

Agreement

Between:

Her Majesty the Queen in right of Canada,
as represented by the Minister of the Environment,
hereinafter referred to as "Canada"

and

The City of Calgary
hereinafter referred to as "ENMAX"

Preamble

Whereas ENMAX and Canada agree that atmospheric pollution problems of smog, acid rain, respirable particulate matter, atmospheric transport and deposition of toxic metals, and the global increases in concentrations of greenhouse gases with recent scientific recognition of discernible effects on the global climatic system, are deleterious to the interests of Canadians, and result in part from air emissions of fossil-fuel electricity generation;

and Whereas the Parties recognize that their ongoing programs to reduce electricity consumption through conservation or efficiency measures lessens such air pollution emissions, but cannot eliminate them;

And Whereas the Parties recognize that electricity users share responsibility with electricity generators for air pollution emissions resulting from their use of electricity;

And Whereas Canada is proceeding with this Green Power procurement pilot project to develop and prove a method to fulfill the commitment made in its Sustainable Development Strategy to purchase 15-20% of its nationwide energy needs from renewable energy sources by 2010;

And Whereas Canada intends to derive benefit for Canadians and itself through the transfer and ownership of air pollution emission reduction credits resulting from the Green Power generation, as an integral result of the pilot project.;

And Whereas ENMAX, on its part, desires to facilitate Canada's green power purchases on a non-profit basis as a pilot project in its green power marketing program, whereby it expects to offer its customers choice in the source of electrical power they use;

And Whereas the Parties intend to cooperate with other interested parties in expanding the amount of green power purchased and used in Alberta, by raising awareness among Albertans of the benefits and affordability of green power, and facilitating its sale and purchase;

And Whereas the technologies used to produce the Green Power under this Agreement are to be established technologies and are not considered to be a part of the pilot nature of the Agreement;

Now Therefore the Parties agree to establish, on a pilot project basis, appropriate financial and contractual arrangements to cause a displacement of some fossil fuel electricity generation supplying Albertans with electricity through the Interconnected Electric System. This displacement will arise from the installation and operation of incremental supply of non-fossil fuel source electricity generation by Vision Quest Windelectric Inc.

Article 1 Definitions

1.1 In this Agreement,

"Annual Amount" means the quantity of Green Power to be purchased pursuant to this Agreement in a particular Year, calculated in accordance with Article 3.

"Base Load" means the electricity generation normally dispatched by the Power Pool of Alberta on a continuous basis.

"Catalytic Customer" means ENMAX or a customer of ENMAX that temporarily reduces its green power consumption to accommodate supply to other green power customers within the supply amount from an existing green power generation capacity, until new green power generation is arranged.

"EC" means the federal Department of the Environment.

"Emission Reduction Credits" are intangible commodities recognized by the Parties and others as arising under this Agreement through the direct displacement by Green Power sources of air pollution emissions from coal, oil, or natural gas fueled electricity

generation. Emission Reduction Credits under this Agreement are for specific pollutants known to arise from some or all fossil-fuel electricity generation supplying the Interconnected Electric System. The air pollutants recognized under this Agreement are CO₂, SO₂, N₂O, NO_x, particulates and heavy metals (mercury, chromium 6, cadmium, lead, nickel, and arsenic). Emission Reduction Credits include "Greenhouse Gas Emission Reduction Credits", which in this Agreement are Emission Reduction Credits for CO₂ and N₂O, as a special subset.

"Fiscal Year" means a year beginning on April 1 and ending on March 31.

"green power" means electricity originating from Renewable Energy Sources delivered onto the Interconnected Electric System.

"Green Power" means a form of green power having the following characteristics:

- a) originating from Renewable Energy Sources coming into production, or yielding incremental production, subsequent to June 1, 1997;
- b) originating from a facility maintaining EcoLogo™ "alternative source electricity generation" certification under the Environmental Choice Program of EC;
- c) incrementally displaces, from time to time, fossil-fuel electricity generation on the Interconnected Electric System which would otherwise have supplied Alberta electricity purchasers, including Canada, with electrical energy; and
- d) results in air pollution Emission Reduction Credits, through its displacement of fossil-fuel electricity generation, for which ownership accrues to the Green Power purchaser.

"Green Power Marketing Strategy" is the plan, set forth by ENMAX in the proposal dated March 25, 1997, and the attached Annex 'B'.

"Green Power Premium" means the amount which Canada pays for the receipt of Green Power service calculated in accordance with Article 4.

"Green Premium Rate" means a price charged by ENMAX for green power, offered to more than one non-residential customer.

"Interconnected Electric System" means all transmission facilities and all electric distribution systems in Alberta that are interconnected.

“Interconnection Point” means a point of secondary metering of electric service delivered onto the Interconnected Electric System.

“NRCan” means the federal Department of Natural Resources.

“Pool Price” means the per unit price of electricity for each Settlement Period as established by the Power Pool of Alberta through a competitive process under the Pool Rules set by the Power Pool Council to regulate the operation of the Power Pool in accordance with the *Electric Utilities Act*. The Pool Price is converted for the purposes of this Agreement to a per kWh figure.

“producers” means independent power producers, electrical utilities or other parties who own operating Green Power sources.

“Renewable Energy Source” means a photovoltaic system, a run-of-the-river hydroelectric plant with capacity not exceeding 20 MW, a wind energy conversion system (a single turbine or a wind farm), a turbine powered by renewable-biomass (Renewable Forest Biomass, agricultural produce, agricultural waste, or other biomass, obtained from sustainable biomass production) combustion or the products of bio-fuel conversion, or energy recovery technologies utilizing methane from sewage or landfills.

“Renewable Forest Biomass” means wood or wood waste obtained from production that complies with the National Standard CAN/CSA-Z808-96, "A Sustainable Forest Management System: Guidance Document", and the criteria to be established under the Panel Review Criteria PRC-29 relating to the National Standard by the Environmental Choice Program.

“Service Area” means the area determined under Alberta’s *Hydro and Electric Energy Act* in which the owner of an electric distribution system may distribute electricity.

“Settlement Period” means the period of time during a trading day on the Power Pool of Alberta during which Pool Prices are established for the purpose of remuneration for dispatched electricity generation. Current Settlement Periods are one hour in duration commencing on the hour.

“VQ” means Vision Quest Windelectric Ltd.

“Year” means calendar year in the Mountain Standard Time Zone.

1.2 Headings

The division of this Agreement into Articles and Sections and the insertion of headings are for the convenience of reference only and shall not affect the construction or interpretation of this Agreement. The terms "this Agreement", "hereof", "hereunder"

and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles and Sections are to Articles and Sections of this Agreement.

1.3 Extended Meanings

In this Agreement words importing the singular number only shall include the plural and *vice versa*, words importing the masculine gender shall include the feminine and neuter genders and *vice versa* and words importing persons shall include individuals, partnerships, associations, trusts, unincorporated organizations and corporations.

1.4 Annexes

The following Annexes are attached hereto and deemed to be a part hereof:

Annex A: Determination of Annual Amount of Green Power for Purchase by Canada

Annex B: Green Power Marketing Strategy

Annex C: Terms and Conditions for Incorporation into Contracts between ENMAX
and Any Green Power producer

Annex D: Quantification of Emission Reduction Credits

Article 2 Sale and Purchase of Green Power

2.1 Contract with VQ

ENMAX hereby undertakes to enter into a contract with VQ for the installation of incremental and new Green Power generating facilities in Alberta, resulting in the delivery of electricity onto the Interconnected Electric System sufficient to meet the electricity requirements of EC facilities in Alberta.

2.2 Customary Electricity Service

ENMAX will continue to provide electricity service to EC facilities within its Service Area in the manner customary to all such service and Canada will continue to pay for

electricity service provided to EC facilities by ENMAX in the manner customary to all such service.

2.3 Payments to Power Pool of Alberta

ENMAX will pay such amounts to the Power Pool of Alberta as are determined by regulatory and market conditions in Alberta, for electricity delivered to their customers,

including Green Power arising from this Agreement.

2.4 Payment of Green Power Premium

As set out in Article 4, and in the manner set out in Article 9, Canada shall pay the Green Power Premium to ENMAX.

Article 3 Green Power Purchase Amounts

3.1 Annual Amount

Canada agrees to purchase from ENMAX, and ENMAX agrees to cause to be generated for EC's use, Green Power in an Annual Amount equal to EC's total electricity consumption in facilities owned or leased in Alberta. The Annual Amount is to be determined in a manner described in Annex 'A', but in no event after 1997 be less than 1,800,000 kWh nor greater than 2,200,000 kWh for any full Year of the Agreement. The Green Power delivered onto the Interconnected Electric System under this Agreement shall be attributed, in whole, to the use of EC facilities. When Green Power is purchased for a portion of a Year, the Annual Amount shall be prorated to that period of time.

3.2 Catalytic Customer Status

If ENMAX complies with the Green Power Marketing Strategy, Canada will serve as a Catalytic Customer by reducing the agreed amount of Green Power to be purchased in any Year, at the sole request of ENMAX tendered in advance of the Year. This reduction is to be calculated as part of the annual reconciliation procedure of Article 9.2, in accordance with Articles 4.5 and 4.8 and with sales of green power by ENMAX to its other direct customers during that Year.

3.3 Proportional Reduction for NRCan Facilities

Where there is a reduction in Green Power supplied to EC facilities pursuant to Catalytic Customer status, ENMAX will ensure that reduction is matched

proportionately by a reduction in green power supplied to NRCan's facilities in Alberta.

3.4 Proportional Reduction for ENMAX

Where there is a reduction in Green Power supplied to EC facilities pursuant to Catalytic Customer status, ENMAX will also serve as a Catalytic Customer and ensure that the EC reduction is matched proportionately by a reduction in green power purchased by ENMAX.

3.5 Procurement of Additional Green Power

When the total reductions of green power purchased by all Catalytic Customers exceeds 1,400,000 kWh, ENMAX shall commence procurement of additional Green Power of its choice, sufficient to return EC to its Annual Amount.

3.6 Ownership of Emission Reduction Credits

Ownership of Emission Reduction Credits resulting from the sale of the Green Power for which Canada serves as a Catalytic Customer must be agreed in advance with Canada at the time of the request for Canada to serve as a Catalytic Customer.

Article 4 Green Power Premium

4.1 No Cross-Subsidization by non-Green Power Customers

ENMAX shall not cross-subsidize the sale of Green Power to Canada by non-green power customers of ENMAX.

4.2 No Cross-Subsidization of non-Green Power Customers

ENMAX shall not subsidize purchases by non-Green Power customers of ENMAX with the Green Power Premium paid by Canada.

4.3 Estimated Green Power Premium

4.4 Component Factors set out in Invoice

ENMAX shall provide at the same time as the first invoice in the Year the component factors as listed in Article 4.3 which are used to calculate the Estimated Green Power Premium for that Year. The calculation and the component factors may be subject to audit by Canada.

4.5 Green Power Premium

4.6 Total Green Power delivered by VQ for EC facilities

ENMAX shall calculate the total Green Power delivered by VQ for sale to Canada for EC facilities in Alberta as the lesser of:

- a) the Annual Amount; and
- b) the total electricity production by VQ from its wind turbine facilities at Belly River and Castle River East for the Year minus all other sales of green power to any customers of VQ whatsoever.

4.7 Incentive for VQ to Deliver

Notwithstanding the provisions of Article 4.5, the Green Power Premium shall be reduced if VQ fails to deliver from its Belly River and Castle River East wind turbine facilities a total of at least 1,440,000 kWh of Green Power for EC facilities, as follows:

- a) if total Green Power VQ_a delivered by VQ for EC facilities is between 900,000 kWh and 1,440,000 kWh, the Green Power Premium shall be:

$$(VQ_a - 900,000 \text{ kWh}) / (540,000 \text{ kWh}) \times VQ_a \times (P_w \times \text{CPI} / \text{CPI}_{1998} - PP_{VQ}) \times (1 + CC_{af})$$

where VQ_a , P_w , CPI , CPI_{1998} , PP_{VQ} and CC_{af} are determined in accordance with article 4.5.

- b) if total Green Power delivered by VQ for EC facilities is at or below 900,000 kWh, the Green Power Premium shall be equal to zero dollars (\$0.00);
- c) if Catalytic Customer status is in effect for a Year, then for the purpose of Article 4.7, green power deliveries by ENMAX to its direct customers resulting in a Catalytic Customer reduction in deliveries to EC facilities, are deemed to be deliveries to EC facilities;
- d) for the 1997 Year, the Green Power amounts of 900,000 kWh and 1,440,000 kWh in a) and b) shall be replaced by the prorated annual amounts calculated from the day upon which VQ commences delivery of Green Power for EC facilities;
- e) for the last Year of this Agreement, the Green Power amounts of 900,000 kWh and 1,440,000 kWh in a) and b) shall be replaced by the prorated annual amounts calculated to the day upon which VQ makes its last delivery of Green Power for EC facilities.

4.8 No Payment for Deliveries over the Annual Amount

No money shall be paid by Canada for deliveries by VQ onto the Interconnected Electric System for EC facilities which exceed the Annual Amount.

4.9 Annual Reconciliation Invoice

ENMAX shall include in the annual reconciliation the component factors as listed in Articles 4.3 and 4.5 to 4.8, which are used to calculate the Green Power Premium for the previous Year.

4.10 Additional Base Load Electricity Supply

In the event that ENMAX constructs additional non-green power Base Load during this Agreement, PP_{VQ} in Article 4.5 shall be replaced by the greater of the values as determined by the definition of PP_{VQ} in Article 4.5, or the per kWh cost of the additional non-green power Base Load during the period in which such Base Load is accessed.

4.11 Most-Favoured Customer Status

Canada shall have most-favoured customer status with ENMAX. If:

- a) VQ offers green power from its first Belly River and first Castle River East wind turbines or from expanded or additional facilities delivering power onto the Interconnected Electric System at the same Interconnection Points, to other customers at different rates; or
- b) ENMAX offers green power arising from wind power generation to other customers at different rates or conditions; or
- c) after January 1, 1999, ENMAX has a Green Premium Rate less than:
$$(5.68 \text{ cents/kWh} \times \text{CPI/CPI}_{1998} - \text{PP}_e) \times (1 + \text{CC}_{af})$$
where CPI, CPI_{1998} , and PP_e are defined as in Article 4.5 and CC_{af} is 3%.

then Canada shall have the right to accept such rates or conditions instead of those in this Agreement.

Article 5 Emission Reduction Credits

5.1 Assignment and Transfer of Interest

ENMAX agrees to assign and transfer to Canada any interest it may have in any and all Emission Reduction Credits which result from Green Power production pursuant to the purchase of Green Power by Canada under this Agreement.

5.2 Included Value

All present and future value for the Emission Reduction Credits, whether of a monetary nature or otherwise, are included in the assignment and transfer.

5.2 Rights of Disposition

Canada, as owner of the Emission Reduction Credits, is entitled to register or bank the credits with any relevant authority, existing or created in the future; to sell, assign and transfer these Emission Reduction Credits to any Canadian person, at the sole discretion of Canada; seek and receive recognition from ENMAX for any reasonable procedures which quantify the amount of the Emission Reduction Credits associated

with the Green Power sale and purchase under this Agreement.

5.3 Taxes

Each Party shall pay any taxes or other fees that are associated with its respective assignment and transfer of the Emission Reduction Credits described herein.

5.4 Warranty by ENMAX

ENMAX represents and warrants to Canada as follows:

5.4.1 ENMAX has and will maintain at all times during the term of this Agreement, all necessary power and authority to execute, deliver and perform its obligations under the Emissions Reduction Credits articles of this Agreement.

5.4.2 The execution, delivery and performance of the Emission Reduction Credits component of the Green Power sale by ENMAX has been duly authorized by all necessary action and does not violate any of the terms or conditions of ENMAX's governing documents, or any contract to which it is a party, or any law, rule, regulation, order, judgement or other legal or regulatory determination applicable to ENMAX.

5.4.3 There is no pending or threatened litigation, arbitration or administrative proceeding that materially adversely affects ENMAX's ability to perform this Emission Reduction Credits component of the Green Power sale.

5.4.4 ENMAX represents and warrants that its ownership of the Emission Reduction Credits being transferred under this Agreement, whether arising temporarily from the assignment and transfer from any Green Power

producer, or through other means, is free and clear of any liens,

encumbrances, charges, agreements or claims.

5.4.5 ENMAX makes no warranty or representation that Canada's use or ownership of these Emission Reduction Credits will not be challenged by a government agency, private party, or other interested third party. ENMAX agrees to provide any and all documentation related to Emission Reduction Credits

ownership, as has been generated pursuant to this Agreement, to Canada, in the event of such a challenge.

5.5 Warranty by Canada

Canada hereby represents and warrants to ENMAX as follows:

5.5.1 Canada has, and at all times during the term of this Agreement will have, all necessary power and authority to execute, deliver and perform its obligations under the Emissions Reduction Credits articles of this Agreement.

5.5.2 The execution, delivery and performance of the Emissions Reduction Credits component of this Agreement by Canada has been duly authorized by all necessary action and does not violate any of the terms or conditions of any contract to which Canada is a party, or any law, rule, regulation, order, judgement or other legal or regulatory determination applicable to Canada.

5.5.3 There is no pending or threatened litigation, arbitration or administrative proceeding that materially adversely affects Canada's ability to perform the Emissions Reduction Credits articles of this Agreement.

5.6 Quantification of Emission Reduction Credits

The quantities of the Emission Reduction Credits for each pollutant shall be calculated in accordance with Annex 'D'.

5.7 Certification in Annual Reconciliation

So long as this Agreement remains in operation, ENMAX will report on and certify assignment and transfer of ownership of Emission Reduction Credits associated with the sale and purchase of Green Power under this Agreement, as part of the annual reconciliation process. No payments determined as owing ENMAX as part of the annual reconciliation process shall be due, nor shall such payments become overdue, until the Emission Reduction Credits component of the annual reconciliation process is completed.

5.8 Costs of Emission Reduction Credits Accounting Service

5.9 Limitation on Liability

Canada agrees to not hold ENMAX liable if an Emission Reduction Credits quantification system acceptable to a governmental authority for credit registration cannot be developed or applied for any part of the term of this Agreement.

5.10 Relationship to Activities Implemented Jointly

Greenhouse Gas Emission Reduction Credits under this Agreement do not have and are not to be construed by ENMAX or by Canada as having any relationship to Activities Implemented Jointly under the Framework Convention on Climate Change. This Agreement will not prejudice any future action or position by Canada with respect to national greenhouse gas emission reduction credits under the Framework Convention on Climate Change.

Article 6 Green Power Producers

6.1 Contracts with Green Power producers

ENMAX undertakes to include the clauses in Annex 'C' within any and all contracts entered into with Green Power producers whose services may be used to supply Green Power to Canada under this Agreement, and to provide Canada with copies of such contracts, and any amendments thereto.

6.2 Substitution of Green Power producers

In the event a Green Power producer is unable to comply with its obligations under its contract with ENMAX to supply services necessary to this Agreement, ENMAX may, with the consent of Canada, which consent may not be unreasonably withheld, substitute on a permanent or temporary basis, other Green Power producers to provide, in part or in whole, ENMAX's service obligations to Canada under this Agreement.

6.4 EcoLogo™ Certification for VQ's Wind Turbine Facilities

ENMAX shall ensure that EcoLogo™ certification for VQ's wind turbine facilities at

Belly River and Castle River East is valid at all times for which Green Power is sold to Canada from these facilities.

Article 7 Green Power Marketing Strategy

7.1 Green Power Marketing Strategy

ENMAX undertakes to make such efforts as are reasonable under the circumstances to effect the Green Power Marketing Strategy.

7.2 Canada Participation in Green Power Marketing

Canada will provide certain support, at its discretion, in implementation of the Green Power Marketing Strategy, such as public endorsement of Green Power; public information through fact sheets, world wide web pages, media interviews, display booths at trade shows and conferences, or other communication and promotional vehicles; and promotional activities and policy support for other government departments' and other governments' purchases.

Article 8 Term of the Green Power Agreement

8.1 Term of Agreement

This Agreement is to be in effect for a period of ten (10) years from the date of the first delivery of Green Power produced pursuant to this Agreement. ENMAX will notify Canada of the date of the first delivery of Green Power from VQ.

8.2 Renewal

This Agreement may be renewed for a period of up to five (5) years under the same terms and conditions in effect at the conclusion of the ten (10)-year term, at the sole discretion of Canada. Canada must notify ENMAX at least one (1) year in advance of the expiry of the ten (10)-year term of its intention to renew the Agreement.

Article 9 Method of Payment

9.1 Goods and Services Tax

The Goods and Services Tax (GST) is not included in the price quoted by ENMAX.

The GST, to the extent applicable, will be shown as a separate item on all invoices and will be paid by Canada. ENMAX agrees to remit to Revenue Canada—Customs and Excise any GST that the bidder received from Canada pursuant to this Agreement.

9.2 Method of Payment

Payment for the Green Power shall be made in accordance with the method of payment specified below.

- a) Against monthly invoices submitted in accordance with Article 4.3;
- b) Payment by Canada for the service shall be made within thirty (30) days of the receipt of the invoice;
- c) If Canada has any objection to the form of the invoice or of the substantiating documentation, within fifteen (15) days of its receipt Canada shall notify ENMAX of the nature of the objection.
- d) ENMAX will invoice Canada monthly for an amount calculated as the Estimated Green Power Premium divided by twelve (12).
- e) As an aid to budgeting for the annual reconciliation after the end of the Year, quarterly, ENMAX shall also provide:
 - (i) actual Green Power amounts delivered by the Green Power producer onto the Interconnected Electric System for EC;
 - (ii) the actual receipts of the Green Power producer divided by its total electricity deliveries onto the Interconnected Electric System; and
 - (iii) the amount of Emission Reduction Credits in kg listed by pollutant.
- f) By no later than March 15 of each Year, ENMAX shall reconcile the monthly invoices using the Estimated Green Power Premium, and the actual Green Power Premium and total Green Power delivered in the previous Year. Credit amounts shall either be provided as a credit against the first or subsequent months' invoices of the following Year or refunded to Canada, at Canada's discretion. Debit amounts shall be invoiced forthwith to enable prompt payment by Canada. ENMAX will also include a reconciliation and Year statement for the quantity of Emission Reduction Credits assigned and transferred to Canada.

Article 10 General Terms and Conditions

10.1 Successors and Assigns

The Agreement shall enure to be benefit of and be binding upon the Parties hereto and their lawful heirs, executors, administrators, successors and assigns.

10.2.1 Assignment

Subject to 10.2.3, this Agreement shall not be assigned in whole or in part by ENMAX without the prior written consent of the Canada and any assignment made without that consent is void and of no effect.

10.2.2 No Liability on Canada

No assignment of the Agreement shall relieve ENMAX from any obligation under the Agreement or impose any liability upon Canada.

10.2.3 Assignment to Municipal Subsidiary Corporation

ENMAX may assign this Agreement to a wholly owned municipal subsidiary corporation of ENMAX without the prior consent of Canada.

10.3.1 Time of the Essence

Time is of the essence of this Agreement.

10.3.2 Excusable Delay

10.3.2.1 Any delay by ENMAX in performing ENMAX's obligations under the Agreement which is caused by an event beyond the control of ENMAX, and which could not have been avoided by ENMAX without incurring unreasonable cost through the use of work-around plans including alternative sources or other means, constitutes an excusable delay. Events may include, but are not restricted to: acts of God, acts of Her Majesty, acts of local or provincial governments, fires, floods, epidemics, quarantine restrictions, strikes or labour unrest, freight embargoes and unusually severe weather.

10.3.2.2 ENMAX shall give notice to Canada immediately after the occurrence of the

event that causes the excusable delay. The notice shall state the cause and

circumstances of the delay and indicate the portion of the service affected by the delay. When requested to do so by Canada, ENMAX shall deliver a description in a form satisfactory to Canada, of work-around plans including alternative sources and any

other means that ENMAX will utilize to overcome the delay and endeavour to prevent any further delay. Upon approval in writing by Canada of the work-around plans and use all reasonable means to recover any time lost as a result of the excusable delay.

10.3.2.3 Unless ENMAX complies with the notice requirements set forth in the Agreement, any delay that would constitute an excusable delay shall be deemed not to be an excusable delay.

10.3.3 Canada Right of Termination

Notwithstanding that ENMAX has complied with the requirements of Article 10.3.2.2, Canada may exercise any right of termination contained in Article 10.5.2.

10.4.1 Notice

Where in the Agreement any notice, request, direction, or other communication is required to be given or made by either party, it shall be in writing and is effective if delivered in person, sent by registered mail or by facsimile addressed to the party for whom it is intended at the address mentioned in the contract and any notice, request, direction or other communication shall be deemed to have been given if delivered in person, at the time of delivery; if by registered mail, when the postal receipt is acknowledged by the other party; or if by facsimile, when transmitted.

10.4.2 **Addresses for Notice**

All notices, payments and other formal communications which either Party may give to the other or in connection with this Agreement shall be in writing and shall be either hand delivered, sent by registered mail, return receipt requested, or by facsimile to the following addresses:

Environment Canada
Prairie and Northern Region
Twin Atria Building
4999 98th Avenue
Edmonton, Alberta
T6B 2X3

Attn.: Manager, Air Issues
facsimile number (403) 495-2615

With a copy by ordinary mail or by facsimile to

Environment Canada
Environmental Protection Service
Oil, Gas and Energy Branch
Place Vincent Massey, 10th Floor
Hull, Quebec
K1A 0H3

Attn.: Head, Sustainable Energy Section
facsimile number (819) 953-8903

and

The City of Calgary Electric System
2808 Spiller Road Southeast
P.O. Box 2100

Station M
Calgary, Alberta
T2P 2M5
Attn.: General Manager
facsimile number (403) 262-5928

10.4.3 Change of Address

The address of either party may be changed by notice in the manner set out in this provision.

10.5.1 Termination due to Default of Canada

If Canada defaults in any of its obligations under this Agreement and fails to correct the default within sixty (60) days and completes the correction within a reasonable time after notice of it from ENMAX, ENMAX may, at its option and after notice to Canada, terminate this Agreement, in whole or in part.

10.5.2 Termination due to Default of ENMAX

If ENMAX defaults in any of its obligations under this Agreement and fails to correct the default within sixty (60) days, or fails to commence correcting the default within sixty (60) days and completes the correction within a reasonable time after notice of it from Canada, Canada may, at its option and after notice to ENMAX:

- (a) terminate this Agreement, in whole or in part
- (b) perform the obligation at ENMAX's expense; or
- (c) seek an award of specific performance directing ENMAX to fulfill its obligations under this Agreement.

10.5.3 Causes Beyond Control

If, after Canada issues a notice of termination, it is determined by Canada that the default of ENMAX is due to causes beyond the control of ENMAX, such notice of termination shall be deemed to be a notice issued pursuant to Article 10.2.3 and the rights and obligations of the Parties shall be governed by Articles 10.2.2 to 10.5.2, inclusive.

10.5.4 Default Defined—Obligations

For the purposes of this Agreement, a Party is in default if that Party fails to meet its obligations as described in this Agreement.

10.5.5 Default Defined—Representations

A Party is also in default if any representation or warranty made by that Party in this Agreement proves to have been misleading or false in any material respect when made.

10.6.1 Records

ENMAX shall keep proper accounts and records of the cost of the service and of all expenditures or commitments made by ENMAX including the invoices, receipts and vouchers, which shall at reasonable times be open to audit and inspection by the authorized representatives of Canada who may make copies and take extracts therefrom.

10.6.2 Facilities for Audit

ENMAX shall provide facilities for audit and inspection and shall furnish the authorized representatives of Canada with such information as they or Canada may from time to time require with reference to the documents referred to herein.

10.6.3 Retention of Records

ENMAX shall not dispose of the documents referred to herein without the written consent of Canada, but shall preserve and keep them available for audit and inspection for a period of two years following the termination of this Agreement.

10.6.4 Confidentiality

The parties anticipate that it may be necessary to transfer to each other information relating to this Agreement, of a confidential nature. Subject to the Access to Information Act, R.S.C. 1985 c.A-1, the parties shall keep all such information confidential.

10.7.1 Conflict of Interest

ENMAX declares that ENMAX has no pecuniary interest in the business of any third party that would cause a conflict of interest or seem to cause a conflict of interest in carrying out the work. Should such an interest be acquired during the life of this Agreement, ENMAX shall declare it immediately to Canada.

10.7.2 Compliance with Conflict of Interest Code

It is a term of this Agreement:

- a) that no former public office holder who is not in compliance with the post-employment provisions of the Conflict of Interest and Post-Employment Code for Public Office Holders shall derive a direct benefit from this Agreement;
- d) that during the term of this Agreement ENMAX, its directors, officers, and employees who are engaged in the course of carrying out this Agreement shall conduct themselves in compliance with the principles of the Conflict of Interest and Post-Employment Code for Public Office Holders. Should an interest be acquired during the life of this Agreement that would cause a conflict of interest or seem to cause a departure from the principles, ENMAX shall declare it immediately to Canada.

10.8.1 Member of House of Commons

No member of the House of Commons shall be admitted to any share or part of this Agreement or to any benefit to arise therefrom.

10.9.1 Amendments

No amendment of this Agreement nor waiver of any of the terms and provisions

shall be deemed valid unless effected by a written amendment.

10.10.1 Entire Agreement

This Agreement constitutes the entire agreement between the Parties with respect

to the subject matter of this Agreement and supersedes all previous negotiations, communications and other agreements relating to it unless they are incorporated by reference in this Agreement.

10.11.1 Governing Law

This Agreement shall be interpreted in accordance with the laws in force in the Province of Alberta.

Article 11 Dispute Settlement

If a dispute arising from this Agreement cannot be settled amicably through good faith negotiation, within sixty (60) days, the Parties agree to submit the dispute to arbitration pursuant to the federal *Commercial Arbitration Act*. The party requesting such arbitration shall do so by written notice to the other party. The cost of arbitration and fees of the arbitrator shall be borne equally by the Parties. The Parties shall bear their own costs including solicitor/client costs of the arbitration. The arbitration shall take place in the city of Calgary before a single arbitrator to be chosen jointly by the Parties. If the Parties cannot agree on the choice of an arbitrator within thirty (30) days of written notice to submit the dispute to arbitration, each party will choose a representative who will select the arbitrator.

The Parties may determine the procedure to be followed by the arbitrator in conducting the proceedings, or may ask the arbitrator to do so. The arbitrator shall issue a written award within thirty (30) days of hearing the Parties. The award may be entered in any court having jurisdiction and enforced as a judgement of that court.

The Parties agree that the word "dispute" in this clause refers to a dispute of fact or law, other than, a dispute of public law.

Article 12 Supplementary Conditions

12.1.1 INTERNATIONAL SANCTIONS

From time to time, in compliance with United Nations obligations or other international agreements, Canada imposes restrictions on trade, financial transactions or other dealings with a foreign country or its nationals. These sanctions may be implemented by regulations under the United Nations Act (UNA), R.S.C. 1985, c. U-2, the Special Economic Measures Act (SEMA), R.S.C. 1992, c. 17, or the Export and Import Permits Act (EIPA), R.S.C. 1985, c. E-19. ENMAX agrees that it will, in the performance of this Agreement, comply with any such regulations in effect during the

life of this Agreement, and will inform its subcontractors of the existence of the SEMA and of its regulations in force at the time of contract award. In the event that such regulations preventing ENMAX from performing all or part of its obligations, ENMAX shall treat the situation as a force majeure, and forthwith inform Canada of the situation

and follow the procedures applicable to force majeure.

12.1.2 Breach of Undertaking is Default

ENMAX agrees that Canada relies on ENMAX's undertaking in Article 12.1.1, to enter into this Agreement, and that any breach of the undertaking shall entitle Canada to terminate this Agreement under the provisions of this Agreement relating to default by ENMAX, and therefore to recover damages from ENMAX, including procurement costs arising out of such a termination.

12.1.3 Existing Sanctions

As of this date, sanctions are in place against the following countries:

- a) Yugoslavia (Serbia and Montenegro) - UNA, United Nations Federal Republic of Yugoslavia (Serbia and Montenegro) Regulations, SOR 92-342 as amended by SOR 92-211;
- b) Iraq - UNA, United Nations Iraq Regulations, SOR 90-531 as amended by SOR 90-694, 91-185, and 93-343;
- c) Libya - UNA, United Nations Libya Regulations, SR 92-222 as amended by SOR 93-521;
- d) Republic of Bosnia and Herzegovina - UNA, United Nations Republic of Bosnia and Herzegovina Regulations, SOR 95-145.

12.2.1 Certification—Contingency Fees

ENMAX certifies that it has not directly or indirectly paid or agreed to pay and covenants that it will not directly or indirectly pay a contingency fee for the solicitation, negotiation or obtaining of any contract to any person other than an employee acting in the normal course of the employee's duties.

12.3.1 Accounting for Solicitation Fees

All accounts and records pertaining to payments of fees or other compensation for the solicitation, obtaining or negotiation of this Agreement shall be subject to the Accounts and Audit provisions of this Agreement.

12.4.1 In this Article:

"contingency fee" means any payment or other compensation that is contingent upon or

is calculated upon the basis of a degree of success in soliciting or obtaining a government contract or negotiating the whole or any part of its terms.

"employee" means a person with whom ENMAX has an employer/employee relationship

"person" includes an individual or group of individuals, a corporation, a partnership, an organization and an association and, without restricting the generality of the foregoing, includes any individual who is required to file a return with the Registrar pursuant to section 5 of the Lobbyist Registration Act R. S. 1985 c.44 (4th Supplement) as the same may be amended from time to time.

ARTICLE 13 ENFORCEMENT

13.1 Enforcement

ENMAX agrees that it will take all necessary legal action to enforce the terms of its contracts with any Green Power producer.

ARTICLE 14 ENVIRONMENTAL ASSESSMENT

14.1 Environmental Assessment by Canada

Execution of the sale and purchase of Green Power shall be conditional upon an environmental assessment being conducted by Canada under the *Canadian Environmental Assessment Act*.

14.2 Environmental Assessment by VQ

This Agreement is conditional upon VQ complying with any and all laws relating to environmental assessment.

ARTICLE 15 CONDITION SUBSEQUENT ON GREEN POWER AGREEMENT WITH NRCAN

15.0 Condition Subsequent

Implementation of this Agreement is contingent upon the signing of a Green Power Agreement between NRCan and ENMAX. If such an agreement is not signed by December 1, 1997, this Agreement shall not be in effect, in which case:

- a) Canada will not be liable for costs or damages resulting from any actions which ENMAX may have undertaken with respect to the implementation of this Agreement;
and
- b) ENMAX will not be liable for costs or damages resulting from any actions which Canada may have undertaken with respect to the implementation of this Agreement.

IN WITNESS WHEREOF the parties have executed this Agreement

SIGNED on behalf of **The City of Calgary**
by a duly authorized official of ENMAX
this day of November 1997.

SIGNED by a duly authorized
official of **Her Majesty the Queen in
right of Canada as represented by the
Minister of the Environment**, this
4th day of November 1997.

(Signature)

(Signature)

J. Vollmershausen
Regional Director General
Prairie and Northern Region
Environment Canada

Annex A

Determination of Annual Amount of Green Power for Purchase by Environment Canada

This procedure is intended to result in Canada purchasing an amount of Green Power which is equal to the consumption of electricity in Alberta by EC owned and leased facilities. The amount of electricity calculated by the procedure detailed below for a given Fiscal Year shall be used as the Annual Amount for the Year following, unless (after Fiscal Year 1996/1997) the amount is greater than 2,200,000 kWh or less than 1,800,000 kWh, when the Annual Amount will be set at those figures respectively. The Annual Amount for Year 1997 shall be set at 2,423,000 kWh and for 1998 at 2,187,000 kWh.

Wherever available, metered electricity consumption amounts from the relevant Fiscal Year shall be used to establish the amount of electricity consumed by an individual facility or group of facilities during that Fiscal Year. Where such metered amounts are not available (for example, as is usually the case for leased space), the floor area of the facility may be used in combination with the total metered annual electricity consumption per unit floor area of the same facility, to calculate an estimated annual consumption. If no metered figures are available for a facility, then the metered annual electricity consumption per unit floor area for the Twin Atria Building in Edmonton (or the annual consumption per unit floor area for the EC portion of the Twin Atria building, if this is metered), may be used for office space; and the metered annual electricity consumption per unit floor area for the Calgary Manhattan warehouse space, may be used for warehouse space. As an alternative in the case of unmetered office floor space, a consumption of 170 kWh/m²/year may be used. In the case of facilities without floor space, metered consumption from similar facilities may be used.

A list of owned and leased facilities, and their annual consumption for Fiscal Years 1995/1996 and 1996/97, determined via the above method, is below.

**Electricity Consumption for EC
Owned or Leased Facilities in Alberta**

		Fiscal Year:		1995/96		1996/97	
		Facility		floor area (m ²)	kWh Used	floor area (m ²)	kWh Used
Falcon Farm	metered			69,280		39,720	
Duffield WxRadio	metered			6,830		10,410	
Stony Plain Upper Air	metered			38,340		38,340	
Ralston	metered			9,378		3,150	
Vauxhall/Hays	metered			950		950	
Esther CAPMoN Station	metered			14,075		14,075	
Forestburg Radio Tower	metered			1,680		1,680	
Jasper Auto Station	metered			1,528		1,718	
Various Water Survey	metered			138,698		128,072	
Various Water Survey	metered			146,322		116,563	
Calgary Harry Hayes	estimated	1193.4	123,159	1,193.4	123,159		
Calgary Manhattan Warehouse	metered	4059.0	193,596	2,259.0	193,596		
Calgary Shell Aerocentre	estimated	587.4	113,662	587.4	171,110		
Coronation Auto. Station	metered		1,935		2,718		
Edmonton Forestry Bldg.	estimated	1002.3	117,470	891.6	104,496		
Edmonton Twin Atria	estimated	5497.5	1,063,766	4,385.0	848,498		
Edmonton Warehouse	estimated	719.4	61,652	1,699.6	145,656		
Edson Auto. Station	metered		2,910		2,910		
Fort McMurray	estimated	161.6	31,270	161.6	31,270		
Peace River	estimated	778.9	150,717	379.0	73,337		
Pincher Creek Auto. Station	metered		2,280		2,280		
Rocky Mountain House Auto. Station	metered		2,680		2,680		
Slave Lake Auto. Station	metered		3,810		3,810		
Various other facilities	metered		126,517		126,517		
Total:			2,422,505		2,186,715		

Annex B

Green Power Marketing Strategy

Annex C

Terms and Conditions for Substantial Incorporation into
Agreements between ENMAX and Green Power producers

Annex D

Quantification of Emission Reduction Credits

The Emission Reduction Credits will be calculated through the use of emission factors for each pollutant, applicable to each type of fossil fuel generation in the Province of Alberta. The emission factors, in kg/kWh generated, will be applied to the portions of electricity delivered by generators to the Interconnected Electric System from each type of fossil fuel generation using an average for that type of plant. The type of plants shall be coal-fired, heavy-oil and natural gas thermal generation. The emission factors to be used are in the table.

For each pollutant “i”, ENMAX will calculate the quantity of Emission Reduction Credits as:

$$ERC_i = \text{Green Power amount} \times [EF_i(\text{coal}) \times F(\text{coal}) + EF_i(\text{oil}) \times F(\text{oil}) + EF_i(\text{ng}) \times F(\text{ng})]$$

where:

ERC_i = the Emission Reduction Credits for the i^{th} pollutant

Green Power amount = the quantity in kWh of Green Power purchased by the Green Power Purchaser

$EF_i(\text{coal})$ = the Emission Factor for the i^{th} pollutant from coal-fired generation

$F(\text{coal})$ = the fraction of electricity delivered onto the Interconnected Electric System from coal-fired electricity generation in Alberta

$EF_i(\text{oil})$ = the Emission Factor for the i^{th} pollutant from heavy-oil fired generation

$F(\text{oil})$ = the fraction of electricity delivered onto the Interconnected Electric System from heavy oil-fired electricity generation in Alberta

$EF_i(\text{ng})$ = the Emission Factor for the i^{th} pollutant from natural gas fired generation

$F(\text{ng})$ = the fraction of electricity delivered onto the Interconnected Electric System from natural gas fired electricity generation in Alberta

The Emission Reduction Credits include only the imputed quantities of reductions arising from the displacement of fossil-fuel electricity generation on the Interconnected Electric System, and do not include emissions which may arise, or have arisen, in the construction or operation of the Green Power generation.

The factors in the Emission Reduction Credits quantification table may be updated annually or at other times as needed and as found practical, to improve the precision of the quantification, via notice from Canada to ENMAX.

Emission Factors for Emission Reduction Credits Quantification			
Pollutant	Alberta Electricity Generation Fossil Fuel Source Displaced		
	Natural Gas (kg/kWh)	Coal (kg/kWh)	Oil (diesel) (kg/kWh)
CO ₂ carbon dioxide	0.596	1.017	1.259
SO ₂ sulphur dioxide	0.000007	0.003224	not available
N ₂ O nitrous oxide	not available	not available	not available
No _x nitrogen oxides	0.0006208	0.001962	not available
Particulates	0.00003112	0.0002301	not available
Hg mercury	0	0	not available
Cr Hexavalent Chromium	0	1.657E-09	not available
Cd inorganic cadmium	0	4.328E-09	not available
Pb lead	0	1.731E-08	not available
Ni nickel compounds	0	3.292E-08	not available
As inorganic arsenic	0	9.076E-09	not available
fraction of Alberta electricity production from each fossil-fuel source	0.1027	0.8309	0.001529

It is anticipated that a system to calculate the quantity of emission reductions due to displacement of dispatchable fossil-fuel electricity generation on a monthly basis for each Green Power source by the Power Pool of Alberta can be developed. ENMAX agrees to cooperate in providing data, or access to data, as part of any effort by

Canada or other cooperating parties to calculate or estimate such emission reductions.

It is anticipated that any effort to calculate or estimate such emission reductions will be done by Canada, the Power Pool of Alberta, and other cooperating parties, who will be responsible for the development costs of the calculation system.

Should the anticipated calculation system be successfully developed and implemented to the satisfaction of Canada, it will replace the calculation method described above.

In the event that the anticipated calculation system can be applied retroactively to purchases of Emission Reduction Credits associated with the Canada Green Power purchase, the amended Emission Reduction Credits quantities shall be accepted by ENMAX.