

**MASTER RETAIL GAS SALES AGREEMENT**

**WPS Energy Services, Inc.**, a Wisconsin corporation, (hereinafter referred to as the "Seller") and Dana Point Condominiums, (hereinafter referred to as the "Buyer") each a "Party" and collectively "Parties", hereto agree as of October 24, 2006 to the terms of this Master Retail Gas Sales Agreement (the "Agreement") as follows:

**1. QUANTITY**

Seller agrees to sell and schedule for delivery to Buyer, and Buyer agrees to purchase and receive from Seller, a quantity of gas for the facility(ies) and pursuant to other agreed-upon commercial terms as identified in any Exhibit A effective between the Parties.

**2. PRICE**

2.1 Unless otherwise provided in an effective Exhibit A, the price for the Baseload or Contract Quantity, as applicable, shall be the sum of two Price Components: (i) Commodity, and (ii) Transportation. The Commodity component shall be equal to the 'NYMEX Last Day Settle', as defined in Section 17, for the applicable month, unless the Commodity component is fixed pursuant to 2.2 below. The Transportation component shall be related to transportation to the applicable Transporter citygate and/or Basis, as defined in Section 17, for the applicable Service Level noted on an effective Exhibit A and for the applicable month unless the Transportation component is fixed pursuant to 2.2 below.

2.2 Buyer and Seller may from time to time agree in writing to fix either the Commodity or Transportation Price Component, or both. The process of establishing a fixed price for either or both Price Components is as follows: Buyer shall submit a signed Fixed Price Request to Seller, substantially in the form of Exhibit C, including applicable fixed Price Component, term, quantity, and price(s), and if Seller agrees with such request, then Seller will return a Revised Exhibit A or a Transaction Confirmation. Gas priced in this manner, for either or both Price Components shall be considered to be the first Gas through the meter.

2.2.1 Buyer represents to Seller each time a pricing Component is fixed that (a) it has made its own independent decisions to enter the transaction and its decisions are based on its own judgment and upon advice from such advisors as it has deemed necessary; (b) Buyer is capable of assessing the merits and understands and accepts the terms, conditions and risks of the transaction; (c) Seller is not acting as a fiduciary for, or an advisor to, Buyer in respect to the transaction, and (d) it understands that any corresponding futures hedge referenced by Seller is owned by Seller for Seller's price protection and that no representation has been made by Seller that a position in futures is held by Seller for Buyer's benefit.

2.3 Unless otherwise noted on the Exhibit A, Baseload or Contract quantities, as applicable, stated on the Exhibit A, and/or quantities associated with fixed price components pursuant to Section 2.2 above, which remain unused by Buyer at the end of the month will be purchased back from Buyer by the Seller at prevailing market rates. In the event that Buyer's expected Use will exceed the Baseload or Contract Quantity, Seller will use commercially reasonable efforts to provide Incremental Supply, as defined in Section 17, at prevailing market prices as adjusted for Fuel, if applicable, and margin. Credits for Baseload or Contract quantities purchased-back from Buyer and/or charges for Incremental Supply shall appear as separate line items on Seller's invoice to Buyer, including applicable price and quantity.

**3. SERVICE LEVEL**

Sales and purchases will be on a Firm or Interruptible basis, as set forth in Exhibit A.

**4. SCHEDULING**

Buyer and Seller shall use commercially reasonable efforts to provide each other with sufficient notice to allow timely nominations and nomination changes to all Transporters in accordance with the nomination requirements of that Transporter.

**5. BALANCING**

Seller agrees to provide Balancing Services as provided on Exhibit A. If no Balancing Service is noted on Exhibit A, Buyer is responsible for all balancing activities, and Buyer shall pay all Imbalance Charges and Cashouts.

**6. DELIVERY POINT**

Seller shall schedule for delivery the Gas purchased and sold hereunder to Buyer at the location(s) set forth as Delivery Point(s) in the effective Exhibit A.

**7. TERM**

This Agreement shall commence as of the first date written above and remain in effect until terminated by either Party on sixty (60) Days written notice, subject to termination rights pursuant to Sections 8.5 and 14.3, provided however if one or more Exhibit As are in effect, termination of the Agreement shall not be effective until the expiration of the latest Delivery Period as provided in any Exhibit A.

**8. BILLING AND PAYMENT**

8.1 By the tenth (10th) day of each month, Seller shall submit to Buyer an invoice setting forth the quantity of Gas purchased by Buyer during the preceding month and the total amount due. Billing will be based on actual Use plus applicable Fuel, unless otherwise provided on Exhibit A. If the actual Use is not available from the applicable Transporter by the invoice



\*101730\*

date, the invoice will be based on an estimate using nominated quantities, or as otherwise provided in Exhibit A. Such estimates shall be adjusted to reflect actual quantities on the first month's statement after actual quantities become available.

8.2 Except as provided in Section 8.3, Buyer shall remit payment to Seller for the total amount due by the 20th day of the month. Payment shall be made by check, wire transfer, or EFT for amounts up to \$50,000. Payments larger than \$50,000 shall be made by wire transfer, EFT, ACH, or other method acceptable to Seller.

8.3 If Buyer disputes the amount payable under any invoice rendered hereunder, Buyer shall pay when due the amount not in dispute under such invoice as well as provide documentation to support the amount paid or disputed. Buyer recognizes that Buyer's assertion of an inaccurate Usage determination by Transporter, in the absence of a redundant metering device to support that claim, is not adequate support to withhold payment. Any payment by Buyer shall not be deemed to be a waiver of Buyer's right to recoup any overpayment, nor shall acceptance of any payment be deemed to be a waiver of Seller's right to any underpayment.

8.4 Any claim must be made within two (2) years of the date of the invoice or last revision thereof.

8.5 In the event the Buyer fails to pay the undisputed amount due to Seller when due, the unpaid portion of the undisputed amount shall accrue at a rate equal to one and one half percent (1 1/2%) per month, provided that in no event shall such rate exceed the maximum rate allowed by law, compounded daily from the date such payment is due until the same is paid. If Buyer fails to pay the undisputed portion of any invoice rendered hereunder beyond five (5) days after the due date of such invoice, then Buyer shall be in default and Seller, in addition to all other legal remedies available to it, shall have the right to (a) discontinue any service(s), (b) suspend further sales of Gas until such default has been cured, and/or (c) terminate this Agreement with at least two Business Days notice.

## **9. FINANCIAL RESPONSIBILITY**

9.1 When reasonable grounds for insecurity of payment arise, or if Buyer desires to establish a Fixed Price pursuant to Section 2.2, Seller may demand adequate assurance of performance. Adequate assurance of performance must be delivered to Seller no later than three (3) business days after the date of request, and must be in form, from an issuer, and in an amount, acceptable to Seller. Adequate assurance of performance may include, without limitation, a standby irrevocable letter of credit or a guaranty by an entity that is above investment grade. If Buyer fails to provide adequate assurance of performance as provided in this Section, then Buyer shall be in default and Seller may terminate this Agreement with at least two Business Days' written notice.

9.2 If Seller terminates this Agreement pursuant to this Article 9 any time during a term covered by an effective Exhibit A between the Parties, Seller has the right to liquidate any or all of the Buyer's forward gas purchases and to set off all amounts due to Seller that Buyer is currently in arrears, if any, as provided in Section 14.3 below. Seller's damages shall include any losses suffered as a result of liquidating Seller's position(s) that support Buyer's fixed price components.

9.3 In the event either Party shall (i) make an assignment or any general arrangement for the benefit of creditors; (ii) default in the payment obligation to the other Party; (iii) file a petition or otherwise commence, authorize, or acquiesce in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors or have such petition filed or proceeding commenced against it; (iv) otherwise become bankrupt or insolvent (however evidenced); or (v) be unable to pay its debts as they fall due; then the other Party shall have the right to either withhold and/or suspend deliveries or payment, or terminate the Agreement without prior notice, in addition to any and all other remedies available hereunder.

## **10. TITLE, TAXES**

10.1 Seller warrants title to all Gas delivered hereunder, that it has good and lawful authority to sell the same that said Gas is free from liens and adverse claims of every kind. Title to all Gas delivered hereunder shall pass from Seller to Buyer at the Delivery Point(s).

10.2 Seller shall pay or cause to be paid all production, severance or similar taxes lawfully levied on Seller, on the gas, or on any transaction giving rise to taxes, and applicable to the Gas delivered hereunder which accrue prior to its delivery to Buyer at the Delivery Point(s), and Seller shall hold Buyer harmless therefrom. Buyer shall pay all taxes lawfully levied on Buyer applicable to such Gas at and after delivery to the Delivery Point(s) and shall hold Seller harmless therefrom. In the event that sales of Gas hereunder are subject to any state or local gas revenue, utility, sales or use taxes that Seller is obligated to remit to any competent taxing authority, Buyer shall reimburse Seller for any such taxes remitted by Seller in connection with sales of Gas hereunder. Buyer shall provide Seller with evidence of any applicable exemption or exclusion from sales or other similar taxes, in the appropriate states.

## **11. ASSIGNMENT**

This Agreement shall be binding upon and inure to the benefit of the respective heirs, representatives, successors, and assigns of the Parties hereto, provided however, this Agreement shall not be assigned or transferred by either Party without the prior written consent of the other Party, which consent shall not unreasonably be withheld. Notwithstanding the foregoing, Buyer and Seller each may assign this Agreement to its parent, affiliate, or subsidiary as long as notice is provided and the assigning party retains liability for the obligations thereunder.

## **12. FORCE MAJEURE**

In the event either Party is rendered unable, wholly or in part, by Force Majeure to carry out its obligations under this Agreement, other than to make payments due hereunder, the obligations of each Party, so far as they are affected by such Force Majeure, shall be suspended during the period of Force Majeure. The term "Force Majeure" as employed herein shall

mean industrial disturbances, acts of God, acts of the public enemy, wars, terrorist acts, blockades, riots, landslides, hurricanes, lightning, earthquakes, fires, floods, washouts, unavoidable freezing of pipes or wells and explosions, governmental actions such as necessity for compliance with any court order, law, statute, ordinance, or regulation promulgated by a governmental authority having jurisdiction or any other unplanned or non-scheduled occurrence, condition, situation, or threat thereof not covered above, which renders either Buyer or Seller unable to perform its obligations hereunder, provided such event is beyond the reasonable control of the Party claiming such inability. The claiming Party shall give the other Party notice and full particulars in writing including a specific description of the cause relied upon and estimated duration of such event as soon as reasonably possible after the occurrence. In addition if the Buyer is the claiming Party, Buyer will be responsible for any Imbalance Charges that arise between the occurrence and Seller's reasonable ability to adjust to notification by Buyer of the occurrence.

### **13. THIRD PARTY CLAIMS**

Seller shall have responsibility for and assume any liability with respect to claims arising prior to the delivery of Gas to Buyer at the specified Delivery Point(s). Buyer shall have responsibility for and any liability with respect to claims arising from or related to the delivery of Gas at and after the Delivery Point(s).

### **14. REMEDIES**

14.1 Buyer's sole and exclusive remedy in the event Seller is unable to provide the Baseload or Contract Quantity shown on the effective Exhibit A is an amount equal to the positive difference, if any, between the purchase price paid by Buyer for replacement gas (or replacement fuel adjusted to an MMBtu cost equivalent) less the applicable Price as specified on the pertinent Exhibit A, multiplied by that portion of the Baseload or Contract Quantity not delivered by Seller, plus any Imbalance Charges proximately caused by Seller's failure to deliver. Any Gas priced using Fixed Price Components shall be considered the first Gas through the meter, provided that if (a) there are multiple fixed price tiers and (b) there is a partial performance for any reason, then the volumes shall be allocated on either a 'first-in first-out', 'last-in first-out', or pro-rata, basis as determined by the performing Party in its sole discretion.

14.2 Seller's sole and exclusive remedy in the event Buyer is unable to take the Baseload or Contract Quantity shown on the effective Exhibit A is an amount equal to the positive difference, if any, between the Price specified herein and the net price received by Seller from the resale of such Gas, adjusted for reasonable incremental transportation differential to the new delivery point, multiplied by the portion of the Baseload or Contract Quantity not bought by Buyer, plus any Imbalance Charges proximately caused by Buyer's failure to take. Any Gas priced using Fixed Price Components shall be considered the first Gas through the meter, provided that if (a) there are multiple fixed price tiers and (b) there is a partial performance for any reason, then the volumes shall be allocated on either a 'first-in first-out', 'last-in first-out', or pro-rata basis as determined by the performing Party in its sole discretion.

14.3 If this Agreement is terminated as a result of default, Seller has the right to liquidate any or all of the Buyer's forward gas purchases and to set off all amounts due to Seller. If upon liquidation Seller receives a higher price than it otherwise would have received under this contract, then that difference will be multiplied by the liquidated quantity and reduce the amount owed. If upon liquidation Seller receives a lower price than it otherwise would have received under this contract, then that difference will be multiplied by the liquidated quantity and added to any amounts due.

### **15. LIMITATIONS**

15.1 **ALL GAS SOLD HEREUNDER IS PROVIDED "AS IS", AND SELLER EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE.**

15.2 **IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT, WHETHER IN AGREEMENT, IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE, FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES.**

### **16. MISCELLANEOUS**

16.1 Unless otherwise noted on an effective Exhibit A, Buyer acknowledges and agrees that Seller will be the sole Marketer supplying Gas for use in Buyer's facility(ies) identified on an effective Exhibit A.

16.2 The sale of Gas herein is subject to all applicable federal and state laws, orders, rules and regulations and to the Federal Energy Regulatory Commission rules and regulations or successor agency having jurisdiction. Either Party shall have the right to question or contest any such law, ordinance, order, rule, or regulation.

16.3 If any provision in this Agreement is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Agreement.

16.4 This Agreement and any effective Exhibits and/or Transaction Confirmations together set forth all understandings between the Parties respecting the terms and conditions of any transaction herein described. All prior agreements, understandings and representations, whether consistent or inconsistent, oral or written, between the Parties are merged into and superseded by this written Agreement. If the Parties agree to terms other than Commercial Terms, as defined in Section 17, in an Exhibit A that modify, change or otherwise conflict with any provisions of this Agreement, the terms of the effective Exhibit A which applies to the applicable facility(ies) shall govern with respect to the applicable facility(ies), provided however that no terms shall be deemed to conflict with, modify or change the terms of Sections 12 and 15 herein, unless explicitly stated.

If a Revised Exhibit A modifies any provisions other than those relating to the Commercial Terms of a transaction, those provisions must be expressly agreed to by both Parties as evidenced by a fully executed Revised Exhibit A containing those provisions.

16.5 The addresses for notices and billing are provided in Exhibit B as it may be amended from time to time. All notices required pursuant to this Agreement may be sent by facsimile or mutually acceptable electronic means, a nationally recognized overnight courier service, first class mail, certified mail return receipt requested, or hand delivered. Notice shall be deemed received when received on a Business Day by the addressee. In the absence of proof of the actual receipt date, the following presumptions will apply: notices sent by facsimile shall be deemed to have been received upon the sending Party's receipt of its facsimile machine's confirmation of successful transmission. If the Day on which such facsimile is received is not a Business Day or is after five p.m. (at the receiving Party's place of business) on a Business Day, then such facsimile shall be deemed to have been received on the next following Business Day. Notice by overnight mail or courier shall be deemed to have been received on the next Business Day after it was sent or such earlier time as is confirmed by the receiving Party. First class mail is deemed received (5) Business Days after mailing.

16.6 No failure by either Party to enforce any right, obligation or remedy hereunder shall operate as a waiver of any of the foregoing, or the waiver of any future right, obligation or remedy, whether of like or different character or nature.

16.7 Each Party consents to the recording of telephonic conversations with respect to transactions under this Agreement without further notice, agrees to provide to its employees such notice of recording that may be required by applicable law, regulation or tariff, and agrees that it will not contest the admissibility of any recording of such telephonic conversations and such recording shall constitute a "writing" for purposes of Section 2.2.

16.8 The headings throughout this Agreement are inserted for reference purposes only, and are not to be construed or taken into account in interpreting the terms and provisions of any Article, not to be deemed in any way to qualify, modify or explain the effects of any such term or provision.

**16.9 THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ILLINOIS.**

16.10 Each Party to this Agreement represents and warrants that it has full and complete authority to enter into and perform this Agreement. Each person who executes this Agreement on behalf of either Party represents and warrants that it has full and complete authority to do so and that such Party will be bound thereby.

16.11 There are no Third Party Beneficiaries to this Agreement and none are intended.

## **17 DEFINITIONS**

17.1 "Baseload Quantity" shall mean the fixed, monthly quantity of Gas which when divided by the number of days in the month, establishes the daily nomination for the applicable month. Buyer and Seller agree that this daily nomination is sufficient to cover Buyer's Use based on historical and current usage data.

17.2 "Basis" shall mean the price differential between the receipt point (usually Henry Hub) and the contracted delivery point. Basis can include upstream transportation, fuel, margin and any other fees to the delivery point.

17.3 "Business Day" shall mean a day during which any Federal Reserve Bank office is open for business.

17.4 "Cashout" shall mean the process used by a Transporter (or Seller as applicable) to purchase, sell, or trade natural gas at the end of any day, month, or delivery period, as applicable, for the purpose of balancing receipts and deliveries for a specified day, month, or delivery period.

17.5 "Commercial Terms" shall mean price, quantity, service level, delivery point, delivery period, terms related to transportation, and/or terms related to a balancing service.

17.6 "Contract Quantity" shall mean the fixed monthly quantity of Gas that Buyer and Seller agree is sufficient to cover Buyer's Use based on historical and current usage data.

17.7 "Constraint Day" shall mean any day during which the Transporter listed in Exhibit A issues balancing orders, operational flow orders, operational matching orders (or the equivalent) or deems the day a Critical Gas Day (or the equivalent) and thereby restricts deliveries by Seller or use by Buyer, requires a specific delivery by Seller or use by Buyer, or otherwise requires an affirmative action by either Party due to adverse operational conditions experienced by the Transporter.

17.8 "Firm" shall mean that either Party may interrupt its performance without liability only to the extent that such performance is prevented for reasons of Force Majeure or the failure of the other Party to perform.

17.9 "Firm Reservation Quantity" shall mean the quantity of Gas identified on Exhibit A for which Seller will obtain Firm transportation capacity to the Delivery Point.

17.10 "Fuel" shall mean the difference between the quantity scheduled to the applicable receipt or delivery point and the quantity received at the delivery point or meter location as converted to a per unit charge.

17.11 "Full Requirements" shall mean the quantity of Gas required by Buyer at the locations identified in an Exhibit A. Seller's obligation to provide Full Requirements is expressly conditioned upon Buyer's obligation to provide Seller with timely

and accurate information as to expected usage, including but not limited to, timely notice of deviations from previously-established expected usage, as well as other terms and conditions included in this Agreement and in the applicable Exhibit A.

17.12 "Gas" shall mean natural gas, which is in conformance with the quality specification of the Transporter or is accepted by the Transporter.

17.13 "Imbalance Charges" shall mean any fees, penalties, costs or charges (in cash or in kind) assessed by a Transporter for failure to satisfy the Transporter's balance and/or nomination requirements.

17.14 "Incremental Supply" shall mean Gas in addition to the Baseload or Contract Quantity, as applicable, nominated to meet Buyer or Transporter requirements as a result of unforeseen events, including, but not limited to balancing orders, critical gas day, operational flow orders, operational matching orders, (or the equivalent), or changes in Buyer's daily Use of Gas.

17.15 "Interruptible" shall mean that either Party may interrupt its performance at any time for any reason, whether or not caused by an event of Force Majeure, with no liability, except such interrupting Party may be responsible for any Imbalance Charges related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by Transporter.

17.16 "Marketer" shall mean an entity, other than an LDC or Transporter, which supplies natural gas to end-users.

17.17 "MMBtu" shall mean one million British thermal units, which is equivalent to one dekatherm (dkthm).

17.18 "NYMEX Last Day Settle" shall mean the price in dollars per MMBtu equal to the closing price on the New York Mercantile Exchange for natural gas futures contracts for delivery at the Henry Hub for the month of delivery hereunder, on the last day on which futures contracts for that month were traded.

17.19 "Receiving Transporter" shall mean the transporter(s) receiving Gas at the Delivery Point(s) identified in the effective Exhibit A.

17.20 "Secondary Firm" shall mean that either Party may interrupt its performance only to the extent that such performance is prevented by either (i) an event of Force Majeure, or (ii) a curtailment in Firm transportation using secondary receipt or delivery points.

17.21 "Transaction Confirmation" shall mean Seller's written acceptance of a change in Commercial Terms for a specific transaction(s) pursuant to Buyer's written request.

17.22 "Transporter(s)" shall mean all Gas gathering or pipeline companies, or local distribution companies, acting in the capacity of a transporter, transporting Gas for Seller or Buyer upstream or downstream, respectively, of the Delivery Point pursuant to a particular Exhibit A).

17.23 "Usage or Use" shall mean for the applicable meter, the difference in meter readings recorded by Transporter during a specific period of time. The difference in meter readings may be converted by Transporter to a caloric measurement pursuant to the applicable Transporter tariff.

17.24 "Variable Quantity" shall mean the quantity of Gas used in excess of the agreed upon Firm Reservation Quantity and provided using commercially reasonable efforts.

**IN WITNESS WHEREOF, the Parties have duly executed this Agreement to be effective on the day and year first written above.**

**SELLER: WPS ENERGY SERVICES, INC.**

**BUYER: DANA POINT CONDOMINIUMS**

Signature: Roger L Stanley

Signature: Larry Miller

NAME: Roger L Stanley

NAME: Larry Miller

TITLE: Vice President

TITLE: President

DATE: 12-4-06

DATE: 11-27-06