

ORDINANCE NO. 2015-21_____

AN ORDINANCE AUTHORIZING THE VINELAND MUNICIPAL ELECTRIC UTILITY TO EXECUTE A SERVICE AGREEMENT WITH BP ENERGY COMPANY FOR CAPACITY AND ENERGY TRANSACTIONS.

WHEREAS, the City of Vineland owns and operates the Vineland Municipal Electric Utility for the benefit of its citizens; and

WHEREAS, the Vineland Municipal Electric Utility is constantly seeking ways to provide higher quality services and lower costs to its customers; and

WHEREAS, the Energy Policy Act of 1992 has created new opportunities for buying, selling, transmitting, and exchanging capacity and energy that may benefit the Vineland Municipal Electric Utility; and

WHEREAS, new types of energy services and short term power supply agreements that appear to provide opportunities to reduce power supply costs are being offered by electric utilities and power marketers; and

WHEREAS, various electric utilities and power marketers have provided unsolicited offers in the form of “enabling agreements” which, if the agreements were in effect, would permit power supply purchases to occur when such transactions would be advantageous to the Vineland Municipal Electric Utility; and

WHEREAS, enabling agreements have become the basis for most energy purchases and sales in the Pennsylvania-New Jersey-Maryland Interconnection and have substantially displaced split savings transactions because the agreements permit utilities to take advantage of lower cost power supplies that may be available from time to time; and

WHEREAS, BP Energy Company, Houston, Texas has on file with the Federal Energy Regulatory Commission (FERC) a Power Purchase and Sale Agreement accepted by FERC which allows for the sale of electric energy to wholesale customers, and specifies a service agreement for such sales; and

WHEREAS, ORDINANCE NO. 95-44 authorizes Vineland Municipal Electric Utility (VMEU) to submit this Master Power Purchase and Sale Agreement to City Council for approval;

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the City of Vineland as follows:

1. That Vineland Municipal Electric Utility hereby submits BP Energy Company’s Master Power Purchase and Sale Agreement, to City Council for approval and the Mayor’s signature, the original to be filed with the Municipal Clerk.
2. That the Director of Municipal Utilities or his designee is authorized to make short term (not to exceed 1 year duration) energy and associated transmission transactions under this tariff when they are beneficial to the City.

3. That any service agreements entered into between the Vineland Municipal Electric Utility and Energy America, LLC shall be filed in a timely manner with the Municipal Clerk and the Purchasing Agent.
4. That the service agreements are in accordance with NJSA 40A:11-5(f); since said agreement is regulated by the US Federal Energy Regulatory Commission.

That this Ordinance shall take effect upon passage and publication as provided by law.

Passed First Reading:

Passed Final Reading:

President of Council

Approved by the Mayor:

Mayor

ATTEST:

City Clerk

MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This *Master Power Purchase and Sale Agreement* (“*Master Agreement*”) is made as of the following date: February 3, 2015 (“*Effective Date*”). The *Master Agreement*, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the “*Agreement*.” The Parties to this *Master Agreement* are the following:

Name: City of Vineland, NJ (“Party A” or “BUYER”)

All Notices:

Street: 640 E Wood Street, P.O. Box 1508

City: Vineland, NJ Zip: 08362-1508

Attn: Joseph Isabella

Phone: 856-794-4000 ext 4167

Facsimile: 856-405-4622

Duns: 073739955

Federal Tax ID Number: 21-6001670

Invoices:

Attn: Donna Brenoskie

Phone: 856-794-4000 ext 4162

Facsimile: 856-405-4622

Scheduling:

Attn: Todd Weaver

Phone: 856-794-4000 ext 4352

Facsimile: 856-405-4614

Payments:

Attn: Roxanne Tosto

Phone: 856-794-4000 ext 4640

Facsimile: 856-794-4327

Wire Transfer:

BNK: Susquehanna Bank

ABA: 031309123

ACCT: 10006932973

Credit and Collections:

Attn: Susan Baldosaro

Phone: 856-794-4000 Ext 4169

Facsimile: 856-690-9511

With additional Notices of an Event to:

Attn: Yolanda Hill

Phone: 856-794-4000 Ext 4767

Facsimile: 856-690-9511

Name: BP Energy Company (“BPEC” or “Party B”)

All Notices:

Street: 201 Helios Way

City: Houston, Texas Zip: 77079

Attn: Contract Services - Power

Phone: (713) 323-2000

Facsimile: (713) 323-0203

Duns: 62-527-5755

Federal Tax ID Number: 36-3421804

Confirmations:

Attn: Confirmations - Power

Phone: (713) 323-3806

Facsimile: (281) 227-8470

Invoices:

Attn: Power Accounting

Phone: (713) 323-8971

Facsimile: (713) 323-7457

Scheduling:

Attn: Scheduling

Phone: (713) 323-5262

Facsimile: (713) 323-7909

Option Exercise:

Phone: (713) 323-5262

Payments:

Attn: Power Accounting

Phone: (713) 323-8971

Facsimile: (713) 323-7457

Wire Transfer:

BNK: JPMorgan Chase Bank, NA
New York, NY

ABA: 021000021

ACCT: 826078354

Article 8 ARTICLE 8 IS DELETED
IN ITS ENTIRETY AND
REPLACED AS NOTED BELOW

Article 10

Confidentiality Confidentiality Applicable If not checked, inapplicable

Schedule M

- Party A is a Governmental Entity or Public Power System
- Party B is a Governmental Entity or Public Power System
- Add Section 3.6. If not checked, inapplicable
- Add Section 8.6. If not checked, inapplicable

Specify, if any: Schedule M, Part A, the definition of "Special Fund" shall be changed to read as follows: "Special Fund" means a fund, account, or subaccount established pursuant to an approved budget appropriation authorized by the governing body of the Governmental Entity or Public Power System (municipality) to satisfy the obligations hereunder out of which amounts shall be paid to satisfy the Governmental Entity's or Public Power System's (municipality's) obligations under this Master Agreement for each fiscal year (January 1 through December 31) in the Delivery Period."

Schedule M, Part E, Section 3.6, the first part of the first sentence shall be changed to read as follows: "With respect to each Transaction, Governmental Entity or Public Power System (municipality) shall either (i) have created a Special Fund or"

Other Changes

GENERAL TERMS AND CONDITIONS

Article One: General Definitions

The following definitions are amended as set forth below:

Business Day. Section 1.4 is amended to delete the first sentence and replace it to read as follows: "Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank Holiday.

Claims. Section 1.8 shall be amended by adding the words "including personal injury (including death) or property damage" after the words "third party claims" in the first line.

Credit Rating. Section 1.12 is amended in its entirety to read as follows:

"Credit Rating" means, i) with respect to Party B on any date of determination, the respective rating then assigned to its Guarantor's unsecured senior long-term debt obligations (not supported by third party credit enhancement), by S&P, Moody's or such other rating agency or

agencies as are specified; and if no rating is assigned to such entity's unsecured, senior long-term debt obligations by such rating agency, the general corporate credit rating or long-term issuer rating, as applicable, assigned by such rating agency to such entity and ii) with respect to Party A or any other entity on any date of determination, the lowest underlying rating of the bonds issued by Party A assigned to Party A by S&P, Moody's, or such other rating agency or agencies as are specified; and if there is no underlying rating of bonds currently issued by Party A then the general obligation bond (unlimited tax) rating or if unavailable, the issuer rating, as applicable, assigned by such rating agency to Party A.

“Force Majeure: Section 1.23(ii) is amended in the second sentence by inserting the following text after the word “Hereunder”, “or to obtain the Product at a more advantageous price or under more advantageous terms and conditions.

“Force Majeure: Section 1.23(iv) is amended by inserting the following text after the phrase “Contract Price”: “or under more advantageous terms to a third party purchaser.

Performance Assurance. Section 1.45 is amended and restated in its entirety as follows:

“Performance Assurance” means, (i) with respect to Party A, such acceleration of payments as provided in Article 8 and shall not include any cash, letter of credit or other collateral and (ii) with respect to Party B cash, parent guaranty, or other security acceptable to the Party A, provided however, that letter(s) of credit are not acceptable with respect to Party B.

Recording. Section 1.50 is amended by changing "Section 2.4" to "Section 2.5”

Replacement Price. Section 1.51 shall be amended by (i) adding the phrase "for delivery" immediately before the phrase "at the Delivery Point" in the second line and (ii) deleting the phrase "at Buyer's option" from the fifth line and replacing it with the following: "absent a purchase".

Sales Price. Section 1.53 shall be amended by (i) deleting the phrase "at the Delivery Point" from the second line, and (ii) deleting the phrase "at Seller's option" from the fifth line and replace it with the following: “absent a sale”.

Unilateral Agreement. Section 1.60. The definition of “Transaction” in Section 1.60 is amended to read, in its entirety, as follows:

"Transaction" means a particular transaction agreed to by the Parties relating to the sale by Party B and the purchase by Party A of a Product pursuant to this Master Agreement.

Merger Event. Section 1.62 shall be added as the following definition:

“‘Merger Event’ means, with respect to a Party or its Guarantor, that such Party or its Guarantor consolidates or amalgamates with, or merges into or with, or transfers substantially all of its assets to another entity (or, with respect to Government Entity, an entity such as an organization, board, commission, authority, agency or body succession) and (i) the resulting entity fails to assume all of the obligations of such Party or its Guarantor hereunder or (ii) the benefits of any credit support provided pursuant to Article 8 as set forth in the terms of this Agreement, fail to extend to the performance by such resulting, surviving or transferee entity of its obligations

hereunder or (iii) the resulting entity's creditworthiness is materially weaker than that of such Party or its Guarantor immediately prior to such action; provided however, that the words "materially weaker" in this clause (iii) shall mean that (x) the Credit Rating of such Party (or, if applicable, the Guarantor of such Party) shall be rated lower than Baa3 by Moody's, or lower than BBB- by S&P or (y) in the event that there is no Credit Rating by either Moody's or S&P applicable to such Party (or, if applicable, the Guarantor of such Party) but such Party (or, if applicable, the Guarantor of such Party) has a Credit Rating from any other internationally recognized rating agency, lower than a rating equivalent to the foregoing by such rating agency."

Guarantor. Section 1.63 shall be added as the following definition:

"'Guarantor' for Party B means BP Corporation North America Inc."

Guaranty. Section 1.64 shall be added as the following definition:

"'Guaranty' for Party B means a written payment guaranty substantially in the form attached hereto as Schedule I, and in an amount acceptable to Party A, properly executed and delivered by Party B's Guarantor or any other guarantor acceptable to Party A."

Article Two: TRANSACTION TERMS AND CONDITIONS

Section 2.4 is amended to delete the phrase "either orally or" from the seventh line.

Article Three: OBLIGATIONS AND DELIVERIES.

Transmission and Scheduling. Section 3.2 shall be amended by adding the following text to the end of the Section:

"Product deliveries shall be scheduled in accordance with the then-current applicable tariffs, protocols, operating procedures and scheduling practices for the relevant region."

Force Majeure. Section 3.3 is amended to delete from the last sentence "resume performance of" and replace it with "make-up".

New Section 3.7. Article Three is amended by inserting a new section 3.7 as follows:

"Party A shall take all actions necessary to ensure that it has the ability to fulfill its financial obligations under this Agreement at all times, including, without limitation, (i) issuance of an immediate Emergency Appropriation upon resolution of the Borough Council, N.J.Stat. Ann. §40A:4-46 (2014) and 40A:4-45.3 (2014) and 40A:4-49 (2014); (ii) raise taxes upon resolution of the Borough Council, N.J. Stat. Ann. §40A:60-6 (2014); and (iii) raise electric utility rates upon resolution of Borough Council, N.J. Stat. Ann. §40:62-13 (2014)."

Article Four: REMEDIES FOR FAILURE TO DELIVER

Suspension of Performance. Section 4.3 The following is added as a new Section 4.3:

“Notwithstanding, and in addition to the remedies provided pursuant to Sections 4.1 and 4.2, if Seller or Buyer fails to schedule and/or deliver/receive all or part of the Product pursuant to a Transaction for a period of seventy-two (72) consecutive hours during any Delivery Period, and such failure is not excused under the terms of the Product, by the other Party’s failure to perform or by agreement of the Parties, then upon one (1) Business Day prior notice, and for so long as the non-performing Party fails to perform, the performing Party shall have the right to suspend its performance under such Transaction. In the event the performing Party suspends performance pursuant to this Section 4.3, it shall not be obligated to resume performance until it has received notice from the non-performing Party at least one (1) Business Day prior to the date upon which the non-performing Party intends to resume its performance.”

Insert the following as a new Section 4.4

“Section 4.4 Exclusivity. So long as any failure of Seller to schedule or deliver, or any failure of Buyer to schedule or receive, a Product hereunder does not constitute or result in an Event of Default as defined in Article Five hereof, the remedies specified in this Article Four shall be the exclusive remedies available to Buyer for any failure of Seller to Schedule or deliver any Product hereunder, and to Seller for any failure of Buyer to schedule or receive a Product hereunder, and no other liability under any theory of law or equity shall attach in connection with such failure.”

Article Five: EVENTS OF DEFAULT; REMEDIES

Events of Default. Section 5.1

Section 5.1(a) shall be amended by deleting “three (3) Business Days” and replacing it with “two (2) Business Days” in the second line” and the following phrase will be added to the end of the phrase, before the semicolon: “provided, however, that, notwithstanding the foregoing, an Event of Default will not occur if (i) it is caused by an error or omission of an administrative or operational nature, and (ii) funds were available to such party, to enable it to make the relevant payment when due, and (iii) such relevant payment is made within five (5) Business Days of the date due.”

Section 5.1(f) shall be deleted in its entirety and replaced with the following: “a Merger Event occurs;”.

Section 5.1(g) is amended to add the phrase “(after giving effect to any applicable notice requirement or grace period)” to the end of the section.

Section 5.1(h)(ii) is amended by inserting in the fourth line after the word “within” the words “the time period specified in such guaranty, or if no time period is so specified, within”.

Section 5.1(h)(v) is amended to add to the last sentence “made in connection with this Agreement” immediately after the words “any guaranty”.

Declarations of an Early Termination Date and Calculation of Settlement Amount. Section 5.2 is amended by reversing the placement of “(i)” and “to” and is amended to delete the last sentence and replace it with the following:

“(i) Calculation by Non-Defaulting Party. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date.

(ii) Calculating Gains and Losses. The Gains and Losses for the Terminated Transaction shall be determined by calculating, in a commercially reasonable manner, the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of that Terminated Transaction.

(iii) Sources of Information. The Non-Defaulting Party (or its agent) may determine its Gains and Losses by reference to information either available to it internally or supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets.

(iv) Third Party Sources. Third parties supplying such information may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information.

(v) Gains and Losses Comparable to Market. Notwithstanding the foregoing, the Non-Defaulting Party’s determination of Gains and Losses for the Terminated Transaction shall be comparable to that which would have been obtained by comparing the value of the remaining term, transaction quantities, and transaction prices under each Terminated Transaction had it not been terminated to the equivalent quantities and relevant market prices for the remaining term which are reasonably expected to be available in the market under a replacement contract for the Terminated Transaction.

(vi) Replacement Transactions. It is expressly agreed that the Non-Defaulting Party shall not be required to enter into a replacement Transaction in order to determine the Settlement Amount.”

Net Out of Settlement Amounts. Section 5.3 shall be amended by adding the phrase "plus, at the option of the Non-Defaulting Party, any cash or other form of liquid security then in the possession of the Defaulting Party or its agent pursuant to Article Eight," after the first use of the phrase "due to the Non-Defaulting Party" in the sixth line.

The following shall be added to the end of Section 5.4:

“Notwithstanding any provision to the contrary contained in this Agreement, the Non-Defaulting Party shall not be required to pay to the Defaulting Party any amount under Article Five until the Non-Defaulting Party receives confirmation satisfactory to it in its reasonable discretion (which may include an opinion of its counsel) that all other obligations of any kind whatsoever of the Defaulting Party and any of its Affiliates to make any payments to the Non-Defaulting Party or any of its Affiliates under this Agreement or otherwise have been fully and finally performed.”

Closeout Setoffs. Section 5.6, Option A is amended to delete the Section entirely and replace it with the following:

“Upon the occurrence of an Event of Default with respect to a Party ("X"), the other Party ("Y") will have the right (but not be obliged) without prior notice to X or any other person to set-off or apply any obligation of X owed to Y (whether or not matured or contingent and whether or not arising under this Agreement, and regardless of the currency, place of payment or booking office of the obligation) against any obligation of Y owed to X (whether or not matured or contingent and whether or not arising under this Agreement, and regardless of the currency, place of payment or booking office of the obligation). Y will give notice to the other Party of any set-off effected hereunder.

Amounts (or the relevant portion of such amounts) subject to set-off may be converted by Y into the Termination Currency at the rate of exchange at which such Party would be able, acting in a reasonable manner and in good faith, to purchase the relevant amount of such currency. If any obligation is unascertained, Y may in good faith estimate that obligation and set-off in respect of the estimate, subject to the relevant Party accounting to the other when the obligation is ascertained. Nothing herein shall be deemed to create a charge or other security interest. This provision shall be without prejudice and in addition to any right of set-off, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).”

Suspension of Performance. Section 5.7 is amended to (i) insert “to withhold any payment due to the Defaulting Party under this Agreement until the Event of Default or Potential Event of Default is cured and/or” after “(i)” in line four; (ii) delete the word “early” in the sixth line and replace it with “Early”.

Other Terminating Events. Section 5.8. The following is inserted as Section 5.8:

“5.8 Other Terminating Events. If performance by either Party (an "Affected Party") under this Agreement or in respect of any Transaction becomes subject to regulation of any kind whatsoever, other than as a result of any action of Party A, under any applicable law to a greater or different extent than that existing on the Effective Date and such regulation either renders this Agreement or the Transaction(s) hereunder illegal and therefore unenforceable by either or both Parties, then such Party (or either Party if both Parties are Affected Parties) may treat such event as a Force Majeure with respect to

suspension of its obligations to perform, and declare an Early Termination Date in the manner contemplated by Section 5.2, which notice shall specify the basis for declaring such Early Termination Date with respect to this Agreement and the Transaction(s) hereunder. The provisions of Article FIVE of the Master Agreement will then apply to the Parties as if an Early Termination Date had been declared as an Event of Default, except that neither party shall be deemed the Non-Defaulting Party. Party B shall be the calculation agent for purposes of determining the amount of the Termination Payment, and if there is a dispute as to the amount of the Termination Payment, the dispute resolution procedures set forth in Section 8.7 with respect to disputed calculations for additional performance assurance shall apply to resolve the dispute over the amount of the Termination Payment. The terms and provisions of this Section 5.8 will apply notwithstanding any inconsistency with Section 10.8 hereof and will govern to the extent of any inconsistency therewith."

Article Seven: LIMITATIONS

Limitation of Remedies, Liability and Damages. Section 7.1 shall be amended as follows:

Section 7.1, shall be amended by (i) deleting in the fifteenth line the words, "UNLESS EXPRESSLY HEREIN PROVIDED", (ii) adding in the nineteenth line the words PROVIDED, HOWEVER, NOTHING IN THIS SECTION SHALL AFFECT THE ENFORCEABILITY OF THE PROVISIONS OF THIS AGREEMENT RELATING TO REMEDIES FOR FAILURE TO DELIVER/RECEIVE IN SECTIONS 4.1 AND 4.2, AND CALCULATION AND PAYMENT OF THE TERMINATION PAYMENT IN SECTIONS 5.2 AND 5.3." immediately after the words "ANY INDEMNITY PROVISION OR OTHERWISE", and (iii) adding at the end of the last sentence the words "AND ARE NOT PENALTIES".

Article 8: CREDIT AND COLLATERAL REQUIREMENTS

Article 8 of the Master Agreement, Credit and Collateral Requirements, is deleted in its entirety and replaced with the following:

"8.1 Party A Credit Protection. Financial Information If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of its or, if applicable, its Guarantor's annual report containing audited consolidated financial statements for such fiscal year. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

8.2 Party A Credit Assurances. If (i) Party B's Guarantor's Credit Rating falls below BBB- by Standard & Poor's and below Baa3 by Moody's or (ii) if Party B's Guarantor is not rated by either S&P or Moody's, or (iii) if such Credit Rating is suspended or withdrawn (such event, hereafter referred to as a "Party B Downgrade Event"), Party A

will provide Party B with written notice requiring Party B or Party B's Guarantor, if any, to provide Performance Assurance in an amount reasonably required to provide Party A with assurance of Party B's or its Guarantor's, if any, performance hereunder which amount shall not exceed the amount equal to one-hundred percent (100%) of a Contract Exposure as defined in Section 8.7. In the event that Party B fails to provide such Performance Assurance to Party A within three (3) Business Days of the end of the Discussion Period, or fails to maintain such Performance Assurance for so long as the Party B Downgrade Event is continuing, then an Event of Default under Article Five will be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

8.3 As security for the performance obligations hereunder, Party B shall deliver to Party A, within seven (7) Business Days of the execution and delivery of this Master Agreement, Performance Assurance in the form of a Parent Guaranty, substantially in the form attached hereto as Schedule I, in the amount of \$8,000,000.

8.4 Party B's Credit Protection. Financial Information. If requested by Party B, Party A shall deliver within 180 days following the end of each fiscal year, a copy of Party A's annual report containing audited consolidated financial statements for such fiscal year. In all cases the statements shall be for the most recent accounting period and prepared in accordance with New Jersey Local Fiscal Affairs Law, N.J. Stat. Ann.s § 40A:5-1, (2014) *et. seq.*; provided, however, that Party A shall have an additional 90 day grace period beyond the original 180 days to provide the financial information before an Event of Default may occur; provided further that Party A shall provide unaudited management prepared financial statements signed by an authorized representative within 90 days of Party B's original request for financial information.

8.5 Party B Credit Assurances. If (i) Party A's Credit Rating falls below BBB- by Standard & Poor's or Baa3 by Moody's, or (ii) if such Credit Rating is suspended or withdrawn, or (iii) if Party A's most recent Credit Rating is more than thirty-six (36) months old and Party B has a commercially reasonable belief that Party A's creditworthiness or performance under this contract has become unsatisfactory (each such event, hereafter referred to as a "Party A Downgrade Event") Party B may provide Party A with written notice requiring Party A to accelerate payments in arrears to weekly. In the event that Party A fails to provide such payment acceleration to Party B within three (3) Business Days of the receipt of such notice or fails to maintain such payment acceleration for so long as the Party A Downgrade Event is continuing, then an Event of Default under Article Five shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

8.6 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent either or both Parties deliver Performance Assurance hereunder, a Party (a "Pledgor") hereby grants to the other Party (the "Secured Party") a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or

for the benefit of, such Secured Party, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Secured Party's first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, the Non-Defaulting Party may do any one or more of the following: (i) exercise any of the rights and remedies of a Secured Party with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the Defaulting Party in the possession of the Non-Defaulting Party or its agent; (iii) draw on any outstanding Letter of Credit issued for its benefit; and (iv) liquidate all Performance Assurance then held by or for the benefit of the Secured Party free from any claim or right of any nature whatsoever of the Defaulting Party, including any equity or right of purchase or redemption by the Defaulting Party. The Secured Party shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Pledgor's obligations under the Agreement (the Pledgor remaining liable for any amounts owing to the Secured Party after such application), subject to the Secured Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

8.7 Additional Performance Assurance; Disputed Calculations.

(a) If the Pledging Party disputes the amount of Performance Assurance requested by the Secured Party and such dispute relates to the amount of the Contract Exposure claimed by the Secured Party, then the Pledging Party shall

(i) notify the Secured Party of the existence and nature of the dispute not later than 1:00 p.m. Eastern Prevailing Time on the first Business Day following the date that the demand for Performance Assurance is made by the Secured Party, and

(ii) provide Performance Assurance to or for the benefit of the Secured Party in an amount equal to the Pledging Party's own estimate, made in good faith and in a commercially reasonable manner, of the Pledging Party's Collateral Requirement. In all such cases, the Parties thereafter shall promptly consult with each other in order to reconcile the two conflicting amounts.

If the Parties have not been able to resolve their dispute on or before the second (2nd) Business Day following the date that the demand is made by the Secured Party, then the Secured Party and the Pledging Party each shall obtain one (1) market quotation from (2) two Reference Market Makers within two (2) Business Days (taking the arithmetic average of those two (2) market quotations obtained to recalculate and establish Contract Exposure in connection with setting Performance Assurance hereunder; provided, that, if only one (1) quotation can be obtained, then that quotation shall be used and if no quotations can be obtained, Secured Party's original calculation shall be applicable) for the purpose of recalculating the Contract Exposure of the Transaction in respect of which the Parties disagree as to the Contract Exposure thereof, and the Secured Party shall

inform the Pledging Party of the results of such recalculation (in reasonable detail). Performance Assurance shall thereupon be provided, returned, or reduced, if necessary, on the next Business Day in accordance with the results of such recalculation.

(b) If the Secured Party disputes the amount of Performance Assurance to be reduced by the Secured Party and such dispute relates to the amount of the Contract Exposure claimed by the Secured Party, then the Secured Party shall

(i) notify the Pledging Party of the existence and nature of the dispute not later than the 1:00 p.m. Eastern Prevailing Time on the first Business Day following the date that the demand to reduce Performance Assurance is made by the Pledging Party and

(ii) effect the reduction of Performance Assurance to or for the benefit of the Pledging Party in an amount equal to the Secured Party's own estimate, made in good faith and in a commercially reasonable manner.

In all such cases, the Parties thereafter shall promptly consult with each other in order to reconcile the two conflicting amounts. If the Parties have not been able to resolve their dispute on or before the second (2nd) Business Day following the date that the demand is made by the Pledging Party, then the Secured Party and the Pledging Party each shall obtain one (1) market quotation from two (2) Reference Market-Maker within two (2) Business Days (taking the arithmetic average of those two (2) market quotations to recalculate and establish Contract Exposure in connection with setting Performance Assurance levels; provided, that, if only one (1) quotation can be obtained, then that quotation shall be used and if no quotation can be obtained, Secured Party's original calculation shall be applicable) for the purpose of recalculating the Contract Exposure of the Transaction in respect of which the Parties disagree as to the Contract Exposure thereof, and the Secured Party shall inform the Pledging Party of the results of such recalculation (in reasonable detail). Performance Assurance shall thereupon be provided, returned, or reduced, if necessary, on the next Business Day in accordance with the results of such recalculation.

(c) Definitions. With respect to this Article 8 the following definitions will apply.

"Collateral Requirement" means the Secured Party's Contract Exposure.

"Contract Exposure" means an amount equal to (x) the Termination Payment that would be payable from the Providing Party to the Requesting Party, as if an Early Termination Date had been declared pursuant to Article 5 of this Agreement (notwithstanding whether or not an Event of Default has occurred) and all Transactions had been terminated; (y) plus the net amount of all other payments owed but not yet paid between the Parties, whether or not such amounts are then due, for performance already provided pursuant to any and all Transactions conducted under the Agreement; (z) less the amount of any Performance Assurance then held by the Requesting Party.

“Downgrade Event” means the occurrence of a Party B or Party A Downgrade Event, as applicable.

“Pledging Party” means either Party, when that Party receives a demand for or is required to transfer Performance Assurance.

“Reference Market-maker” means a leading dealer in the relevant market selected by a Party determining its Contract Exposure in good faith from among dealers which satisfy all the criteria that such Party applies generally at the time in deciding whether to offer or to make an extension of credit.

“Secured Party” means either Party, when that Party makes a demand for or is entitled to receive Performance Assurance.”

Article Nine: Governmental Charges

Governmental Charges. Section 9.2 shall be amended by adding the following sentence to the end of the Section:

“To extent required by law, either Party, upon written request of the other, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if either Party is exempt from Governmental Charges and shall use reasonable efforts to obtain and cooperate with obtaining any exemption from or reduction of Governmental Charges.”

Article Ten: MISCELLANEOUS

Representations and Warranties. Section 10.2. The following are added as additional representations to Section 10.2:

“(xiii) the other Party is not acting as a fiduciary for or an adviser to it in respect of any Transaction;

(xiv) it understands and acknowledges that the other Party may, either in connection with entering into a Transaction or from time to time thereafter, engage in open market transactions that are designed to hedge or reduce the risks incurred by it in connection with such Transaction and that the effect of such open market transactions may be to affect or reduce the value of such Transaction.”

Section 10.2 (ix) is amended to read in its entirety as follows:

“(ix) (a) it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code, 11 U.S.C. 101 (26); (b) it is an “eligible contract participant” as such term is defined in the Commodity Exchange Act, as amended 7 U.S.C. §1a (18); and (c) it is an “eligible commercial entity” as such term is defined in the Commodity Exchange Act, as amended 7 U.S.C. § 1a (17).”

Indemnity. Section 10.4 is amended by adding the following as the last sentences of this section: “Buyer shall indemnify Seller for all Claims arising at the Delivery Point and on Buyer’s side of the Delivery Point. Notwithstanding this Article 10.4, no obligation of indemnification shall arise with respect to any claim to the extent the same resulted from the negligence, willful misconduct, or bad faith of the indemnified party.”

Assignment. Section 10.5 shall be amended to delete clause (ii) and the portion of clause (iii) before the words “provided, however”, and replace them with the following: “(ii) transfer or assign this Agreement to an Affiliate of such Party so long as (x) such Affiliate’s creditworthiness is equal to or higher than that of such Party or the Guarantor, if any, as of the Effective Date, if any, for such Party, or (y) the obligations of such Affiliate are guaranteed by such Party or its Guarantor, if any, in accordance with a guaranty agreement in form and substance satisfactory to the other Party, and (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such Party whose creditworthiness is equal to or higher than that of such Party or its Guarantor, if any, as of the Effective Date; ...”

Governing Law. Section 10.6 is changed to read as follows:

“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. NOTWITHSTANDING THE FOREGOING, EACH PARTY IRREVOCABLY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF THE FEDERAL AND STATE COURTS LOCATED IN NEW JERSEY, WAIVES ANY OBJECTION WHICH IT MAY HAVE TO THE LAYING OF VENUE OF ANY PROCEEDINGS BROUGHT IN ANY SUCH COURT; AND WAIVES ANY CLAIM THAT SUCH PROCEEDINGS HAVE BEEN BROUGHT IN AN INCONVENIENT FORUM. IN RESPECT OF THE APPLICABILITY OF THE NEW JERSEY CODE PROVISIONS TO THIS AGREEMENT, THE LAWS OF THE STATE OF NEW JERSEY SHALL APPLY.”

Notice. Section 10.7 is amended to delete the phrases “or facsimile” and “facsimile or” from line 4.

General. Section 10.8 is amended to add at the end of the second to last sentence: “and the rights of either party pursuant to (i) Article 5, (ii) Section 7.1, (iii) Section 10.11 (iv) Waiver of Jury Trial provisions, if applicable, (v) Arbitration provisions, if applicable, (vi) the obligation of either party to make payments hereunder shall also survive the termination of the Agreement or any Transaction.”

Forward Contract. Section 10.10 is amended by deleting the existing provision in its entirety and replaced by the following:

“10.10 Bankruptcy Issues. The Parties intend that (i) all Transactions constitute a "forward contract" within the meaning of the United States Bankruptcy Code (the "Bankruptcy Code"); (ii) all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute "settlement payments" within the meaning of the Bankruptcy Code; (iii) all transfers of Performance Assurance by one Party to the other Party under this Agreement constitute "margin payments" within the meaning of the Bankruptcy Code; and (iv) this Agreement constitutes a "master netting agreement" within the meaning of the Bankruptcy Code.”

Mitigation. Section 10.12. The following provision is added as Section 10.12:

“10.12 Mitigation. Each Party has a duty to mitigate damages under this Agreement and will use commercially reasonable efforts to minimize any damages it may incur resulting from the other Party’s failure to perform under Section 4.1 or 4.2 and/or an Event of Default under Section 5.1.”

FERC Standard of Review: Mobile-Sierra Waiver. Section 10.13. The following provision is added as Section 10.13:

“(a) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver in subsection (b) below is unenforceable or ineffective as to such Party), a non-party or FERC acting *sua sponte*, shall solely be the “public interest” application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish* 554 U.S. 527 (2008) (the “Mobile-Sierra” doctrine).

(b) In addition, and notwithstanding the foregoing subsection (a), to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable law or market conditions that may occur. In the event it were to be determined that applicable law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection (b) shall not apply, provided

that, consistent with the foregoing subsection (a), neither Party shall seek any such changes except solely under the "public interest" application of the "just and reasonable" standard of review and otherwise as set forth in the foregoing section (a)."

Affirmative Action. Section 10. 14. The following is added as a new section 10.14, as is required by N.J. Stat. Ann. §10:5-31 (2014) and N.J.A.C. 17:27

"During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. To the extent applicable, except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that all employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality, or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. To the extent required by law, the contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting for the provisions of this nondiscrimination clause.

To the extent required by law, the contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

To the extent required by law, the contractor or subcontractor, where applicable, will send to each labor union with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of the contractor's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

To the extent applicable, the contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J. Stat. Ann. §10:5-31 *et seq.*, as amended and supplemented from time to time and the Americans with Disabilities Act.

To the extent required by law, the contractor or subcontractor agrees to make good faith efforts to employ minority and women workers consistent with the applicable county employment goals established in accordance with N.J.A.C. 17:27-5.2 or a binding

determination of the applicable county employment goals determined by the Division, pursuant to N.J.A.C. 17:27-5.2.“ To the extent required by law, the contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

To the extent required by law, the contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

To the extent applicable, in conforming with the applicable employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

Letter of Federal Affirmative Action Plan Approval
Certificate of Employee Information Report
Employee Information Report Form AA302

The contractor and its subcontractors shall furnish such reports or other documents to the Division of Contract Compliance and EEO as may be reasonably requested by the Division from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be reasonably requested by the Division of Contract Compliance & EEO for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code at N.J.A.C. 17:27.”

Press Release. Section 10. 15. A new Section 10.15 shall be added as follows:

“Neither Party shall issue a press release about this Agreement and the Transaction hereunder without the express written consent of the other Party which shall not be unreasonably withheld, conditioned or delayed.”

Authorizations. Section 10.16 shall be added as a new Section under Article Ten:

“Authorizations. Upon execution of this Agreement and upon request of either Party, the other Party shall promptly deliver to the requesting Party one or more of the following:

(i) a secretary's certificate of corporate resolutions authorizing the execution, delivery and performance of this Agreement and any Confirmation hereunder, and authorizing the Party to engage in Transactions hereunder or to execute, deliver and perform under any guaranty of such Guarantor, (ii) a secretary's certificate as to the continuing full force and effectiveness of the foregoing and the incumbency of individuals executing the foregoing or otherwise purporting to act on behalf of such Party or Guarantor; and/or (iii) specimen signatures with respect to each Party, its Guarantor, if any, and their respective signatories executing this Agreement and any Guaranty or Confirmation(s) on its behalf."

Section 10.17 shall be added as a new section in Article 10 as follows:

"Section 10.17-New Jersey Business Registration Certificate. N.J. Stat. Ann. §52:32-44 imposes the following requirements on contractors and all subcontractors that knowingly provide goods or perform services for a contractor fulfilling this contract: 1) the contractor shall provide written notice to its subcontractors to submit proof of business registration to the contractor; 2) prior to receipt of final payment from a contracting agency, a contractor must submit to the contracting agency an accurate list of all subcontractors or attest that none was used; 3) during the term of this contract, the contractor and its affiliates shall collect and remit, and shall notify all subcontractors and their affiliates that they must collect and remit to the Director, New Jersey Division of Taxation, the use tax due pursuant to the Sales and Use Tax Act, (N.J. Stat. Ann. §54:32B-1 *et seq.* (2014)) on all sales of tangible personal property delivered into this State."

"A contractor, subcontractor or supplier who fails to provide proof of business registration or provides false business registration information shall be liable to a penalty of \$25 for each day of violation, not to exceed \$50,000 for each business registration not properly provided or maintained under a contract with a contracting agency. Information on the law and its requirements is available by calling the New Jersey Department of the Treasury's Business Services line at (609) 292-9292."

Section 10.18 shall be added as a new section in Article 10 as follows:

"Section 10.18-Sales and Use Tax. The Party A acknowledges that the Party B is exempt from sales or use tax under the Sales and Use Tax Act."

Section 10.19 shall be added as a new section in Article 10 as follows:

"Section 10.19-Subcontractors. The Party B hereby attests that no subcontractors were used with respect to the Agreement."

Section 10.20 shall be added as a new section in Article 10 as follows:

"Section 10.20- Political Campaign Contributions. To the extent applicable to Party B, Party B hereby attests that it is in full compliance with N.J.Stat. Ann. §19:34-45 (2014)."

Section 10.20 shall be added as a new section in Article 10 as follows:

“10.20 UCC Applicable and Utility Disclaimer. Notwithstanding the laws of the State of New York to the contrary, the Parties agree that (i) each Product is a “good” as such term is defined in the Uniform Commercial Code of the State of New York, and (ii) all of the provisions of the Uniform Commercial Code of the State of New York shall apply to this Agreement and all Transactions. Party A further agrees that Party B is not a “utility” as such term is used in 11 U.S.C. Section 366, and each Party agrees to waive and not to assert the applicability of the provisions of 11 U.S.C. Section 366 in any bankruptcy proceeding involving Party B, and further agrees that Party B is not a provider of last resort.”

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the date first above written.

Party A Name: City of Vineland, NJ

Party B Name: BP Energy Company

By: _____

By: Kirk Resowehr

Name: _____

Name: Kirk Resowehr

Title: _____

Title: Attorney-in-Fact

Legal: _____	Credit: _____
-----------------	------------------

Legal: <u>MR</u>	Credit: <u>PR</u>
---------------------	----------------------

DISCLAIMER: This Master Power Purchase and Sale Agreement was prepared by a committee of representatives of Edison Electric Institute ("EEI") and National Energy Marketers Association ("NEM") member companies to facilitate orderly trading in and development of wholesale power markets. Neither EEI nor NEM nor any member company nor any of their agents, representatives or attorneys shall be responsible for its use, or any damages resulting therefrom. By providing this Agreement EEI and NEM do not offer legal advice and all users are urged to consult their own legal counsel to ensure that their commercial objectives will be achieved and their legal interests are adequately protected.

**SCHEDULE I: FORM OF GUARANTY AGREEMENT
ATTACHED**

SCHEDULE 1 GUARANTY AGREEMENT

This Guaranty Agreement (the "Guaranty") is made by **BP CORPORATION NORTH AMERICA INC.** ("Guarantor"), an Indiana Corporation, in favor of **CITY OF VINELAND, NJ** (individually and collectively, "Counterparty").

WHEREAS, Counterparty is or may become party to commodity-related physical and financial transactions and agreements (collectively, whether one or more, the "Agreement" or "Agreements") with any one or more of the following indirect subsidiaries of Guarantor: **BP ENERGY COMPANY** (individually and collectively, the "Company"); and

WHEREAS, the Guarantor is the indirect parent of Company, and will receive substantial and direct benefits from the transactions contemplated by the Agreement and has agreed to enter into this Guaranty to provide assurance for the payment obligations of Company in connection with the Agreement and to induce the Counterparty to enter into the Agreement.

NOW, THEREFORE, in consideration of good and valuable consideration, the adequacy, receipt and sufficiency of which are hereby acknowledged, the Guarantor hereby agrees as follows:

1. **Guaranty.** The Guarantor hereby unconditionally, irrevocably and absolutely guarantees the punctual payment when due (subject to written demand in accordance with Paragraph 6 below) of Company's payment obligations arising under any Agreement, as such Agreement may be amended or modified by agreement between Company and the Counterparty from time to time (collectively, the "Guaranteed Obligations"); provided, however, that the total liability of the Guarantor hereunder, regardless of any amendment or modification to any Agreement, is limited to the lesser of (a) the Guaranteed Obligations under all Agreements or (b) US \$8,000,000, plus all interest, reasonable attorneys' fees, and/or costs of collection, if any, required by such Agreement to be paid by Company in the collection of Guaranteed Obligations. In addition, subject to the limitations above, Guarantor shall reimburse Counterparty for all sums paid to Counterparty by Company with respect to such Guaranteed Obligations which Counterparty is subsequently required to return to Company or a representative of Company's creditors as a result of Company's bankruptcy, insolvency, reorganization, liquidation, receivership, or similar proceeding. The Guarantor's obligations and liability under this Guaranty shall be limited to payment obligations only and the Guarantor shall have no obligation to perform under any Agreement, including, without limitation, to sell, deliver, supply or transport gas, electricity or any other commodity.

If all or a part of any payment made by Guarantor to Counterparty hereunder is later determined to have been improper because such amount was not actually owed by Company to Counterparty under the Agreement or such payment was otherwise unjustified, Counterparty shall repay such amount to Guarantor within ten (10) business days of written demand by Guarantor together with any interest, reasonable attorneys' fees, and/or costs of collection, if any, required by the Agreement to be paid by Counterparty in the collection of such amount.

2. **Guaranty Absolute.** The liability of Guarantor under this Guaranty shall be absolute, irrevocable and unconditional irrespective of:
- (a) any defect or deficiency in any Agreement or any other documents executed in connection with any Agreement;
 - (b) any modification, extension or waiver of any of the terms of any Agreement;
 - (c) any change in the time, manner, terms or place of payment of or in any other term of, all or any of the Guaranteed Obligations, or any other amendment or waiver of or any consent to departure from any Agreement or any other agreement or instrument executed in connection therewith;
 - (d) any sale, exchange, release or non-perfection of any property standing as security for the liabilities hereby guaranteed or any liabilities incurred directly or indirectly hereunder or any setoff against any of said liabilities, or any release or amendment or waiver of or consent to departure from any other guaranty, for all or any of the Guaranteed Obligations;
 - (e) except as to applicable statutes of limitation, failure, omission, delay, waiver or refusal by the Counterparty to exercise, in whole or in part, any right or remedy held by the Counterparty with respect to any Agreement or any transaction under any Agreement; or
 - (f) any change in the existence, structure or ownership of the Guarantor or Company, or any bankruptcy, insolvency, reorganization, liquidation, receivership, or similar proceeding affecting Company or its assets.

The obligations of the Guarantor hereunder are several and not joint with Company or any other person, and are primary obligations for which the Guarantor is the principal obligor. There are no conditions precedent to the enforcement of this Guaranty, except as expressly contained herein. It shall not be necessary for the Counterparty, in order to enforce payment by the Guarantor under this Guaranty, to exhaust its remedies against Company, any collateral pledged by Company, any other guarantor, or any other person liable for the payment or performance of the Guaranteed Obligations. This Guaranty is one of payment and not of collection and shall apply regardless of whether recovery of all such Guaranteed Obligations may be discharged, or uncollectible in any bankruptcy, insolvency, reorganization, liquidation, receivership, or similar proceeding affecting Company or its assets.

Without limiting Guarantor's own defenses and rights hereunder, Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses to which Company is or may be entitled to arising from or out of the Agreements or otherwise, except as limited herein and except for defenses arising out of the bankruptcy, insolvency, reorganization, liquidation, receivership, or similar proceeding affecting Company or its assets.

3. **Waiver.** Guarantor hereby waives:

- (a) notice of acceptance of this Guaranty, notice of the creation or existence of any of the Guaranteed Obligations and notice of any action by the Counterparty in reliance hereon or in connection herewith;
- (b) notice of the entry into any Agreement between Company and the Counterparty and notice of any amendments, supplements or modifications thereto; or any waiver of consent under any Agreement, including waivers of the payment and performance of the obligations thereunder;
- (c) notice of any increase, reduction or rearrangement of Company's obligations under any Agreement or notice of any extension of time for the payment of any sums due and payable to the Counterparty under any Agreement;
- (d) except as expressly set forth herein, presentment, demand for payment, notice of dishonor or nonpayment, protest and notice of protest or any other notice of any other kind with respect to the Guaranteed Obligations; and
- (e) any requirement that suit be brought against, or any other action by the Counterparty be taken against, or any notice of default or other notice be given to, or any demand be made on, Company or any other person, or that any other action be taken or not taken as a condition to the Guarantor's liability for the Guaranteed Obligations under this Guaranty or as a condition to the enforcement of this Guaranty against the Guarantor.

4. **Subrogation.** The Guarantor shall be subrogated to all rights of the Counterparty against Company in respect of any amounts paid by the Guarantor pursuant to the Guaranty, provided that the Guarantor waives any rights it may acquire by way of subrogation under this Guaranty, by any payment made hereunder or otherwise (including, without limitation, any statutory rights of subrogation under Section 509 of the Bankruptcy Code, 11 U.S.C. §509, or otherwise), reimbursement, exoneration, contribution, indemnification, or any right to participate in any claim or remedy of the Counterparty against Company or any collateral which the Counterparty now has or acquires, until all of the Guaranteed Obligations shall have been irrevocably paid to the Counterparty in full. If (a) the Guarantor shall perform and shall make payment to the Counterparty of all or any part of the Guaranteed Obligations and (b) all the Guaranteed Obligations shall have been paid in full, the Counterparty shall, at the Guarantor's request, execute and deliver to the Guarantor appropriate documents necessary to evidence the transfer by subrogation to the Guarantor of any interest in the Guaranteed Obligations resulting from such payment by the Guarantor.

5. **Notices.** All demands, notices and other communications provided for hereunder shall, unless otherwise specifically provided herein, (a) be in writing addressed to the party receiving the notice at the address set forth below or at such other address as may be

designated by written notice, from time to time, to the other party, and (b) be effective upon delivery, when mailed by U.S. mail, registered or certified, return receipt requested, postage prepaid, or personally delivered. Notices shall be sent to the following addresses:

If to Counterparty:

City of Vineland
640 E Wood Street
Vineland, NJ 08362
Attn: Susan Baldosaro
Fax: 856-690-9511

If to Guarantor:

BP Corporation North America Inc.
201 Helios Way
Houston TX 77079
Attention: NAGP Credit Services – Guarantees
Fax: 713-354-0996

6. **Demand and Payment.** Counterparty is not entitled to make demand upon Guarantor until a default occurs in payment of any Guaranteed Obligations by Company to Counterparty. Any demand by the Counterparty for payment hereunder shall be in writing, reference this Guaranty, reference the Guaranteed Obligations, and signed by a duly authorized representative of the Counterparty and delivered to the Guarantor pursuant to Section 5 hereof. There are no other requirements of notice, presentment or demand. The Guarantor shall pay, or cause to be paid, such Guaranteed Obligations within ten (10) business days of receipt of such demand.
7. **No Waiver; Remedies.** Except as to applicable statutes of limitation, no failure on the part of Counterparty to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.
8. **Term; Termination.** This Guaranty shall continue in full force and effect from the Effective Date until thirty (30) days following Guarantor's notice, in writing, to Counterparty of Guarantor's termination of this Guaranty (the "Termination Date"); provided, however, the termination of this Guaranty shall not affect Guarantor's obligations hereunder with respect to any transaction entered into prior to such Termination Date, and this Guaranty shall remain in full force and effect until all Guaranteed Obligations arising with respect to such transactions have been fully satisfied.
9. **Assignment; Successors and Assigns.** The Guarantor and the Counterparty shall not assign its rights hereunder without the prior written consent of the other party, and any assignment without such prior written consent shall be null and void and of no force or

effect. This Guaranty shall be binding upon and inure to the benefit of the each party hereto and their respective successors and permitted assigns.

10. **Amendments, Etc.** Subject to the Guarantor's right to terminate this Guaranty pursuant to Paragraph 8, no amendment of this Guaranty shall be effective unless in writing and signed by Guarantor and Counterparty. No waiver of any provision of this Guaranty or consent to any departure by the Guarantor therefrom shall in any event be effective unless such waiver shall be in writing and signed by Counterparty. Any such waiver shall be effective only in the specific instance and for the specific purpose for which it was given.
11. **Caption.** The captions in this Guaranty have been inserted for convenience only and shall be given no substantive meaning or significance whatsoever in construing the terms and provisions of this Guaranty.
12. **Representation and Warranties.**

The Guarantor represents and warrants as follows:

- (a) The Guarantor is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has full corporate power to execute, deliver and perform this Guaranty.
 - (b) The execution, delivery and performance of this Guaranty have been and remain duly authorized by all necessary corporate action and do not contravene the Guarantor's constitutional documents or any contractual restriction binding on the Guarantor or its assets.
 - (c) This Guaranty constitutes the legal, valid and binding obligation of the Guarantor enforceable against Guarantor in accordance with its terms, subject, as to enforcement, to bankruptcy, insolvency, reorganization and other laws of general applicability relating to or affecting creditor's rights and to general equity principles.
13. **Foreign Currency Obligations.** Subject to the limitation of Guarantor's total liability set forth in Paragraph 1 hereof, the Guarantor shall make payment in the currency in which the Company is required to pay its payment obligations (the "Original Currency"). For the purposes of calculating Guarantor's total liability hereunder and applying the limitation on Guarantor's total liability, the value of the payment obligation in the Original Currency shall be converted to US Dollars by the Guarantor at the rate equal to the applicable spot exchange rate of a large commercial bank located in Canada or the United States on the date that payment is made by the Guarantor.
 14. **GOVERNING LAW. THIS GUARANTY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF**

NEW YORK WITHOUT REGARD OR REFERENCE TO THE CONFLICT OF LAWS PRINCIPLES OF ANY JURISDICTION. However, if any provision of this Guaranty shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Guaranty.

15. **Entire Agreement.** This Guaranty constitutes the entire agreement and understanding between Guarantor and Counterparty with respect to the Guaranteed Obligations and supercedes and replaces in its entirety any and all guaranties previously issued by Guarantor to Counterparty with respect to the Guaranteed Obligations, or any part of them.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be duly executed and delivered by its duly authorized representative effective as of this _____ day of February, 2015 ("Effective Date").

BP CORPORATION NORTH AMERICA INC.

By: _____
Name:
Title:

SCHEDULE M

- A. The Parties agree to add the following definitions in Article One.

“Act” means New Jersey Statutes Title 40, Municipalities and Counties, Chapter 62, Municipal Public Utility Services, Article 5, Light, Heat and Power Production, N.J. Stat. Ann. §40:62-12 (2014), *et seq.*

“Governmental Entity or Public Power System” means a municipality, county, governmental board, public power authority, public utility district, joint action agency, or other similar political subdivision or public entity of the United States, one or more States or territories or any combination thereof.

“Special Fund” means a fund or account of the Governmental Entity or Public Power System set aside and or pledged to satisfy the Public Power System’s obligations hereunder out of which amounts shall be paid to satisfy all of the Public Power System’s obligations under this Master Agreement for the entire Delivery Period.

- B. The following sentence shall be added to the end of the definition of “Force Majeure” in Article One.

If the Claiming Party is a Governmental Entity or Public Power System, Force Majeure does not include any action taken by the Governmental Entity or Public Power System in its governmental capacity.

- C. The Parties agree to add the following representations and warranties to Section 10.2:

Further and with respect to a Party that is a Governmental Entity or Public Power System, such Governmental Entity or Public Power System represents and warrants to the other Party continuing throughout the term of this Master Agreement, with respect to this Master Agreement and each Transaction, as follows: (i) all acts necessary to the valid execution, delivery and performance of this Master Agreement, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the Act and the Public Power System’s ordinances, bylaws or other regulations, (ii) all persons making up the governing body of Governmental Entity or Public Power System are the duly elected or appointed incumbents in their positions and hold such positions in good

standing in accordance with the Act and other applicable law, (iii) entry into and performance of this Master Agreement by Governmental Entity or Public Power System are for a proper public purpose within the meaning of the Act and all other relevant constitutional, organic or other governing documents and applicable law, (iv) the term of this Master Agreement does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and applicable law, (v) the Public Power System's obligations to make payments hereunder are unsubordinated obligations and such payments are (a) operating and maintenance costs (or similar designation) which enjoy first priority of payment at all times under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law or (b) otherwise not subject to any prior claim under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law and are available without limitation or deduction to satisfy all Governmental Entity or Public Power System' obligations hereunder and under each Transaction or (c) are to be made solely from a Special Fund, (vi) entry into and performance of this Master Agreement and each Transaction by the Governmental Entity or Public Power System will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any obligation of Governmental Entity or Public Power System otherwise entitled to such exclusion, and (vii) obligations to make payments hereunder do not constitute any kind of indebtedness of Governmental Entity or Public Power System or create any kind of lien on, or security interest in, any property or revenues of Governmental Entity or Public Power System which, in either case, is proscribed by any provision of the Act or any other relevant constitutional, organic or other governing documents and applicable law, any order or judgment of any court or other agency of government applicable to it or its assets, or any contractual restriction binding on or affecting it or any of its assets.

D. The Parties agree to add the following sections to Article Three:

Section 3.4 Public Power System's Deliveries. On the Effective Date and as a condition to the obligations of the other Party under this Agreement, Governmental Entity or Public Power System shall provide the other Party hereto (i) certified copies of all ordinances, resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery and performance by Governmental Entity or Public Power System of this Master Agreement and (ii) an opinion

of counsel for Governmental Entity or Public Power System, in form and substance reasonably satisfactory to the Other Party, regarding the validity, binding effect and enforceability of this Master Agreement against Governmental Entity or Public Power System in respect of the Act and all other relevant constitutional organic or other governing documents and applicable law.

Section 3.5 No Immunity Claim. Governmental Entity or Public Power System warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (a) suit, (b) jurisdiction of court (including a court located outside the jurisdiction of its organization), (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment.

E. If the appropriate box is checked on the Cover Sheet, as an alternative to selecting one of the options under Section 8.3, the Parties agree to add the following section to Article Three:

Section 3.6 Governmental Entity or Public Power System Security. With respect to each Transaction, Governmental Entity or Public Power System shall either (i) have created and set aside a Special Fund or (ii) upon execution of this Master Agreement and prior to the commencement of each subsequent fiscal year of Governmental Entity or Public Power System during any Delivery Period, have obtained all necessary budgetary approvals and certifications for payment of all of its obligations under this Master Agreement for such fiscal year; any breach of this provision shall be deemed to have arisen during a fiscal period of Governmental Entity or Public Power System for which budgetary approval or certification of its obligations under this Master Agreement is in effect and, notwithstanding anything to the contrary in Article Four, an Early Termination Date shall automatically and without further notice occur hereunder as of such date wherein Governmental Entity or Public Power System shall be treated as the Defaulting Party. Governmental Entity or Public Power System shall have allocated to the Special Fund or its general funds a revenue base that is adequate to cover Public Power System's payment obligations hereunder throughout the entire Delivery Period.

F. If the appropriate box is checked on the Cover Sheet, the Parties agree to add the following section to Article Eight:

Section 8.4 Governmental Security. As security for payment and performance of Public Power System's obligations hereunder, Public Power System hereby pledges, sets over, assigns and grants to the other Party a security interest in all of Public Power System's right, title and interest in and to [specify collateral].

G. The Parties agree to add the following sentence at the end of Section 10.6 - Governing Law:

NOTWITHSTANDING THE FOREGOING, IN RESPECT OF THE APPLICABILITY OF THE ACT AS HEREIN PROVIDED, THE LAWS OF THE STATE OF NEW YORK SHALL APPLY.