR USE. THE OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT ARE OBLIGATIONS OF THE PARTIES ONLY, AND NO RECOURSE SHALL BE AVAILABLE AGAINST ANY EMPLOYEE, OFFICER, DIRECTOR, SHAREHOLDER, MEMBER, PARTNER, OR AFFILIATE OF A PARTY UNLESS SPECIFICALLY PROVIDED FOR IN A SEPARATE AGREEMENT.

The representations and warranties made in this Article 9 shall be deemed to be repeated upon the execution of any Transaction.

#### **ARTICLE 10. BANKRUPTCY CODE ACKNOWLEDGEMENTS**

The Parties acknowledge and agree that all Transactions constitute "forward contracts" within the meaning of the United States Bankruptcy Code. Each Party further agrees that, for purposes of this Agreement, the other Party is not a "utility" as such term is used in Section 366 of the U.S. Bankruptcy Code, and each Party waives and agrees not to assert the applicability of the provisions of such Section 366 in any bankruptcy proceeding wherein such Party is a debtor. The Parties further agree that all Electricity delivered hereunder constitutes a "good" under Section 503(b)(9) of the U.S. Bankruptcy Code.

#### **ARTICLE 11. DEFINITIONS**

Capitalized terms used in this Agreement have the following meanings:

(a) "Addendum" means, in respect to a specific Transaction, a supplement to, or modification of, this Agreement signed, or deemed accepted, by both Parties setting forth the terms of such Transaction.

(b) "Adequate Assurances" means collateral in the form of cash, letters of credit, or other security acceptable to Seller.

(c) "Affiliates" means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

(d) "Agreement" means this Electricity Sales and Purchase Agreement, including all appendices, Addenda, Voice Records, Electronic Communications, and schedules, which are incorporated herein by reference as part of this Agreement, and all Transactions and any credit support or similar agreement between the Parties in respect thereto.

(e) "Base Price" means an amount per MWh in \$US (unless otherwise provided for) equal to the sum of: (i) the charges for the settlement interval at the time of delivery of Electricity as determined by the RTO or Local Utility (if appropriate) controlling or overseeing the location(s) in which the Delivery Point(s) are located, (ii) all costs to

deliver Electricity to the Delivery Point(s), and (iii) two dollars and fifty cents (\$2.50) per MWh.

(f) "Business Day" means any day except Saturday, Sunday, or Federal Bank Holidays.

(g) "Buyer's Baseline" means the information provided to Seller regarding Buyer's operations and Electricity usage, including the stipulated MWh usage set forth in each Transaction.

(h) "Buyer's Facilities" means the account(s) identified in Appendix II.

(i) "Buyer's Local Utility" means the electric distribution utility or utilities responsible for delivering electricity to Buyer's Facilities.

(j) "Contract Price" means the price per MWh in \$US (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of Electricity as specified in a Transaction.

(k) "Contract Quantity" means the quantity of Electricity specified in a Transaction.

(l) "Costs" means, with respect to the non-defaulting Party only, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace a terminated Transaction; and all reasonable attorneys' fees and expenses incurred by the non-defaulting Party in connection with enforcing its rights under this Agreement in the event of termination.

(m) "Default" means, with respect to a Party (the defaulting Party), the occurrence of any of the following; (i) the failure to make, when due, any payment required pursuant to this Agreement or otherwise, if such failure is not remedied within five (5) Business Days after written notice; (ii) any representation or warranty is false or misleading when made or repeated; (iii) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Default) if such failure is not remedied within five (5) Business Days after written notice; (iv) the failure by Buyer to provide Adequate Assurances in accordance with Article 5(e); (v) such Party (or such Party's credit support provider) files a petition or otherwise commences, authorizes or acquiesces to the commencement of a proceeding or cause of action with respect to it under any bankruptcy proceeding or similar Laws for the protection of creditors, or has such a petition filed against it; (vi) such Party makes an assignment or any general arrangement for the benefit of creditors; (vii) such Party otherwise becomes bankrupt or insolvent (however evidenced); (viii) such Party becomes unable to pay its debts as they fall due; (ix) termination of a Transaction prior to its End Date unless otherwise expressly agreed to in the Agreement; or (x) any default under any other agreement between the Parties.

(n) "Delivery Point(s)" means the physical point(s) specified in a Transaction at which Seller shall deliver, or cause to be delivered, Electricity to Buyer.

(o) "Electricity" means electric energy (expressed in MWh) and any related components thereto or products specified in a Transaction.

(p) "Electronic Communication" means communication conducted by electronic means whereby electronic records are created, including without limitation, electronic mail and instant messaging.

(q) "Force Majeure" means events or circumstances, beyond the reasonable control of a Party and not caused by the negligence of such Party, which prevent that Party from performing its obligations under this Agreement, and which the Party claiming Force Majeure is unable to avoid or prevent through the exercise of due diligence. Force Majeure shall include, without limitation, a Force Majeure affecting an RTO or Buyer's Local Utility that in turn prevents a Party's performance of its obligations hereunder. A claim of Force Majeure may not be based on: (i) Buyer's inability to economically use or dispose of Electricity purchased under this Agreement; (ii) Buyer's closure or material curtailment or discontinuation of operation of any of Buyer's Facilities due to economic circumstance or condition; or (iii)

Seller's ability to sell Electricity at a price greater than the Contract Price.

- (r) "Gains" means, with respect to a Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of a Transaction, determined in a commercially reasonable manner.
- (s) "Governmental Entity" means a municipality, county, governmental board, governmental department, commission, agency, bureau, administrative body, joint action agency, court, or other similar political subdivision or public entity or instrumentality of the United States or one or more states.
- (t) "Imaged Document" means any document generated by the Parties which is scanned and stored in electronic form, including, by way of illustration and not limitation, portable document format or similar type (e.g. jpg, tiff, gif).
- (u) "Interest Rate" means two percent (2%) per annum over the prime-lending rate as published in *The Wall Street Journal* under "Money Rates"; provided that, the Interest Rate may never exceed the maximum rate permitted by Law.
- (v) "Law" means any law, constitution, charter, statute, ordinance, code, rule, regulation, tariff, protocols, decision, order, decree, judgment or other legislative or administrative action of any Governmental Entity, or any interpretation thereof by any court, agency or instrumentality having jurisdiction, as well as all rules, policies and procedures lawfully adopted by an RTO governing or controlling the area in which Buyer's Facilities are located.
- (w) "Losses" means, with respect to a Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of a Transaction, determined in a commercially reasonable manner.
- (x) "MWh" means a megawatt-hour of Electricity.
- (y) "Off-Peak Hours" means hours not defined as On-Peak Hours.
- (z) "On-Peak Hours" means hours determined to be "on peak" by Buyer's regional reliability council of the North American Electric Reliability Council, or any successor entity, governing the area in which Buyer's Facilities are located.
- (aa) "RTO" means a power pool, independent system operator, transmission provider, or Buyer's Local Utility acting as the grid manager, or any comparable entity that provides system management and oversight for Electricity delivered to Buyer's Facilities.
- (bb) "Settlement Amount" means, with respect to a Transaction, the Losses or Gains, and Costs, which the non-defaulting Party incurs as a result of the termination of such Transaction.
- (cc) "Set-off" means offset, combination of accounts, netting, right of retention or withholding, or any similar right.
- (dd) "Start Date" means the date specified in a Transaction; provided, that if a Transaction does not specify such a date, then the date upon which all of the conditions set forth under Article 4(a)(i)-(iii) are satisfied.
- (ee) "Taxes" means all federal, state and local taxes, assessments, levies, duties, fees, charges or withholdings of any kind, including gross receipts taxes, utility and regulatory taxes, assessments and surcharges however denominated and all penalties, fines, additions to tax, or interest on unpaid taxes, but excluding any taxes on net income.
- (ff) "Termination Payment" has the meaning set forth in Article 7(c).
- (gg) "Transaction" means an agreement between the Parties for the purchase and sale of Electricity pursuant to this Agreement, which shall include, among other terms, the Electricity product, Contract Price, delivery term, Contract Quantity and Delivery Point(s).

(hh) "Voice Record" means a recorded telephone conversation between representatives of the Parties evidencing the terms of a Transaction.

## ARTICLE 12. MISCELLANEOUS

- (a) When the singular number is used, it is deemed to include the plural and vice versa. The words "include" and "including" mean, "including, without limitation" with respect to whatever follows.
- (b) This Agreement and each Transaction is strictly confidential and shall not be disclosed by a Party (except to such Party's Affiliates, employees, lenders, counsel and other advisors, permitted assignees, or prospective purchasers who have agreed to treat such information as confidential) without the prior written consent of the other Party, except as required by Law; provided that Seller may publicize the existence of this Agreement in press releases and sales and marketing materials, and identify Buyer as a customer of Seller and as a reference to third parties. The Parties agree that damages would be an inadequate remedy for breach of this provision and that either Party shall be entitled to equitable relief in connection herewith, provided that any damages shall be limited to actual damages as provided herein.
- (c) Unless otherwise specified herein, any notice required or permitted under this Agreement, must be in writing and addressed as provided in Appendix I. Notice by receipt confirmed facsimile, email or hand delivery shall be effective on the Business Day actually received. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. Either Party may change any address listed in Appendix I by providing written notice of same in accordance herewith.
- (d) This Agreement contains the complete understanding between the Parties, supersedes all previous discussions, communications, writings and agreements previously executed between the Parties related to the sale and purchase of Electricity, and, except to the extent otherwise provided for herein, may not be amended, modified or supplemented except in a writing signed by both Parties.
- (e) This Agreement (including any Transaction, or portion thereof, may not be assigned or transferred by a Party without the prior written approval of the other Party, which approval shall not be unreasonably withheld, except it may be assigned or transferred without such approval: (i) by either Party to a successor acquiring all or substantially all of the shares and/or the assets (including, without limitation, all or a substantial portion of Seller's portfolio of retail supply contracts) of the transferring Party, whether by merger or acquisition, (ii) by either Party to any Affiliate; or (iii) by Seller in connection with any financing or other financial arrangements involving the accounts, revenues or proceeds hereof; provided, that in the case of items (i) and (ii), the assignee or transferee shall be at least as creditworthy as the assigning or transferring Party and such assignee or transferee shall agree in writing to be bound by the terms and conditions of this Agreement (including all outstanding Transactions). Notwithstanding anything to the contrary in this Agreement, Buyer agrees that Seller may require any approved assignee or transferee to execute a new Electricity Sales and Purchase Agreement, Addendum and/or Appendix with Seller, as the case may be, as a condition precedent to the assignment or transfer of any (whole or partial) Transaction.
- (f) In the event that an action, suit or other proceeding is brought to enforce or interpret this Agreement or any part hereof or the rights or obligations of any Party to this Agreement, the prevailing Party will be entitled to recover from the other Party reasonable attorneys' fees and direct out-of-pocket costs and disbursements associated with the dispute that are incurred by the prevailing Party.
- (g) No waiver by either Party of any right or obligation hereunder, including in respect to any Default by the other Party, shall be considered a waiver of any future right or obligation, whether of a similar or different character. Any waiver shall be in writing.
- (h) This Agreement does not grant, create or otherwise provide any rights enforceable by any person or entity not a Party to this Agreement.

(i) This Agreement and all Transactions (including any Addenda) shall form a single integrated agreement between the Parties. Any inconsistency between any terms of this Agreement and any terms of a Transaction shall be resolved in favor of the terms of such Transaction. Upon full execution (or deemed acceptance) of an Addendum, such Addendum (absent manifest error) shall control in the event of any conflict with the terms of a Voice Record or Electronic Communication, or in the event of any conflict with the terms of this Agreement. In the absence of an Addendum, the Voice Record or Electronic Communication shall evidence the terms of the Transaction.

(j) Each Party hereby consents to the recording and storage of Voice Records and Electronic Communication and waives any objection to recording of Voice Records and use of Electronic Communication. An Electronic Communication record shall be deemed received upon arrival at the receiving Party's electronic mailbox or internet address.

(k) THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT. THIS SECTION 12(k) SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT FOR ANY REASON.

(l) Buyer covenants that if it is a Governmental Entity it shall not claim immunity on the grounds of sovereignty or similar grounds from enforcement of this Agreement. Buyer further covenants that if it is a Governmental Entity it shall obtain all necessary budgetary approvals, appropriations, and funding for all of its obligations under this Agreement, the failure of which shall not be an excuse for Buyer's performance hereunder.

(m) Any provision declared or rendered unlawful, invalid, void or unenforceable by any applicable court of law or regulatory agency will not otherwise affect any other provision, agreement, covenant or remaining lawful obligations under this Agreement; provided, that in any such event, the Parties shall use good faith efforts to reform this Agreement in order to give effect to the original intention of the Parties.

(n) This Agreement may be signed in counterparts, each of which will constitute an original and together will constitute one and the same Agreement. The Parties agree that if a copy of this Agreement, including any Appendix and/or Addendum, is executed by a Party and transmitted to the other Party by facsimile, the copy received shall be deemed for all legal purposes to be an original executed by the transmitting Party.

(o) The Parties agree that if a copy of this Agreement, including any Appendix and/or Addendum, is executed by a Party and transmitted to the other Party in the form of an Imaged Document, to which a Party has affixed its written or electronic signature, the copy received by the other Party shall be deemed for all legal purposes to be as valid an authentic as an original executed by the transmitting Party, and will be given the same legal effect as a written and signed paper original, and may be introduced as evidence in any proceeding as if such were original business records. Neither Party shall contest the admissibility of such Imaged Documents as evidence in any proceeding, and waive any objection they may have to the use of same.

For BUYER:  
<COMPANY LEGAL NAME>

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

Title: \_\_\_\_\_

APPROVED AS TO FORM

*Amela Henry*  
CITY ATTORNEY

For SELLER:  
NOBLE AMERICAS ENERGY SOLUTIONS LLC

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

Title: \_\_\_\_\_

APPENDIX I  
FORM OF NOTICE FOR THE ELECTRICITY SALE AND PURCHASE AGREEMENT  
BETWEEN NOBLE AMERICAS ENERGY SOLUTIONS LLC ("SELLER")  
AND <COMPANY'S LEGAL ENTITY NAME> ("BUYER")  
AS OF <Month day, year> ("EFFECTIVE DATE")

Date of Last Revision

<b>SELLER</b> <b>ALL FORMAL NOTICES:</b>	<b>BUYER</b> <b>ALL FORMAL NOTICES:</b>
Noble Americas Energy Solutions LLC Attention: Legal Department 401 West A Street, Suite 500 San Diego, CA 92101 Telephone: (619) 684 8251  Facsimile: (619) 684 8350 Email: <a href="mailto:NAESContracts@noblesolutions.com">NAESContracts@noblesolutions.com</a>	<Company Name> Attention: Address Address Telephone: Facsimile: Email:
<b>SALES REPRESENTATIVE:</b>	<b>BUYER'S REPRESENTATIVE: (Optional)</b>
Jeff Bush Noble Americas Energy Solutions LLC 401 West A Street, Suite 500 San Diego, CA 92101 Telephone: 310 315 4912  Facsimile: 619 684 8350 Email: <a href="mailto:jbush@noblesolutions.com">jbush@noblesolutions.com</a>	<Name Of Contact> <Customer's Name> Street Address <City, State, Zip> Telephone: Facsimile: Email:
<b>SCHEDULING:</b>	<b>COMMERCIAL CONTACT:</b>
E-Mail by Region:  ERCOT: <a href="mailto:NAESERCOTDesk@noblesolutions.com">NAESERCOTDesk@noblesolutions.com</a> EAST: <a href="mailto:NAESEastDesk@noblesolutions.com">NAESEastDesk@noblesolutions.com</a> MIDWEST: <a href="mailto:NAESMidwestDesk@noblesolutions.com">NAESMidwestDesk@noblesolutions.com</a> NORTHEAST: <a href="mailto:NAESNEDesk@noblesolutions.com">NAESNEDesk@noblesolutions.com</a>  WEST: <a href="mailto:NAESWestDesk@noblesolutions.com">NAESWestDesk@noblesolutions.com</a>	<Company Name>  Attention: Address Address Telephone: Facsimile: Email:
<b>REMITTANCE BY CHECK</b> <b>(send to nearest location):</b>	<b>INVOICES:</b>
Noble Americas Energy Solutions LLC Operating/Lockbox Account 771045440  #24220 Network Place Chicago, IL 60673-242  P.O. Box #730964 Dallas, TX 75373-0964  P.O. Box #100967 Pasadena, CA 91189-0967	<Company Name>  Attention: Address Address Telephone: Facsimile: Billing Method: Summary Copies To: If Applicable
<b>REMITTANCE BY WIRE TRANSFER:</b>	
JP Morgan Chase Bank New York, New York Bank ABA: 021000021 Account Number: 771045440	Federal Tax Identification No.:  Duns Number:

**Addendum for Fixed Price, Fixed Volume Electricity  
With Hourly Balancing (Oregon – Portland General Electric)**

Reference:

ELECTRICITY SALES AND PURCHASE AGREEMENT  
Between Noble Americas Energy Solutions LLC ("Seller")

And Xxxxx Xxxxx ("Buyer")

As of September 01, 2011 ("Effective Date")

Addendum Date: November 1, 2011

This Addendum ("Addendum") supplements the Electricity Sales and Purchase Agreement referred to above (the "Agreement"). For the accounts identified in an Enrollment Form completed by Buyer or prior addendum, the Parties hereby agree to the price arrangement, terms and quantities identified below. Capitalized terms not otherwise defined in this Addendum shall have their meanings set forth elsewhere in the Agreement, including its Appendices.

1. **PRODUCT.** The Contract Price(s) for Electricity set forth in this Addendum include each component in the table set forth below that is indicated by an [X], which are referred to herein collectively as "Electricity."

<b>ELECTRICITY:</b>	
(Generation Components)	
<input checked="" type="checkbox"/>	Electric Energy Commodity
<input type="checkbox"/>	BPA Scheduling, Transmission, Losses and Ancillary Services (Delivery to PGE)
<input type="checkbox"/>	PGE Network Scheduling, Transmission and Ancillary Services (PGE OATT)
<input type="checkbox"/>	Losses (PGE)

2. **DELIVERY PERIOD.** This Addendum shall be in full force and effect as of the Addendum Date. The terms set forth herein shall apply from the Start Date through the End Date:

<b>Start Date:</b>	<b>End Date:</b>
January 01, 2012	December 31, 2012

3. **DELIVERY POINT.**

<b>Market Area</b>	<b>Delivery Point</b>
Oregon	Portland General

4. **PRICING**

- 4.1 **Contract Price:** Buyer shall pay the following Contract Price per MWh for the Contract Quantity of Electricity set forth in the table below:

<b>Contract Price (in US\$/MWh)</b>
<b>\$XX.XX</b>

- 4.2 **Pass-Through Charges:** The Contract Price set forth above includes only the components set forth in Section One of this Addendum. If either or both of (i) BPA Scheduling, Transmission, Losses and Ancillary Services (Delivery to PGE) and (ii) PGE Network Scheduling, Transmission and Ancillary Services (PGE OATT) are not selected in Section One of this Addendum, Seller shall pass through to Buyer all charges for the associated BPA Tariff Reference Price and PGE Tariff Reference Price, respectively, as applicable. Charges for the BPA Tariff Reference Price and PGE Tariff Reference Price shall be as set forth in the table below. Seller shall also pass through to Buyer all other RTO or Buyer's Local Utility charges associated with Electricity delivery to the Delivery Point.

<b>BPA Tariff Reference Price</b>	<b>PGE Tariff Reference Price</b>
Schedules 1-3,5-7, 9a of the Bonneville Power Administration Transmission Business Line Open Access Transmission Tariff	The Retail Network Transmission Rates, including Schedules 1-3, as set forth in Attachment N of the Portland General Electric Company Open Access Transmission Tariff

- 4.3 **Changes in Circumstances:**

- 4.3.1 Accuracy of Supplied Information: The Contract Price for Electricity is established in reliance on the accuracy of information provided to Seller concerning Buyer's load requirements. Seller may pass through to Buyer any incremental costs incurred by Seller as a result of inaccuracies in any such information provided to Seller.
- 4.3.2 If a change in Law occurs that a) re-defines or alters the congestion zone(s) where Buyers' Facilities are located or b) alters the RTO market structure or protocol design, causing additional costs to Seller due to Buyer's service, Seller may pass through such additional costs to Buyer.
- 4.3.3 The Contract Price set forth above may include ancillary services, wholesale or network transmission, RTO market charges, or other services administered or provided by Buyer's RTO. Buyer acknowledges that such charges are based on the established rates, operations and/or protocols applicable to Buyer's service that are in effect as of the Addendum Date. In the event of changes in such rates, protocols, and/or operations that cause additional costs to Seller, Seller may pass through such additional costs to Buyer.

5. **CONTRACT QUANTITY:** Seller shall service 100% of Buyer's Electricity requirements. The Contract Quantities for this Transaction are set forth below:

The Contract Price relates to the Contract Quantities at (choose one) <input checked="" type="checkbox"/> the Delivery Point <input type="checkbox"/> Buyer's Meter		
Electric Energy Commodity		
Month	Hourly On Peak Contract Quantity (MW)	Hourly Off Peak Contract Quantity (MW)
1/2012	X.XX	X.XX
2/2012	X.XX	X.XX
3/2012	X.XX	X.XX
4/2012	X.XX	X.XX
5/2012	X.XX	X.XX
6/2012	X.XX	X.XX
7/2012	X.XX	X.XX
8/2012	X.XX	X.XX
9/2012	X.XX	X.XX
10/2012	X.XX	X.XX
11/2012	X.XX	X.XX
12/2012	X.XX	X.XX

6. **MONTHLY BILLING SETTLEMENT.** Seller shall invoice Buyer for an amount equal to the Contract Quantity multiplied by the Contract Price.
- 6.1 **Excess Quantity:** During any hour of delivery, if Buyer's usage (expressed in MWh) exceeds the Contract Quantity ("Excess Quantity"), Buyer shall pay Seller for the Excess Quantity in an amount equal to the market energy imbalance charges plus related delivery costs applicable to the Excess Quantity during that hour of excess usage, as assessed or defined by Buyer's Local Utility tariff, plus 1.00 dollar(s) per MWh.
- 6.2 **Deficit Quantity:** During any hour of delivery, if Buyer's usage (expressed in MWh) is less than the Contract Quantity as set forth above ("Deficit Quantity"), Seller shall invoice Buyer for an amount equal to the Contract Quantity multiplied by the Contract Price and credit Buyer's account by an amount equal to the Deficit Quantity multiplied by the market energy imbalance charges applicable to the Deficit Quantity during that hour of deficit usage, as assessed or defined by Buyer's Local Utility tariff.
7. **DEMAND RESPONSE**  
 If Buyer participates in any demand response programs, Buyer shall notify Seller and reimburse Seller for any costs incurred by Seller as a result of Buyer's participation.

**CREDIT** Buyer hereby acknowledges that Seller's acceptance of this Addendum and enrollment of Buyer's Facilities is contingent upon Seller receiving a completed Credit Application (attached) and subject to Buyer meeting Seller's credit requirements as determined by Seller in its sole discretion.

As amended herein, all other Terms and Conditions contained in the Agreement remain in full force and effect.

This Addendum is subject to the Schedule(s) identified below and that are attached hereto:

NOBLE AMERICAS ENERGY SOLUTIONS LLC

XXXXXXXXXXXXXXXXXXXX



Sign: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

Sign: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

See substitute  
ordinance  
185072

## ORDINANCE No.

\*Authorize the City to execute a Contract-Specific Procurement agreement to purchase electricity from an Energy Service Supplier, if in the City's best interest (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. Nonresidential customers of Oregon's two investor-owned utilities may purchase their electricity from suppliers other than their utility through a process called Open Access. Oregon's restructuring laws unbundle electricity and billing from the services traditionally provided by the regulated utility, while metering, distribution and other services remain with the utility.
2. Under ORS 279B.085 and Portland City Code 5.33.220.B.2, the City may adopt Contract-Specific Special Procurements, when doing so will result in substantial cost savings, is unlikely to encourage favoritism or substantially diminish competition, or otherwise will substantially promote the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under ORS 279B.055, 279B.060, 279B.065 or 279B.070.
3. A Contract-Specific Special Procurement will increase competition as the City will seek competitive rate quotes from PGE, Pacific Power and an Energy Service Supplier to supply of electricity to certain qualifying City accounts.
4. An Energy Service Supplier (ESS) will be selected through a competitive Request for Qualifications process.
5. ESSs are certified by the Oregon Public Utility Commission (OPUC) and registered with Portland General Electric and/or Pacific Power to provide electricity supply to retail customers meeting OPUC specified criteria, such as some of the City bureaus.
6. Open access enrollment periods occur four times each year. The 12-month enrollment period is in November, effective the following January. Nine, six and three month enrollment periods occur in February, May and August.
7. Each enrollment period is open for five days, during which the City must decide whether or not it should contract with an ESS.
8. At the beginning enrollment period the Energy Service Supplier provides market-based electricity price quotes. The ESS and City staff will analyze these prices and compare them with the standard cost of service rates charged by either PGE or Pacific Power. If the ESS offers net bill savings, the City can choose to enroll. If the price quoted does not offer net bill savings, the City may decline the offer and continue purchasing electricity from PGE and Pacific Power.



9. Conducting a formal competitive bid for market-based electricity prices is not practicable given the short, rolling enrollment period.
10. Purchasing electricity through an ESS offers a range of options for purchasing electricity generated by renewable energy or Renewable Energy Certificates from sources like wind, biogas, biomass, geothermal and other clean energy resources. Generally, these renewable energy products increase the cost of electricity, as compared with traditional offerings from the incumbent utilities.
11. City staff recommends that the Council authorize the City's Chief Procurement Officer to determine if buying electricity from an Energy Service Supplier is in the City's best interest, and to execute a power purchase agreement if she so determines.

NOW, THEREFORE, the Council directs:

- a. The Bureau of Planning and Sustainability will select an Energy Service Supplier through a competitive Request for Qualifications process.
- b. The Chief Procurement Officer for the City of Portland, or the person designated by the Chief Procurement Officer, is authorized under this Ordinance to execute an agreement to purchase electricity from an ESS on behalf of the City if found to be in the best interest of the City to do so, subject to approval as to form by the City Attorney.
- c. The Bureau of Planning and Sustainability, consulting with the City Attorney's Office, will finalize the terms of and execute the Power Purchase Agreement in a form substantially similar to attached Exhibit A.
- d. The Chief Procurement Officer may approve changes to the Power Purchase Agreement that she determine are desirable to secure favorable energy rates and reduce the City's energy costs.
- e. The Chief Procurement Office may approve changes to the Power Purchase Agreement that she determines are desirable to secure renewable generated electricity and implement the City's Climate Action Plan and renewable energy goals.

Section 2. The Council declares that an emergency exists in order that the City may execute an agreement with an Energy Service Supplier to purchase electricity resulting in substantial cost savings and benefitting the public; therefore, this Ordinance shall be in full force and effect from and after its passage by the Council.

Passed by the Council:  
Mayor Sam Adams  
Prepared by: David Tooze  
November 28, 2011

**LaVonne Griffin-Valade**  
Auditor of the City of Portland  
By: \_\_\_\_\_  
Deputy

See Substitute  
185072

Agenda No.  
**ORDINANCE NO.**  
Title

✓ \*Authorize the City of ~~Portland~~ to execute a Contract-Specific Procurement agreement to purchase electricity from an Energy Service Supplier, if in the City's best interest. (Ordinance)

<b>INTRODUCED BY</b> Commissioner/Auditor: <b>Mayor Sam Adams</b> <i>JP</i>	CLERK USE: DATE FILED <b>DEC 02 2011</b>
<b>COMMISSIONER APPROVAL</b>	<div>LaVonne Griffin-Valade Auditor of the City of Portland</div> By: <i>[Signature]</i> Deputy  ACTION TAKEN:  <b>DEC 07 2011 CONTINUED TO DEC 14 2011 9:30 A.M.</b>
Mayor—Finance and Administration - Adams	
Position 1/Utilities - Fritz	
Position 2/Works - Fish	
Position 3/Affairs - Saltzman	
Position 4/Safety - Leonard	
<b>BUREAU APPROVAL</b>	
Bureau: Planning and Sustainability Bureau Head: <i>Susan Anderson</i>	
Prepared by: D Tooze Date Prepared: Nov 28, 2011	
Financial Impact & Public Involvement Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/>	
Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Council Meeting Date <b>December 7, 2011</b>	
✓ <b>City Attorney Approval:</b> required for contract, code, easement, franchise, comp plan, charter <i>[Signature]</i>	

<b>AGENDA</b>
<b>TIME CERTAIN</b> <input type="checkbox"/> Start time: _____  Total amount of time needed: _____ (for presentation, testimony and discussion)
<b>CONSENT</b> <input type="checkbox"/>
<b>REGULAR</b> <input checked="" type="checkbox"/> Total amount of time needed: <b>5 minutes</b> (for presentation, testimony and discussion)

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:		
		YEAS	NAYS
1. Fritz	1. Fritz		
2. Fish	2. Fish		
3. Saltzman	3. Saltzman		
4. Leonard	4. Leonard		
Adams	Adams		