#10

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL 117492

AN ORDINANCE relating to the City Light Department; authorizing the execution of a confirmation agreement with the Oregon Trail Wind Park, LLC for the purchase of environmental attributes, which include renewable energy certificates that are necessary or convenient for meeting the requirements of the Washington State Energy Independence Act; and further authorizing the execution of other necessary and convenient agreements for the receipt, tracking, transferring, management, and sale of the environmental attributes.

WHEREAS, the Revised Code of Washington ("RCW") Chapter 19.285 (the "Washington State Energy Independence Act") requires the City Light Department ("City Light") to acquire renewable resources and/or environmental attributes; and

WHEREAS, Oregon Trail Wind Park, LLC has the marketing rights to the environmental attributes of the Oregon Trail Wind Park; and

WHEREAS, the Oregon Trail Wind Park's environmental attributes meet the requirements of RCW Chapter 19.285; and

WHEREAS, Oregon Trail Wind Park, LLC wishes to sell and City Light wishes to purchase such environmental attributes created by the Oregon Trail Wind Park; and

WHEREAS, Oregon Trail Wind Park, LLC has agreed to execute a Master Renewable Energy Certification Purchase and Sale Agreement; and

WHEREAS, Ordinance 123499 authorized City Light's use of a Master Renewable Energy Certificate Purchase and Sale Agreement; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Superintendent of the City Light Department ("City Light"), or his designee, is hereby authorized to execute for and on behalf of the City, a transaction-specific 12-year Confirmation Agreement, substantially in the form attached hereto as Exhibit A. The

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agreement with Oregon Trail Wind Park, LLC set forth the terms under which Oregon Trail Wind Park, LLC will deliver environmental attributes, which include renewable energy certificates ("RECs") to City Light.

Section 2. The Superintendent of City Light, or his designee is hereby further authorized to execute for and on behalf of the City additional agreements necessary for use of the Western Renewable Energy Generation Information System or any other system for tracking and transferring the RECs to City Light and other necessary and convenient agreements to enable City Light to use the environmental attributes purchased hereunder to meet its regulatory requirements.

Section 3. Upon determining the availability of surplus environmental attributes within City Light's portfolio, and in order to minimize the cost to City Light's customers of compliance with the Washington State Energy Independence Act, the Superintendent, or his designee, is further authorized to execute for and on behalf of the City agreements for the sale of all or a portion of the environmental attributes purchased under the Renewable Energy Certificate Purchase and Sale Agreement with Oregon Trail Wind Park, LLC, on terms and conditions that the Superintendent deems in the best interests of City Light provided, however, that no such sale shall jeopardize City Light's compliance with the Washington State Energy Independence Act.

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Section 4. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the ____ day of _____, 2012, and signed by me in open session in authentication of its passage this _____ day of _____, 2012.

_____

President _____of the City Council

Approved by me this ____ day of _____, 2012.

_____

Michael McGinn, Mayor

Filed by me this ____ day of _____, 2012.

_____

Monica Martinez Simmons, City Clerk

(Seal)

Exhibit A: Confirmation Agreement – Renewable Energy Certificates – Oregon Trail Wind Park, LLC

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EXHIBIT A

CONFIRMATION AGREEMENT

RENEWABLE ENERGY CERTIFICATES

OREGON TRAIL WIND PARK, LLC

Seller: OREGON TRAIL WIND PARK, LLC	**Buyer:** the City of Seattle, acting by and through its City Light Department
Contract ID:	Contract ID:
Deal Maker:	Deal Maker:
Phone:	Phone:
E-mail:	E-mail:
Fax:	Fax:

This Confirmation Agreement ("**Confirmation**") dated as of _____ ("**Trade Date**") is entered into by and between OREGON TRAIL WIND PARK, LLC ("**Seller**") and the City of Seattle, acting by and through its City Light Department ("**Buyer**"), each referred to herein individually as a "**Party**" and collectively as the "**Parties**".

The following describes a Transaction between Buyer and Seller for the sale, purchase and delivery of Product pursuant to the terms of the Master Renewable Energy Certificate Purchase and Sale Agreement between them dated _____ ("**Master Agreement**"). The Master Agreement and this Confirmation, including the Special Terms & Exceptions described in Section 8 below, shall be collectively referred to herein as the "**Agreement**". Any capitalized term used, but not defined, in this Confirmation shall have the meaning ascribed to such term in the Master Agreement. In the event that there is a conflict between the terms of the Master Agreement and the terms of this Confirmation, the terms of this Confirmation shall control.

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1. **Product**: RECs. The REC is generated on a Unit Contingent basis from the Unit Specific Renewable Energy Facility, identified in Section 3 below, that meets the requirements of the Washington RPS as in effect on the Trade Date, the definition of a Renewable Resource under Section 19.285.030 (18) of the Revised Code of Washington ("RCW") as in effect on the Trade Date, and satisfies the requirements for eligibility for certification under Section II of the Green-e Energy National Standard for Renewable Electricity Products, National Standard Version 1.6. Unless a change is agreed to by the Parties in writing, Version 1.6 will be the applicable Green-e standard during the Term regardless of changes by Green-e. Buyer shall have the right to disaggregate, retain or separately sell the RECs or Environmental Attributes purchased under this Agreement; provided that (a) Seller shall not bear any costs or risks associated with such third party sale(s) or transfer(s), except that Seller will remain liable to Buyer for any failure to comply with Seller's obligations under this Agreement and (b) if Buyer provides representations or warranties to a third party in connection with such third party sale or transfer that are materially different than the

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representations and warranties provided by Seller under this Agreement, then Buyer shall indemnify Seller for any liability caused by the differences between the representations and warranties in this Agreement and the representations and warranties provided by Buyer in the third party sale(s) or transfer(s).

2. **Term**: The Term of this Transaction shall commence on January 1, 2019 and shall continue through February 1, 2031 and until all obligations of the Parties under this Transaction have been satisfied, unless an Early Termination Date of this Agreement is established pursuant to Section 5.2 of the Master Agreement.

3. **Unit Specific Renewable Energy Facility Information**:

   a. Name of Facility: Oregon Trail Wind Park

   b. Location of Facility: Hagerman, Idaho

   c. Facility ID Number: ☐ EIA or ☐ QF? (check one)

   d. Fuel Type: Wind

   e. Initial Operating Date: ___/___/_2011

   f. Nameplate Capacity (MW): 13.5

4. **Contract Quantity**: 100% of the Environmental Attributes generated by the Renewable Resource during the Term.

   a. Unit Contingent Expected Volume (estimated): 35,900 RECs/year

   b. Guaranteed Minimum Volume: OREGON TRAIL WIND PARK, LLC: 48,904 per each discrete period of three contiguous full calendar years during the Term ("Performance Measurement Period"). Commencing in the fourth full calendar year after the commencement of the Term and each calendar year thereafter, if the amount of RECs and Replacement RECs Delivered in the Performance Measurement Period ending in the previous calendar year is less than the Guaranteed Minimum Volume, Seller shall provide Replacement RECs to Buyer in an amount equal to the difference between the Guaranteed Minimum Volume and the RECs Delivered during the Performance Measurement Period ("REC Shortfall"). The Vintage of the Replacement RECs must be no older than the most recent (i.e., for a Performance Measurement Period 2019 to 2021, the Vintage of Replacement RECs is 2021) calendar year of the Performance Measurement Period with respect to which the REC Shortfall occurred. If Seller is unable to provide Replacement RECs to the Buyer in the full amount of the REC Shortfall, then Buyer shall procure Replacement RECs in an amount equal to the portion of the REC Shortfall for which Seller did not provide Replacement RECs. If Buyer is able to obtain such Replacement RECs, Seller will reimburse Buyer for the cost of such Replacement RECs ("Replacement REC Reimbursement") up to a maximum amount per Replacement REC equal to the applicable administrative penalty set forth in RCW 19.285.060 (or any successor statute) ("REC Shortfall Penalty"). If neither Seller nor Buyer is able to obtain the Replacement RECs, then Seller will pay Buyer the Replacement REC Reimbursement in an amount equal to the product of the REC

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Shortfall Penalty and the Replacement RECs that could not be obtained by Seller or Buyer.

Buyer will pay the Purchase Price for any Replacement RECs Delivered hereunder.

In the event that the Renewable Energy Facility substation transformer fails such that a replacement is necessary (a "Transformer Failure Event"), the Guaranteed Minimum Volume set forth above will be reduced for each Performance Measurement Period affected by the Transformer Failure Event by an amount equal to the product of (i) the original Guaranteed Minimum Volume set forth above, and (ii) the quotient of the number of hours during the applicable Performance Measurement Period that the transformer was unavailable, divided by the total number of hours during the applicable Performance Measurement Period.

5. **Purchase Price: $13.00 per REC during the entire Term**

6. **WREGIS Generator Information**:

   a. Generating Unit Identification Number: _____

   b. Generating Unit Name: _____

   c. Primary Facility Name: Oregon Trail Wind Park

   d. Facility Owner Name: Oregon Trail Wind Park, LLC

   A completed Generator Attestation substantially in the form of Exhibit B to the Master Agreement will be provided as soon as reasonably practicable.

7. **Delivery Date**: Delivery shall occur through the WREGIS REC electronic tracking and transfer system. Seller shall comply with all laws, including, without limitation, the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer, and Buyer shall be given sole title to all such WREGIS Certificates upon the transfer of such WREGIS Certificates to Buyer's WREGIS account. Within 10 Business Days after receipt by Seller of WREGIS Certificates from WREGIS, Seller shall deliver such WREGIS Certificates to Buyer's WREGIS account ID ___. After such delivery of WREGIS Certificates to Buyer's WREGIS account, Seller shall invoice Buyer for such RECs in accordance with Section 2.3 of the Master Agreement.

8. **Special Terms & Exceptions**:

   a. Seller covenants that it will not sell or attempt to resell the RECs associated with this Transaction nor take any action that will damage, harm or interfere with Buyer's rights to clean title, ownership and marketability of the RECs associated with this Transaction.

   b. Definition 1.6(b) is deleted and replaced in its entirety with the following: had any such petition filed or commenced against it and not dismissed within 90 days.

   c. Definition 1.17 is deleted and replaced in its entirety with the following: "**Costs**" means, with respect to the Non-Defaulting Party, the present value of brokerage fees, commissions, attorneys fees, and other similar third party transaction costs and

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expenses reasonably incurred by such Party either in terminating or replacing any arrangement pursuant to which it has hedged its obligations, as determined by the Non-Defaulting Party in a commercially reasonable manner.

d. Definition 1.23 is deleted and replaced in its entirety with the following: "**Downgrade Event**" means (a) with respect to Buyer, that Buyer's Credit Rating falls below BBB- from S&P or Baa3 from Moody's or becomes no longer rated by either S&P or Moody's, and (b) with respect to Seller, that Seller has failed to Deliver WREGIS Certificates in respect of the most recently concluded calendar year period during the Term in an amount equal to or greater than the product of fifteen percent (15%), multiplied by the Renewable Energy Facility's Nameplate Capacity, multiplied by 8760.

e. Definition 1.49 is deleted and replaced in its entirety with the following: "**Renewable Energy Certificate**" or "**REC**" means a tradable certificate, credit, allowance, green tag, or other transferable document conferring ownership, howsoever entitled, created by an Applicable Program or Certification Authority, indicating proof of one megawatt-hour of generation from a Renewable Energy Source by a Renewable Energy Facility. Owning a REC means the right to claim title to all the Environmental Attributes attributable to the generation of electric energy from the Renewable Energy Facility and includes all of the Environmental Attributes associated with the generation of electricity from which the REC is derived. The Environmental Attributes may be disaggregated and retained or sold separately, all as the Parties agree in a Confirmation. A REC is separate from the energy produced and may be separately transferred or conveyed. RECs are measured in one megawatt-hour increments.

f. Definition 1.52 is deleted and replaced in its entirety with the following: "**Renewable Portfolio Standard**" or "**RPS**" means a state or federal law, rule or regulation that requires a stated amount or minimum proportion or quantity of electricity that is sold or used by specified persons to be generated from Renewable Energy Sources, and includes the Washington Renewable Portfolio Standard.

g. The following is added to the end of Section 2.2 "**Product Delivery**": If WREGIS ceases operations such that the transfer procedure set forth in this Section 2.2 becomes incapable of being performed or administered, then either Party, on notice, may request that the Parties enter into negotiations to make the minimum changes to this Master Agreement and any applicable Confirmation(s) necessary to identify and implement an alternate tracking system or transfer mechanism in a manner that gives effect to the original intention of the Parties, while attempting to preserve to the maximum extent possible the benefits, burdens and obligations set forth in this Master Agreement as of the Effective Date. Upon receipt of a notice requesting negotiations, the Parties shall negotiate in good faith. If the Parties are unable, within sixty (60) days after the sending of the notice requesting negotiations, to agree upon changes to this Master Agreement and any applicable Confirmation(s), then either Party may submit the issues for dispute resolution pursuant to Section 9.7.

h. The second paragraph to Section 2.10 "**Secondary Markets**" is deleted and replaced in its entirety with the following: Any representation of compliance with an Applicable Program applies only up to the Trade Date. If applicable, a Confirmation may provide by its terms that the Renewable Energy Facility will be designated by Seller after the Trade Date and on or before the Delivery Date, so long as once having been specified, the

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Delivery complies with the requirements of the Applicable Program, in the manner represented by Seller.

i. Section 3.2(d) is deleted and replaced in its entirety with the following: each Environmental Attribute and REC sold hereunder meets the specifications set forth in the Confirmation;

j. Section 3.5 is deleted and replaced in its entirety with the following: **Cooperation on Delivery; Review of Records.** Upon either Party's receipt of notice from an Administrator that the transfer of RECs pursuant to a Transaction will not be recognized or Product Delivery was not made as required pursuant to the terms of a Transaction, that Party will immediately so notify the other Party, providing a copy of such notice, and both Parties will cooperate in taking such actions as are necessary and commercially reasonable to cause such transfer to be recognized and Product Delivered. Each Party agrees to provide copies of its records to the extent reasonably necessary for the Verification Provider or Certification Authority to perform the functions designated on the Confirmation, and to verify the accuracy of any fact, statement, charge or computation made pursuant hereto if requested by the other Party. If any fact, statement, charge or computation contained any inaccuracy, the necessary adjustments and any resulting payments will be made promptly and the payments will bear interest at the Prime Rate from the date the overpayment or underpayment was made until the resulting adjustment payment is paid. If Seller is not the owner or operator of the Renewable Energy Facility that generated all of the Product in a Transaction, Seller will cooperate with Buyer in any efforts to review the records of the original seller of such Product. If Seller is the owner or operator of the Renewable Energy Facility that generated any portion of the Product in a Transaction, it consents to Buyer's assignment of rights under this Section to any subsequent purchaser of such Product. The obligations set forth in this Section terminate with respect to any particular Transaction on the later of thirty (30) days following the last date for any banking of the RECs under the Applicable Program for the Vintage of the Product Delivered, or the third anniversary of the Delivery Date.

The Parties further reserve the right to review during normal business hours and at its own expense, for up to two (2) years following the Delivery Date of the WREGIS Certificates, and with reasonable advance notice to the other Party and to the extent that such other Party is in possession of such information:

(a) The actual hourly MWh generated by the Renewable Energy Facility, and

(b) Information required to verify that the RECs sold under the Confirmation were not otherwise sold by Seller to a third party.

k. Section 4.1 is deleted and replaced in its entirety with the following: **Financial Information.** If requested in writing by a Party before or during the Term, the other Party will deliver:

(a) within 200 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements (or tax returns without the Schedule K-1 or unaudited if audited statements are not available) for such fiscal year of such Party, or if applicable, of the entity specified in Exhibit C,

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(b) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of the quarterly report containing unaudited consolidated financial statements for such fiscal quarter of such Party, or if applicable, of the entity specified in Exhibit C, and

(c) such other information as specified in the Confirmation.

In all cases the statements will be for the most recent accounting period and prepared in accordance with generally accepted accounting principles in the jurisdiction in which the reporting entity is organized; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay will not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements. If applicable, timely filing of Form 10-K, Form 10-Q or Form 8-K with the Securities and Exchange Commission satisfies the requirements of this Section.

I. Section 4.2 is deleted and replaced in its entirety with the following: **Credit Assurances**.

(a) During the Term, if there is any Downgrade Event affecting Buyer or Seller (or Seller's Affiliate), the other Party, in its discretion, may require the Party experiencing the Downgrade Event to provide Credit Support sufficient to assure that the Party experiencing or affected by the Downgrade Event will continue to meet its current contractual obligations under this Master Agreement for the next twelve (12) months from the date of the demand for Credit Support (or if the remaining Term is less than twelve (12) months, for the remaining Term) as set forth in Section 4.2(c) or 4.2(d), as applicable.

(b) Following a demand for Credit Support and until such time as the Party is no longer experiencing or affected by a Downgrade Event, the Party experiencing or affected by the Downgrade Event shall maintain satisfactory Credit Support on an ongoing, rolling basis sufficient to assure its current contractual obligations and its contractual obligations for the next twelve (12) months as set forth in Section 4.2(c) or 4.2(d), as applicable. At the request of either Party, Credit Support shall be increased or decreased as appropriate once per calendar month such that the party providing Credit Support will be able to meet the affected Party's then-current contractual obligations and its contractual obligations under this Master Agreement for the next twelve (12) month period (or if the remaining Term is less than twelve (12) months, for the remaining Term) as set forth in Section 4.2(c) or 4.2(d), as applicable.

(c) In the case of a Downgrade Event being experienced by Seller, such Credit Support may be provided by Seller's Affiliate on behalf of Seller provided that Seller's Affiliate holds a Credit Rating equal to or greater than BBB- from S&P or Baa3 from Moody's. Seller's Credit Support for the above period shall be in an amount sufficient to provide Replacement RECs equal to 5 percent multiplied by 8760 multiplied by the Renewable Energy Facility's Nameplate Capacity (MW) multiplied by the Market REC Price or the applicable penalty pursuant to the Washington RPS as in effect on the Trade Date, whichever is less. For purposes of this Section 4.2(c), Market REC Price shall be determined by using, in the absence of a liquid, transparent REC market, the average of three broker estimates (or as few as one broker estimate, if two or three are not reasonably available) for the above referenced twelve (12) month period. The

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brokers are to be chosen by Buyer. In the event a liquid, transparent REC market exists, then the Market REC Price shall be used from the REC market.

(d) If Buyer is experiencing a Downgrade Event, Buyer's Credit Support for the above period shall be in an amount equal to the greater of (a) two month's of anticipated payments to Seller, or (b) the negative difference between the Market REC Price and the Purchase Price herein multiplied by the RECs that would be delivered for the above referenced twelve (12) month period under this Master Agreement (assuming deliveries of 125 percent of the Guaranteed Minimum Volume applicable to such period). For purposes of this Section 4.2(d), Market REC Price shall be as determined by using, in the absence of a liquid, transparent REC market, the average of three broker estimates (or as few as one broker estimate, if two or three are not reasonably available) for the above referenced twelve (12) month period. The brokers are to be chosen by Seller. In the event a liquid, transparent REC market exists, then the Market REC Price shall be used from the REC market.

(e) If the Party experiencing a Downgrade Event fails to provide such Credit Support within ten (10) days of a request for Credit Support or fails to maintain Credit Support as set forth above, the requesting Party may suspend its performance under this Master Agreement until such Credit Support is posted or may treat the failure to provide Credit Support as a default and exercise its rights under Article 5 of this Master Agreement.

(f) At a Party's written request, the other Party shall furnish the requesting Party financial information as may be reasonably required to confirm that a Downgrade Event has not occurred.

(g) Either Party may assign its Credit Support obligation to a "Guarantor" acceptable to the other Party that will be able to meet the minimum credit standards set forth in the definition of Downgrade Event.

m. Section 5.1 (h) is deleted and replaced in its entirety with the following: failure by Seller to provide Replacement RECs or make the Replacement REC Reimbursement payment, if applicable, as may be required in the Confirmation.

n. Section 5.3 is deleted and replaced in its entirety with the following: **Net Out of Settlement Amounts**. The Non-Defaulting Party will aggregate all Settlement Amounts under this Master Agreement into a single amount by netting out (a) all amounts that are due to the Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash, security or other Credit Support then available to the Non-Defaulting Party, plus any or all other amounts due to the Defaulting Party under this Master Agreement against (b) all Settlement Amounts that are due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting Party under this Master Agreement, so that all such amounts will be netted out to a single liquidated amount (the "**Termination Payment**") payable by the Defaulting Party. If the Non-Defaulting Party uses the market price for a comparable transaction to determine the Gains or Losses, such price should be determined by using the average of market quotations provided by three (3) or more bona fide unaffiliated market participants (or as few as one bona fide unaffiliated market participant, if two or three are not reasonably available). If the number of available quotes is three (or two, if three are not reasonably available), then the average of the three (or two, if three are not reasonably available) quotes shall be deemed to be the market price. Where a quote is in the form of bid and ask prices, the price that is to be

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used in the averaging is the midpoint between the bid and ask price. The quote(s) obtained shall be: (a) for a like amount, (b) of the same Product, and (c) for the remainder of the Term. The Termination Payment, if any, is due from the Defaulting Party to the Non-Defaulting Party within ten (10) Business Days following notice.

o. Section 5.4 is hereby modified by replacing the term "Performance Assurance" with the term "Credit Support".

p. Article 6 is deleted and replaced in its entirety with the following:

If either Party is rendered unable, wholly or in part, by Force Majeure to carry out its obligations with respect to this Master Agreement, then upon such Party's (the "**Claiming Party**") giving notice and full particulars of such Force Majeure as soon as reasonably possible after the cause relied upon first delays or prevents performance hereunder, confirmed in writing, the obligations of the Claiming Party will, to the extent they are affected by such Force Majeure, be suspended during the continuance of said inability, but for no longer period, and the Claiming Party will not be in breach hereof or liable to the other Party for, or on account of, any loss, damage, injury or expense resulting from, or arising out of such event of Force Majeure. The Party receiving such notice of Force Majeure will have five (5) Business Days following such receipt to notify the Claiming Party that it objects to or disputes the existence of Force Majeure. "**Force Majeure**" means an event or circumstance which materially adversely affects the ability of a Party to perform its obligations under one or more Transactions, which event or circumstance was not reasonably anticipated as of the date such Transaction was entered into and which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which the Claiming Party is unable to overcome or avoid or cause to be avoided, by the exercise of due diligence. Force Majeure includes events or circumstances described in the previous sentence that disrupt the operation of the specified Renewable Energy Facility. Force Majeure may not be based on (i) the loss or failure of Buyer's markets; (ii) Buyer's inability economically to use or resell the Product purchased hereunder; or (iii) Seller's ability to sell the Product to another at a price greater than the Purchase Price. Subject to and without limiting Article 7, Force Majeure may include a change in Applicable Law, or the failure or disruption in Deliveries of any Certification Authority that is not the Claiming Party. In the case of a Party's obligation to make payments hereunder, Force Majeure will be only an event or act of a Governmental Authority that on any day disables the banking system through which a Party makes such payments.

q. Section 9.5(c) is hereby modified by replacing the word "parties" with "Parties" in the first line thereof.

r. Section 9.7(a) is deleted and replaced in its entirety with the following: **Negotiations.** The Parties must attempt in good faith to resolve all disputes arising out of, related to or in connection with this Master Agreement promptly by negotiation, as follows. Any Party may give the other Party written notice of any dispute ("**Dispute Notice**") not resolved in the normal course of business. Executives of both Parties at levels one level above the personnel who have previously been involved in the dispute must meet at a mutually acceptable time and place within ten days after delivery of such notice, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within thirty (30) days

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after the referral of the dispute to such senior executives, or if no meeting of such senior executives has taken place within fifteen (15) days after such referral, either Party may initiate mediation in accordance with Section (b) below. **All negotiations pursuant to this clause are confidential unless disclosure is required by law.**

s. Section 9.8 is deleted and replaced in its entirety with the following: **Jurisdiction and Venue**. Any disputes arising out of, in connection with or with respect to this Master Agreement, the subject matter of this Master Agreement, the performance or non-performance of any obligation under this Master Agreement that cannot be resolved in accordance with Section 9.7 shall be adjudicated in King County Superior Court, King County, Washington or the U.S. District Court for the Western District of Washington and nowhere else. Each of the Parties irrevocably consents to the jurisdiction of such courts.

The Parties agree to the Transaction set forth herein.

Seller: OREGON TRAIL WIND PARK, LLC	**Buyer**: City of Seattle, acting by and through its City Light Department
By:	By:
Name:	Name:
Title:	Title:

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ATTACHMENT 1 TO CONFIRMATION AGREEMENT
SAMPLE FORM
ATTESTATION FROM GENERATOR PARTICIPATING IN WREGIS

This Attachment 1 to the Confirmation Agreement governs generation at the Facility during the Term. Any changes shall be provided by the Seller to the Buyer as soon as reasonably practicable by providing a revised Attachment 1. Any capitalized term used, but not defined, in this Attestation shall have the meaning ascribed to such term in the Master Agreement.

1. Renewable Energy Facility Owner Information

a. Name of Owner: ("Owner")

b. Address of Owner:

c. Contact person: Title:

d. Telephone: Fax: Email:

2. Renewable Energy Facility and WREGIS Registration Information

a. Name of Facility: ("Facility")

b. Location/Address of Facility:

c. Facility ID Number: _____ ☐ EIA or ☐ QF? (check one)

d. Fuel Type:

e. Initial Operating Date: ___/___/___

f. Nameplate Capacity (MW): ____

3. WREGIS Information

a. Generating Unit Identification Number:

b. Generating Unit Name:

c. Primary Facility Name:

4. Other

a. Is the Facility owner reporting its direct greenhouse gas emissions in a legally binding cap and trade program for the time period of generation listed on this form?

☐ Yes; list the cap and trade program: _____

☐ No

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b. If Seller is providing only RECs to Purchaser and selling the associated electricity to a utility or load-serving entity, please write the name of the utility or load-serving entity here: _____

c. If Facility has been registered in WREGIS by an entity other than Owner, complete items 1 – 3 immediately below and have an agent of the company or individual designated in WREGIS to manage Facility's account in WREGIS complete and sign this form. For the purposes of this form, such a company or individual is referred to as an "Account Manager".[1]

(i) Name of Account Manager as appears in WREGIS:

(ii) Date that account management rights assigned to Account Manager expire:[2]

(iii) ☐ Account Manager has attached documentation[3] accepted by WREGIS authorizing Account Manager to register Facility in WREGIS

5. [Intentionally Omitted]

6. Signature

As an authorized agent of Owner or Account Manager, Signatory declares that they have the knowledge and authority to attest that the statements on this form are true and correct. By signing this form, Signatory is attesting that the statements and declarations herein are true as of the date this form is signed, and that Seller will provide a revised form to the Buyer as soon as reasonably practicable following any event or circumstance that causes the statements and declarations herein to no longer be true.

If any conditions change related to the information on this form, Seller agrees to inform the Buyer in writing as far in advance of the change as commercially practicable.

_____ _____

Signature Date

_____

Title

[1] Only fill in this section if Owner and Account manager have signed the appropriate bi-lateral form required by WREGIS to designate Account Manager as the sole manager of Facility's Tracking System account and sole recipient of Facility's Environmental Attributes. If there is no Account Manager, and Owner manages Facility's account, this section should be left blank, and Owner must complete this attestation.

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_____

Organization

_____

Place of Execution

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ATTACHMENT 2 TO CONFIRMATION AGREEMENT

CONSENT TO COLLATERAL ASSIGNMENT OF CONFIRMATION AGREEMENT AND MASTER RENEWABLE ENERGY CERTIFICATE PURCHASE AND SALE AGREEMENT

This CONSENT TO COLLATERAL ASSIGNMENT AGREEMENT (this "Consent"), dated as of July ____, 2012 is hereby entered into among The City of Seattle, acting by and through its City Light Department (the "Contracting Party"), CAMP REED WIND PARK, LLC ("Camp Reed"), GOLDEN VALLEY WIND PARK, LLC ("Golden Valley"), OREGON TRAIL WIND PARK, LLC ("Oregon Trail"), SALMON FALLS WIND PARK, LLC ("Salmon Falls"), THOUSAND SPRINGS WIND PARK, LLC ("Thousand Springs"), TUANA GULCH WIND PARK, LLC ("Tuana Gulch"), and together with Camp Reed, Golden Valley, Oregon Trail, Salmon Falls and Thousand Springs, the "Assignors", and each individually, an "Assignor" and UNION BANK, N.A., as collateral agent for the Lenders (as defined below) and the other Secured Parties referred to in the Credit Agreement defined below (the "Secured Parties") (in such capacity, and including any permitted successors or assigns, the "Collateral Agent").

RECITALS

WHEREAS, (i) the Contracting Party and Camp Reed have entered into a Master Renewable Energy Certificate Purchase and Sale Agreement dated as of the date hereof and Confirmation Agreement No. 1 dated as of the date hereof (each, as amended, modified and supplemented and in effect from time to time, the "Camp Reed Agreement"), (ii) the Contracting Party and Golden Valley have entered into a Master Renewable Energy Certificate Purchase and Sale Agreement dated as of the date hereof and Confirmation Agreement No. 1 dated as of the date hereof (each, as amended, modified and supplemented and in effect from time to time, the "Golden Valley Agreement"), (iii) the Contracting Party and Oregon Trail have entered into a Master Renewable Energy Certificate Purchase and Sale Agreement dated as of the date hereof and Confirmation Agreement No. 1 dated as of the date hereof (each, as amended, modified and supplemented and in effect from time to time, the "Oregon Trail Agreement"), (iv) the Contracting Party and Salmon Falls have entered into a Master Renewable Energy Certificate Purchase and Sale Agreement dated as of the date hereof and Confirmation Agreement No. 1 dated as of the date hereof (each, as amended, modified and supplemented and in effect from time to time, the "Salmon Falls Agreement"), (v) the Contracting Party and Thousand Springs have entered into a Master Renewable Energy Certificate Purchase and Sale Agreement dated as of the date hereof and Confirmation Agreement No. 1 dated as of the date hereof (each, as amended, modified and supplemented and in effect from time to time, the "Thousand Springs Agreement") and (vi) the Contracting Party and Tuana Gulch have entered into a Master Renewable Energy Certificate Purchase and Sale Agreement dated as of the date hereof and Confirmation Agreement No. 1 dated as of the date hereof (each, as amended, modified and

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supplemented and in effect from time to time, the "Tuana Gulch Agreement", and together with the Camp Reed Agreement, the Golden Valley Agreement, the Oregon Trail Agreement, the Salmon Falls Agreement and the Thousand Springs Agreement, the "Assigned Agreements", and each individually, an "Assigned Agreement");

WHEREAS, Idaho Wind Partners 1, LLC (the "Borrower") has entered into the Credit Agreement dated as of October 8, 2010 (as amended, modified and supplemented and in effect from time to time, the "Credit Agreement"), among the Borrower, each Assignor, each other Borrower Subsidiary party thereto, the financial institutions from time to time parties thereto (collectively, the "Lenders"), The Bank of Tokyo-Mitsubishi UFJ, Ltd., New York Branch, as Administrative Agent for the Lenders (in such capacity, and including any permitted successors or assigns "Administrative Agent"), the Collateral Agent, The Bank of Tokyo-Mitsubishi UFJ, Ltd., New York Branch, as PPA Letter of Credit Issuing Bank (in such capacity, and including any permitted successors or assigns, the "PPA Letter of Credit Issuing Bank") and ING Capital LLC, as DSR Letter of Credit Issuing Bank (in such capacity, and including any permitted successors or assigns, the "DSR Letter of Credit Issuing Bank", and together with the PPA Letter of Credit Issuing Bank, the "Letter of Credit Issuing Banks");

WHEREAS, the Borrower, each Assignor and each other Borrower Subsidiary have entered into a Pledge and Security Agreement with the Collateral Agent dated as of October 8, 2010 (as amended, modified and supplemented and in effect from time to time, the "Pledge and Security Agreement") pursuant to which each Assignor has collaterally assigned all of its right, title and interest in the applicable Assigned Agreement; and

WHEREAS, it is a requirement under the Credit Agreement that each Assignor and the Contracting Party execute and deliver this Consent.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

1. (a) The Contracting Party hereby acknowledges and consents to the grant of a security interest in, lien on, and collateral assignment of all right, title and interest of each Assignor in, to and under (but, except pursuant to paragraph 1(b) below, not its obligations, liabilities or duties with respect to) the Assigned Agreements by each Assignor to the Collateral Agent pursuant to the Pledge and Security Agreement.

(b) In the event that an Assignor defaults in its obligations owed to the Collateral Agent or to the Lenders under the Credit Agreement and the Collateral Agent at the written direction of the Lenders and other Secured Parties thereafter forecloses on the applicable Assigned Agreement, the Contracting Party hereby acknowledges and consents to the transfer of such Assignor's interest under such Assigned Agreement to the Collateral Agent or any assignee consented to by the Contracting Party, provided that, the Collateral Agent or such assignee (i) cures all outstanding payment defaults, (ii) assumes,

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and provides evidence of such assumption in writing and in a form reasonably acceptable to the Contracting Party, all obligations, duties and benefits conferred to such Assignor under such Assigned Agreement, and (iii) agrees that all representations, warranties, indemnities and agreements made by such Assignor shall, following such assumption, continue to be made by the Collateral Agent or such assignee as shall be agreed in an assumption agreement.

2. The Contracting Party represents and warrants (i) it is duly organized and validly existing under the laws of the jurisdiction of its incorporation or organization, (ii) it has the power and authority to enter into this Consent and to perform its obligations hereunder, (iii) all governmental and other authorizations, approvals, consents, notices and filings that are required to have been obtained or submitted by it with respect to entering into and performing this Consent have been obtained or submitted and are in full force and effect and all conditions thereof have been complied with, (iv) the Assigned Agreements are in full force and effect as of the effective date of this Consent, and (v) the Contracting Party has no knowledge of any assignments, breach or default of the Assigned Agreements.

3. The Collateral Agent represents and warrants that (i) it is duly organized and validly existing under the laws of the jurisdiction of its incorporation or organization, (ii) it has the power and authority to enter into this Consent and to perform its obligations hereunder, (iii) all governmental and other authorizations, approvals, consents, notices and filings that are required to have been obtained or submitted by it with respect to entering into and performing this Consent have been obtained or submitted and are in full force and effect and all conditions thereof have been complied with; (iv) the Collateral Agent represents that it is the Collateral Agent under the Credit Agreement and under the Pledge and Security Agreement referenced above, and (v) the Collateral Agent has no knowledge of any assignment, breach or default of either the Credit Agreement or the Pledge and Security Agreement.

4. The Borrower represents and warrants that (i) it is duly organized and validly existing under the laws of the jurisdiction of its incorporation or organization, (ii) it has the power and authority to enter into this Consent and to perform its obligations hereunder, (iii) all governmental and other authorizations, approvals, consents, notices and filings that are required to have been obtained or submitted by it with respect to entering into and performing this Consent have been obtained or submitted and are in full force and effect and all conditions thereof have been complied with; (iv) the Borrower represents that it is the Borrower under the Credit Agreement and under the Pledge and Security Agreement referenced above, (v) the Credit Agreement and the Pledge and Security Agreement are in full force and effect as of the effective date of this Consent, (vi) the Credit Agreement and the Pledge and Security Agreement authorize the Collateral Agent to execute this Consent and to perform its obligations stated hereunder, and (vii) the Borrower has no knowledge of any assignment, breach or default of either the Credit Agreement or the Pledge and Security Agreement.

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5. The Contracting Party agrees that it will not terminate or suspend its obligations under the Assigned Agreements without first giving the Collateral Agent written notice and not less than ten (10) days opportunity to cure.

6. The Parties agree that the Contracting Party shall make all payments due to the Assignors under the Assigned Agreements to Union Bank, N.A., as Depositary Agent (in such capacity, the "Depositary Agent"), to be deposited into Idaho Wind Partners 1, Revenue Account at Union Bank, N.A., Ref: Idaho Wind Partners 1, LLC,. All parties hereto agree that each payment by the Contracting Party to the Depositary Agent of amounts due to the Assignors from the Contracting Party under the Assigned Agreements shall satisfy the Contracting Party's corresponding payment obligation under the Assigned Agreement.

7. The Contracting Party shall deliver to the Collateral Agent, concurrently with the delivery thereof to an Assignor, a copy of each notice, request or demand given by the Contracting Party pursuant to the Assigned Agreements.

8. This Consent and the obligations of the Contracting Party hereunder shall terminate and be of no further force and effect on the earlier of (i) the date on which the Contracting Party shall have received notice in writing from the Collateral Agent, that the lien of the Pledge and Security Agreement has been released in full and (ii) the date on which the Assigned Agreement has been terminated in accordance with its terms and the terms of this Consent.

9. Notice to any party hereto shall be in writing and shall be deemed to be delivered on the earlier of: (a) the date of personal delivery, (b) if deposited in a United States Postal Service depository, postage prepaid, registered or certified mail, return receipt requested, or sent by express courier, in each case addressed to such party at the address indicated below (or at such other address as such party may have theretofore specified by written notice delivered in accordance herewith), upon delivery or refusal to accept delivery, or (c) if transmitted by facsimile, the date when sent and facsimile confirmation is received; provided that any facsimile communication shall be followed promptly by a hard copy original thereof by express courier:

To the Collateral Agent: Union Bank, N.A.
1251 Avenue of Americas, 19th Floor
New York, NY 10020
Attention: Corporate Trust Dept.
Telephone: (646) 452-2005
Facsimile: (646) 452-2000/1

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To the Assignors: Idaho Wind Partners 1, LLC
c/o RP Wind ID LLC
P.O. Box 2049
82 Elm Street
Manchester Center, VT 05255
Attn: Steve Eisenberg
Telephone: (802) 362-9147
Facsimile: (802) 362-9148

To the Contracting Party: Seattle City Light
Attention: Caroline Dethloff
Manager, Wholesale Contracts
P.O. Box 34023
Seattle, WA 98124-4023
Telephone: (206) 684-3534
Fax No.: (206) 386-4555
Email: caroline.dethloff@seattle.gov

10. The Parties to this Agreement will from time to time, upon the reasonable written request of another Party, execute and deliver such further documents and do such other acts and things as such other Party may reasonably request in order to effectuate more fully the purposes of this Agreement.

11. This Consent shall be binding upon and shall inure to the benefit of the successors and assigns of the Contracting Party, and shall inure to the benefit of the Collateral Agent, the Secured Parties and their respective successors, transferees and assigns.

12. This Consent may be executed in one or more counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

13. THIS CONSENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF WASHINGTON, WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES THEREOF.

14. Any legal action or proceeding with respect to this Consent and any action for enforcement of any judgment in respect thereof shall be brought in the Superior Court of King County, Washington at Seattle, and, by execution and delivery of this Consent, each of the Contracting Party, the Assignors and the Collateral Agent hereby accepts for itself and in respect of its property, generally and unconditionally, the exclusive jurisdiction of the aforesaid court and the Washington appellate courts from any appeal thereof.

15. Each of the Contracting Party, the Assignors and the Collateral Agent hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of

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any of the aforesaid actions or proceedings arising out of or in connection with this Consent brought in the courts referred to above and hereby further irrevocably waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum.

16. Neither this Consent nor any of the terms hereof may be terminated (other than pursuant to the terms hereof), amended, supplemented, waived or modified except by an instrument in writing signed by the parties hereto.

17. In case any provision in or obligation under this Consent shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

18. In the event of any conflict between the terms, conditions and provisions of this Consent and those of any other agreement, document or instrument (including, without limitation, the Assigned Agreements), the terms, conditions and provisions of Assigned Agreements shall prevail.

[SIGNATURE TO FOLLOW]

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IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute and deliver this Consent as of the date first written above.

THE CITY OF SEATTLE
BY AND THROUGH ITS
CITY LIGHT DEPARTMENT,
as Contracting Party

By: _____
Name: Robert W. Cromwell, Jr.
Title: Director

IDAHO WIND PARTNERS 1, LLC,
as Borrower

By:_____
Name:
Title:

CAMP REED WIND PARK, LLC,
as Assignor

By:_____
Name:
Title:

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GOLDEN VALLEY WIND PARK, LLC,
as Assignor

By:_____
Name:
Title:

OREGON TRAIL WIND PARK, LLC,
as Assignor

By:_____
Name:
Title:

SALMON FALLS WIND PARK, LLC,
as Assignor

By:_____
Name:
Title:

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THOUSAND SPRINGS WIND PARK, LLC,

as Assignor

By:_____

Name:

Title:

TUANA GULCH WIND PARK, LLC,

as Assignor

By:_____

Name:

Title:

Acknowledged and Agreed:

UNION BANK, N.A.,

as Collateral Agent

By:_____

Name: _____

Title: _____

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Form revised: December 6, 2011

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
City Light	Robert W. Cromwell, Jr./684-3856	Calvin Chow/684-4652

Legislation Title:

AN ORDINANCE relating to the City Light Department; authorizing the execution of a confirmation agreement with the Oregon Trail Wind Park, LLC for the purchase of environmental attributes, which include renewable energy certificates that are necessary or convenient for meeting the requirements of the Washington State Energy Independence Act; and further authorizing the execution of other necessary and convenient agreements for the receipt, tracking, transferring, management, and sale of the environmental attributes.

Summary of the Legislation:

This legislation approves the confirmation agreement for the 12-year purchase of environmental attributes, which include renewable energy certificates ("RECs") to allow the City Light Department ("City Light") to comply with the Washington State Energy Independence Act also known as Initiative 937 or I-937. Under these agreements, City Light would pay $13 per REC from 2019 through 2031 for approximately 35,900 RECs per year.

Background:

This legislation approves the confirmation agreement for the purchase of RECs from Oregon Trail Wind Park LLC, located in southern Idaho. This resource is expected to produce about 35,900 RECs annually. City Light will receive 100 percent of the RECs associated with the renewable resource starting in 2019 for a 12-year term. The RECs will be delivered to City Light through the Western Renewable Energy Generation Information System. City Light intends to use the RECs to partially meet its regulatory requirement under the Energy Independence Act.

Please check one of the following:

____ **This legislation does not have any financial implications.**
(Please skip to "Other Implications" section at the end of the document and answer questions a-h. Earlier sections that are left blank should be deleted. Please delete the instructions provided in parentheses at the end of each question.)

__X__ **This legislation has financial implications.**
(If the legislation has direct fiscal impacts (e.g., appropriations, revenue, positions), fill out the relevant sections below. If the financial implications are indirect or longer-term, describe them in narrative in the "Other Implications" Section. Please delete the instructions provided in parentheses at the end of each title and question.)

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Appropriations:

Fund Name and Number	Department	Budget Control Level*	2012 Appropriation	2013 Anticipated Appropriation
TOTAL			0	0

**See budget book to obtain the appropriate Budget Control Level for your department.*

Appropriations Notes: Although this legislation does have fiscal implications, these impacts begin in 2019. There are no appropriation impacts in 2012 and 2013.

Anticipated Revenue/Reimbursement Resulting from this Legislation:

Fund Name and Number	Department	Revenue Source	2012 Revenue	2013 Revenue
TOTAL				

Revenue/Reimbursement Notes: None.

Total Regular Positions Created, Modified, or Abrogated through this Legislation, Including FTE Impact:

Position Title and Department	Position # for Existing Positions	Fund Name & #	PT/FT	2012 Positions	2012 FTE	2013 Positions*	2013 FTE*
TOTAL							

** 2013 positions and FTE are total 2013 position changes resulting from this legislation, not incremental changes. Therefore, under 2013, please be sure to include any continuing positions from 2012.*

Position Notes: None.

Spending/Cash Flow: None.

Fund Name & #	Department	Budget Control Level*	2012 Expenditures	2013 Anticipated Expenditures
TOTAL				

** See budget book to obtain the appropriate Budget Control Level for your department.*

Spending/Cash Flow Notes: Spending begins in 2019.

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Other Implications:

a) **Does the legislation have indirect financial implications, or long-term implications?** Yes. Starting in 2019, the expected annual cost is approximately $470,000.

b) **What is the financial cost of not implementing the legislation?** The financial cost of not implementing this legislation would be to purchase RECs or resources that are more expensive or pay the costs related to the penalty in I-937 for not having sufficient RECs. The penalty cost (for not having obtained sufficient RECs and/or eligible renewable resources to meet the requirements of I-937) is approximately five times greater than the price of the RECs proposed in this legislation.

c) **Does this legislation affect any departments besides the originating department?** No.

d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** Alternatives include purchasing RECs from other renewable resources and/or energy plus RECs from new renewable resources. City Light is acquiring and will continue to acquire both to meet its regulatory obligation and its retail customer load requirements. Renewable resources that include energy, RECs, and delivery cost approximately three to six times more than this REC purchase.

e) **Is a public hearing required for this legislation?** No.

f) **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?** Not applicable.

g) **Does this legislation affect a piece of property?** No.

h) **Other Issues:** None

List attachments to the fiscal note below: None.

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City of Seattle
Office of the Mayor

May 29, 2012

Honorable Sally J. Clark
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Clark:

I am pleased to transmit the attached proposed Council Bill that authorizes the City Light Department to execute a twelve year confirmation agreement with Oregon Trail Wind Park, LLC for the purchase of environmental attributes in the form of renewable energy certificates from a new wind development in southern Idaho. City Light is required to purchase renewable resources and/or environmental attributes under Chapter 19.285.030 (18) of the Revised Code of Washington. This agreement will facilitate meeting this requirement.

By acquiring the "renewable energy certificates" from the Oregon Trail Wind Park, we are not only taking a meaningful step to assure City Light's compliance with "I-937" for a number of years in the future, we are helping to support and promote the development of new, renewable electric generating resources in the Northwest. This agreement is fully consistent with our shared goal of promoting a sustainable community, doing so in a very cost-effective manner.

Thank you for your consideration of this legislation. Should you have questions, please contact Robert W. Cromwell, Jr. at 684-3856.

Sincerely,

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

Michael McGinn, Mayor
Office of the Mayor
600 Fourth Avenue, 7th Floor
PO Box 94749
Seattle, WA 98124-4749

Tel (206) 684-4000
Fax (206) 684-5360
TDD (206) 615-0476
mike.mcginn@seattle.gov

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