

WOOD FIBER SUPPLY CONTRACT

This WOOD FIBER SUPPLY CONTRACT (this “Agreement”) is made this ___ day of _____, 200, by and between [SUPPLIER] (“Supplier”) and NACOGDOCHES POWER, LLC, a Delaware Limited Liability Company (“Purchaser”).

WHEREAS, Supplier owns and operates equipment and facilities for the collection, processing, storage, transportation and delivery of Wood Fuels;

WHEREAS, Purchaser is developing and shall own and operate a biomass-fired electric generating facility in Nacogdoches County, Texas;

WHEREAS, Supplier desires to collect, process, store and deliver to Purchaser such amount of Wood Fuels meeting such specifications as Purchaser requires upon the terms and conditions hereinafter set forth, and Purchaser desires to receive such services;

NOW THEREFORE, in consideration of the mutual covenants and promises set forth herein and other good and valued consideration, the receipt, adequacy and sufficiency of which are acknowledged, the parties agree as to the following:

1 DEFINITIONS

1.1 For the purposes of this Agreement, the following terms shall have the following meanings:

“Aged Waste” means any aged Wood that is undergoing decay or loss of structural integrity.

“Effective Date” means the date on which Purchaser serves notice to Supplier that it is ready to accept deliveries under this Agreement.

“Facility” means that certain 100 MW biomass-fired electric generating facility being developed by Purchaser in Nacogdoches County, Texas.

“Foreign Matter” means any matter alien in character to the natural state of Wood.

“Purchaser” means the Purchaser listed above.

“Supplier” means the Supplier listed above.

“Tare Weight” refers to the deduction from the gross weight of a substance and its container made in allowance for the weight of the container.

“Treated Wood” means any Wood that has been acted upon with some agent, including but not limited to, any toxic or hazardous chemicals for

the purpose of improving or altering its condition.

“Wood” means organic material produced by trees, including bark, wood, and leaves. Wood shall not mean roots, vines or other such material.

“Wood Fuels” means Wood harvested in the forest and forest product processing facility waste consisting of Wood that meets the specifications set forth herein and that is suitable for combustion at the Facility.

2 SERVICES TO BE RENDERED

- 2.1 Upon the terms and conditions hereinafter set forth, Supplier undertakes and agrees to collect, process, store and deliver Wood Fuels to Purchaser and Purchaser undertakes and agrees to purchase and accept from Supplier, those certain quantities of Wood Fuels as are more particularly set forth in Schedule A.
- 2.2 Purchaser shall accept delivery of such Wood Fuels and shall pay Supplier for such Wood Fuels at the prices described in Schedule A and on the terms contained in Section 8 herein.

3 TERM

- 3.1 Unless sooner terminated as hereinafter provided, this Agreement shall commence on the Effective Date and shall terminate 10 years thereafter.

4 SPECIFICATIONS

- 4.1 Supplier represents, warrants and agrees that the Wood Fuels delivered to Purchaser pursuant to this Agreement shall meet the following specifications.
- 4.2 Moisture - The moisture content of such Wood Fuels shall not be greater than the percentage specified in Schedule A by weight on a wet basis.
- 4.3 Species - All species shall be acceptable.
- 4.4 Foreign Matter - All such Wood Fuels shall be clean and free from metal or other deterrent materials including, but not limited to, rock and tramp metal: (a) which shall interfere with operation of the conveying, distribution, boilers, and/or other equipment connected with or related to the Facility; or (b) which shall materially affect the weight of such Wood Fuels.
- 4.5 No Watered Wood - No such Wood Fuels shall be intentionally watered.
- 4.6 No Aged Wood - No such Wood Fuels shall consist of aging or deteriorated wood.

- 4.7 No Treated Wood - No such Wood Fuels shall consist of Treated Wood.
- 4.8 Size - Wood Fuels delivered in chip form shall consist, on average, of material no larger than three and one-half inches (3.5”) in any dimension. No such Wood Fuels shall consist of material larger than six inches (6”) in any dimension.
- 5 PRICE
- 5.1 Supplier shall collect, store, process and deliver Wood Fuels to Purchaser at a price listed in Schedule A.
- 5.2 The Wood Fiber Price will be adjusted weekly upwards or downwards by \$/ton for each \$/gal increase or decrease in the price of on-road diesel fuel from the current price of \$/gal. For the purposes of determining this adjuster, all data shall come from the Weekly On-Highway Diesel Prices listed by the Energy Information Administration (“EIA”) for the Gulf Coast Region as found at:
<http://tonto.eia.doe.gov/oog/info/wohdp/diesel.asp>.
- 6 QUANTITY
- 6.1 Supplier shall collect, store, process and deliver Wood Fuels to Purchaser in the quantity listed in Schedule A.
- 7 MEASUREMENT
- 7.1 In order to facilitate the measurement and handling of the Wood Fuels, Supplier shall identify each load of Wood Fuels by the contract number and the information listed on Schedule A. If applicable, Supplier shall provide such information to Purchaser through the designated electronic card system provided by Purchaser.
- 7.2 Purchaser shall determine the net weight in tons of each load of Wood Fuels by weighing the loaded vehicle at Purchaser’s facility and subtracting the Tare Weight therefrom.
- 7.3 In order to determine whether the Wood Fuels comply with the specifications listed herein, Purchaser shall sample each load by customary procedures based upon random sampling. Purchaser may reject all or any portion of any delivery of Wood Fuels hereunder if Purchaser reasonably determines that such delivery contains Wood Fuels that fail to meet the specifications as set forth herein and gives notice to Supplier of such failure within three (3) calendar days of such delivery. Purchaser shall be deemed to have accepted any delivery of Wood Fuels that it does not reject within such three (3) day period.

- 7.4 If Supplier delivers a load of Wood Fuels to Purchaser that is rejected by Purchaser, Supplier may remove the load from the Facility at Supplier's cost or pay Purchaser the equivalent cost to remove the rejected load.

8 PAYMENT FOR SERVICES

- 8.1 Purchaser shall pay all invoices and requests for payment received from Supplier within seven (7) days of receipt. If Purchaser does not pay Supplier within seven (7) days, Supplier shall have the right to terminate this Agreement with thirty (30) days written notice to Purchaser.

9 NON-PERFORMANCE BY SUPPLIER

- 9.1 If Supplier does not deliver Wood Fuels to Purchaser in the required quantity under the terms and conditions of this Agreement, or if Supplier delivers Wood Fuels to Operator that fail to satisfy the specifications set forth herein, Purchaser shall have the right upon written notice to Supplier, to obtain the services rendered by Supplier from other persons or entities. If any such failure by Supplier is not rectified and continues for more than sixty (60) days, then Purchaser, at its sole discretion, may terminate this Agreement at any time after the end of such sixty (60) day period with written notice unless Supplier cures such failure and does not have any additional failure under this Section for an additional thirty (30) days.

- 9.2 Purchaser, at its option, may cover any shortage in Wood Fuels by Supplier by making in good faith, and without unreasonable delay, any reasonable purchase of or contract to purchase goods in substitution for those due from Supplier and furthermore, in the event of non-conforming goods, Purchaser has the right to address any deficiency in delivery by rejecting the entire delivery, accepting the entire delivery, or accepting any commercial units or amounts and rejecting the balance.

10 EXCUSED DELIVERY AND PURCHASE

- 10.1 In the event that either Purchaser or Supplier shall be prevented from performing its respective obligations hereunder by reason of Acts of God, fire, floods, riots, civil commotion, war, transportation strikes, embargoes or other governmental act, order or regulation outside such party's control that prevents such party from performing the services herein, such party shall not be held in breach hereof, but shall be excused for such nonperformance to the extent and during such time that such conditions or causes exist; provided, however, that if such nonperformance shall continue for a period in excess of ninety (90) consecutive days, the other party shall have the right to terminate this Agreement upon ten (10) days written notice to the non-performing party.

- 10.2 In the event that the Purchaser suffers a major breakdown of the Facility

and Purchaser elects to stop receiving fuel, Purchaser and Supplier shall be temporarily relieved of their obligations under this Agreement until the repairs to the Facility have been completed. Purchaser shall notify the Supplier of the breakdown within forty-eight (48) hours and give an estimated time for repairs. The Agreement shall be back in full force and effect the day after the repairs are completed. Purchaser shall utilize best efforts to resolve any such problems.

11 SUPPLIER'S REPRESENTATIONS AND WARRANTIES

- 11.1 Supplier shall obtain and maintain in effect, during the term of this Agreement, all necessary licenses and permits incident to its operations in the performance of this Agreement.
- 11.2 Supplier warrants that all Wood Fuels sold and delivered to Purchaser hereunder shall be produced and transported in compliance with all applicable state and federal laws, rules and regulations, including, but not limited to, the Occupational Safety and Health Act, the Fair Labor Standards Act of 1938, including sections 6,7,11,12 and 14, the requirements of the United States Department of Labor, the applicable provisions of Executive Order 11246, the Federal Insurance Contributions Act, the Internal Revenue Code of 1954, the Endangered Species Act, the Clean Water Act, the Rehabilitation Act of 1973, the Vietnam Era Veterans Readjustment Act of 1974 and the Americans with Disabilities Act of 1992; State Maximum Legal Load Limits; and all applicable amendments to and orders/regulations issued under such laws and revisions thereof. Upon request, Supplier shall furnish Purchaser with evidence, satisfactory to Purchaser, of compliance with all such state or federal laws, rules and regulations.
- 11.3 **Supplier hereby certifies that all Wood Fuels produced and delivered under this Agreement shall be done so in compliance with State Forestry Best Management Practices, as published by the Texas Forestry Association.**
- 11.4 Supplier warrants that no Wood Fuels produced and delivered under this Agreement shall be harvested from a legally-designated conservation area.
- 11.5 Supplier warrants that title to all Wood Fuels produced and delivered under this Agreement shall pass to Purchaser free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to in this Section as "liens." When requested by Purchaser, Supplier shall collect and provide Purchaser landowner source information.
- 11.6 Supplier agrees to pay, or cause to be paid, all severance taxes or other levies upon or incident to the production and delivery of all Wood Fuels hereunder that shall or may constitute a lien thereon or on any products

manufactured therefrom.

- 11.7 At its own expense, Supplier shall defend all claims against Purchaser's title or other proprietary interests warranted in this Agreement.

12 ASSIGNMENT

- 12.1 Purchaser may assign or collaterally assign its interest and obligations hereunder to Lender or any financial institution or institutions participating in the financing of the Facility. In the event of the assignment of this Agreement by Purchaser to Lender or any financial institution or institutions participating in the financing of the Facility, Purchaser shall remain fully responsible according to this Agreement for all of its obligations and liabilities hereunder. No such assignment shall alter or impair the rights of any surety.
- 12.2 This Agreement shall not be assigned by Supplier without the prior written consent of Purchaser.
- 12.3 This Agreement shall bind and inure to the benefit of the parties to this Agreement and any successor or assignee acquiring an interest hereunder consistent with Sections 12.1 and 12.2 hereof.

13 ENTIRE AND COMPLETE AGREEMENT

- 13.1 This Agreement, including any referenced attachments, and any other documents incorporated by reference therein, shall constitute the complete agreement between Purchaser and Supplier relating to the supply of the Wood Fuels, superseding all prior agreements or undertakings. Any exceptions or additional terms in Supplier's acknowledgment of this Agreement are hereby rejected unless specifically agreed to in writing by Purchaser and Supplier. No course of prior dealing or performance of Purchaser and Supplier or usage of trade shall be relevant to supplement, explain, interpret or modify any term, condition or instruction used in this Agreement.

14 INDEPENDENT CONTRACTOR

- 14.1 Nothing in this Agreement shall be deemed to constitute either party a partner, agent or legal representative of the other party or to create any fiduciary relationship between the parties. Supplier is, and shall remain, an independent contractor in the supply of the Wood Fuels, maintaining complete control of its personnel, workers, subcontractors and operations required for supply of the Wood Fuels.

15 THIRD PARTY BENEFICIARIES

15.1 This Agreement shall be for the benefit of the Purchaser and Supplier and for such other parties only as expressly provided in this Agreement and then subject to the terms of this Agreement. Except as specifically otherwise set forth herein, nothing contained in this Agreement, whether express or implied, shall be construed to give any person or entity other than the parties hereto, any legal or equitable right, remedy, or claim under or in respect to this Agreement or any provisions contained herein.

16 HEADINGS

16.1 Captions and heading in this Agreement are for reference only and do not constitute a part of the substance of this Agreement.

17 AMENDMENTS

17.1 This Agreement may be amended or modified only by a written agreement between the parties hereto.

18 SEVERABILITY

18.1 The invalidity or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other provision hereof. Any invalid or unenforceable provision shall be deemed severed from this Agreement and the balance of this Agreement shall be reformed in such a manner as to effect to the maximum extent possible the original intent of Purchaser and Supplier.

19 WAIVER

19.1 Unless otherwise specifically provided by the terms of this Agreement, no delay or failure to exercise a right resulting from any breach of this Agreement shall impair such right or shall be construed to be a waiver thereof, but such right may be exercised from time to time and as often as may be deemed expedient. Any waiver shall be in writing and signed by the party granting such waiver. If any representation, warranty or covenant contained in this Agreement is breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and not be deemed to waive any other breach under this Agreement.

20 CONFIDENTIALITY

20.1 Each of the parties agrees that it shall keep strictly confidential the terms of this Agreement and any materials or information regarding the project; provided that the terms hereof may be disclosed to Lender and the attorneys, accountants and other consultants of the Purchaser involved in assisting the parties with the project, as long as such parties agree to be

bound by the foregoing confidentiality requirement.

21 INDEMNITY

- 21.1 Supplier agrees to indemnify, reimburse and hold Purchaser harmless from and against any and all claims, losses, demands, liens, causes of action or suits, judgments, fines, assessments, liabilities, damages and injuries (including death) of whatever kind or nature, including to all persons or property, arising out of, on account of, or as a result of, directly or indirectly, Supplier's or its subcontractors' operations, performance or nonperformance under this Agreement, whether or not caused or alleged to have been caused, in whole or in part, by the negligence of Purchaser. Supplier hereby waives as against Purchaser any immunity from suit afforded by applicable workers compensation laws.
- 21.2 At Purchaser's request, Supplier shall afford to Purchaser, at Supplier's expense, a complete defense of any such claim, demand, cause of action or suit, and (whether or not Supplier undertakes said defense) Supplier shall bear all attorneys' fees, costs of preparation and maintenance of the defense, all court costs and expert, discovery and investigative fees, and any associated appeal costs, so that Purchaser shall incur no cost whatsoever as a result of such claim, demand, cause of action or suit, or ensuring compliance with this indemnity provision. Purchaser expressly reserves the right to be represented by counsel of its own selection at Supplier's expense. The exercise of Purchaser's right to select its own attorneys shall in no way detract from or release Supplier from Supplier's obligation to indemnify and hold Purchaser harmless hereunder.

22 INSURANCE

- 22.1 The Supplier shall maintain in full force and effect at all times during the term of this Agreement insurance policies with insurance companies authorized to do business in the State of Texas with a Best Insurance Reports rating of "A-" or better with limits and coverage provisions in no event less than the limits and coverage provisions set forth below:
- 22.1.1 Workers' Compensation Insurance: Workers' compensation insurance as required by state laws.
- 22.1.2 Employer's Liability Insurance: Employer's liability insurance for all employees of the Supplier in the amount of \$1,000,000 per accident or \$500,000 for disease.
- 22.1.3 General Liability Insurance: Liability insurance against claims for personal injury (including bodily injury and death) and property damage with a \$1,000,000 minimum limit per occurrence for combined bodily injury and property damage provided that policy

aggregates, if any, shall apply separately to claims occurring with respect to this Agreement.

22.1.4 Automobile Liability Insurance: Automobile liability insurance against claims of personal injury (including bodily injury and death) and property damage covering all owned (if any), leased, non-owned and hired vehicles used in the performance of the Supplier's obligations under this Agreement with a \$1,000,000 minimum limit per occurrence for combined bodily injury and property damage and containing appropriate no-fault insurance provisions wherever applicable.

22.2 Workers' Compensation Insurance and Employees Liability Insurance shall fully cover all employees, supervisors, owners, partners and/or executive officers participating in Supplier's operations hereunder.

22.3 Prior to commencing operations hereunder, Supplier shall furnish to Purchaser a Certificate of Insurance evidencing such coverage.

22.4 Supplier shall notify Purchaser in writing at least ten (10) days before cancelling or materially changing such insurance policies.

22.5 Supplier shall notify Purchaser in writing at least ten (10) days before obtaining coverage from any additional insurer or new insurer, and Purchaser shall have the right to approve (which approval shall not be unreasonably withheld) any such insurer.

22.6 Should Supplier fail to furnish current evidence upon demand of any insurance required hereunder, or in the event of cancellation or adverse material change in any such insurance, Purchaser may, at its option, suspend this Agreement until insurance is obtained or terminate this Agreement immediately without further action.

23 TIME OF ESSENCE

23.1 Time is of the essence in the performance of the Supplier's obligations hereunder.

24 COUNTERPARTS

24.1 This Agreement may be executed in multiple counterparts, each of which shall constitute an original of this Agreement, but all of which shall together constitute one and the same instrument.

25 NOTICE

25.1 All notices, consents and other communications required or permitted by

this Agreement shall be in writing and shall be delivered by hand or overnight courier service, mailed or sent by telecopy as follows:

25.2 If to the Purchaser:

Nacogdoches Power, LLC.
New Hampshire Avenue, Suite 207
Portsmouth, NH 03801
Attn: Frank W. Getman Jr.
(603) 294-4850
(603) 457-6013 (Fax)

25.3 If to Supplier:

[SUPPLIER]
Attn:

25.4 All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt if delivered by hand or overnight courier service or sent by telecopy, or on the date seven (7) days after dispatch if sent by certified or registered mail if mailed, in each case delivered, sent or mailed (properly addressed) to such party.

26 ARBITRATION

26.1 Arbitration Procedure. Any controversy, dispute or claim between Purchaser and Supplier arising out of or relating to this Agreement, or the breach thereof, shall be settled finally and conclusively by arbitration according to the Commercial Arbitration Rules of the American Arbitration Association then in effect, unless the parties mutually otherwise agree. If the parties fail to agree on a panel of three (3) arbitrators within thirty (30) days following the date of a written notice by one party to the other calling for arbitration, either party by written notice to the other may designate one arbitrator, the other party shall then designate one arbitrator, and the two arbitrators so designated shall promptly designate a third arbitrator from a list of persons from the National Roster following said Commercial Arbitration Rules. The costs and expenses of arbitration shall be paid as awarded by the Arbitrator; otherwise costs and expenses shall be shared equally. Purchaser and Supplier shall each abide by and perform any resulting arbitration award. The arbitration award, when issued, shall be final and shall be enforceable in any court of competent jurisdiction. The location for the arbitration

shall be Houston, Texas.

- 26.2 While any controversy, dispute or claim arising out of or relating to this Agreement is pending, Purchaser and Supplier shall continue to perform their obligations hereunder to the extent possible notwithstanding such controversy, dispute or claim.
- 27 CHOICE OF LAW; CHOICE OF FORUM
- 27.1 Purchaser and Supplier agree that the laws of the State of Texas shall govern the validity, interpretation, construction and performance of this Agreement without regard to their internal principles of conflict of laws.
- 27.2 Purchaser and Supplier agree, subject to the provisions regarding Arbitration in Section 29, to submit to the jurisdiction of the federal courts located in Texas in any litigation between the parties, or, if the federal courts lack jurisdiction, the state courts of Texas.

Wood Supply Reservation Agreement

IN WITNESS WHEREOF, Purchaser and Supplier have caused this Agreement to be executed in their respective names by persons duly authorized to do so on their behalf.

NACOGDOCHES POWER, LLC (“Purchaser”)

By: _____

[SUPPLIER] (“Supplier”)

By: _____

