



ANTONIO R. VILLARAIGOSA  
*Mayor*

Commission  
THOMAS S. SAYLES, *President*  
ERIC HOLOMAN, *Vice President*  
RICHARD F. MOSS  
CHRISTINA E. NOONAN  
JONATHAN PARFREY  
BARBARA E. MOSCHOS, *Secretary*

RONALD O. NICHOLS  
*General Manager*

June 24, 2013

The Honorable City Council  
City of Los Angeles  
Room 395, City Hall  
Los Angeles, California 90012

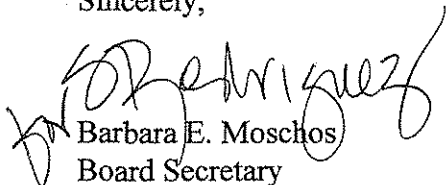
Honorable Members:

Subject: Power Sales Agreement No. BP 13-033 and Agency Agreement No. BP 13-034 with  
Southern California Public Power Authority

Pursuant to Charter Sections 373 and 674, enclosed for approval by your Honorable Body is Resolution No. 013 310, adopted by the Board of Water and Power Commissioners (Board) on June 19, 2013, approved as to form and legality by the City Attorney, which recommends approval of the Los Angeles Department of Water and Power, Power Sales Agreement No. BP 13-033 for 34.32 Megawatts of Geothermal Capacity and Agency Agreement No. BP 13-034 for Project Management Services with Southern California Public Power Authority. As directed by the Board, transmitted to you are supporting documents.

If there are any questions regarding this item, please contact Ms. Winifred Yancy, Manager of Intergovernmental Affairs and Community Relations, at (213) 367-0025.

Sincerely,

  
Barbara E. Moschos  
Board Secretary

BEM:oja  
Enclosures: LADWP Resolution  
Board Letter  
Power Sales Agreement No. BP 13-033  
Agency Agreement No. BP 13-034

(Ordinance transmitted under separate cover)

**Water and Power Conservation . . . a way of life**

111 North Hope Street, Los Angeles, California 90012-2607 Mailing address: Box 51111, Los Angeles 90051-5700  
Telephone: (213) 367-4211 Cable address: DEWAPOLA

c/enc: Mayor Antonio Villaraigosa  
Councilmember Jose Huizar, Chair, Energy and the Environment Committee  
Gerry F. Miller, Chief Legislative Analyst  
Miguel A. Santana, City Administrative Officer  
Rafael Prieto, Legislative Analyst, CLA  
William R. Koenig, Chief Administrative Analyst  
Winifred Yancy

WHEREAS, the Los Angeles Department of Water and Power's (LADWP) Renewable Portfolio Standard Policy and Enforcement Program (RPS Policy) represents the continued commitment by LADWP to renewable energy resources in accordance with Section 399.30(e) of the Public Utilities Code, requiring the governing boards of publicly owned electric utilities to adopt a program for enforcement on or before January 1, 2012; and

WHEREAS, the RPS Policy established compliance targets for LADWP to supply 25 percent of its retail energy sales from eligible renewable energy resources by 2016 and 33 percent by 2020 in accordance with the California Renewable Energy Resources Act, also referred to as Senate Bill 2 (1X); and

WHEREAS, the strategies in LADWP's Integrated Resource Plan (IRP) include regulatory requirements, policy objectives, and increases in eligible renewable energy resources, while maintaining service reliability, using existing assets near eligible renewable energy resources, and minimizing the financial impact on ratepayers; and

WHEREAS, the Board of Water and Power Commissioners (Board) approved the Southern California Public Power Authority (SCPPA) Renewable Electric Energy Resource Project Development Agreement (Phase I Renewable Development Agreement), LADWP Agreement No. 96125-76 under Resolution No. 006-157, which authorized LADWP to participate with other members of SCPPA for the purpose of investigating and performing due diligence on potential new eligible renewable energy resource options; and

WHEREAS, the Board approved the SCPPA Phase II Renewable Development Agreement, LADWP No. 12-020 under Resolution No. 013-049, which authorized LADWP to participate with other members of SCPPA for the purpose of planning, exploring, investigating, developing new renewable resources, and allocating costs for these purposes up to \$10 million in aggregate through the year 2020; and

WHEREAS, SCPPA, pursuant to the needs of its members, under Phase I Renewable Development Agreement, LADWP Agreement No. 96125-76, issued a Request for Proposal (RFP), a competitive process, for the purchase and/or acquisition of eligible renewable energy resources; and

WHEREAS, SCPPA received over 300 responses to its RFP, which included the Heber-1 Geothermal Energy Project (HGEP), proposing the sale of 46 megawatts (MW) of renewable energy and associated environmental attributes from an existing geothermal power generating facility located in Imperial County, California; and

WHEREAS, HGEP, which is owned by Heber Geothermal Company (HGC), a wholly owned subsidiary of Ormat Nevada, Inc., was selected to provide renewable energy from geothermal power generating facilities to SCPPA for the benefit of LADWP and the Imperial Irrigation District (Participants); and

WHEREAS, SCPPA and HGC plan to enter into a Power Purchase Agreement for all of the electric energy, environmental attributes, and generating capacity rights from HGEP for a 10-year term with a total expenditure of \$249 million; and

WHEREAS, the HGEP Power Sales Agreement (PSA) No. BP 13-033 sets forth mutual covenants and agreements between LADWP and SCPPA for LADWP's acquisition during the contract term, an average of 34.32 MW of the metered output, associated environmental attributes, and generating capacity rights associated with HGEP; and

WHEREAS, the HGEP Agency Agreement (AA) No. BP 13-034 provides for the designation of LADWP as the project manager to administer and manage HGEP on behalf of and for the benefit of the Participants, and sets forth mutual covenants and agreements between SCPPA and LADWP in order to enable SCPPA to carry out activities necessary for planning, development, acquisition, maintenance, improvement, administration, and operation of HGEP on behalf of the Participants.

NOW, THEREFORE, BE IT RESOLVED that PSA No. BP 13-033 and AA No. BP 13-034 by and between LADWP and SCPPA, now on file with the Secretary of the Board and approved as to form and legality by the City Attorney, be and the same are hereby approved.

BE IT FURTHER RESOLVED that the Board requests that pursuant to Los Angeles City Charter Section 674, the Los Angeles City Council (City Council) approve, by ordinance, PSA No. BP 13-033 and AA No. BP 13-034.

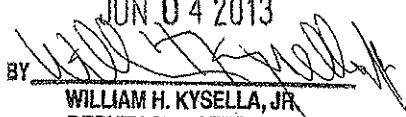
BE IT FURTHER RESOLVED that the electric energy and environmental attributes acquired from PSA No. BP 13-033 shall be credited towards LADWP's RPS Policy compliance targets.

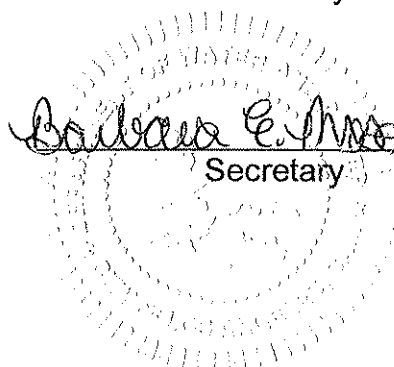
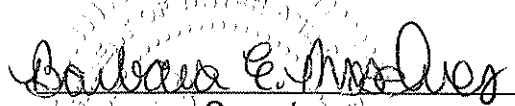
BE IT FURTHER RESOLVED that the President or the Vice President of this Board, or General Manager, or such person as the General Manager shall designate in writing, and the Secretary, Assistant Secretary, or the Acting Secretary of the Board, are hereby authorized and directed to execute PSA No. BP 13-033 and AA No. BP 13-034 for and on behalf of LADWP, upon approval by the City Council by ordinance.

BE IT FURTHER RESOLVED that the Chief Accounting Employee of LADWP, upon proper certification, is authorized and directed to draw demands on the Power Revenue Fund, in payment of the obligations arising under PSA No. BP 13-033 and AA No. BP 13-034.

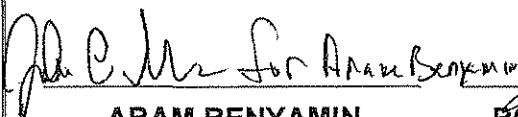
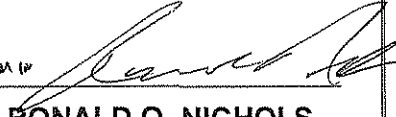
I HEREBY CERTIFY that the foregoing is a full, true, and correct copy of the resolution adopted by the Board of Water and Power Commissioners of the City of Los Angeles at its meeting held JUN 19 2013

APPROVED AS TO FORM AND LEGALITY  
CARMEN A. TRUTANICH, CITY ATTORNEY

JUN 04 2013  
BY   
WILLIAM H. KYSELLA, JR.  
DEPUTY CITY ATTORNEY

  
  
Secretary

**LOS ANGELES DEPARTMENT OF WATER AND POWER (LADWP) BOARD APPROVAL LETTER**

<b>TO: BOARD OF WATER AND POWER COMMISSIONERS</b>		<b>DATE: June 6, 2013</b>
 <b>ARAM BENYAMIN</b> Senior Assistant General Manager - Power System		<b>SUBJECT:</b>  LADWP Power Sales Agreement (PSA) No. BP 13-033 for 34.32 Megawatts (MWs) of Geothermal Capacity from the Heber-1 Geothermal Energy Project (Project) in Imperial County, California and Agency Agreement (AA) No. BP 13-034 for Project Management Services with Southern California Public Power Authority (SCPPA)
 <b>RONALD O. NICHOLS</b> General Manager		<b>FOR COMMISSION OFFICE USE:</b>  RESOLUTION NO. _____
_____  _____		
<b>CITY COUNCIL APPROVAL                  REQUIRED: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></b>	<b>IF YES, BY WHICH CITY                  CHARTER SECTION:                  373 and 674</b>	

New Contract

**PURPOSE**

Transmitted for approval by your Honorable Board is a Resolution, approved as to form and legality by the City Attorney, recommending to the Los Angeles City Council (City Council) approval, by Ordinance, of LADWP PSA No. BP 13-033 between SCPPA and the City of Los Angeles acting by and through the LADWP which authorizes the LADWP to purchase an annual average of 34.32 MW of renewable geothermal energy from SCPPA and sets forth mutual covenants and agreements in order to pay SCPPA for its costs of purchaser's share of the energy and capacity of the Project. The PSA enables SCPPA to enter into a Power Purchase Agreement (PPA) between Heber Geothermal Company (HGC), a general partnership organized and existing under the laws of the State of California (Seller), and SCPPA which provides for the purchase of renewable geothermal energy from the Project located in Imperial County, California beginning February 2, 2016, for a 10-year term.

The Resolution also recommends to the City Council approval of LADWP AA No. BP 13-034, between SCPPA and the LADWP, which provides for the designation of LADWP as the Project Manager to administer and manage the Project on behalf of and for the benefit of all the Project participants (Participants), which includes the LADWP and the Imperial Irrigation District (IID).

The energy received under this agreement shall be applied towards LADWP's Renewable Portfolio Standard (RPS) goals.

### **COST AND DURATION**

The PSA has the following terms:

- Purchase of renewable geothermal energy from the Project beginning February 2, 2016, for a 10-year term.
- LADWP shares of the generation capacity of 30.67 MW in the first 3-year term and 35.88 MW in the remaining agreement term.
- An expected capacity factor of up to 95 percent.
- A renewable energy price of \$80.00 per megawatt-hour (MWh) for the first Contract Year with 1.5 percent annual escalation thereafter.

The average annual cost for this energy is expected to be approximately \$24.9 million (LADWP share).

Total expenditures of LADWP share are estimated not to exceed \$249 million over the 10-year life of the PSA.

### **Funding Source**

The funding for this Project has been budgeted and will be funded through the Variable Renewable Portfolio Standard Adjustment Factor (which is a component of the Composite Energy Cost Adjustment Factor). It is consistent with the LADWP 5-year Financial Plan that was reviewed as part of the recent rate action. As indicated in the table below, The cost of energy of this Project is far lower than that in the Financial Plan Case No. 119.

Year	2013	2014	2015	2016	2017	2018
Case 119 New RPS Projects Average (\$/MWh)	\$158.2	\$116.0	\$ 111.2	\$115.1	\$115.6	\$131.1
Geo Heber-1 Cost (\$/MWh)				\$80.0	\$81.2	\$82.4

The Project is expected to have a potential rate impact up to approximately 0.021 cents per kWh, including transmission costs, for Fiscal Year (FY) 15/16, and up to approximately an average of 0.038 cents per kWh through the contract term. For a typical household using an average of 500KWh electricity per month, the increased cost

is approximately \$0.11 per month for FY 15/16 and \$0.19 per month for the term of the contract.

### Fiscal Impact Statement

The average annual expenditures may total \$24.9 million per year for 10 years based on an average capacity factor of 95 percent for a total cost over the life of the contract of \$249 million. The funds will be used to purchase renewable energy and associated environmental attributes and provide for energy transmission as part of LADWP's RPS Policy. This will benefit the ratepayers of Los Angeles by supplying them with renewable energy and reducing the consumption of fossil fuels and reducing emissions.

### BACKGROUND

SCPPA is a non-profit joint powers agency formed in 1980 to facilitate joint power and transmission projects for the benefit of the Southern California municipal utilities. SCPPA's members include LADWP, the Cities of Anaheim, Azusa, Banning, Burbank, Cerritos, Colton, Glendale, Pasadena, and Riverside, as well as the IID. On April 4, 2006, the Board of Water and Power Commissioners (Board) approved the SCPPA Renewable Electric Energy Resource Project Development Agreement, LADWP Agreement No. 96125-76 under Resolution No. 006-157 (Phase I Agreement) which authorized LADWP to participate with other members of SCPPA for the purpose of investigating and performing due diligence on potential new renewable resource options.

SCPPA Phase II Renewable Development Agreement, LADWP Agreement No. BP 12-020 under Resolution No. 013-049, (Phase II Agreement) approved by the Board on August 21, 2012, replaced the Phase I Agreement and authorizes LADWP to participate with other members of SCPPA for the purpose in planning, exploring, investigating, developing new renewable resources, and allocating costs for these purposes up to \$10 million in aggregate through the year 2020. All future renewable energy projects will be under the Phase II Agreement approved by the Board.

The LADWP's goal and primary challenge is to develop a long-term resource plan that are representative to the local and regional economy, and operationally flexible to changes in state and federal regulations, fuel prices, and advances in power generation technologies.

The policies that shape and guide the LADWP's resource planning are the RPS Policy, its Enforcement Program, and the Power Integrated Resource Plan (IRP).

## **LADWP RPS Policy**

The RPS Policy represents the guiding principles of the LADWP to implement renewable resources. The RPS Policy was amended in December 2011 to comply with regulatory requirements of the California Renewable Energy Resources Act, Senate Bill 2 (1X) (SB2 [1X]), which requires publicly owned utilities such as the LADWP to supply 25 percent of its energy from renewable resources by 2016 and 33 percent by 2020. The RPS Policy was amended in accordance with Section 399.30(e) of the Public Utilities Code, requiring the governing boards of Public Owned Utilities (POUs) to adopt "a program for enforcement" on or before January 1, 2012.

LADWP RPS Policy includes the following compliance targets:

- Average 20 percent renewable over the period of January 1, 2011, to December 31, 2013.
- Average 25 percent renewable for the period of January 1, 2016, to December 31, 2016.
- Average 33 percent renewable for the period of January 1, 2020, to December 31, 2020.
- Minimum average 33 percent renewable for the period of January 1 to December 31 in each year after 2020.

According to SB2 (1X), eligible renewable energy resources procured June 1, 2010, or after, are placed into three categories. The Portfolio Content Category 1 (PCC1) must represent an increasing proportion of renewable energy until 75 percent of this energy is achieved by 2020 under SB2 (1X). PCC1 energy is achieved if the renewable energy resource is interconnected with a California Balancing Authority. LADWP is a California Balancing Authority under SB2 (1X).

## **Power IRP**

The Power IRP presents several potential strategies for meeting LADWP's regulatory mandates and policy objectives for increasing renewable energy generation, reducing greenhouse gas emissions, maintaining electric power service reliability, and minimizing the financial impact on ratepayers. The LADWP rigorously evaluates each potential strategy to identify and recommend the best overall plan to meet its key objectives at the least cost.

The IRP establishes the following key selection principles for renewable projects:



- Maintain a high level of electric service reliability by taking advantage of the geographic diversity of renewable projects.
- Exercise environmental stewardship.
- Comply with regulatory requirements such as the California Renewable Energy Resources Act, SB2 (1X), which requires POU's such as the LADWP to supply 25 percent of its energy from renewable resources by 2016 and 33 percent by 2020.
- Maximize the use of existing LADWP assets such as the Mead 230-kilovolt (kV) Station and transmission lines in the heavily renewable resourced areas.
- Take advantage of the benefits of "clustering" resources to optimize efficiency for operations and maintenance of facilities.

The LADWP rigorously evaluates each potential strategy to identify and recommend the best overall tactical plan to meet these key objectives.

### **SCPPA Request for Proposal**

In January 2012, SCPPA issued a Request For Proposal (RFP), a competitive selection process, for the purchase and/or acquisition of renewable energy resources. LADWP jointly participated with multiple municipal utilities for the purpose of acquiring renewable energy resources. SCPPA received over 300 proposals from numerous firms having the capability to provide renewable energy from sources such as geothermal, wind, solar, biomass, landfill gas, hydroelectric, and other sources.

Of all the proposals received in response to SCPPA RFP, the Project was shortlisted by several SCPPA members based on key selection principles.

This geothermal Project will be a vital asset to the existing renewable portfolio and will assist in providing firm energy delivery while maintaining the lowest energy price in comparison to comparable geothermal projects. The average energy price of the base-load proposals (which include geothermal and biomass proposals) submitted to the SCPPA 2012 RFP is \$100/MWh. Wind and solar generation comprise the vast majority of the existing and near-term additional renewable energy. However, the Power IRP further expands the need for reliable sources of energy such as geothermal which provides resource diversification. The integration costs with geothermal are insignificant due to the predictability of the resources, which can be scheduled, unlike wind and solar generation which are intermittent resources that bear high integration costs which can cost as high as \$10/MWh to \$20/MWh in order to provide firm backup energy. Additionally, LADWP selected the Project towards the generation portfolio because the Project meets the following criteria:

- Provides for PCC1 renewable energy resources at a lower price than other alternatives.
- Supports LADWP long-term coal replacement strategy.
- Can use existing transmission capacity at the Mead 230-kV Substation.
- The energy harnessed is clean and safe for the surrounding environment.
- The Project provides base load energy and is sustainable.

The SCPA team, consisting of the LADWP and the IID, negotiated the PPA with HGC in which HGC would sell to SCPA an average of 46 MW total nominal capacity renewable energy net of parasitic load from the Project located in Imperial County, California.

The renewable energy is shared by the Participants: LADWP and IID. From 2016 to 2018, the LADWP share is 66.67 percent, which is approximately equivalent an annual average of 30.67 MW or 255 gigawatt-hour (GWh). From 2019 to 2025, the LADWP share increases to 78.0 percent, which is equivalent an annual average of 35.88 MW or 299 GWh. IID has a share of 33.33 percent of the Project energy from 2016 to 2018 and 22.0 percent from 2019 to 2025. The purchase equal an average annual output for LADWP of 34.32 MW of renewable energy, or 300,643 MWh annually, will enable the LADWP to meet approximately 1.3 percent of the LADWP's RPS requirements in 2020. The renewable energy will be delivered through the 230-kV bank of the Mead 230-kV Substation, which is directly connected to LADWP's transmission system.

Through separate PSAs between SCPA and each Participant, SCPA sells all of the renewable energy received from the Project and passes through to each Participant in accordance with its respective output entitlement share, the rights, benefits, and obligations provided under the Project PPA.

The AA provides for the designation of LADWP as the Project Manager to administer and manage Geothermal Facility on behalf of SCPA and for the benefit of all the Participants. SCPA maintains a very small staff to minimize administrative and general fees charged to the projects, and the largest Participant of each project typically acts as SCPA's agent for project management and administration. In this case, LADWP would be SCPA's agent for project management and administration, including the management of fiscal matters associated with any bond financing which could take place at a later time. LADWP will charge SCPA for this service, and SCPA will charge the Participants, including LADWP, for the cost of this service based on their entitlement shares.

### **The Power Purchase Agreement**

The Participants negotiated the PPA with HGC, a wholly-owned affiliate of Ormat Nevada, Inc., a Nevada corporation. Ormat Nevada, Inc. is in turn an affiliate of Ormat Technologies Inc., a Delaware Corporation. The PPA provides that HGC will sell to SCPPA an average of 46 MW (402,960 MWh) of renewable energy and environmental attributes from the Project, located in Imperial County, California for a delivery term of 10 years starting February 2, 2016, as the Delivery Commencement Date (DCD). The project currently delivers energy to Southern California Edison under a PPA which expires on December 15, 2015. The Project is expected to deliver energy to SCPPA on December 16, 2015, under an Interim Delivery Period (IDP) until the DCD, through the IID and the Western Area Power Administration (WAPA) transmission system. The Point of Delivery (POD) of the renewable energy to LADWP is at the 230-kV Mead Substation which is directly connected to the LADWP transmission system. The purchase price for delivered energy, including transmission costs to POD, is \$80.00 per MWh with a 1.5 percent annual escalation through the contract term. During the IDP, HGC may deliver energy through the California Independent System Operator (CAISO) transmission system at the same energy price.

For each contract year, the annual guaranteed generation of the Project energy delivered to the Point of Delivery is 90 percent of each year's annual contract quantity and declines not more than 1.0 percent yearly for the duration of the delivery term. To the extent there is a shortfall of guaranteed energy delivered, that replacement energy will be recovered in the following two contract years.

The PPA provides performance securities for various stages of Project commencement and through the delivery term of the Project, which SCPPA can draw upon if the Project's owner fails to timely achieve specific milestone dates or the energy delivery terms and conditions. A Project Commencement Security in the aggregate amount of \$5,130,000.00 from the effective date of the PPA to the planned DCD, and a Delivery Term Security in the aggregate amount of \$22,000,000.00 which guarantee the owner's obligations under the PPA following the DCD.

There have been no previous PPAs directly with Seller, although SCPPA recently completed a PPA for the Wild Rose Geothermal Energy Project with related entity.

### **The LADWP Power Sales Agreement No. BP 13-033**

Under the PSA, the LADWP contractually agrees to mutual covenants and agreements in order to pay SCPPA for its costs of an average 74.6 percent share of energy and capacity of the Project. In addition, the PSA:

- Identifies the roles and obligations of SCPPA and LADWP, including project deliverables, project manager, setting up of an annual budget, reporting requirements, among others.
- Establishes payment mechanisms including payment pledges, charges and billing procedures, interest payments, among others.
- Establishes step-up requirements for a non-defaulting Participant to bear their pro rata share of the costs of another Participant that fails to meet its payment obligations under its separate PSA with SCPPA.
- Establishes the rights and obligations of SCPPA and LADWP under the PSA to deliver energy, capacity, and environmental attributes.
- Establishes other terms and obligations including nonperformance and payment defaults, and liability conditions to termination or amendments, among others.
- Establishes a Coordinating Committee for the purpose of project control, communication, and coordination between the Participants and SCPPA. For all actions taken by the Coordinating Committee an affirmative vote of one or more representatives of the Participants having output entitlement shares aggregating at least 80 percent of the output entitlement shares is required.
- Encompasses other services including dynamic scheduling, arrangement of transmission services, metering, and transfer of environmental attributes to Participants.

#### **The LADWP Agency Agreement No. BP 13-034**

Under the AA, the LADWP contractually agrees to act as the Project Manager for SCPPA, in order for SCPPA to carry out activities necessary to place the Project in operation and maintenance. The mutual covenants and agreements addressed by the AA:

- Provides for the designation of the LADWP as the Project Manager to administer the project energy scheduling on behalf of SCPPA and for the benefit of all the Participants.
- Identifies the roles and obligations of SCPPA and LADWP in connection with project reviews, project monitoring, project accounting, billing, project reporting, project controls, setting up of an annual budget, reporting requirements, among others.
- Establishes payment mechanisms including payment to LADWP by SCPPA for costs, charges, and billing procedures, among others.

- The term of the AA is the same as the PSA, which is inclusive of the 10-year PPA term, and provides additional time required for SCPA administrative, energy scheduling, and financial matters.

### **Los Angeles City Council Approval**

Per City Charter Section 373, City Council approval is required for long-term contract and per City Charter Section 674, City Council approval by Ordinance is required for the purchase of electric energy.

An Executive No. 4 waiver was granted by the Mayor's Office on May 20, 2013. A report from the City Administrative Office, will be provided for City Council review prior to final consideration of this item.

### **METHOD OF SELECTION**

Competitive     Cooperative Purchase     Sole Source     Single Source

### **OUTREACH EFFORTS TAKEN**

The SCPA RFP was distributed to renewable energy providers, developers, and contractors, as well as posting.

### **Minority(MBE)/Women (WBE) /Other Business Enterprise (OBE)**

### **SUBCONTRACTING PARTICIPATION**

The PPA has been structured to include the MBE/WBE policy according to the Los Angeles business policies requirements described in Section 14.25(c) of the PPA.

### **ENVIRONMENTAL DETERMINATION**

In accordance with Section 15060 (c)(2) of the California Environmental Quality Act (CEQA) Guidelines, an activity is not subject to CEQA if it will not result in a direct or reasonably foreseeable direct physical change in the environment. Since this PPA would involve purchase of power generated from an existing geothermal facility, it is not subject to CEQA.

Board of Water and Power Commissioners  
Page 10  
June 6, 2013

**RECOMMENDATION**

It is recommended that your Honorable Board adopt the attached Resolution recommending City Council's approval of PSA No. BP 13-033 and AA No. BP 13-034.

KM:nsh

Attachments

e-c/att: Ronald O. Nichols  
Richard M. Brown  
Aram Benyamin  
James B. McDaniel  
Philip Leiber  
Gary Wong  
Randy S. Howard  
Kenneth K. Mak

**EXECUTION COPY**

---

**HEBER-1 GEOTHERMAL ENERGY PROJECT**

**POWER SALES AGREEMENT**

**BETWEEN**

**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**

**AND**

**THE CITY OF LOS ANGELES ACTING BY AND THROUGH THE DEPARTMENT OF  
WATER AND POWER**

**DATED AS OF MAY 31, 2013**

---

## TABLE OF CONTENTS

	Page
1. PARTIES .....	1
2. RECITALS, CONSTRUCTION AND PRELIMINARY MATTERS .....	1
3. AGREEMENT .....	3
4. DEFINITIONS .....	3
4.1 Delivery Point Output Cost Share .....	3
4.2 Total Monthly Costs .....	3
4.3 Power Purchase Agreement Total Monthly Costs .....	4
4.4 Project Cost Share .....	5
5. PURCHASE AND SALE OF OUTPUT AND THE ROLES AND OBLIGATIONS OF SCPPA AND THE PROJECT PARTICIPANTS .....	5
5.1 Purchase and Sale of Output Entitlement Share .....	5
5.2 Output and Deliverables .....	5
5.3 Project Manager .....	6
5.4 Adoption of Annual Budget .....	6
5.5 Reports .....	6
5.6 Records and Accounts .....	7
5.7 Provide Information .....	7
5.8 Consultants and Advisors Available .....	7
5.9 Liquidated Damages .....	7
6. COORDINATING COMMITTEE .....	7
6.1 Establishment and Authorization of the Coordinating Committee .....	7
6.2 Coordinating Committee Responsibilities .....	8
6.3 Management Decisions and the Role of Board of Directors .....	12
6.4 Periodic Audits .....	13
6.5 Additional Committees .....	14
6.6 Written Record .....	14
6.7 Change in Representative .....	14
6.8 Costs of Consultants .....	14
6.9 Representative's Expenses .....	14
6.10 Inaction by Committee .....	14
6.11 Compliance with the Power Purchase Agreement .....	14
6.12 Delegation .....	15
7. CHARGES AND BILLINGS .....	15
7.1 Power Purchase Agreement Monthly Costs and Billing Statement .....	15
7.2 Adoption of Alternative Billing Statement Procedures .....	16
7.3 Disputed Monthly Billing Statement .....	16
7.4 Reconciliation of Monthly Costs .....	16
7.5 Other or Additional Cost Reconciliation Mechanisms .....	17
7.6 Interest on Late Payments .....	17
7.7 Prepayment of Monthly Costs .....	17



**TABLE OF CONTENTS**  
(continued)

		<b>Page</b>
7.8	Costs or Expenses Incurred for Sole Benefit of Purchaser .....	17
7.9	Credit, or other Payment Attributable to a Specific Project Participant .....	17
8.	<b>UNCONDITIONAL PAYMENT OBLIGATIONS; RATE COVENANT; AUTHORIZATIONS; CONFLICTS; LITIGATION .....</b>	<b>18</b>
8.1	Unconditional Payment Obligation.....	18
8.2	Source of Payments.....	18
8.3	Rate Covenant .....	18
8.4	Authorizations .....	19
9.	<b>OTHER TERMS AND SERVICES .....</b>	<b>19</b>
9.1	Delivery Procedures.....	19
9.2	Other Services and Transmission From Points of Delivery.....	19
9.3	Energy Services.....	19
9.4	Balancing Agent and Dynamic Scheduling .....	19
9.5	Transfer of Environmental Attributes to Project Participants .....	20
10.	<b>RIGHTS AND OBLIGATIONS UNDER PROJECT AGREEMENTS.....</b>	<b>20</b>
11.	<b>NONPERFORMANCE AND PAYMENT DEFAULT.....</b>	<b>21</b>
11.1	Nonperformance by Purchaser.....	21
11.2	Notice of Payment Default.....	21
11.3	Cured Payment Default.....	21
11.4	Failure to Cure Payment Default.....	21
11.5	Treatment of the Defaulting Project Participant's Project Rights and Obligations upon Payment Default of Defaulting Project Participant.....	22
11.6	Elimination or Reduction of Payment Obligations .....	23
11.7	Use of Operating Reserve Account.....	23
11.8	Step-Up Invoices .....	23
11.9	Application of Moneys Received from Step-Up Invoices Relating to the Project .....	24
11.10	Application of Moneys Received from Default Invoices.....	24
11.11	Application of Moneys Received from Compliance Payments .....	25
11.12	Application of Moneys Received from Sale of Facility Output.....	25
12.	<b>CHARACTER, CONTINUITY OF SERVICE.....</b>	<b>25</b>
12.1	Outages, Interruptions and Curtailment of Energy Deliveries.....	25
12.2	Uncontrollable Forces .....	27
13.	<b>SEVERAL OBLIGATION; LIABILITY.....</b>	<b>27</b>
13.1	Project Participants' Obligations Several.....	27
13.2	No Liability of SCPPA or Purchaser, or Their Directors, Officers, Employees, Etc.; SCPPA's and Purchaser's and Project Manager's (within its capacity as Project Manager) Directors, Officers, Employees Not Individually Liable .....	27
13.3	Extent of Exculpation; Enforcement of Rights .....	28
13.4	Determination or Enforcement of Rights.....	28

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
13.5 No Relief From Insurer's Obligations.....	28
13.6 No General Liability of SCPPA .....	29
13.7 Indemnification of Purchaser .....	29
13.8 Indemnification of Project Manager .....	29
13.9 Separate Capacities .....	30
14. RESTRICTIONS ON DISPOSITION.....	30
14.1 Restrictions on Elimination of Payment Obligations.....	30
14.2 Restrictions on Disposition of Purchaser's Entire System.....	30
14.3 Successors and Assigns.....	30
15. EFFECTIVE DATE, TERM AND EXPIRATION.....	31
15.1 Effective Date; Execution in Counterparts .....	31
15.2 Termination Conditions .....	31
15.3 Expiration.....	31
15.4 Termination of Agreement before Expiration Date .....	32
16. REVISION OF APPENDICES B AND C .....	32
17. SEVERABILITY.....	32
18. CONDITIONS TO TERMINATION OR AMENDMENT .....	32
19. REPRESENTATION AND GOVERNING LAW .....	33
20. ARBITRATION AND ATTORNEYS' FEES .....	33
21. PURCHASER'S CONTRACT ADMINISTRATOR.....	33
22. NOTICES .....	33
23. AMENDMENTS .....	33

**TABLE OF CONTENTS**

**Page**

**APPENDICES**

A – DEFINITIONS..... A-1

B – SCHEDULE OF PROJECT PARTICIPANTS CAPACITY AMOUNTS,  
OUTPUT ENTITLEMENT SHARES, PROJECT COST SHARES, POINTS  
OF DELIVERY ..... B-1

C – SCHEDULE OF PROJECT PARTICIPANTS DELIVERY POINT OUTPUT  
COST SHARES ..... C-1

D – POWER PURCHASE AGREEMENT BETWEEN SOUTHERN  
CALIFORNIA PUBLIC POWER AUTHORITY AND HEBER  
GEOTHERMAL COMPANY, DATED AS OF MAY 31, 2013 ..... D-1

# HEBER-1 GEOTHERMAL ENERGY PROJECT

## POWER SALES AGREEMENT

1. **PARTIES.** This Heber-1 Geothermal Energy Project Power Sales Agreement (this "Agreement"), is dated for convenience as of this 31<sup>th</sup> day of May, 2013, by and between the SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY, a joint powers agency and a public entity organized under the laws of the State of California, hereinafter designated as "SCPPA," created under the provisions of the Act, and the CITY OF LOS ANGELES acting by and through the Department of Water and Power, a California municipality. The CITY OF LOS ANGELES is also periodically designated in this Agreement as "LADWP" or as "Purchaser," or, depending upon the context, as "Project Participant." LADWP and SCPPA are also sometimes herein referred to individually as a "Party" and together as the "Parties." In addition, LADWP and the other member of SCPPA participating in the Project may be referred to collectively, in this Agreement, as "Project Participants."
  
2. **RECITALS, CONSTRUCTION AND PRELIMINARY MATTERS.** The Recitals set forth herein and the facts, which follow, are incorporated into this Agreement by reference for all purposes. The facts and the circumstances of the Parties contained in the Recitals, among others, represent the background and framework for this Agreement, the aim and purpose of this Agreement and the intendments of the Parties with respect thereto. This Agreement has been reviewed by attorneys for both Parties and shall not be interpreted with reference to the rules of construction providing for construction against a Party responsible for drafting or creating a particular provision or section, but should instead be interpreted in a manner which broadly carries forth the goals and objectives of the Parties as expressed herein. References to "Sections," "Annexes," "Appendices," "Schedules" and "Exhibits" shall be to Sections, Annexes, Appendices, Schedules and Exhibits, as the case may be, of this Agreement unless otherwise specifically provided. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose nor given any substantive effect. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. The use herein of the word "include" or "including", when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter. This Agreement is made with reference to the following facts among others:
  - 2.1 SCPPA was created pursuant to provisions contained in the Joint Exercise of Powers Act found in Chapter 5 of Division 7 of Title 1 of the Government Code of California, as amended from time to time (the "Act"), by its members, which are municipalities and an irrigation district that supply, among other things, electrical energy, in the State of California, for the purpose of jointly and

cooperatively undertaking the planning, financing, development, acquisition, construction, improvement, betterment, operation, and maintenance, of projects for the generation or transmission of electric energy, including the development and implementation of systems and frameworks for the acquisition and delivery of secure, long-term reliable supplies of renewable electric energy.

- 2.2 To facilitate the appropriate review and due diligence studies necessary to carry forth an effective program for the development of renewable resources SCPPA created the "Renewable Electric Energy Resource Project" to be carried forth between SCPPA and those SCPPA members desiring to participate in this renewable energy oriented project under SCPPA's Joint Powers Agreement. Thereafter on March 17, 2006, the SCPPA Board of Directors by way of Resolution 2006-13 found and declared the proposed Renewable Electric Energy Resource Project to be an official SCPPA Study Project pursuant to the SCPPA Joint Powers Agreement and authorized the execution of a development agreement, which development agreement has been superseded by a second phase development agreement pursuant to Resolution 2012-008, for the Renewable Electric Energy Resource Project among SCPPA and the SCPPA members participating in this Study Project.
- 2.3 In pursuit of the goals of the Renewable Electric Energy Resource Project SCPPA has issued Requests for Proposals ("RFP") for potential renewable electric resources to address SCPPA member renewable energy needs, and as a result of responses to that RFP SCPPA and two of its members, LADWP and the Imperial Irrigation District, have investigated the feasibility of a geothermal electric generating facility (the "Facility") currently in existence, maintained and operated by Heber Geothermal Company, a California partnership (the "Power Purchase Provider"), an affiliate of Ormat Nevada, Inc., a Delaware corporation. The Facility is located in Imperial County, California, on a site owned by the Power Purchase Provider.
- 2.4 SCPPA desires to enter into a Power Purchase Agreement with the Power Purchase Provider for the purchase of Energy and the associated Environmental Attributes from the Facility for the purpose of selling all said purchased Facility Output to LADWP and the other Project Participant pursuant to this Agreement and a Power Sales Agreement with such other Project Participant.
- 2.5 LADWP has a need for an economical, reliable source of Energy and Environmental Attributes to meet the requirements of environmental and energy procurement laws, including renewables portfolio standard requirements, as well as the demands of its current and/or future customers in an environmentally responsible manner and, as such, has determined that it is desirable to enter into this Agreement to purchase a Contract Share of the Energy and Environmental Attributes of the Facility from SCPPA.
- 2.6 The Project Participants have participated with SCPPA in the negotiation of a power purchase agreement and related agreements, arrangements and mechanisms for the procurement of the Facility Output of this Facility by way of a transaction

through which SCPPA will purchase the Facility Output of this electric generation facility and will pay for Facility Output, Replacement Energy, Excess Energy, Capacity Rights, Environmental Attributes and any other Facility Output in connection with the delivery of the same.

- 2.7 The Project Participants have concluded that the purchase of geothermal electric generation under the Power Purchase Agreement will materially assist the Project Participants to carry forth their critical operating and business objectives and their RPS compliance requirements to provide a long-term supply of renewable energy for the Project Participants. SCPPA and the Project Participants anticipate that the Facility Output produced by the Project will be utilized to serve the Project Participants' renewable energy needs within their respective service areas and will materially assist each respective utility in meeting the requirements of its renewable portfolio standard.
- 2.8 In order to secure the performance of the Power Purchase Provider in connection with all of its obligations and requirements under the Power Purchase and Security Agreements, SCPPA has endeavored to provide for various legal mechanisms including Security Instruments and other contractual provisions under which SCPPA is entitled to exercise certain remedial rights and assurances in order to assure the provision of electric energy by the Facility to satisfy the requirements of the Power Purchase Agreement. It is the intention of the Parties that the Project Participants, under the Power Sales Agreements, shall be reposed with the rights, benefits, liabilities, obligations and risks accruing to SCPPA pursuant to the provisions of these instruments in accordance with each Project Participant's Output Entitlement Share and Project Cost Share
3. **AGREEMENT.** For and in consideration of the promises and the mutual covenants and agreements hereinafter set forth, and in order to pay SCPPA for its costs of Purchaser's share of the Facility Output, the Parties agree as herein set forth.
4. **DEFINITIONS.** The meaning of capitalized terms in this Agreement not otherwise defined in context shall be as defined in Section 1.1 of the Power Purchase Agreement, which is incorporated herein by this reference, or by the definitions set forth in the attached Appendix A.
  - 4.1 Delivery Point Output Cost Share. As to any Project Participant for each Power Supply Year during the term of the Power Purchase Agreement, the applicable percentage share, as set forth for such Project Participant in Appendix C hereof, of the Delivery Point Output Cost Component with respect to such Project Participant's Designated Point of Delivery. The Delivery Point Output Cost Share of such Project Participant may be adjusted in connection with a revision of Appendix C as provided in Section 16.
  - 4.2 Total Monthly Costs. All of SCPPA's costs resulting from SCPPA's contracting for, providing for, accommodating, and facilitating the Project, including costs arising under the Power Purchase Agreement or other Project Agreements. SCPPA shall apply, as a credit against Total Monthly Costs, any receipts,

revenues and other moneys received by SCPPA from surplus equipment, materials, supplies or assets relating to the Project sold prior to the date of Delivery Commencement for the benefit of SCPPA, if any. Total Monthly Costs shall, as applicable, consist of (i) the Delivery Point Output Cost Component (described in Section 4.3.1), (ii) the Power Purchase Agreement General and Administrative Cost Component (described in Section 4.3.2), (iii) a Reserve Fund Cost Component (described in Section 4.3.3), and (iv) a Supplementary Services Cost Component to the extent SCPPA incurs such cost (described in Section 4.3.4), and Total Monthly Costs shall include, but not be limited to, the items of cost and expense referred to in the Power Purchase Agreement and Related Agreements and this Section 4.2 that are accrued or paid by SCPPA during each Month of each Power Supply Year. In the event any Power Supply Year shall consist of fewer than twelve Months, the fraction set forth in Section 4.3.2 shall be adjusted accordingly and, in the event of any revision of the Annual Budget after the commencement of any Power Supply Year, the amount determined pursuant to said Section shall be appropriately adjusted so that any increase or decrease in the portion of the Annual Budget applicable to said Section(s) shall be evenly apportioned over the remaining Months of such Power Supply Year.

4.3 Power Purchase Agreement Total Monthly Costs. The cost components of Total Monthly Costs during the term of the Power Purchase Agreement shall consist of the following:

4.3.1 The Delivery Point Output Cost Component of the Total Monthly Costs for each Month with respect to each of the respective Points of Delivery shall consist of the costs of the Facility Output or Replacement Energy, as calculated at the applicable Energy prices therefor set forth in the Power Purchase Agreement, as delivered at such Point of Delivery during such Month.

4.3.2 The Power Purchase Agreement General and Administrative Cost Component of the Total Monthly Costs for each Month shall consist of one-twelfth of the administrative and general costs with respect to the Project, including (i) legal fees, costs relating to litigation (including disbursements and other amounts paid as a result of such litigation), insurance costs (including amounts to fund any self-insurance program), overhead costs, any taxes required to be paid by SCPPA with respect to Facility Output or the Project, (ii) all expenses incurred in enforcing the Power Purchase Agreement and other Power Purchase and Security Agreements, (iii) all costs of compliance by SCPPA with its indemnification obligations under Section 13.7 of this Agreement and (iv) all costs related to the conducting of the business of SCPPA with respect to the Project, including the applicable portion of salaries, fees for legal, engineering, financial and other services, all other costs attributable to miscellaneous and incidental expenses in connection with the administration of the Project, and all other expenses properly related to the conduct of such affairs of SCPPA.

- 4.3.3 The Reserve Fund Cost Component of the Total Monthly Costs shall consist of the monthly costs associated with a Project Participant's Project Cost Share that is necessary to establish and maintain the Reserve Funds at the level deemed prudent and appropriate by the Coordinating Committee and the SCPPA Board of Directors.
- 4.3.4 The Supplementary Services Cost Component of the Total Monthly Costs shall consist of all monthly costs incurred by SCPPA, if any, in connection with the transmission, dispatching, scheduling, balancing, or delivery of and otherwise facilitating the disposition, movement, crediting and accounting for a Purchaser's Output Entitlement Share from its Designated Point of Delivery to one or more specified delivery point(s) as determined by such Purchaser pursuant to Sections 9.2, 9.4 and 9.5.
- 4.4 Project Cost Share. For any Power Supply Year and as to any particular Project Participant, the share (expressed as a percentage), as set forth in Appendix B of this Agreement, attributable to such Project Participant with respect to Monthly Costs as provided in Section 7.1 and Section 7.2 hereof. The Project Cost Share of such Project Participant may be adjusted in connection with a revision of Appendix B as provided in and subject to the provisions of Section 16.

**5. PURCHASE AND SALE OF OUTPUT AND THE ROLES AND OBLIGATIONS OF SCPPA AND THE PROJECT PARTICIPANTS.**

- 5.1 Purchase and Sale of Output Entitlement Share. In accordance with the terms and conditions of this Agreement, commencing on the earliest of (i) the date SCPPA is obligated to pay any portion of the costs of the Project, (ii) the effective date of the Power Purchase Agreement, or (iii) the date of the first delivery of energy to Purchaser pursuant to this Agreement, and continuing through the term of this Agreement, except as otherwise provided herein, SCPPA shall provide Purchaser its Output Entitlement Share of any and all products, rights, and benefits, whether tangible or intangible received or obtained by SCPPA with respect to the Project, including without limitation Facility Output or, if applicable, Replacement Energy, at Purchaser's Designated Point of Delivery, and Purchaser shall be responsible for and pay its applicable Cost Share of any and all costs, liabilities and obligations associated with the acquisition of such products, rights, and benefits, which shall include without limitation all costs, liabilities and obligations associated with Facility Output or Replacement Energy, as applicable, under the Power Purchase Agreement and any other applicable Project Agreement.
- 5.2 Output and Deliverables. During the term of the Power Purchase Agreement, SCPPA shall purchase and provide to Purchaser, and Purchaser shall purchase and receive from SCPPA its Output Entitlement Share of the Facility Output or Replacement Energy as delivered at Purchaser's Designated Point of Delivery in accordance with the Power Purchase Agreement. To the extent permitted by the Power Purchase and Security Agreements, the applicable Project Agreements, or otherwise determined by the Coordinating Committee or the Board of Directors, SCPPA will endeavor to take such actions or implement such measures as may be



necessary or desirable for the utilization, maintenance or preservation of the rights and interests of the Project Participants in the Project including, if appropriate, such enforcement actions or other measures as the Coordinating Committee or the Board of Directors deems to be in the Project Participants' best interests.

- 5.3 Project Manager. SCPPA or its designee or designees shall act as Project Manager to administer the Project, or cause the Project to be administered, through any project management or agency agreement or, as applicable, through the Power Purchase Agreement.
- 5.4 Adoption of Annual Budget. The Annual Budget and any amendments to the Annual Budget shall be prepared and approved in accordance with Sections 5.4.1 or 5.4.2, respectively.
  - 5.4.1 SCPPA will prepare and submit to Purchaser a proposed Annual Budget at least sixty (60) days prior to the beginning of each Power Supply Year. In connection with the preparation of the Annual Budget, SCPPA shall incorporate therein the Operating Budget for such Power Supply Year as prepared by the Project Manager and approved by the Coordinating Committee. Project Participants may then submit to SCPPA, at any time until the Annual Budget is adopted, any matters or suggestions relating to the Annual Budget. SCPPA shall adopt the Annual Budget not less than thirty (30) nor more than sixty (60) days prior to the beginning of such Power Supply Year and shall cause copies of such adopted Annual Budget to be delivered to each Project Participant; provided, however, the Annual Budget for the first Power Supply Year shall be prepared, considered, adopted and delivered in the most practicable manner available prior to Delivery Commencement of the Facility. As required from time to time during any Power Supply Year after seven (7) days written notice to each Project Participant, SCPPA may, pursuant to the foregoing provisions for adopting the Annual Budget, adopt an amended Annual Budget for and applicable to such Power Supply Year for the remainder of such Power Supply Year.
  - 5.4.2 Any adjustment, and any other or further mechanism for adjustment, as may be required to address the variability of costs of operation of the Project at any time during the Power Supply Year or the variability of or addition to any other Annual Budget component, may be incorporated into the Annual Budget as provided above, or any amendment to an Annual Budget at any time during any Power Supply Year upon the seven (7) days written notice to each Project Participant as set forth in Section 5.4.1.
- 5.5 Reports. SCPPA will prepare and issue to Project Participants the following reports each quarter of a Power Supply Year:
  - 5.5.1 Financial and operating statement relating to the Project.
  - 5.5.2 Variance report comparing the costs in the Annual Budget versus actual costs, and the status of other cost-related issues with respect to the Project.

- 5.6 Records and Accounts. SCPPA will keep, or cause to be kept, accurate records and accounts of each of the properties and facilities comprising the Project as well as of the operations relating to the Project, as applicable, all in a manner similar to accepted accounting methodologies associated with similar projects. All transactions of SCPPA relating to the Project with respect to each Fiscal Year shall be subject to an annual audit. Purchaser shall have the right at its own expense to examine and copy the records and accounts referred to above on reasonable notice during regular business hours.
- 5.7 Provide Information. Purchaser agrees to supply SCPPA, upon request, with such information, documentation and certifications as SCPPA shall reasonably determine to be requisite to and necessary or desirable for the administration and ongoing activities of the Project, including information reasonably available to allow SCPPA to respond to requests for such information from any federal, state or local regulatory body or other authority.
- 5.8 Consultants and Advisors Available. SCPPA shall make available to the Coordinating Committee at the latter's request, all consultants and advisors, and such consultants and advisors shall be authorized to consult with and advise the Coordinating Committee on Project matters.
- 5.9 Liquidated Damages. Any amounts paid to SCPPA as and for liquidated damages as provided under Section 3.7 of the Power Purchase Agreement (and not then refunded subject to Section 3.7(a)) shall be remitted to Project Participants in accordance with their respective Project Cost Shares.

## 6. COORDINATING COMMITTEE.

- 6.1 Establishment and Authorization of the Coordinating Committee. The Coordinating Committee is hereby established and duly authorized to act on behalf of the Project Participants as provided in this Section 6 for the purpose of (i) providing coordination among, and information to, the Project Participants and SCPPA, (ii) the administration of the Power Purchase Agreement, (iii) the administration of the Project Agreements, (iv) making any recommendations to the Board of Directors regarding the administration of the Project and any acquisitions related thereto and (v) execution of the Coordinating Committee responsibilities set forth in Section 6.2 hereof, including the various financial, administrative, and technical matters which may arise from time to time in connection with the Project or the administration thereof, and such further developments as may need to be addressed. The Coordinating Committee shall consist of one representative from each Project Participant. Each Project Participant shall be entitled to cast a vote equal to its Project Cost Share as set forth in Appendix B hereof. SCPPA shall be entitled to one non-voting representative. SCPPA and Purchaser shall, within thirty (30) days after SCPPA has entered into the Power Sales Agreement between SCPPA and Purchaser, give notice to SCPPA and any other Project Participant, of its representative on the Coordinating Committee. Alternate representatives may be appointed by similar written notice to act on the Coordinating Committee, or on any subcommittee

established by the Coordinating Committee or by the Board of Directors, in the absence of the regular representative or to act on specified occasions with respect to specified matters. An alternate representative may attend all meetings of the Coordinating Committee but may vote only if the representative for whom she/he serves as alternate is absent. No Project Participant's representative shall exercise any greater authority than permitted by the Project Participant or Project Participants, which she/he represents. The chairperson of the Coordinating Committee ("Chairperson") shall be a representative of the Project Manager. The Chairperson shall be responsible for calling and presiding over meetings of the Coordinating Committee. The Chairperson or SCPPA shall promptly call a meeting of the Coordinating Committee at the request of any representative in a manner and to the extent permitted by law. For the purpose of conducting meetings, a quorum shall exist so long as SCPPA's representative and the representative of at least a majority of the Project Participants shall be present. Except as may otherwise be provided in an agreement to which all of the Project Participants agree, all actions taken by the Coordinating Committee shall require an affirmative vote of one or more Project Participants having Project Cost Shares aggregating at least eighty percent (80%) of the total Project Cost Shares. Notwithstanding the forgoing, however, if a proposed action before the Coordinating Committee or the Board of Directors relates solely to the interests of a single Project Participant and such Project Participant determines, in good faith, that such proposed action will not adversely affect, economically or otherwise, such Project Participant, Project Participants agree that they shall not unreasonably withhold their affirmative vote with respect to such proposed action. Unless the Board of Directors shall otherwise determine to require a majority vote pursuant to the terms of the Joint Powers Agreement, all actions with respect to the Project taken by the SCPPA Board of Directors shall require an affirmative vote of at least eighty percent (80%) of the Project Votes (as defined in SCPPA's Joint Powers Agreement, dated as of November 1, 1980, as amended from time to time) cast thereon. Purchaser acknowledges and agrees that SCPPA, through the Coordinating Committee or the Board of Directors, as applicable, may from time to time enter into applicable Project Agreements or amendments of and supplements to the applicable Project Agreements (in accordance with their respective terms) and that, except as provided herein or as otherwise provided by resolution of the Board of Directors, SCPPA will not be required to obtain the consent or approval of Purchaser in connection with any such Project Agreement or supplement or amendment, provided that any such amendment shall be approved by the Coordinating Committee or the Board of Directors in the manner provided by this Agreement. Conducting of Coordinating Committee meetings and actions taken by the Coordinating Committee may be taken by vote given in an assembled meeting or by telephone, video conferencing, letter, e-mail or by any combination thereof, to the extent permitted by law.

6.2 Coordinating Committee Responsibilities. In addition to those responsibilities enumerated in Section 6.1 the Coordinating Committee shall have the following responsibilities:

6.2.1 Provide liaison between SCPPA and the Project Participants at the

management or other levels with respect to the ongoing administration of the Project and maintain a liaison between the Project Participants and all other SCPPA members with respect to the Project, and where the Coordinating Committee deems it appropriate, maintain a liaison with the counterparties to any Project Agreements and with any other entities or utilities engaged in or in connection with other renewable energy projects.

- 6.2.2 Exercise general supervision over any subcommittee established pursuant to Section 6.5.
- 6.2.3 Review, develop, discuss, and, if appropriate, recommend, modify or approve all budgets and revisions thereof prepared and submitted by SCPPA or the Project Manager pursuant to any applicable agreement.
- 6.2.4 Review, develop, discuss, and, if appropriate, modify, approve or otherwise act upon any systems or procedures for adjustment of the Annual Budget or any alternative methodologies for budgeting or billing as set forth in Section 5 and Section 7 of this Agreement.
- 6.2.5 Carry out all other actions reposed in the Coordinating Committee with respect to budgeting and billing as set forth in Section 5 and Section 7 of this Agreement.
- 6.2.6 Review, discuss and attempt to resolve any disputes among the Project Participants or the parties to any Project Agreements including, without limitation, the Power Purchase Provider, the counterparties under the Power Purchase and Security Agreements, the Security Instruments, Imperial County, California officials or representatives, any community organizations, or any other counterparty with respect to any Project Agreement relating to the Project.
- 6.2.7 Make recommendations to the Project Manager, the Board of Directors or to the counterparties to any of the Project Agreements, as appropriate, with respect to the ongoing administration of the Project.
- 6.2.8 Upon the request of the Project Participants affected thereby, acting by and through their respective representatives on the Coordinating Committee and in coordination with SCPPA's Board of Directors, adopt a resolution approving the revisions of Appendices A, B and C, as applicable, of this Agreement as provided in and subject to the provisions of Section 16.
- 6.2.9 Review, develop, and if appropriate, modify and approve rules, procedures and protocols for the administration of the Project or Project Agreements, including rules, procedures and protocols for the management of the costs of the scheduling, handling, tagging, dispatching and crediting of Facility Output and the handling and crediting of Environmental Attributes associated with the Facility.

- 6.2.10 Review, and, if appropriate, modify, approve or otherwise act upon, the form or content of any written statistical, administrative, or operational reports, geothermal energy related data, electric generation information, geothermal energy production data, and technical information, facility reliability data, transmission information, forecasting scheduling, dispatching, tagging, parking, exchanging, balancing, movement, or other delivery information, climate and weather related matters, regulatory matters or requirements, and other information and other similar records or matters pertaining to the Project which are furnished to the Coordinating Committee by the Project Manager, the counterparties to Project Agreements, experts, consultants or others.
- 6.2.11 Review, and, if appropriate, modify, approve or otherwise act upon, practices and procedures as formulated by the Project Manager or, if applicable, the counterparty to any Project Agreement, to be followed by the Project Participants for, among other things, the production, scheduling, tagging, transmission, delivery, balancing, exchanging, crediting, tracking, monitoring, remarketing, sale or disposition of Facility Output.
- 6.2.12 Review, modify and approve, if necessary, the schedule of planned activities formulated by the Project Manager or the counterparty with respect to the performance of any Project Agreement, including the policies for selection and utilization of contractors and consultants included in the budgets with respect to the Project. In formulating and approving such schedules, consideration may be given, if possible, to each Project Participant's electric system conditions, which may prevail during such planned activities.
- 6.2.13 Review, and, if appropriate, recommend, modify, approve or otherwise act with respect to the exercise of SCPPA's rights under the Power Purchase Agreement or review, recommend, approve or otherwise act with respect to the procurement of resources in connection with the Power Purchase Agreement.
- 6.2.14 Review, modify, approve or otherwise act upon any proposed change, extension or modification of any date set forth in Appendix I of the Power Purchase Agreement of the milestone schedule or to any Milestone under the Power Purchase Agreement as the Coordinating Committee shall deem to be desirable, appropriate or otherwise in SCPPA's interest. The Coordinating Committee may impose such other terms, conditions or qualifications upon any such action as the Coordinating Committee shall deem appropriate.
- 6.2.15 Review and act upon any present, potential or possible future anticipated failure to deliver Guaranteed Generation or Maximum Generation under the Power Purchase Agreement in such manner as the Coordinating Committee shall deem appropriate.

- 6.2.16 Act upon such recommended changes, as the Coordinating Committee shall deem appropriate as set forth in Section 11.5 of the Power Sales Agreements. Such changes as may occur in such manner with respect to Appendices A, B and C herein shall be considered an element of the administration of this Agreement and shall not be deemed an amendment of this Agreement and shall not require the consent of the Parties hereto.
- 6.2.17 Review, and if appropriate, recommend, modify or approve practices and procedures formulated by the Project Manager or by any counterparty to any Project Agreements giving due recognition to the needs of all Project Participants.
- 6.2.18 Review and act upon any matters involving any Security and Assignment Agreement, including but not limited to the Performance Security, any of the applicable Power Purchase and Security Agreements, any guarantee or letter of credit delivered to or for the benefit of SCPA by the Power Purchase Provider or any other counterparty to any Project Agreement in connection with the Project, and take such actions or make such recommendations as may be appropriate or desirable in connection therewith.
- 6.2.19 Review, and, if appropriate, recommend, modify or approve practices and procedures formulated by the Project Manager or any counterparty with respect to any Project Agreement, and when requested by a Project Participant review, and, if appropriate, recommend, modify or approve those matters associated with any Point of Delivery or any other point or points designated for delivery of energy, delivery arrangements, transmission contracts, or other Project Agreements.
- 6.2.20 Review, and, if appropriate, recommend, modify, or approve policies or programs formulated by the Project Manager or any counterparty under any Project Agreement for determining or estimating the geothermal energy resources or the values, quantities, volumes or costs of renewable energy from the Facility.
- 6.2.21 Review, modify or approve recommendations of the Project Manager or counterparties made pursuant to the provisions of any Project Agreement.
- 6.2.22 Review, modify and where appropriate, recommend or approve the implementation of metering technologies and methodologies appropriate for the delivery, accounting for, transferring and crediting of Facility Output to the respective Points of Delivery or from any of the Points of Delivery to other points or destinations, as applicable.
- 6.2.23 Review, examine modify and where appropriate, recommend or approve the implementation of methods for addressing curtailments or other.
- 6.2.24 Review, modify and where appropriate, recommend or approve the

implementation of practices and procedures to carry forth the provisions of Section 9 herein, as may be applicable with respect to any of the Project Participants.

- 6.2.25 Identify, or develop criteria to identify, contracts or agreements relating to work that shall be deemed to be Major Contracts under any applicable project management or operating agreement.
- 6.2.26 Review, and to the extent permitted by this Agreement or any other relevant agreement relating to the Project, modify and approve or disapprove the specifications, vendors' proposals, bid evaluations, form of final agreement, or any other matters with respect to Major Contracts.
- 6.2.27 Perform such other functions and duties as may be provided for under this Agreement, the Power Purchase Agreement, the Power Purchase and Security Agreements, the Security Instruments or any other applicable Project Agreement or as may otherwise be appropriate or beneficial to the Project.

6.3 Management Decisions and the Role of Board of Directors. The rights and obligations of SCPPA under the Project Agreements shall be subject to the ultimate control at all times of the Board of Directors. Project Participants shall be entitled to participate in the decisions of the Board of Directors with respect to SCPPA's rights and interests in the Facility and the Project as provided in Section 6.1 herein. SCPPA through the Board of Directors shall have, in addition to the duties and responsibilities set forth elsewhere in this Agreement, the following duties and responsibilities, among others:

- 6.3.1 Future Developments. The Board of Directors shall provide liaison among the Project Participants at the management level with respect to the direction of the Project and future developments arising out of the Power Purchase and Security Agreements.
- 6.3.2 Dispute Resolution. The Board of Directors shall endeavor to review, discuss and attempt to resolve any disputes among SCPPA, the Project Participants and the counterparties under the Project Agreements relating to the Project, the operation and management of the Facility and SCPPA rights and interests in the Facility.
- 6.3.3 Scheduling Procedures. When recommended by the Coordinating Committee, or when otherwise appropriate, the Board of Directors shall act upon and approve or modify the practices and procedures to be followed by the Project Participants for the scheduling, delivering, controlling and allocating Facility Output associated with the Project.
- 6.3.4 Project Agreements. The Board of Directors shall have the authority to approve the Project Agreements and to review modify and approve, as appropriate, all amendments, modifications and supplements to the Project

Agreements.

- 6.3.5 Committees. The Board of Directors shall exercise such review, direction or oversight as may be appropriate with respect to the Coordinating Committee and any other committees established pursuant to the Project Agreements.
  - 6.3.6 Budgeting. The Board of Directors shall review, modify and approve each Annual Budget and the revisions thereto in accordance with Section 5.4 of this Agreement.
  - 6.3.7 Revision of Appendices A, B and C. In coordination with the Coordinating Committee adopt a resolution approving the revisions of Appendices A, B and C, as applicable, of this Agreement as provided in and subject to the provisions of Section 16.
  - 6.3.8 Supervening Authority of the Board. The Board of Directors is reposed with complete and plenary supervening power and authority to act upon any matter which is capable of being acted upon by the Coordinating Committee or which is specified as being within the authority of the Coordinating Committee pursuant to the provisions of this Agreement, including those matters enumerated in Section 6.1 and 6.2 of this Agreement.
  - 6.3.9 Other Matters. The Board of Directors is authorized to perform such other functions and duties, including oversight of those matters and responsibilities addressed by the Coordinating Committee, as may be provided for under this Power Sales Agreement and under the other Project Agreements, or as may otherwise be appropriate.
- 6.4 Periodic Audits. The Board of Directors or the Coordinating Committee may arrange for the annual audit under Section 5.6 of this Agreement by certified accountants, selected by SCPA and experienced in electric generation or electric utility accounting, of the books and accounting records of SCPA, and where deemed appropriate the Project Manager (if other than SCPA), the Power Purchase Provider (to the extent provided under any of the Power Purchase and Security Agreements) and any other counterparty under any Project Agreement to the extent allowable, and any cost reimbursable consultant or cost reimbursable contractor relevant to the administration of the Project, and such audit shall be completed and submitted to SCPA as soon as reasonably practicable after the close of the Fiscal Year. SCPA shall promptly furnish to Project Participants copies of all audits. No more frequently than once every calendar year, a Project Participant may, at its sole cost and expense, audit or cause to be audited the books and cost records of SCPA, the Project Manager (if other than SCPA), the counterparty under any Project Agreement to the extent so provided in the applicable Project Agreement, and any cost reimbursable consultant or cost reimbursable contractor relevant to the administration of the Project.



- 6.5 Additional Committees. The Coordinating Committee may establish as needed subcommittees including, but not limited to, auditing, legal, financial, engineering, mechanical, geologic, operating, insurance, community relations, governmental relations, environmental and public information subcommittees. The authority, membership, and duties of any subcommittee shall be established by the Coordinating Committee; provided, however, such authority, membership or duties shall not conflict with the provisions of any of the Project Agreements. Each such subcommittee shall be initially responsible to the Coordinating Committee.
- 6.6 Written Record. All actions, resolutions, determinations and reports made by the Coordinating Committee as required by this Agreement shall be set forth in a written record or its minutes.
- 6.7 Change in Representative. Each Project Participant shall promptly give written notice to the other Project Participant and SCPPA of any changes in the designation of its representative on the Coordinating Committee or any subcommittee, and SCPPA shall promptly give written notice to the other Project Participants of any changes in the designation of its representative on the Coordinating Committee or any subcommittee.
- 6.8 Costs of Consultants. Costs (or the applicable portion thereof) of consultants and others employed or appointed by the Coordinating Committee to perform the duties required hereunder, to the extent the Coordinating Committee is authorized to so employ or appoint, shall be included in the Total Monthly Costs, as appropriate, and shall be billed to SCPPA or the Project Manager (if other than SCPPA).
- 6.9 Representative's Expenses. Any expenses incurred by any representative of any Project Participant or group of Project Participants serving on the Coordinating Committee or any other committee in connection with his/her duties on such committee shall be paid by the Project Participant or Project Participants which he/she represents and shall not be an expense payable under this Agreement.
- 6.10 Inaction by Committee. It is recognized by SCPPA and the Project Participants that if the Coordinating Committee is unable or fails to agree with respect to any matter or dispute which it is authorized to determine, resolve, approve, disapprove or otherwise act upon after a reasonable opportunity to do so, or within the time limits specified herein or in any otherwise applicable Project Agreement, then the Project Manager may take such action as in its discretion is necessary for its timely performance under any applicable Project Agreement pending the resolution of any such inability or failure to agree, but nothing herein shall be construed to allow the Project Manager to act in violation of the express terms of any applicable project management agreement or this Agreement.
- 6.11 Compliance with the Power Purchase Agreement. It is further recognized by SCPPA and the Project Participants that notwithstanding Section 6.10 or any other provision of this Agreement, no action by the Coordinating Committee, or

the Project Manager (if a designee other than SCPA) shall require SCPA to act in any manner inconsistent with requirements of the Power Purchase Agreement or to refrain from acting in a manner required by such requirements.

- 6.12 Delegation. To secure the effective cooperation and interchange of information in a timely manner in connection with various administrative, technical and other matters which may arise from time to time in connection with administration of the Project Agreements, in appropriate cases, duties and responsibilities of the Board of Directors or the Coordinating Committee, as the case may be under this Section 6, may be delegated to SCPA's Executive Director.

## 7. CHARGES AND BILLINGS.

- 7.1 Power Purchase Agreement Monthly Costs and Billing Statement. During the term of the Power Purchase Agreement the amount of Monthly Costs which shall be paid by Purchaser pursuant to a Billing Statement for a particular Month shall be the sum of the following, as applicable, subject to Sections 7.9 and 7.10 hereof and any applicable adjustments as provided in Section 12 hereof:

- 7.1.1 Purchaser's Delivery Point Output Cost Share multiplied by the Delivery Point Output Cost Component of Total Monthly Costs (as provided in Section 4.3.1) with respect to Purchaser's Designated Point of Delivery for such Month.
- 7.1.2 Purchaser's Project Cost Share multiplied by the Power Purchase Agreement General and Administrative Cost Component of Total Monthly Costs (as provided in Section 4.3.2 hereof) for such Month.
- 7.1.3 Purchaser's Project Cost Share multiplied by the Reserve Fund Cost Component of Total Monthly Costs (as provided in Section 4.3.3 hereof) for such Month.
- 7.1.4 Purchaser's share of the Supplementary Services Cost Component of Total Monthly Costs (as provided in Section 4.3.4 hereof) for such Month based on Purchaser's allocated share of any such services procured by SCPA on behalf of the Purchaser.
- 7.1.5 By the fifth calendar day of each Month during each Power Supply Year, SCPA shall bill Purchaser for the amount of Monthly Costs to be paid by Purchaser for the current Month by providing Purchaser with a Billing Statement in accordance with the charges established pursuant to the provisions of this Agreement. Such Billing Statement shall detail the costs described in this Section 7.1 and shall set forth, among other things, the amounts due for such Month by Purchaser with respect to the items of Monthly Costs set forth in this Section 7.1, as such Monthly Costs may be adjusted from time to time in accordance with Section 5 and this Section 7. Such Billing Statement shall be paid by Purchaser on or before twenty (20) days after receipt of such Billing Statement.

- 7.2 Adoption of Alternative Billing Statement Procedures. The Coordinating Committee may recommend the adoption of an alternative Billing Statement billing methodology in connection with each Project Participant's Billing Statement with respect to the Total Monthly Costs and the costs associated with any Project Agreement. Such alternative Billing Statement procedures may be placed into effect with the approval of the same by resolution of the Board of Directors. Any such alternative Billing Statement billing methodology shall be fiscally prudent, financially sound and shall assure coverage of all potential and actual costs and obligations of SCPPA.
- 7.3 Disputed Monthly Billing Statement. In case any portion of any Billing Statement received by Purchaser from SCPPA shall be in bona fide dispute, Purchaser shall pay SCPPA the full amount of such Billing Statement and, upon determination of the correct amount, the difference between such correct amount and such full amount, if any, including interest at the rate received by SCPPA on any overpayment, will be credited to Purchaser by SCPPA after such determination; provided, however, that such interest shall not accrue on any overpayment that is acknowledged by SCPPA and returned to Purchaser by the fifth calendar day following the receipt by SCPPA of the disputed overpayment. In the event such Billing Statement is in dispute, SCPPA will give consideration to such dispute and will advise Purchaser with regard to SCPPA's position relative thereto within thirty (30) days following receipt of written notification by Purchaser of such dispute.
- 7.4 Reconciliation of Monthly Costs. As soon as practicable after the end of each Power Supply Year, SCPPA will submit to Project Participants a detailed statement of the actual aggregate Monthly Costs and other amounts payable hereunder, including any credits thereto, for all of the Months of such Power Supply Year, and the adjustments of the aggregate Monthly Costs and other amounts payable hereunder, if any, for any prior Power Supply Year, based on the annual audit of accounts provided for in Section 6.4. If, on the basis of the statement submitted as provided in this Section 7.4, the actual aggregate Monthly Costs and other amounts payable by the Project Participants for any Power Supply Year exceed the amount thereof which Project Participants have been billed, Project Participants shall pay SCPPA, within twenty (20) days of receipt of SCPPA's invoice, the amount to which SCPPA is entitled. If, on the basis of the statement submitted pursuant to this Section 7.4, the actual aggregate Monthly Costs or other amounts payable by the Project Participants for any Power Supply Year are less than the amount therefor which Project Participants have been billed, SCPPA shall, unless otherwise directed by Purchaser or the other Project Participant with respect to moneys owed to each, credit such excess against Purchaser's and the other Project Participant's next monthly Billing Statement. In the event that the failure of Purchaser to make its payments in accordance with this Agreement shall have resulted in the application of amounts in any reserve or other Fund under this Agreement to the payment of costs payable from such reserve or Fund and the other Project Participant shall have made up the deficiency created by such application or paid additional amounts as a result of a draw on such reserve or Fund, amounts thereafter paid to SCPPA by Purchaser for

application to such past due payments including interest shall be credited on the Billing Statements of such other Project Participant in the next Month or Months as provided in the applicable provisions of Section 11.

- 7.5 Other or Additional Cost Reconciliation Mechanisms. The Board of Directors may, by resolution, authorize or prescribe other billing, payment, costing and cost reconciliation mechanisms to address such billing, payment, costing and cost reconciliation issues as may from time to time arise with respect to the Project.
- 7.6 Interest on Late Payments. If Purchaser fails to pay any Billing Statement when due, interest shall accrue at a rate equal to the lesser of (i) two hundred (200) basis points above the per annum prime rate reported daily in The Wall Street Journal, or (ii) the maximum rate permitted by applicable Requirements of Law.
- 7.7 Prepayment of Monthly Costs. Purchaser may, at any time, pay moneys to SCPPA or utilize any credits due or amounts owed by SCPPA to Purchaser with respect to the Project for the purpose of prepaying its monthly Billing Statement. Such moneys and amounts owed by SCPPA under any Project Agreement shall be deposited into an account established by, or at the direction of, SCPPA. Consistent with SCPPA's investment policy, moneys in such account shall be invested pursuant to instructions provided to SCPPA by Purchaser and all investment income shall be credited to such account. Payment of the amount of any monthly Billing Statement or Default Invoice shall be made from moneys available in such account to the extent set forth in written directions from Purchaser to SCPPA received at least five (5) business days prior to the due date of such payment. Any credit or prepayment with respect to its monthly Billing Statement shall not relieve or reduce Purchaser's other obligations under this Agreement.
- 7.8 Costs or Expenses Incurred for Sole Benefit of Purchaser. Notwithstanding anything to the contrary in this Agreement, if a particular cost or expense is incurred by SCPPA for the sole benefit of Purchaser, unless otherwise determined by the Coordinating Committee, then such cost or expense shall be allocated only to Purchaser, in which event only Purchaser (and no other Project Participant) shall be responsible for the payment thereof under this Agreement. Any such cost or expense incurred by SCPPA for the sole benefit of Purchaser shall be deemed to be paid last from amounts paid by Purchaser for the payment of its Billing Statements.
- 7.9 Credit or other Payment Attributable to a Specific Project Participant. Should any Project Participant make or provide, through any type of payment mechanism, for a separate payment or prepayment for Facility Output or other Project purpose which results in a credit or reduction in SCPPA's obligation being credited to the purchase of Facility Output, or a reduced cost of power or otherwise credited under the Power Purchase Agreement or other Project Agreement, then, to the extent that such credit is credited to an obligation of SCPPA under the Power Purchase Agreement or such other Project Agreement, such credit shall be passed through or credited to the applicable Project Participant under such Project

Participant's Power Sales Agreement. Such a credit may at the request of the applicable Project Participant be credited on the Project Participants subsequent Billing Statements or handled pursuant to a Billing Statement methodology which bills for and places an amount which is the equivalent of the credit into the Project Participants project stabilization account or such a credit may be otherwise handled in such manner as the applicable Project Participant may reasonably request. The provisions of this Section 7.9 shall be in addition to the terms and provisions of Section 12 and shall not be applicable to any circumstances, conditions or matters that are within the scope of Section 12.

**8. UNCONDITIONAL PAYMENT OBLIGATIONS; RATE COVENANT; AUTHORIZATIONS; CONFLICTS; LITIGATION.**

- 8.1 Unconditional Payment Obligation. Beginning with the earliest of (i) the date SCPPA incurs or becomes obligated to pay any portion of the costs of the Project, (ii) the effective date of any Project Agreement, (iii) the effective date of the Power Purchase Agreement or, (iv) the date of the first delivery of Facility Output to Purchaser and continuing through the term of this Agreement, Purchaser shall pay SCPPA the amounts of Monthly Costs set forth in the Billing Statements submitted by or on behalf of SCPPA to Purchaser in accordance with the provisions of Section 7 hereof and, without duplication, any amount set forth in any Step-Up Invoices or Default Invoices received by Purchaser as a result of the operation of Section 11 hereof, whether or not the Project or any part thereof has been completed, is functioning, producing, operating or operable or its output is suspended, interrupted, interfered with, reduced or curtailed or terminated in whole or in part, and such payments shall not be subject to reduction whether by offset or otherwise and shall not be conditional upon the performance or nonperformance by any party of any agreement for any cause whatsoever.
- 8.2 Source of Payments. The Purchaser hereby represents, warrants and agrees that the obligations of Purchaser to make the payments to SCPPA under this Agreement shall constitute a cost of purchased power and an operating expense of Purchaser payable solely from its electric power revenue fund, including any and all legally available electric system reserves. Purchaser will annually in each and every fiscal year of Purchaser during the term of this Agreement include in its power system budget, whether or not any other items are included, an appropriation from the revenues of its electric system (including moneys derived from sales to third parties) sufficient to satisfy all the payments required to be made in such year under this Agreement until all payments required under this Agreement have been paid in full.
- 8.3 Rate Covenant. Purchaser will establish, maintain and collect rates and charges for the electric service of its electric system each year so as to provide revenues sufficient, together with any legally available electric system reserves, to enable Purchaser to pay to SCPPA all amounts payable when due under this Agreement and to pay all other amounts payable from, and all lawful charges against or liens on, the revenues of its electric system.

8.4 Authorizations. The Purchaser hereby represents and warrants that no order, approval, consent or authorization of any governmental or public agency, authority or person, is required on the part of the Purchaser for the execution and delivery by the Purchaser of this Agreement, or the performance by the Purchaser of its obligations under this Agreement except for such as have been obtained.

## 9. OTHER TERMS AND SERVICES.

9.1 Delivery Procedures. Prior to the time at which any Energy will be delivered to Purchaser from the Facility, Purchaser will schedule and shall be obligated to take delivery of its Output Entitlement Share of the Energy to be delivered. The Facility Output generated and produced from the Project shall be scheduled and delivered to Project Participants at their respective Designated Points of Delivery under any development, operating, project management or agency agreement and/or practices and procedures approved by the Coordinating Committee pursuant to Section 6.2, as applicable.

9.2 Other Services and Transmission from Points of Delivery. It is the obligation of Purchaser to receive its share of Facility Output and to arrange for delivery of such Facility Output to its ultimate destination or destinations after having reached its Designated Point of Delivery, as determined by Purchaser. However, to the extent specified by the Purchaser, and to the extent practicable for SCPPA to do so, SCPPA shall assist in arranging for Supplementary Services and for such additional transmission, interconnection arrangements, energy management, swaps, exchanges or other services, as deemed necessary by Purchaser, associated with the transmission, use or disposition of Facility Output to be utilized by the Purchaser and to provide for delivery, accounting for, transferring and crediting the ownership and transfer of Facility Output from such Purchaser's Designated Point of Delivery to any other points or destinations, as determined by the Purchaser.

9.3 Energy Services. Except as otherwise provided in this Agreement nothing herein shall prevent or restrict Purchaser from providing for its own transmission, energy management services, balancing, or exchanging services or otherwise using or dispatching its Energy under this Agreement; provided, however, that such services, use or activities shall not affect any of the obligations of Purchaser under this Agreement.

9.4 Balancing Agent and Dynamic Scheduling. Upon the request of Purchaser, SCPPA shall either (i) retain an agent to maintain and balance Purchaser's hourly Energy schedules in accordance with WECC protocols ("Balancing Agent"), including the provision or absorption of imbalance energy to accommodate intra-hour fluctuations of Facility Output as compared to Purchaser's Energy schedule and maintaining a balancing account of accumulated imbalance energy to be settled by adjusting future Purchaser Energy schedules or (ii) arrange for Dynamic Scheduling from Purchaser's Designated Point of Delivery to Purchaser's control area or electric system, including the procurement and installation of scheduling hardware, software, and communications equipment

necessary to effectuate Dynamic Scheduling (if such a scheduling methodology is deemed appropriate, applicable and/ or otherwise feasible). Upon the request of Purchaser, SCPPA shall also (x) procure, contract for or otherwise arrange for any available energy balancing or integration services to address any of the above referenced imbalances, fluctuations, variability, intermittency, or like conditions or (y) address the costs, charges or consequences of such imbalances, fluctuations, variability, intermittency, or like conditions through other mechanisms or methodologies which are mutually agreeable to the Purchaser and SCPPA. Any such arrangements (other than arrangements with another Project Participant or other SCPPA members) entered into by SCPPA at the request of Purchaser shall be with third parties and negotiated in arms' length transactions, to the extent applicable.

- 9.5 Transfer of Environmental Attributes to Project Participants. SCPPA shall transfer or pass through all Environmental Attributes received by SCPPA either under the Power Purchase Agreement or with respect to Facility Output following its purchase or acquisition of the Facility to Project Participants in accordance with their respective Output Entitlement Shares in the same manner by which SCPPA receives Environmental Attributes under the terms of the Power Purchase Agreement or otherwise as may be determined by the Coordinating Committee.

#### **10. RIGHTS AND OBLIGATIONS UNDER PROJECT AGREEMENTS.**

Notwithstanding anything to the contrary contained herein: (i) the obligation of SCPPA to deliver Purchaser's Output Entitlement Share of Facility Output hereunder during the Delivery Term of the Power Purchase Agreement is limited to the Facility Output which SCPPA receives from the Facility (or the Power Purchase Provider, as applicable) at Purchaser's Designated Point of Delivery for redelivery to Purchaser hereunder during such time; (ii) the obligation of SCPPA (or the Power Purchase Provider) to deliver Purchaser's Output Entitlement Share of Replacement Energy hereunder during the Delivery Term of the Power Purchase Agreement is limited to the Replacement Energy which SCPPA receives at Purchaser's Designated Point of Delivery under the Power Purchase Agreement, (iii) the obligation of SCPPA to pay any amount to Purchaser hereunder or to give credits against amounts due from Purchaser hereunder is limited to amounts SCPPA receives in connection with the transaction to which the payment or credit relates (or is otherwise available to SCPPA in connection with this Agreement for which such payment or credit relates); (iv) any purchase costs, operating costs, energy costs, capacity costs, environmental attribute costs, transmission costs, tax costs, insurance costs, indemnifications, other costs or other charges for which SCPPA is responsible under the Project Agreements shall be considered purchase costs, operating costs, energy costs, capacity costs, environmental attribute costs, transmission costs, tax costs, insurance costs, indemnifications, other costs or other charges incurred by SCPPA and payable by Project Participants as provided in this Agreement; and (v) any Force Majeure under the Power Purchase Agreement or other event of force majeure affecting the delivery of energy pursuant to applicable provisions of the Project Agreements shall be considered an event caused by Uncontrollable Forces affecting SCPPA with respect to the delivery of energy and/or environmental attributes hereunder and SCPPA forwarding to Purchaser notices and information from the Power Purchase Provider concerning an event of Force Majeure upon receipt thereof shall be sufficient to constitute a notice that Uncontrollable Forces have occurred.

## 11. NONPERFORMANCE AND PAYMENT DEFAULT.

- 11.1 Nonperformance by Purchaser. If Purchaser shall fail to perform any covenant, agreement or obligation under this Agreement or shall cause SCPPA to be in default with respect to any undertaking entered into for the Project or to be in default under the Power Purchase Agreement, or any other Project Agreement, as applicable, or cause a default to occur pursuant to such agreements, SCPPA may, in the event the performance of any such obligation remains unsatisfied after thirty (30) days' prior written notice thereof to the Purchaser and a demand to so perform; take any action permitted by law to enforce its rights under this Agreement, including but not limited to termination of this Agreement, and/or (unless SCPPA has already taken action pursuant to the immediately following sentence) bring any suit, action or proceeding at law or in equity as may be necessary or appropriate to recover damages and/or enforce any covenant, agreement or obligation against the Purchaser with regard to its failure to so perform.
- 11.2 Notice of Payment Default. On or promptly following the Initial Payment Default Date by Purchaser, SCPPA shall issue a Default Invoice and shall provide written notice to Purchaser that as a result of a Payment Default it is in default under this Agreement and has assumed the status of a Defaulting Project Participant and that Purchaser's Project Rights are subject to discontinuance, termination and disposal in accordance with Sections 11.4 and 11.5 of this Agreement. Notice of such Payment Default shall be provided promptly by SCPPA to the other Project Participant. In addition to the foregoing, the Notice of Payment Default shall specify that five (5) days after the issuance of the written notice of Payment Default by SCPPA, deliveries of Facility Output to the Purchaser pursuant to this Agreement shall be thereafter suspended until such time as Purchaser is in Compliance. SCPPA may take any action through or in conjunction with the Power Purchase Provider or any other counterparty under a Project Agreement or with the Project Manager, if applicable, to expeditiously carry forth the provisions of this Section 11.
- 11.3 Cured Payment Default. If after a Payment Default, Purchaser cures such Payment Default within the Cure Period, its Project Rights shall not be subject to discontinuance, termination or disposal as provided for in Sections 11.4 and 11.5 of this Agreement as a result of any Payment Default associated with such Cured Payment Default.
- 11.4 Failure to Cure Payment Default. If at any time thirty (30) days after an uncured Payment Default by Purchaser, Purchaser fails to be in Compliance, due to the failure of the Defaulting Project Participant to cure its Payment Default in a timely manner in accordance with this Agreement, Purchaser's Project Rights shall immediately be discontinued and terminated and its Project Rights and Obligations shall be disposed of by SCPPA in accordance with Section 11.5 of the Defaulting Project Participant's Power Sales Agreement; provided, however, the Defaulting Project Participant's obligation to make payments under its Power Sales Agreement shall not be eliminated or reduced except to the extent provided



in Section 11.6. SCPPA shall provide to the Defaulting Project Participant a separate monthly invoice of any such payment obligations under its Power Sales Agreement. SCPPA shall immediately notify the Project Manager (if other than SCPPA), the other Project Participant and such others as SCPPA deems appropriate, of such discontinuance and termination of a Defaulting Project Participant's Project Rights.

11.5 Treatment of the Defaulting Project Participant's Project Rights and Obligations upon Payment Default of Defaulting Project Participant. In the event Defaulting Project Participant's Project Rights are discontinued and terminated pursuant to Section 11.4 of its Power Sales Agreement, SCPPA shall undertake or cause to be undertaken the following actions in the order indicated:

11.5.1 SCPPA shall, to the extent permitted under the Project Agreements, offer to convey, transfer and assign to all non-Defaulting Project Participants, on a temporary or permanent basis as determined by SCPPA, the Project Rights and Obligations of Defaulting Project Participant, and SCPPA shall so convey, transfer and assign on such basis so determined by SCPPA to (i) all requesting non-Defaulting Project Participants the amount of Project Rights and Obligations requested if the aggregate of such requests does not exceed the amount of the Project Rights and Obligations of the Defaulting Project Participant, or (ii) all requesting non-Defaulting Project Participants on a pro-rata basis (based upon the amount requested) if the aggregate of such requests exceeds the amount of the Project Rights and Obligations of the Defaulting Project Participant. Each such requesting non-Defaulting Project Participant shall assume all, but not less than all, Project Rights and Obligations so conveyed, transferred and assigned to it by SCPPA.

11.5.2 If all of Defaulting Project Participant's Project Rights and Obligations are not conveyed, transferred and assigned to non-Defaulting Project Participants as provided in Section 11.5.1 of its Power Sales Agreement, SCPPA shall, to the extent permitted under the Project Agreements and to the extent SCPPA in its discretion determines it appropriate, offer to convey, transfer and assign, on a temporary or permanent basis as determined by SCPPA, the remaining (or all, if applicable) of Defaulting Project Participant's Project Rights and Obligations to third parties, all in accordance with applicable law. Each such requesting third party shall assume all, but not less than all, Project Rights and Obligations so conveyed, transferred and assigned to it by SCPPA.

11.5.3 If, at any time or from time to time, any of the Project Rights and Obligations of a Defaulting Project Participant are not conveyed, transferred and assigned as provided in Sections 11.5.1 or 11.5.2 of its Power Sales Agreement, SCPPA shall use its best efforts, to the extent reasonably possible and economically beneficial, to offer all non-Defaulting Project Participants and third parties, for long-term or short-term sale as determined by SCPPA, Facility Output associated with such

Project Rights and Obligations or to remarket or resell such Facility Output, or cause the same to be remarketed or resold; provided, however, that without eliminating Defaulting Project Participant's obligation to make payments under its Power Sales Agreement (notwithstanding anything to the contrary in this Agreement), including payment of SCPPA's costs and expenses related to such default and sale, such payment obligation shall be satisfied to the extent that payments are received by SCPPA from the remarketing or sale of Facility Output associated with Defaulting Project Participant's Project Rights. If at the time of any Coordinating Committee meeting, any of Defaulting Project Participant's Project Rights and Obligations are not conveyed, transferred and assigned as provided in Sections 11.5.1 or 11.5.2, the associated voting rights with respect to Defaulting Project Participant's Project Rights and Obligations shall be redistributed pro-rata among the non-Defaulting Project Participants, based upon each non-Defaulting Project Participant's Output Entitlement Share, so that the total voting rights remain at one hundred percent (100%).

Except as provided in this Section 11.5 or otherwise in this Agreement, SCPPA may not convey, transfer or assign any Project Participant's Rights and Obligations without the prior written consent of the Project Participant.

- 11.6 Elimination or Reduction of Payment Obligations. Upon termination of Defaulting Project Participant's Project Rights pursuant to Section 11.5 and conveyance, transfer or assignment of Defaulting Project Participant's Project Rights and Obligations pursuant to Sections 11.5.1 or 11.5.2, Defaulting Project Participant's obligation to make payments under its Power Sales Agreement (notwithstanding anything to the contrary in this Agreement) shall not be eliminated or reduced except to the extent of moneys received by SCPPA as a result of the conveyance, transfer and assignment of Defaulting Project Participant's Project Rights and Obligations, less SCPPA's related costs and expenses; provided, however, such payment obligations for Defaulting Project Participant may be eliminated or reduced to the extent permitted by law, if and to the extent any costs incurred by SCPPA have been fully paid, and the Board of Directors, by resolution, determines to eliminate or reduce such payment obligations, which determination shall not be unreasonably withheld.
- 11.7 Use of Operating Reserve Account. With respect to a Payment Default by Purchaser, funds in the operating reserve account, if any, held by SCPPA may be used, to the extent necessary and to the extent available, to cover any deficiency with respect to any payment due by SCPPA attributable to Purchaser's participation in the Project. Any replenishing of any operating reserve account held by SCPPA shall be in accordance with rules and protocols promulgated by SCPPA.
- 11.8 Step-Up Invoices. Step-Up Invoices shall be issued in accordance with the provisions set forth below.

- 11.8.1 In the event of a Payment Default by one or more Defaulting Project Participants, which is in existence following the Operating Reserve Depletion Date, SCPPA shall provide by the fifth (5<sup>th</sup>) day of the Month following such Operating Reserve Depletion Date, a separate Step-Up Invoice to each non-Defaulting Project Participant that includes a charge equal to the non-Defaulting Project Participant's pro-rata share, based upon the Project Cost Shares of all non-Defaulting Project Participants, of the amount of Total Monthly Costs reflected in the unpaid Billing Statements for the previous Month for such Defaulting Project Participant(s). Notwithstanding the foregoing, the amount of each monthly Step-Up Invoice provided to a non-Defaulting Project Participant shall not exceed one hundred percent (100%) of the aggregate amount that such non-Defaulting Project Participant was billed with respect to Total Monthly Costs in its Billing Statement for the Month preceding such monthly Step-Up Invoice.
- 11.8.2 Step-Up Invoices shall be due and payable within twenty (20) days of the receipt thereof, and payments to SCPPA with respect to Step-Up Invoices shall be separate from any other payments due under each Project Participant's Power Sales Agreement, including but not limited to monthly Billing Statement payments.
- 11.9 Application of Moneys Received from Step-Up Invoices Relating to the Project. Moneys received by or on behalf of SCPPA from the payment of Step-Up Invoices relating to a Payment Default of a Project Participant shall be applied in the following manner:
- 11.9.1 All moneys received from the Project Participants with respect to the amount of Total Monthly Costs as set forth in the Step-Up Invoices, shall be applied toward the Defaulting Project Participant's Total Monthly Costs.
- 11.9.2 In the event a Project Participant pays less than the total amount of its Step-Up Invoice, such Project Participant shall be a Defaulting Project Participant and its partial payment shall be allocated toward all Total Monthly Costs.
- 11.10 Application of Moneys Received from Default Invoices. Moneys received by or on behalf of SCPPA from the payment of Default Invoices shall be credited on each non-Defaulting Project Participant's next monthly Billing Statement(s) or Billing Statements in an amount equal to the aggregate amount such non-Defaulting Project Participant paid as a result of Step-Up Invoices with respect to such Default Invoice, plus a pro-rata share, based upon the Project Cost Shares of the non-Defaulting Project Participants, of the amount SCPPA received regarding late payment interest charges. In the event a Defaulting Project Participant pays less than the full amount of its Default Invoice, the credit to each non-Defaulting Project Participant shall be adjusted proportionately.

11.11 Application of Moneys Received from Compliance Payments. Moneys received by or on behalf of SCPPA from a Defaulting Project Participant that makes payments to remain in Compliance with respect to a Payment Default, associated with a Defaulting Project Participant's payments to remain in Compliance, shall be credited on each non-Defaulting Project Participant's next monthly Billing Statement(s) in an amount equal to the aggregate amount such non-Defaulting Project Participant paid as a result of Step-Up Invoices with respect to such Compliance payment, plus a pro-rata share, based upon the Project Cost Shares of the non-Defaulting Project Participants, of the amount SCPPA received regarding late payment interest charges.

11.12 Application of Moneys Received from Sale of Facility Output. Moneys received by or on behalf of SCPPA from the sale of Facility Output related to a Defaulting Project Participant's Project Rights and Obligations, as provided in Section 11.5.3 hereof, shall be applied in the following manner in order:

11.12.1 SCPPA shall credit on each non-Defaulting Project Participant's next monthly Billing Statement(s) an amount up to, but not in excess of, the aggregate amount paid to SCPPA by such non-Defaulting Project Participant with respect to each such non-Defaulting Project Participant's Step-Up Invoices.

11.12.2 Following consultation with the non-Defaulting Project Participants, SCPPA shall determine the disposition of any moneys received that are in excess of the aggregate amount of related Step-Up Invoices paid by non-Defaulting Project Participants. Unless the Coordinating Committee determines otherwise, or except as otherwise required by law, the Defaulting Project Participant shall have no claim or right to any such monies.

## 12. CHARACTER, CONTINUITY OF SERVICE.

12.1 Outages, Interruptions and Curtailment of Energy Deliveries. Under certain conditions set forth in Project Agreements or in the case of emergencies or abnormal conditions with respect to the Facility or in order to take the Facility out of service for repairs, maintenance work, replacements, equipment installation or inspections, or in the event of a failure by a Project Participant to receive or accept Facility Output or Replacement Energy delivered to SCPPA at a Point of Delivery, the Power Purchase Provider may temporarily interrupt or curtail deliveries of Facility Output (or in the case of the Power Purchase Provider, the Replacement Energy) to Project Participants. In the event of the occurrence of any such interruption or curtailment, including any associated Facility outage, which shall cause a reduction in deliveries of Facility Output, any incurrence by SCPPA of additional costs, or a receipt by SCPPA of payments or credits under any Project Agreement, certain of the rights, entitlements and obligations of the affected Project Participants under their respective Power Sales Agreements shall be subject to adjustment as follows:

- 12.1.1 In the case of such an interruption, curtailment or outage affecting the deliveries of Facility Output at or to the 92 kV Heber Substation, (i) the resulting reduction in Facility Output at or to such Point of Delivery shall be shared by the Project Participants pro-rata in accordance with their respective Point of Delivery Allocable Shares, and (ii) any resulting costs incurred by SCPPA or payments or credits received by SCPPA shall be allocated among the Project Participants in accordance with their respective Project Cost Shares, provided that any interruption, curtailment or outage affecting the deliveries of Facility Output beyond the 92 kV Heber Substation at or to the 230 kV Mead Substation that results in reduction in Facility Output at or to such Point of Delivery any such reduction in Facility Output shall only be shared by LADWP, and any resulting costs incurred by SCPPA or payments or credits received by SCPPA shall be allocated to LADWP.
- 12.1.2 In the case of such an interruption or curtailment that affects deliveries of Facility Output at or to the 92 kV Heber Substation, and as a result thereof SCPPA shall receive any payment or credit, each affected Project Participant shall in turn receive a credit on its monthly Billing Statement during the term of the Power Purchase Agreement, in the amount of its Delivery Point Output Cost Share of such payment or credit received by SCPPA, provided that an interruption or curtailment that affects deliveries of Facility Output beyond the 92 kV Heber Substation at or to the 230 kV Mead Substation and as a result thereof SCPPA shall receive any payment or credits, LADWP shall in turn receive a credit on its monthly Billing Statement during the term of the Power Purchase Agreement, in the amount of such payment or credit received by SCPPA.
- 12.1.3 In the case where a Project Participant fails to accept or receive at its Designated Point of Delivery all or any portion of its Output Entitlement Share of Facility Output or Replacement Energy delivered to such Point of Delivery, such Project Participant shall be responsible for any cost incurred by SCPPA which is attributable to such failure and the amount of such cost shall be added to such Project Participant's monthly Billing Statement.
- 12.1.4 No such interruption or curtailment of deliveries of Facility Output, including any interruption or curtailment due to a Facility outage, shall relieve any of the Project Participants of their obligations to make payments under their respective Power Sales Agreements.
- 12.1.5 SCPPA or the Project Manager (if other than SCPPA) or SCPPA's agent will use its best efforts to apprise the affected Project Participants of potential outages, interruptions or curtailments, the reason therefor and the probable duration thereof, when such outages, interruptions or curtailments can be deemed likely to occur based upon the information provided to SCPPA or the Project Manager by the Power Purchase Provider.

12.1.6 After informing the affected Project Participants regarding any such planned interruption or curtailment, giving the reason therefor, and stating the probable duration thereof, SCPPA, its agent or the Project Manager, as applicable, will to the best of its ability schedule such interruption or curtailment at a time which will cause the least interference with the system operations of the Project Participants, as applicable.

12.2 Uncontrollable Forces. SCPPA shall not be required to provide, and SCPPA shall not be liable for failure to provide Facility Output, Replacement Energy or other service under this Agreement when such failure or the cessation or curtailment of or interference with the service is caused by Uncontrollable Forces or by the inability of SCPPA, the Power Purchase Provider or other applicable counterparty to obtain any required governmental permits, licenses or approvals to enable SCPPA or the Power Purchase Provider, as applicable, to acquire, administer or operate the Project; provided, however, that Project Participants shall not thereby be relieved of their obligations to make payments under their respective Power Sales Agreements except to the extent SCPPA is so relieved pursuant to any applicable Project Agreements.

### 13. SEVERAL OBLIGATION; LIABILITY.

13.1 Project Participants' Obligations Several. Project Participants shall be severally responsible and liable for performance under their respective Power Sales Agreements, and for any respective arrangements which are not part of the Project. The obligation of Purchaser to make payments under this Agreement is a several obligation and not a joint obligation with those of the other Project Participant under the other Power Sales Agreement to which such Project Participants are parties.

13.2 No Liability of SCPPA or Purchaser, or Their Directors, Officers, Employees, Etc.; SCPPA's and Purchaser's and Project Manager's (within its capacity as Project Manager) Directors, Officers, Employees Not Individually Liable. Both Parties agree that neither SCPPA, the Purchaser, the Project Manager, nor any of their past, present or future directors, officers, board members, agents, attorneys, advisors, employees or employees of the municipal entity of which the Purchaser is a part (collectively the "Released Parties") shall be liable to any other of the Released Parties for any and all claims, demands, liabilities, obligations, losses, damages (whether direct, indirect or consequential), penalties, actions, loss of profits, judgments, orders, suits, costs, expenses (including attorneys' fees and expenses) or disbursements of any kind or nature whatsoever in law, equity or otherwise suffered by any of the Released Parties as a result of the performance or non-performance by the Power Purchase Provider or any of the Released Parties under this Agreement or any Project Agreement (excluding gross negligence or willful misconduct which, unless otherwise agreed to by the Parties, are both to be determined and established by a court of competent jurisdiction in a final, non-appealable order). Each Party releases the Released Parties from any claim or liability that either Party may have cause to assert as a result of any actions or inactions of the Released Parties under this Agreement or the performance or non-

performance by the Project Manager under this Agreement or any Project Agreement (excluding gross negligence or willful misconduct which, unless otherwise agreed to by the Parties, are both to be determined and established by a court of competent jurisdiction in a final, non-appealable order). No such performance or non-performance by the Project Manager, the Power Purchase Provider, or SCPPA shall relieve SCPPA or Purchaser from their respective obligations under this Agreement, including, without limitation, Purchaser's obligation to make payments required under Section 8.1 of this Agreement and SCPPA's obligation to make payments under Section 13.7 of this Agreement, or under any other Project Agreements. The provisions of this Section 13.2 shall not be construed so as to relieve the Project Manager or the Power Purchase Provider from any obligation (or liability in the case of the Power Purchase Provider) under this Agreement, the Power Purchase and Security Agreements or any other applicable Project Agreement. It is also hereby recognized and agreed that no member of the Board of Directors, SCPPA, the Project Manager or the Purchaser, nor any of their past, present or future directors, officers, board members, agents, attorneys, advisors, employees or employees of the governmental entity of which the agent is a part or member of SCPPA in its capacity as a member of SCPPA, shall be individually liable in respect of any undertakings by any of the Released Parties under this Agreement or any Project Agreement. Nothing in this Section 13.2 or in any other provision of this Agreement shall affect Purchaser's obligation to make any payment in accordance with Section 8.1 of this Agreement or to pay any other amounts or costs required to be paid by it under this Agreement.

- 13.3 Extent of Exculpation; Enforcement of Rights. The exculpation provision set forth in Section 13.2 hereof shall apply to all types of claims or actions including, but not limited to, claims or actions based on contract or tort. Notwithstanding the foregoing, either Party may protect and enforce its rights under this Agreement by a suit or suits in equity for specific performance of any obligations or duty of the other Party, and each Party shall at all times retain the right to recover, by appropriate legal proceedings, any amount determined to have been an overpayment, underpayment or other direct monetary damages owed by either a Purchaser, SCPPA or the Project Manager (within its capacity as Project Manager) as the case may be, including, without limitation, any costs payable to SCPPA and any costs payable to the Purchaser or the Project Manager.
- 13.4 Determination or Enforcement of Rights. Notwithstanding Section 13.2 and 13.3 hereof, Purchaser or SCPPA may determine, protect and enforce its rights under this Agreement or any Project Agreement by a suit(s) in equity for specific performance of, or declaratory action with respect to, any obligation or duty hereunder or thereunder.
- 13.5 No Relief from Insurer's Obligations. Notwithstanding any provision in this Agreement to the contrary, including but not limited to the provisions in this Section 13, the provisions of this Section 13 shall not be construed or applied so as to relieve any insurer of its obligation to pay any insurance claims in accordance with any applicable insurance policy.

- 13.6 No General Liability of SCPPA. The undertakings under this Agreement by SCPPA, or the Project Manager (within its capacity as Project Manager), shall never constitute a debt or indebtedness of SCPPA or the Project Manager within the meaning of any provision or limitation of the Constitution or statutes of the State of California and shall not constitute or give rise to a charge against its general credit.
- 13.7 Indemnification of Purchaser. SCPPA undertakes and agrees, to the extent permitted by law, to indemnify and hold harmless Purchaser, its board, officers, agents, attorneys, advisors, employees, and the employees of the governmental entity of which the agent is a part, past, present or future (collectively, "Purchaser Indemnitees"), from and against any and all claims, demands, liabilities, obligations, losses, damages (whether direct, indirect or consequential), penalties, actions, loss of profits, judgments, orders, suits, costs, expenses (including attorneys' fees and expenses) or disbursements of any kind or nature whatsoever in law, equity or otherwise (including, without limitation, death, bodily injury or personal injury to any person or damage or destruction to any property of Purchaser, SCPPA or third persons) (collectively, "Losses") which may be imposed on, incurred by or asserted against Purchaser arising by manner of any breach of this Agreement by SCPPA, or the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement on the part of SCPPA or any of SCPPA's directors, board members, officers, employees, agents and advisors, past, present or future. At Purchaser's option, SCPPA shall defend Purchaser Indemnitees from and against any and all Losses. If SCPPA, with Purchaser's consent, defends any Purchaser Indemnitee, Purchaser and the Purchaser's City Attorney shall approve the selection of counsel, and Purchaser shall further approve any settlement or disposition, such approval not to be unreasonably withheld. Nothing in this Section 13.7 or in any other provision of this Agreement shall affect Purchaser's obligation to make any payment in accordance with Section 8.1 of this Agreement or to pay any other amounts or costs required to be paid by it under this Agreement.
- 13.8 Indemnification of Project Manager. The Parties acknowledge that SCPPA is obligated to indemnify any SCPPA designee Project Manager (when acting within its capacity as the Project Manager), including as provided under Section 16 of the Heber-1 Geothermal Energy Project Agency Agreement to indemnify and hold harmless LADWP, as Project Manager, its board, officers, agents, attorneys, advisors, employees, and the employees of the governmental entity of which the agent is a part, past, present or future, when acting for LADWP as Project Manager (collectively, the "Project Manager Indemnitees") from and against any and all claims, demands, liabilities, obligations, losses, damages (whether direct, indirect or consequential), penalties, actions, loss of profits, judgments, orders, suits, costs, expenses (including attorneys' fees and expenses) or disbursements of any kind or nature whatsoever in law, equity or otherwise (including, without limitation, death, bodily injury or personal injury to any person or damage or destruction to any property of LADWP, SCPPA or third persons) arising by reason of any actions, inactions, errors or omissions incident to the performance of the Heber-1 Geothermal Energy Project Agency Agreement (excluding gross



negligence or willful misconduct which, unless otherwise agreed to by the Parties, are both to be determined and established by a court of competent jurisdiction in a final, non-appealable order) on the part of Project Manager Indemnitees, when acting for LADWP as Project Manager. It is further acknowledged by the Parties that all payments, costs and expenses of SCPA with respect to compliance with any such indemnification obligations, including under Section 16 of the Heber-1 Geothermal Energy Project Agency Agreement, shall be payable as Monthly Costs by Project Participants in accordance with the terms of their respective Power Sales Agreements. At Project Manager's option, SCPA shall defend Project Manager Indemnitees from and against any and all Losses. If SCPA, with Project Manager's consent, defends any Project Manager Indemnitee, Project Manager and Project Manager's City Attorney's Office (or other appropriate Project Manager counsel or authority, as appropriate) shall approve the selection of counsel, and Project Manager shall further approve any settlement or disposition, such approval not to be unreasonably withheld. Notwithstanding any provision of this Agreement which might be construed to the contrary, nothing in this Section 13.8 or in any other provision of this Agreement shall affect LADWP's obligation, as Purchaser, or the obligations of the other Project Participant to make any payment or to pay any cost required of it in accordance with Section 8.1 of this Agreement or to pay any other amounts or costs under its Power Sales Agreement, or SCPA's obligation to make any payment or to pay any cost required of it under the Heber-1 Geothermal Energy Project Agency Agreement.

- 13.9 Separate Capacities. The Parties acknowledge that LADWP, as project manager under the Heber-1 Geothermal Energy Project Agency Agreement, acts in a legal capacity that is separate from its capacity as a Purchaser, Project Participant and a Party under this Agreement. Accordingly, for purposes of this Agreement, the rights, entitlements, obligations and liabilities of LADWP, as Purchaser, Project Participant and a Party under this Agreement, shall not apply to or otherwise be affected by, and shall be legally separate from the rights, entitlements, obligations, and liabilities of LADWP in its capacity as project manager under the Heber-1 Geothermal Energy Project Agency Agreement.

#### 14. RESTRICTIONS ON DISPOSITION.

- 14.1 Restrictions on Elimination of Payment Obligations. No sale, assignment or other disposition of Purchaser's Project Rights and Obligations to any Person ("Assignee") shall release Purchaser from its payment obligations under this Agreement; provided, however, such payment obligations may be eliminated or reduced if (i) such Assignee shall assume and agree to fully perform and discharge the Project Rights and Obligations under this Agreement, (ii) unless otherwise provided by resolution of the Board of Directors, such Assignee shall have a corporate or long-term senior unsecured credit rating not less than Standard & Poors A- or Moody's A3, and (iii) the Board of Directors, by resolution, determines in its sole discretion to eliminate or reduce such payment obligations. For avoidance of doubt, notwithstanding the forgoing, no such sale, assignment or disposition shall cause SCPA to be in default of any term or

condition of the Power Purchase Agreement or of any Project Agreement.

- 14.2 Restrictions on Disposition of Purchaser's Entire System. Purchaser shall not sell, lease or otherwise dispose of all or substantially all of its electric system to any Person ("Acquiring Entity") unless the Acquiring Entity shall assume and agree to fully perform and discharge the Project Rights and Obligations under this Agreement, and such Acquiring Entity shall have a corporate or long-term senior unsecured credit rating not less than investment grade.
- 14.3 Successors and Assigns. Subject in all respects to Sections 11 and 14 hereof, the Project Rights and Obligations under this Agreement shall inure to the benefit of and shall be binding upon the respective successors and assigns of the parties to this Agreement.

**15. EFFECTIVE DATE, TERM AND EXPIRATION.**

- 15.1 Effective Date; Execution in Counterparts. This Agreement shall become effective on the first day when all of the following shall have occurred: (i) this Agreement shall have been duly executed and delivered by SCPPA and Purchaser, (ii) the Power Purchase Agreement shall have been duly executed and delivered by SCPPA and the Power Purchase Provider, and (iii) the Power Sales Agreement between SCPPA and the other Project Participant shall have been duly executed and delivered by the parties thereto. Once the Power Purchase Agreement has been executed and delivered as set forth above, SCPPA shall deliver a copy of the same to Purchaser. This Agreement may be executed in any number of counterparts, each of which shall constitute an original.
- 15.2 Termination Conditions. This Agreement shall be effective upon satisfaction of the conditions set forth in Section 15.1 and shall extend for the term specified in Section 15.3 unless earlier terminated pursuant to an express provision of this Agreement; provided, however, that any obligation to make payments to SCPPA or any outstanding liability of Purchaser hereunder which either exists or may exist as of the date of termination of this Agreement, or which comes into existence at any future time as a result of any activity or transaction carried forth under this Agreement, shall survive such termination.
- 15.3 Expiration. The term of this Agreement shall begin on the day this Agreement becomes effective pursuant to Section 15.1 hereof. Unless terminated earlier pursuant to Section 15.4 and subject to Section 18 hereof, the term of this Agreement shall expire on the later of: (i) the date SCPPA's Joint Powers Agreement (including any extensions thereof) expires or (ii) the date on which the Power Purchase Agreement is terminated and all of Parties' obligation(s) under the Power Purchase Agreement have been fully satisfied or otherwise adequate provision for satisfaction of such obligation(s) have been made and no other such obligation(s) under the Power Purchase Agreement is outstanding; provided, however, in no event shall the term of this Agreement expire so long as the Power Purchase Agreement is of any force or effect.

- 15.4 Termination of Agreement before Expiration Date. Notwithstanding the expiration date set forth in Section 15.3 hereof, this Agreement shall terminate, subject to Section 18 hereof, on the date, SCPPA notifies Purchaser that all Power Sales Agreements are superseded as a result of each Project Participant having (i) succeeded to SCPPA's rights through another agreement or agreements, (ii) entered into a replacement power sales agreement or other agreement with SCPPA or (iii) entered into a replacement power sales agreement or other agreement with one or more Project Participants which have become Project Participants in the Project under another agreement. The purchase price and consideration to be paid to SCPPA by Purchaser with respect to any such superseding arrangement shall consist of the payments and satisfaction of all obligations by Purchaser under and pursuant to this Agreement prior to the effective date of the superseding arrangement plus any remaining costs or obligations incurred by SCPPA in connection with the Facility.
16. **REVISION OF APPENDICES A, B AND C.** The Parties acknowledge that when consistent with the terms of the Power Purchase Agreement and the applicable Project Agreements, SCPPA may hereafter change the proportions of member Facility Output shares and may hereafter enter into additional power sales agreements for the purchase of Facility Capacity with other of its members which would then become additional Project Participants. In such event Appendices A, B and C may be revised, as applicable, so as to add Project Participants and to adjust the Capacity Amounts, Output Entitlement Shares, any of the Cost Shares and the Point of Delivery Allocable Shares (collectively, the "Appendices A, B and C Designations") as set forth in Appendices A, B and C, as shall be necessary to provide for any such revisions in the respective capacity shares of the Project Participants or the addition of Project Participants; provided that any such adjustments in Appendices A, B and C shall be approved by a resolution adopted by the Coordinating Committee (which shall include the affirmative vote of Purchaser's representative on the Coordinating Committee if any of the Purchaser's Appendices A, B and C Designations shall be so adjusted), and shall be approved by a corresponding resolution adopted by SCPPA's Board of Directors, and such adjustments shall be in compliance with this Agreement. The Parties further agree that any such adjustments in Appendices A, B or C shall be made pursuant to the terms of this Agreement as entered into by the Parties and shall be treated as an element of administration of this Agreement. The revised Appendices A, B and C upon receipt of the approvals as provided above and upon compliance with the other requirements set forth in this Section 16 shall become Appendices A, B and C, respectively, to this Agreement in replacement of the prior Appendices A, B and C hereof.
17. **SEVERABILITY.** In case any one or more of the provisions of this Agreement shall for any reason be held to be illegal or invalid by a court of competent jurisdiction, it is the intention of each of the Parties hereto that such illegality or invalidity shall not affect any other provision hereof, but this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein unless a court holds that the provisions are not separable from all other provisions of this Agreement.
18. **CONDITIONS TO TERMINATION OR AMENDMENT.** None of the Power Sales Agreements may be terminated as to any one or more of the Project Participants, or be amended as to any one or more of the Project Participants so as to provide terms and conditions materially different from those contained therein except, subject to the provisions

of this Section 18, upon written notice to and written consent or waiver by the other Project Participant, and upon similar amendment, if appropriate, being made to the Power Sales Agreement of the other Project Participant.

19. **REPRESENTATION AND GOVERNING LAW.** The Parties acknowledge that each Party was represented by counsel in the negotiation and execution of this Agreement. This Agreement was made and entered into in the County of Los Angeles and shall be governed by, interpreted and enforced in accordance with the laws of the State of California. All litigation arising out of, or relating to this Agreement, shall be brought in a State or Federal court in the County of Los Angeles in the State of California. The Parties irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of California and waive any defense of *forum non conveniens*.
20. **ARBITRATION AND ATTORNEYS' FEES.** If a dispute arises between the Parties which the Coordinating Committee or the Board of Directors is unable to resolve, the Parties may by mutual agreement submit the dispute to mediation or non-binding arbitration. With respect to any such dispute the Parties agree that each Party shall bear its own attorneys' fees and costs. Notwithstanding the foregoing, Purchaser and SCPPA recognize and agree that SCPPA's attorneys' fees associated with any matter relating to the Project or this Agreement, including any dispute relating thereto, shall constitute a Project Cost which shall be allocated and billed as set forth in Sections 4 and 7 of this Agreement.
21. **PURCHASER'S CONTRACT ADMINISTRATOR.** Purchaser's contract administrator for this Agreement shall be the person so designated by the individual authorized to receive notices on behalf of Purchaser pursuant to Section 22 herein, and Purchaser's contract administrator shall have the authority to administer this Agreement on behalf of Purchaser. Notwithstanding the foregoing, Purchaser's contract administrator shall have no authority to amend this Agreement on behalf of the Purchaser.
22. **NOTICES.** Any notice, demand or request provided for in this Agreement shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by registered or certified mail, postage prepaid, to the persons specified below:

Southern California Public Power Authority  
Attention: Director of Contract Administration  
1160 Nicole Court  
Glendora, California 91740

Los Angeles Department of Water and Power  
Attention: General Manager  
RE: Power System Contracts  
111 N. Hope Street, Room 921  
Los Angeles, California 90012

23. **AMENDMENTS.** The Parties acknowledge and agree that any amendment to this

Agreement shall be in writing and duly executed by the Parties. No such amendment to this Agreement shall be permitted without the prior approval of the Purchaser's Board of Water and Power Commissioners.

*[SIGNATURE PAGE FOLLOWS]*

IN WITNESS WHEREOF, the Parties hereto have duly caused this Agreement to be executed on their respective behalves by their duly authorized representatives.

SOUTHERN CALIFORNIA PUBLIC  
POWER AUTHORITY

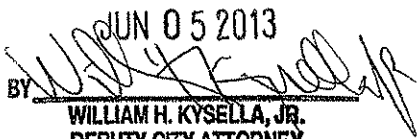
By: \_\_\_\_\_  
RONALD E. DAVIS  
President

Attest: \_\_\_\_\_  
BILL D. CARNAHAN  
Assistant Secretary

CITY OF LOS ANGELES acting by and through its  
DEPARTMENT OF WATER AND POWER

By: \_\_\_\_\_  
RONALD O. NICHOLS  
General Manager

APPROVED AS TO FORM AND LEGALITY  
CARMEN A. TRUTANICH, CITY ATTORNEY

JUN 05 2013  
BY   
WILLIAM H. KYSELLA, JR.  
DEPUTY CITY ATTORNEY

And: \_\_\_\_\_  
Secretary

## APPENDIX A\*

### DEFINITIONS

The following terms, whether in the singular or the plural, and initially capitalized, shall have the meanings specified below:

1. Act. All of the provisions contained in the California Joint Exercise of Powers Act found in Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, beginning at California Government Code Section 6500 et seq., as amended from time to time
2. Annual Budget. The budget approved by the Coordinating Committee and adopted by SCPPA pursuant to Section 5.4.1 of this Agreement not less than thirty (30) days nor more than sixty (60) days prior to the beginning of each Power Supply Year, including any amendments thereto, which shall show a detailed estimate of the Total Monthly Costs under the Power Sales Agreements and all credits, charges, revenues, income, or other funds to be applied to such costs, for and applicable to such Power Supply Year.
3. Billing Statement. The written statement prepared or caused to be prepared each Month by, or on behalf of, SCPPA which shall be based upon certain of the information in the Annual Budget and shall show for such Month the amount to be paid to SCPPA by a Project Participant in accordance with the provisions of Section 7 of its Power Sales Agreement.
4. Board of Directors. The Board of Directors of the Southern California Public Power Authority.
5. Capacity. The ability or potential to generate, produce or transfer electricity, expressed in kilowatts ("kW") or megawatts ("MW"), including, when feasible, ancillary or regulating services or other valuable non-energy products or services from a generating facility.
6. Capacity Amount. "Capacity Amount" means, with respect to a Project Participant, such respective amount of Facility Capacity as is specified in Appendix B.
7. Capacity Rights. "Capacity Rights" means the rights, whether in existence as of the Effective Date or arising thereafter during the term of this Agreement, of SCPPA to Capacity of the Facility, including resource adequacy, associated attributes and/or reserves or any of the foregoing purchased by SCPPA under the Power Purchase Agreement.
8. Chairperson. "Chairperson" is as defined in Section 6.1.
9. Delivery Commencement. "Delivery Commencement" shall have the definition set forth in the Power Purchase Agreement.
10. Compliance. Following a Payment Default, a Defaulting Project Participant shall be in

compliance with its payment obligations under its Power Sales Agreement if it (i) no later than the last day of the Cure Period fully pays all amounts owed as reflected in any Default Invoice; (ii) pays any monthly Billing Statement which comes due during the Cure Period; and (iii) replenishes any reduction made to the applicable operating reserve account or the Reserve Fund as a result of any Payment Default.

11. Consent Agreements. All consents to assignments and all agreements relating thereto entered into with any lender, financial institution or other Person for the purpose of consenting to the assignment of the rights of the Power Purchase Provider under the Power Purchase Agreement.
12. Contract Price. "Contract Price" means the respective purchase prices, as provided in Appendix A to the Power Purchase Agreement, for Facility Output, Delivered Energy and Replacement Energy, pre-operation, interim operation period, startup and test Energy, , as applicable, delivered at the respective Points of Delivery.
13. Coordinating Committee. The Coordinating Committee established in accordance with Section 6 of this Agreement.
14. Cost Share. "Cost Share" means and includes, with respect to any Project Participant, the Project Cost Share and the Delivery Point Output Cost Share, with respect to such Project Participant.
15. Cure Period. That period of time beginning on the date of a Payment Default and concluding thirty (30) days thereafter.
16. Cured Payment Default. A Payment Default which has been cured in accordance with Section 11.3 of this Agreement. If at any time during the Cure Period the Defaulting Project Participant is in Compliance, then the requirements of a Cured Payment Default shall be deemed to have been satisfied as of the date of receipt of such payments by SCPPA and the Cure Period shall expire.
17. Default Invoice. An invoice during the Payment Default Period and the Cure Period issued to a Defaulting Project Participant pursuant to Section 11 of this Agreement that identifies the total defaulted amount owed, including late payment interest, to achieve a Cured Payment Default. During the Cure Period, the Default Invoice shall also include the amount that must be paid to achieve Compliance.
18. Defaulting Project Participant. A Project Participant that causes a Payment Default which has not been remedied and where the Defaulting Project Participant has not affected a Cured Payment Default.
19. Delivered Energy. "Delivered Energy" shall have the definition set forth in the Power Purchase Agreement.
20. Delivery Periods. Means the delivery periods consisting of the First Period and the Second Period as defined herein.



21. Delivery Point Output Cost Component. “Delivery Point Output Cost Component” is defined in Section 4.3.1.
22. Delivery Point Output Cost Share. “Delivery Point Output Cost Share” is defined in Section 4.1.
23. Delivery Term of the Power Purchase Agreement. The time period for the delivery of energy pursuant to the Power Purchase Agreement as set forth therein.
24. Designated Point of Delivery. “Designated Point of Delivery” means, at any time and with respect to a particular Project Participant, the Point of Delivery designated by such Project Participant at which such Project Participant is to receive its share of Facility Output or Replacement Energy as set forth in Appendix B herein, but only as allowed by and provided for in this Agreement and the Project Agreements.
25. Dynamic Scheduling. “Dynamic Scheduling” shall mean the automated scheduling of Energy from the Designated Point of Delivery with respect to a Project Participant to such Project Participant’s control area or electric system, provided that said dynamic schedules adjust at four second intervals, or other intervals as specified by WECC, to match the amount of Energy actually delivered to such Designated Point of Delivery of the Project Participant from the Facility.
26. Energy. “Energy” shall have the definition set forth in the Power Purchase Agreement
27. Environmental Attributes. “Environmental Attributes” shall have the definition set forth in the Power Purchase Agreement.
28. Excess Energy. “Excess Energy” shall have the definition set forth in the Power Purchase Agreement.
29. Facility. “Facility” means all of the facilities including those resources described or defined as the Facility, the Site, Permits and facilities referred to in the Power Purchase Agreement or such portions of these facilities, interests, assets and rights as are provided SCPPA by way of the Power Purchase Agreement and the other Power Purchase and Security Agreements
30. Facility Capacity. “Facility Capacity” shall have the meaning provided in the Power Purchase Agreement.
31. Facility Energy. “Facility Energy” shall have the definition set forth in the Power Purchase Agreement.
32. Facility Credit Agreements. All agreements, assignments and security related documents associated with the financing of the Facility, or of the rights or interests held in connection with the Facility, by the Power Purchase Provider or any of its affiliates and any other agreements or documents providing for security for the performance of the obligations of the Power Purchase Provider.

33. Facility Lender. “Facility Lender” shall have the definition set forth in the Power Purchase Agreement.
34. Facility Output. All output, rights, and other tangible or intangible benefits, whatsoever, derived from the Facility and received by SCPPA, including without limitation, all Energy (including Facility Energy, Delivered Energy and Excess Energy as defined in the Power Purchase Agreement), Capacity Rights and Environmental Attributes, whether received by SCPPA under or pursuant to the Power Purchase Agreement or other applicable Project Agreement.
35. First Period. “First Period” shall have the definition set forth in the Power Purchase Agreement.
36. Fiscal Year. The twelve-month period commencing at 12:01 a.m. on July 1 of each year and ending at 12:01 a.m. on the following July 1, or such other time frame as determined by the Coordinating Committee or Board of Directors.
37. Force Majeure. “Force Majeure” shall have the definition set forth in the Power Purchase Agreement.
38. Guaranteed Generation. “Guaranteed Generation” shall have the definition set forth in the Power Purchase Agreement.
39. Heber Geothermal Company. Heber Geothermal Company, a California partnership.
40. Imperial Irrigation District. Imperial Irrigation District, an irrigation district of the state of California.
41. Initial Payment Default Date. The earlier of (i) the end of the fifth day following the first Payment Default for which no remedy in payment has occurred and been received by SCPPA, or (ii) the last day of the Month in which the first Payment Default has occurred for which no remedy in payment has occurred and been received by SCPPA.
42. Joint Powers Agreement. The “Southern California Public Power Authority Joint Powers Agreement” dated as of November 1, 1980, as amended and modified from time to time, entered into pursuant to the provisions of the Act, among SCPPA and its members.
43. LADWP. The City of Los Angeles acting by and through the Department of Water and Power.
44. Maximum Generation. “Maximum Generation” Shall have the definition set forth in the Power Purchase Agreement.
45. Major Contracts. The Project Agreements and, to the extent not finalized or effective on the effective date of an applicable project management agreement, any other contract or agreement so identified by the Coordinating Committee or the Board of Directors, as such contracts or agreements may be amended or supplemented from time to time.

46. Milestone. “Milestone” shall have the definition set forth in the Power Purchase Agreement.
47. Month. A calendar month.
48. Monthly Costs. “Monthly Costs” is defined in Section 7.1.
49. Operating Budget. The operating budget approved by the Board of Directors, which shall show a detailed estimate of all Project operating costs, including all revenues, income or other funds to be applied to such operating costs, for and applicable to a Power Supply Year.
50. Operating Reserve Depletion Date. The date that is two Months prior to the date on which SCPPA anticipates, assuming continued Payment Defaults by one or more Defaulting Project Participants, that the moneys in the operating reserve account held at any time by SCPPA will be fully depleted; provided, however, if as of the date on which a Payment Default occurs SCPPA determines that the moneys in the operating reserve account held by SCPPA will be fully depleted in less than two Months (or currently are fully depleted), then the Operating Reserve Depletion Date shall be deemed to have occurred when such a Payment Default occurs.
51. Output Entitlement Share. With respect to a particular Project Participant and during each Power Supply Year, the percentage entitlement, as set forth for such Project Participant in Appendix B of this Agreement, of the Facility Output or, if applicable, the Replacement Energy, delivered at such Project Participant’s Designated Point of Delivery. The Output Entitlement Share of such Project Participant may be adjusted in connection with a revision of Appendix B as provided in and subject to the provisions of Sections 16.
52. Participants. The Project Participants.
53. Payment Default. A failure by a Project Participant to pay when due all of its Billing Statement for any Month.
54. Payment Default Period. That period of time during which a Payment Default exists.
55. Performance Security. “Performance Security” shall have the definition set forth in the Power Purchase Agreement.
56. Permit. “Permit(s)” shall have the definition set forth in the Power Purchase Agreement.
57. Person. “Person” means any individual, corporation, partnership, joint venture, limited liability company, association, joint stock company, trust, unincorporated organization, entity, government or other political subdivision.
58. Point(s) of Delivery. Point(s) of Delivery shall have the definition set forth in the Power Purchase Agreement.

59. Point(s) of Delivery Allocable Share. With respect to a particular Project Participant, the percentage share, as set forth for such Project Participant in Appendix B hereof, of the Facility Output at its respective designated Point of Delivery. The Point of Delivery Allocable Share of such Project Participant may be adjusted, but only in accordance with the terms and conditions of this Agreement, as provided for in connection with a revision of Appendix B as provided in and subject to the provisions of Section 16.
60. Power Purchase Agreement. The Power Purchase Agreement between Southern California Public Power Authority and Heber Geothermal Company, dated as of May 16, 2013, attached hereto in substantial form as Appendix D, as the same may be revised, modified or otherwise amended from time to time.
61. Power Purchase Agreement General and Administrative Cost Component. “Power Purchase Agreement General and Administrative Cost Component” is defined in Section 4.3.2.
62. Power Purchase and Security Agreements. The Power Purchase Agreement, the Security Instruments, Consent Agreements, Facility Credit Agreements, and any other consent to assignment or other agreement with any financial institution or Person relating to the Heber-1 Geothermal Energy Project or the Facility or any loan or other credit agreement associated with the Heber-1 Geothermal Energy Project or the Facility, or the Power Purchase Agreement. The Power Purchase and Security Agreements shall also include any instrument or form of security which affords any opportunity for the purchase of the Facility or acquisition, whether through foreclosure, or otherwise, Facility Credit Agreement or any other mortgage, Security Instrument, assignment, beneficial interest, collateral instrument or other device or mechanism providing for the ability to acquire the Heber-1 Geothermal Energy Project or the Facility or an ownership interest therein, as applicable.
63. Power Purchase Provider. Heber Geothermal Company as the counterparty to SCPPA under the Power Purchase Agreement, and the entity named under any applicable operating agreement to operate or otherwise run or manage the Facility, along with each of their successors, or any successors or assigns to the rights of these entities.
64. Power Sales Agreements. The Heber-1 Geothermal Energy Project Power Sales Agreements, dated for convenience as of May 16, 2013, as the same may hereafter be amended from time to time, entered into by SCPPA and each of the Project Participants for, among other things, the acquisition of the Output Entitlement Shares and other project related acquisitions.
65. Power Supply Year. The Fiscal Year, except that the first Power Supply Year shall begin on the first to occur of (i) the date SCPPA is obligated to pay any portion of the costs of the Project, (ii) the date of Delivery Commencement of the Facility, or (iii) the date of the first delivery of Energy to Purchaser pursuant to this Agreement.
66. Project (or Heber-1 Geothermal Energy Project). The term “Project” (or “Heber-1 Geothermal Energy Project”) shall be broadly construed to entail the aggregate of rights,

liabilities, interests and obligations of SCPPA pursuant to the Power Purchase Agreement, the Power Purchase and Security Agreements and the other Project Agreements, including but not limited to the rights, liabilities, interests and obligations associated with the Facility Output. The term Project shall also include those rights, liabilities, interests or obligations necessary or appropriate to carry out the functions specified in Section 6 and to utilize or deliver the Energy of the Facility as specified in Section 9.

67. Project Agreements. Any project management agreement, the Power Sales Agreements, each of the Power Purchase and Security Agreements, any operation and management agreement, other contracts for the purchase, procurement, delivery or transmission of Facility Output, and including the rights and interests under the Facility Credit Agreements or any other consents to assignments or agreements for assignment, any inter-creditor agreement, or any other agreements for scheduling, dispatching, tagging, movement or transmission of Facility Output, agreements to which SCPPA is a party relating to the administration or management of the Project.
68. Project Cost Share. "Project Cost Share" is defined in Section 4.4.
69. Project Manager. SCPPA or a designee or designees appointed by SCPPA to assist SCPPA to carry out SCPPA's responsibilities under the Power Sales Agreements, among other things.
70. Project Participant(s). Those entities executing Power Sales Agreements, together in each case with each entity's successors or assigns, identified as "Project Participants" in Appendix B of the Power Sales Agreements or Appendix C of the Power Sales Agreements and such additional entities executing Power Sales Agreements as may be added by way of a revision of Appendices A, B or C under the terms of this Agreement.
71. Project Rights. All rights and privileges of a Project Participant under its Power Sales Agreement, including but not limited to its Output Entitlement Share, its right to receive Facility Output from the Facility, and its right to vote on Coordinating Committee matters.
72. Project Rights and Obligations. Purchaser's Project Rights and obligations under the terms of this Agreement.
73. Prudent Utility Practices. "Prudent Utility Practices" shall have the meaning provided in the Power Purchase Agreement.
74. Renewable Electric Energy Resource Project. The aggregate of SCPPA's endeavors to acquire renewable energy and capacity and to facilitate acquisition of renewable electric generation and the means to deliver such generation either by way of the development agreement for the Renewable Electric Resource Project as described in Section 2.2 herein
75. Replacement Energy. "Replacement Energy" shall have the meaning provided in the Power Purchase Agreement.

76. Requirement of Law. “Requirement of Law” Shall have the meaning provided in the Power Purchase Agreement.
77. Reserve Fund Cost Component. “Reserve Fund Cost Component” is defined in Section 4.3.3.
78. Reserve Fund(s). Those reserve accounts deemed appropriate to afford a reliable source of funds for the payment obligations of the Project and, taking into account the variability of costs associated with the Project for the purpose of providing a reliable payment mechanism to address the ongoing costs associated with the Project.
79. Second Period. “Second Period” shall have the definition set forth in the Power Purchase Agreement.
80. Security and Assignment Agreements. The agreements and instruments entered into by the Power Purchase Provider or any affiliate thereof and, where applicable, SCPPA, including the Performance Security, and the agreements, instruments and mechanisms referenced or set forth in the Power Purchase Agreement to, among other things, secure certain performance requirements.
81. Security Instruments. The Security and Assignment Agreements, the Performance Security, the Facility Credit Agreements or other arrangement or agreement with the Facility Lender following a purchase of the rights and interests thereunder by SCPPA if applicable, and any and all instruments, agreements, assignments, mortgages, deeds of trusts or conveyances or other collateral arrangements entered into to secure the performance of the Power Purchase Provider or any affiliate thereof under the Power Purchase Agreement or any other of the Power Purchase and Security Agreements, or any lease or interest in real property used by or affecting the Facility, including without limitation any security interest conveyed by way of the Power Purchase Agreement or other agreement or instrument relating to the Project or any Project matter creating a security interest enforceable by SCPPA.
82. Site. “Site” shall have the definition set forth in the Power Purchase Agreement.
83. Step-Up Invoice. An invoice sent to a non-Defaulting Project Participant as a result of one or more Payment Defaults, which invoice shall separately identify any amount owed with respect to the monthly Billing Statement of one or more Defaulting Project Participants for, as the case may be, pursuant to Section 11.8.1 herein, the Total Monthly Costs reflected in the Defaulting Project Participant(s) unpaid monthly Billing Statement.
84. Study Project. “Study Project” has the meaning provided in the Joint Powers Agreement.
85. Supplementary Services. Those services in connection with the delivery of Energy involving additional transmission, interconnection arrangements, energy management, energy balancing, dispatching, tagging, scheduling, Dynamic Scheduling, transmitting, interconnecting, swapping, exchanging or other services associated with the transmission, use or disposition of Facility Output to be utilized by the Project Participants under the Power Sales Agreements, and to otherwise provide for delivery and facilitate the

disposition, movement, taking, receiving, accounting for, transferring and crediting the transfer of Facility Output from the respective Points of Delivery to any other points or destinations, as determined by the Project Participants. Supplementary Services include but are not limited to delivery point swaps, stranded energy/transmission curtailments, tie-point liquidity improvement, transmission loss savings, tie-point price spread optimization, on-peak/off-peak exchanges, peak shifting exchanges, seasonal exchanges, and both simultaneous or non- simultaneous green energy exchanges.

86. Supplementary Services Cost Component. “Supplementary Services Cost Component” is defined in Section 4.3.4.
87. Total Monthly Costs. “Total Monthly Costs” has the meaning described in Section 4.2.
88. Uncontrollable Forces. Any Force Majeure event and any cause beyond the control of any Party, and which by the exercise of due diligence such Party is unable to prevent or overcome, including but not limited to, failure or refusal of any other Person to comply with then existing contracts, an act of God, fire, flood, explosion, earthquake, strike, sabotage, pestilence, an act of the public enemy (including terrorism), civil or military authority including court orders, injunctions and orders of governmental agencies with proper jurisdiction or the failure of such agencies to act, insurrection or riot, an act of the elements, failure of equipment, a failure of any governmental entity to issue a requested order, license or permit, inability of any Party or any Person engaged in work on the Project to obtain or ship materials or equipment because of the effect of similar causes on suppliers or carriers. Notwithstanding the foregoing, Uncontrollable Forces as defined herein shall also include events of Force Majeure pursuant to the Power Purchase Agreement, as defined therein.
89. WECC. The Western Electricity Coordinating Council or its successor.

\*Appendix A may be revised in accordance with and subject to the provisions of Section 16 of this Agreement.

**APPENDIX B\***

**SCHEDULE OF PROJECT PARTICIPANTS  
CAPACITY AMOUNTS  
OUTPUT ENTITLEMENT SHARES  
PROJECT COST SHARES  
POINTS OF DELIVERY**

<b>Project Participants</b>	<b>Delivery Periods</b>	<b>Capacity Amounts (MW)</b>	<b>Output Entitlement Shares (at points of Delivery)</b>	<b>Project Cost Shares</b>	<b>Points of Delivery** (as Designated by Project Participants)</b>
<b>Imperial Irrigation District</b>	First Period	15.33	33.33%	33.33%	92 kV Heber Substation, or such other point as mutually agreed between Buyer and Seller.
	Second Period	10.12	22%	22%	
<b>LADWP</b>	First Period	30.67	66.67%	66.67%	230 kV Mead Substation, or such other point as mutually agreed between Buyer and Seller.
	Second Period	35.88	78%	78%	
<b>Total</b>		46	100%	100%	

\*Appendix B may be revised in accordance with and subject to the provisions of Section 16 of this Agreement.

\*\*The agreement between SCPPA and the Power Purchase Provider or other party with respect to a change in the Designated Point of Delivery may only be provided by SCPPA in accordance with the Power Purchase Agreement or the applicable Project Agreements, or as may be otherwise permitted upon a timely request by the Project Participant.



**APPENDIX C\***

**SCHEDULE OF PROJECT PARTICIPANTS  
DELIVERY POINT OUTPUT COST SHARES**

<b>Project Participants</b>	<b>Delivery Periods</b>	<b>Delivery Point Output Cost Shares</b>
<b>Imperial Irrigation District</b>	First Period	33.33%
	Second Period	22%
<b>LADWP</b>	First Period	66.67%
	Second Period	78%
<b>Total</b>		100% at the respective Points of Delivery

\*Appendix C may be revised in accordance with and subject to the provisions of Section 16 of this Agreement.

**APPENDIX D**  
**POWER PURCHASE AGREEMENT**  
**BETWEEN**  
**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**  
**AND**  
**HEBER GEOTHERMAL COMPANY**  
**DATED AS OF MAY 31, 2013**

**EXECUTION COPY**

**HEBER-1 GEOTHERMAL ENERGY PROJECT**

**AGENCY AGREEMENT**

**BETWEEN**

**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**

**AND**

**THE CITY OF LOS ANGELES ACTING BY AND THROUGH  
THE DEPARTMENT OF WATER AND POWER**

**DATED AS OF MAY 31, 2013**

---

1.	PARTIES .....	1
2.	RECITALS .....	1
3.	AGREEMENT .....	3
4.	DEFINITIONS .....	3
	4.1 Agency Costs .....	3
	4.2 Agency Work.....	3
	4.3 Agent .....	3
	4.4 Agreement.....	3
	4.5 Effective Date .....	3
	4.6 Project.....	3
5.	APPOINTMENT OF AGENT.....	3
	5.1 Appointment of Agent .....	3
	5.2 Agent's Performance of Agency Work in Accordance with Laws, Rules Regulations.....	4
	5.3 Other Agents .....	4
	5.4 Procurement.....	4
6.	RIGHTS, DUTIES AND RESPONSIBILITIES OF SCPA.....	4
	6.1 Review Budgets .....	4
	6.2 Review Agency Cost Estimates .....	4
	6.3 Monitor Agency Work.....	4
	6.4 Making Recommendations and/or Modifications Regarding Agency Work.....	4
	6.5 Provide Assistance.....	4
	6.6 Consider Relevant Matters .....	4
	6.7 Perform Other Functions and Duties .....	4
7.	ACTIVITIES TO BE PERFORMED BY LADWP AS AGENT .....	4
	7.1 Make Periodic Reports .....	5
	7.2 Submit Recommendations .....	5
	7.3 Billings.....	5
	7.4 Inform SCPA .....	5
	7.5 Expend Funds for Agency Costs .....	5
	7.6 Investments .....	5
	7.7 Arrange Services for Agency Work and Operating Work; Administer Contracts; Agent's Employees.....	5
	7.8 Comply with Laws and Regulations.....	5
	7.9 Keep Accounting Records of Expenditures; Audit of Accounting Records.....	5
	7.10 Prepare and Submit Estimates of Agency Costs.....	6
	7.11 Obtain Cost Data.....	6
	7.12 Assist in Budget Preparation .....	6
	7.13 Provide Information.....	6
	7.14 Provide Interface.....	6
	7.15 Furnish Assistance and Information .....	6
	7.16 Place and Maintain Insurance .....	6
	7.17 Provide Information Regarding Defaults.....	6
	7.18 Conduct All Other Activities Relating to Agency Work, Operating Work and Supplementary Services.....	6
8.	AGENCY COSTS .....	6
	8.1 Agency Costs.....	6
	8.2 Costs Not Agency Costs .....	7
	8.3 No Profit .....	8
	8.4 Budget and Review Process.....	8
9.	PAYMENT TO AGENT OF AGENCY COSTS; AUDITS .....	8

9.1	Payment and Audit Procedures.....	8
9.2	Disputed Invoices .....	8
10.	LIABILITY.....	8
10.1	No Liability of SCPPA, Agent or Project Manager (within its capacity as the Project Manager), or Their Directors, Officers, Employees, Etc.; SCPPA’s and Agent’s and Project Manager’s Directors, Officers, Employees Not Individually Liable.....	8
10.2	Extent of Exculpation; Enforcement of Rights in Equity .....	9
10.3	No Relief From Insurer’s Obligations .....	10
10.4	SCPPA, Directors, Officers, Employees, Agents Not Liable; No General Liability of SCPPA.....	10
11.	ALTERNATIVE DISPUTE RESOLUTION .....	10
11.1	Non-Binding Dispute Resolution.....	10
11.2	Role of the Coordinating Committee and SCPPA Board; Nonbinding Mediation Procedure .....	10
12.	RELATIONSHIP OF THE PARTIES.....	10
12.1	Separate and Several Interests .....	10
13.	UNCONTROLLABLE FORCES.....	10
13.1	Excuse of Performance by Reason of Uncontrollable Forces .....	10
14.	BINDING OBLIGATIONS.....	11
14.1	All Obligations Binding.....	11
15.	GENERAL PROVISIONS GOVERNING AGREEMENT.....	11
15.1	Severability.....	11
15.2	Waiver Not to Effect Subsequent Events .....	11
15.3	Headings Not Binding .....	11
16.	INDEMNITY AND RELATED MATTERS, POWER SALES AGREEMENT.....	11
16.1	Indemnification of Agent.....	11
16.2	Obligations under the Power Sales Agreement .....	12
16.3	Separate Capacities .....	12
17.	REPRESENTATION AND GOVERNING LAW .....	12
18.	TERM AND EXPIRATION.....	12
18.1	Effective Date .....	12
18.2	Termination.....	12
19.	ATTORNEYS FEES .....	12
20.	CONTRACT ADMINISTRATOR.....	13
21.	NOTICES .....	13
22.	AMENDMENTS .....	13

## APPENDICES

- A - CONVENIENCE COPY FOR INFORMATIONAL PURPOSES OF APPENDIX A TO THE POWER SALES AGREEMENTS - DEFINITIONS

# HEBER-1 GEOTHERMAL ENERGY PROJECT

## AGENCY AGREEMENT

1. **PARTIES.** This Heber-1 Geothermal Energy Project Agency Agreement (this "Agreement"), is dated for convenience as of this 31<sup>st</sup> day of May, 2013, by and between the SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY, a joint powers agency and a public entity organized under the laws of the State of California, hereinafter designated as "SCPPA," or "the Authority" created under the provisions of the Act, and the CITY OF LOS ANGELES acting by and through the DEPARTMENT OF WATER AND POWER a California municipal utility created by and existing pursuant to the Charter of the City of Los Angeles. The CITY OF LOS ANGELES acting by and through the DEPARTMENT OF WATER AND POWER is also periodically referred to in this Agreement as "LADWP" or "the Department" or as "Agent". LADWP and SCPPA are also sometimes referred to herein, with respect to this Agreement, individually as the "Party" and together as the "Parties". In addition, LADWP and the other member(s) of SCPPA participating in the Heber-1 Geothermal Energy Project may be referred to collectively, in this Agreement, as "Project Participants."
  
2. **RECITALS.** This Agreement has been reviewed by attorneys for both Parties and shall not be interpreted with reference to the rules of construction providing for construction against a Party responsible for drafting or creating a particular provision or section, but should instead be interpreted in a manner which broadly carries forth the goals and objectives of the Parties as expressed herein. References to "Sections," "Annexes," "Appendices," "Schedules" and "Exhibits" shall be to Sections, Annexes, Appendices, Schedules and Exhibits, as the case may be, of this Agreement unless otherwise specifically provided. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. The use herein of the word "include" or "including", when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter. This Agreement is made with reference to the following facts among others:
  - 2.1 SCPPA was created pursuant to provisions contained in the Joint Exercise of Powers Act found in Chapter 5 of Division 7 of Title 1 of the Government Code of California, as amended from time to time (the "Act"), by its members, which are municipalities and an irrigation district that supply, among other things, electrical energy, in the State of California, for the purpose of jointly and cooperatively undertaking the planning, financing, development, acquisition, construction, improvement, betterment, operation, and maintenance, of projects for the generation or transmission of electric energy, including the development and implementation of

systems and frameworks for the acquisition and delivery of secure, long-term reliable supplies of renewable electric energy.

- 2.2 To facilitate the appropriate review and due diligence studies necessary to carry forth an effective program for the development of renewable resources SCPPA created the "Renewable Electric Energy Resource Project" to be carried forth between SCPPA and those SCPPA members desiring to participate in this renewable energy oriented project under SCPPA's Joint Powers Agreement. Thereafter on March 17, 2006, the SCPPA Board of Directors by way of Resolution 2006-13 found and declared the proposed Renewable Electric Energy Resource Project to be an official SCPPA Study Project pursuant to the SCPPA Joint Powers Agreement and authorized the execution of a development agreement, which development agreement has been superseded by a second phase development agreement pursuant to Resolution 2012-008, for the Renewable Electric Energy Resource Project among SCPPA and the SCPPA members participating in this Study Project.
- 2.3 In pursuit of the goals of the Renewable Electric Energy Resource Project SCPPA has issued Requests for Proposals ("RFP") for potential renewable electric resources to address SCPPA member renewable energy needs, and as a result of responses to that RFP SCPPA and three of its members, LADWP and Imperial Irrigation District (the "Project Participants"), have investigated the feasibility of a geothermal electric generating facility (the "Facility") currently in existence, maintained and operated by Heber Geothermal Company, a California partnership (the "Power Purchase Provider"), an affiliate of Ormat Nevada, Inc., a Delaware corporation. The Facility will be located in Imperial County, California, on a site owned by the Power Purchase Provider.
- 2.4 SCPPA desires to enter into a Power Purchase Agreement with the Power Purchase Provider for the purchase of Energy and the associated Environmental Attributes from the Facility for the purpose of selling all said purchased Facility Output to the Project Participants pursuant to the Power Sales Agreements with such other Project Participants.
- 2.5 The Project Participants have participated in the negotiation of a power purchase agreement and related agreements, arrangements and mechanisms for the procurement of the Facility Output of this geothermal generation facility by way of a transaction through which SCPPA purchases Facility Output.
- 2.6 In order to enable SCPPA to carry out the activities necessary to the management and administration of the Project on behalf of the Project Participants, the Project Participants and SCPPA have determined that it is desirable and necessary for SCPPA to enter into an agreement with LADWP to act as the Project Manager and as SCPPA's agent in the administration and management of the Heber-1 Geothermal Energy Project on behalf of the Project Participants.
- 2.7 Section 5.3 of each of the Project Participants' Power Sales Agreement provides for the designation of a Project Manager to administer the Project on behalf of and for the benefit of all of the Project Participants.



- 2.8 It is the purpose of this Agreement to carry forth the intendments of Section 5.3 of the Power Sales Agreements of all of the Project Participants and to designate and appoint LADWP as Project Manager of the Heber-1 Geothermal Energy Project and to repose in LADWP, through this Agency Agreement, the power, authority and responsibility to act as the Agent for the Project Participants in the management and administration of the Project.
3. **AGREEMENT.** For and in consideration of the promises and the mutual covenants and agreements hereinafter set forth, and in order to carry forth the objectives of the Power Sales Agreements and to appoint LADWP as Project Manager over the Heber-1 Geothermal Energy Project, the Parties agree as herein set forth.
4. **DEFINITIONS.** Appendix A of the Power Sales Agreements (a copy of which for the convenience of the Parties is set forth in Appendix A of this Agency Agreement) set forth, where applicable, the defined terms of this Agreement between SCPPA and LADWP. Except for the definition of the term "Project", the definitions in said Appendix A shall be applicable to this Agreement. The term "Project", when initially capitalized, is as defined herein in this Section 4. All other terms which are not specifically defined in this Section 4, when initially capitalized, shall have the meaning ascribed in Appendix A of the Power Sales Agreements. The terms defined in said Appendix A and in this Section 4, whether in the singular or plural, unless specifically provided otherwise, when used herein or in the Appendices hereto and initially capitalized, shall have the meaning ascribed thereto in said Appendix A or as set out below:
- 4.1 Agency Costs. The costs, as set forth in Section 8 hereof, of carrying out Agency Work.
- 4.2 Agency Work. The activities to be performed by the Agent pursuant to Section 7 of this Agreement.
- 4.3 Agent. The City of Los Angeles acting by and through the Department of Water and Power, which shall be responsible, in accordance with the terms of this Agreement, for carrying out the Agency Work on behalf of SCPPA.
- 4.4 Agreement. This Agreement, as it may be amended, modified or supplemented from time to time.
- 4.5 Effective Date. The date described in Section 18.1 hereof.
- 4.6 Project. The project carried out by way of the Heber-1 Geothermal Energy Project Power Sales Agreements, their Appendices and their attached, incorporated or associated instruments and agreements. The Project shall, among other things, entail the aggregate of rights, liabilities, interests and obligations of all Project Participants. For purposes of this Agreement the terms "Project" and "Heber-1 Geothermal Energy Project" shall have the same meaning.
5. **APPOINTMENT OF AGENT.**
- 5.1 Appointment of Agent. In accordance with the terms and conditions of this

Agreement SCPPA hereby appoints, designates, authorizes and directs LADWP to carry out, as agent for and on behalf of SCPPA, Agency Work in accordance with the terms of this Agreement. LADWP hereby accepts such appointment, designation, authorization and direction. Agent shall act as project manager on behalf of the Project Participants for the Heber-1 Geothermal Energy Project. Unless this Agreement is otherwise terminated pursuant to Section 18.2 of this Agreement, LADWP shall serve as Agent and project manager for the duration of the Power Sales Agreements. Except as provided in Section 18.2 of this Agreement, Agent shall not have the right to resign and may not be removed as Agent for the Project during the time which any of the Power Sales Agreements are in effect.

- 5.2 Agent's Performance of Agency Work in Accordance with Applicable Laws, Rules and Regulations. In carrying forth its Agency Work pursuant to the terms of this Agreement Agent shall, in all material respects, observe all applicable laws, rules and regulations.
- 5.3 Other Agents. The Authority shall at all times have the right to appoint another agent or agents to perform, apart from and concurrent with this Agreement, activities relative to the Project.
- 5.4 Procurement. Agent will use LADWP's procurement rules and policies unless other rules or policies are determined by Agent to be in the best interest of the Project.

**6. RIGHTS, DUTIES AND RESPONSIBILITIES OF SCPPA.** SCPPA acting by and through the Coordinating Committee, its Board of Directors or the Executive Director, as applicable, shall have the following rights duties and responsibilities under this Agreement:

- 6.1 Review Budgets. Review, modify and approve the budgets submitted pursuant to the applicable provisions of the Power Sales Agreements
- 6.2 Review Agency Cost Estimates. Review, modify and approve the estimates of Agency Costs submitted by the Agent pursuant to this Agreement.
- 6.3 Monitor Agency Work. Monitor the continuation and completion of Agency Work.
- 6.4 Make Recommendations and/or Modifications Regarding Agency Work. Make (i) recommendations to the Agent with respect to Agency Work and/or (ii) modifications to Agency Work undertaken by Agent.
- 6.5 Provide Assistance. Provide such other assistance to the Agent in carrying out Agency Work as the Board of Directors shall deem reasonable and proper and as the Agent shall request.
- 6.6 Consider Relevant Matters. Consider any matter relating to SCPPA's interests proposed by the Agent, any member of the Board of Directors or any member of SCPPA's staff.
- 6.7 Perform Other Functions and Duties. Perform such other functions and duties as may be required of SCPPA or by SCPPA in connection with SCPPA's interests in the Project.

**7. ACTIVITIES TO BE PERFORMED BY LADWP AS AGENT.**

- 7.1 Make Periodic Reports. Make periodic reports to the Coordinating Committee regarding the operation of the Facility and any relevant operating information and reports, generation and transmission information, statistical, financial and administrative reports, and other similar reports, records, or information which may be helpful to or requested by the Coordinating Committee or the Board of Directors.
- 7.2 Submit Recommendations. Submit recommendations from time to time to the Coordinating Committee or if appropriate, to the Board of Directors, for potential review, modification and approval or disapproval with respect to the following subjects:
- 7.2.1 Recommend policies, criteria or procedures which will carry forth SCPPA's rights responsibilities and obligations pursuant to the Project Agreements.
- 7.2.2 To the extent appropriate and permissible pursuant to the Power Purchase Agreement recommend policies and procedures for conducting tests or performance measurements with respect to the Facility.
- 7.3 Billings. Prepare and render, in the manner and at the times required by the Power Sales Agreements, billings to the Project Participants in accordance with the terms and provisions of the Power Sales Agreements.
- 7.4 Inform SCPPA. Promptly inform SCPPA regarding significant factors which may affect or have affected Agency Work or SCPPA's interests.
- 7.5 Expend Funds for Agency Costs. Expend moneys for Agency Costs in accordance with this Agreement.
- 7.6 Investments. Schedule, select, direct, execute, maintain records of, and provide monthly reports to SCPPA concerning, investments of moneys in accordance with reasonable and customary business practices relating to the administration of such investments.
- 7.7 Arrange Services for Agency Work; Administer Contracts; Agent's Employees. Negotiate, arrange for, administer, perform and enforce all contracts for furnishing, purchasing, procuring and obtaining from any source (including pursuant to contracts between the Agent and third parties) studies, supplies, engineering services, legal services, or other services necessary for the performance and completion of Agency Work or Supplementary Services; administer, perform and enforce such contracts; and furnish conformed copies of such contracts or other related documentation to SCPPA. In performing Agency Work or Supplementary Services, the Agent may use its own employees and equipment and facilities owned or directly leased by the Agent without obtaining any consent or approval of SCPPA.
- 7.8 Comply With Laws and Regulations. Comply with any and all laws and regulations applicable to the performance of Agency Work.

- 7.9 Keep Accounting Records of Expenditures; Audit of Accounting Records. Keep and maintain records of moneys expended, obligations incurred, sunk (unrecoverable) costs, credits accrued; and maintain for auditing by SCPPA those accounting records used by the Agent for the purpose of accumulating financial and statistical data for Agency Work.
- 7.10 Prepare and Submit Estimates of Agency Costs. Prepare and submit to SCPPA, for use by SCPPA in preparing its annual budget with respect to the Project for each fiscal year, the Agent's estimate of Agency Costs for the fiscal year to which such budget applies.
- 7.11 Obtain Cost Data. Obtain and furnish to SCPPA, as applicable, cost data, projections and budgets which may be received from the Power Purchase Provider, the construction manager, construction contractors, the operation manager or operating entities in accordance with the Project Agreements.
- 7.12 Assist in Budget Preparation. To the extent requested by SCPPA, assist in the preparation of the Annual Budget, including the provision of information relating to potential Capital Improvements
- 7.13 Provide Information. Provide the Board of Directors, and any committee established by it, and SCPPA's staff with records and information which may be required for SCPPA to perform its responsibilities.
- 7.14 Provide Interface. Provide interface between SCPPA and the Project Participants with respect to the administration of the Power Purchase Agreement.
- 7.15 Furnish Assistance and Information. Furnish, upon request, to SCPPA or any Project Participant any assistance and information reasonably available pertaining to Agency Work and the Project.
- 7.16 Place and Maintain Insurance. Procure or cause to be procured and maintain or cause to be maintained in force insurance coverage with respect to Agency Work or SCPPA's interests in such form and amounts as the Board of Directors or the Coordinating Committee determines necessary or as Agent may otherwise believe to be appropriate or as may be desirable to protect against potential exposures, or as required by law.
- 7.17 Provide Information Regarding Defaults. Keep the Project Participants and SCPPA fully and promptly informed of any default by any party under any of the Project Agreements of which Agent has knowledge.
- 7.18 Conduct All Other Activities Relating to Agency Work and Supplementary Services. Conduct all other activities deemed necessary to carry forth Agency Work or Supplementary Services or to bring the same to completion and perform such other functions and duties as may be assigned to it by SCPPA, but in any event in a manner consistent with this Agreement.

8. AGENCY COSTS.

8.1 Agency Costs. Agency Costs shall include the following:

- 8.1.1 All costs approved by the Agent of labor, services, transportation and studies, including costs of legal counsel and consultation fees, performed by the Agent or by others, in connection with this Agreement, together with all costs approved by the Agent of facilities utilized in such performance. All costs (including premiums or deposits to self-insurance funds) of insurance related to Agency Work procured in accordance with Section 7.16.
- 8.1.2 Payroll and other expenses of employees of the Agent while performing work in connection with this Agreement, including applicable overhead costs and labor loading charges, including but not limited to time-off allowances, payroll taxes, workers' compensation insurance, retirement and death benefits and other employee benefits.
- 8.1.3 Costs of the Agent associated with performing its duties and responsibilities under this Agreement.
- 8.1.4 All costs paid by the Agent for any studies, reports or other documents obtained from any Project Participant.
- 8.1.5 Costs of the Agent, to the extent not provided for by insurance, of discharging or paying any liability and loss, damage and expense, including costs and expenses for attorneys' fees and other costs of defending, settling or otherwise administering claims, liabilities or losses arising out of workers' compensation or employer's liability claims or by reason of property damage or injuries to or death of any person or persons or by reason of claims of any and every character, or costs that should be paid or provided to Agent to satisfy indemnification obligations under Section 16.1 of this Agreement or other costs that should be paid or provided to Agent to satisfy indemnification obligations under any of the Power Sales Agreements, resulting from, arising out of or connected with the performance of Agency Work, including negligent acts or omissions but excluding grossly negligent acts or willful misconduct (which unless otherwise agreed to by the Parties, are both to be determined and established by a court of competent jurisdiction in a final, non-appealable order) of the Agent, its Board of Water and Power Commissioners, or its respective officers, employees or employees of the municipal entity of which Agent is a part.

8.2 Costs Not Agency Costs. Costs incurred by the Agent which (i) are not attributable to the activities, duties and functions to be performed by the Agent pursuant to Section 7 of this Agreement and (ii) have not been approved by SCPA under this Agreement shall not be Agency Costs. In addition Agency Costs shall not include costs incurred by any Project Participant which are not attributable to Agency Work including the following:

- 8.2.1 To the extent not specifically included in Agency Costs, costs of studies conducted by any Project Participant to determine, for that Project Participant, the usefulness, economics, legal and regulatory implications,

and feasibility of the project and such Project Participant's costs of obtaining the entitlements or accommodations necessary to make the project feasible for that particular Project Participant.

- 8.2.2 Except as may otherwise be provided by SCPPA, through its Board of Directors, the costs of any Project Participant associated with the preparation and the negotiation of contracts between SCPPA and any Project Participant regarding the Project.
- 8.2.3 Except as may be otherwise provided by SCPPA through its Board of Directors, costs incurred by each Project Participant in the various functions of the Board of Directors, the Coordinating Committee, or any committees established by the Board of Directors or the Coordinating Committee, and the expenses of its personnel while performing such functions.
- 8.3 No Profit. The Agent shall not receive any profit under this Agreement or any Project Agreement, nor shall the Agent be obligated to make any expenditure or incur any obligation regarding Agency Work with respect to which it shall not be entitled to reimbursement under this Agreement.
- 8.4 Budget and Review Processes. As is the case with similar costs for other projects of SCPPA, Agency Costs shall be the subject of SCPPA's annual budget and periodic budget review processes.

## 9. PAYMENT TO AGENT FOR AGENCY COSTS; AUDITS.

- 9.1 Payment and Audit Procedures. From time to time, and at such times (not more than monthly) as the Agent shall determine, it shall submit to SCPPA requests and requisitions for payment of items of Agency Costs incurred or paid. SCPPA shall pay or cause to be paid the amount of each such request or requisition within forty five (45) days after its receipt thereof. At such reasonable times as shall be requested by SCPPA, the books and cost records of the Agent relevant to Agency Costs shall be subject to audit by or on behalf of SCPPA.
- 9.2 Disputed Invoices. In case any portion of any invoice received by SCPPA from Agent shall be in bona fide dispute, SCPPA shall pay Agent the full amount of such invoice and, upon determination of the correct amount, the difference between such correct amount and such full amount, if any, including interest at the rate received by Agent on any overpayment, will be credited to SCPPA by Agent after such determination; provided, however, that such interest shall not accrue on any overpayment that is acknowledged by Agent and returned to SCPPA within five (5) calendar days following the receipt by Agent of the disputed overpayment. In the event such invoice is in dispute, Agent will give consideration to such dispute and will advise SCPPA with regard to Agent's position relative thereto within thirty (30) days following receipt of written notification by SCPPA of such dispute.

## 10. LIABILITY.

10.1 No Liability of SCPPA, Agent or Project Manager (within its capacity as the Project Manager), or Their Directors, Officers, Employees, Etc.; SCPPA's and Agent's and Project Manager's Directors, Officers, Employees Not Individually Liable. Both Parties agree that neither Party, nor any of their past, present or future directors, officers, board members, agents, attorneys, advisors, employees or employees of the governmental entity of which the Agent is a part (collectively, the "Released Parties") shall be liable to any other of the Released Parties for any and all claims, demands, liabilities, obligations, losses, damages (whether direct, indirect or consequential), penalties, actions, loss of profits, judgments, orders, suits, costs, expenses (including attorneys' fee and expenses) or disbursements of any kind or nature whatsoever in law, equity or otherwise (including, without limitation, death, bodily injury or personal injury to any person or damage or destruction to any property of any of the Released Parties) suffered by any Released Party as a result of the action or inaction or performance or non-performance by the Power Purchase Provider or any of the Released Parties under this Agency Agreement or any Project Agreement (excluding gross negligence or willful misconduct which unless otherwise agreed to by the Parties, are both to be determined and established by a court of competent jurisdiction in a final, non-appealable order). Each Party shall release each of the other Released Parties from any claim or liability that such Party may have cause to assert as a result of any action or inaction or performance or non-performance by the Released Parties under this Agreement or any Project Agreement (excluding gross negligence or willful misconduct which unless otherwise agreed to by the Parties, are both to be determined and established by a court of competent jurisdiction in a final, non-appealable order). Notwithstanding the foregoing, no such action or inaction or performance or non-performance of any of the Released Parties shall relieve either Party from its respective obligations under this Agreement, including either Party's obligation to make payments required under this Agreement, the Power Purchase and Security Agreements or any other Project Agreement. The provisions of this Section 10.1 shall not be construed so as to relieve the Agent or the Power Purchase Provider from any obligation (or liability in the case of the Power Purchase Provider) under this Agreement, the Power Purchase and Security Agreements or any other applicable Project Agreement. The Parties also hereby recognize and agree that neither Party's past, present or future directors, officers, board members, agents, attorneys, advisors, employees or employees of the governmental entity of which the Agent is a part shall be individually liable in respect of any undertakings by any of the Released Parties under this Agreement or any Project Agreement. Notwithstanding any provision of this Agency Agreement which might arguably be construed to the contrary, nothing in this Section 10 shall affect LADWP's obligation, as a Project Participant, to make any payment or pay any cost required of it under the Power Sales Agreement.

10.2 Extent of Exculpation; Enforcement of Rights in Equity. The exculpation provision set forth in Section 10.1 hereof shall apply to all types of claims or actions including, but not limited to, claims or actions based on contract or tort. Notwithstanding the foregoing, either Party may protect and enforce its rights under this Agreement by a suit or suits in equity for specific performance of any obligation or duty of the other Party and the Agent may enforce by any legal means its right to payment for Agency Costs in accordance with the terms of this

Agreement.

- 10.3 No Relief from Insurer's Obligations. Notwithstanding any provision of this Agreement, including the provisions of this Section 10, the provisions of Section 10.1 shall not be construed so as to relieve any insurer of its obligation to pay any insurance claims.
- 10.4 SCPPA Directors Officers, Employees, Agents Not Liable; No General Liability of SCPPA. It is hereby recognized and agreed that no officer, agent or employee of SCPPA shall be individually liable in respect of any undertakings by SCPPA under this Agreement. The undertakings by SCPPA under this Agreement shall never constitute a debt or indebtedness of SCPPA within the meaning of any provision or limitation of the constitution or statutes of the State of California, and shall not constitute or give rise to a pecuniary liability of SCPPA or a charge against its general credit. Any provision of this Agreement to the contrary notwithstanding, the obligation of SCPPA under this Agreement to make or cause to be made payments shall be limited to those payments permitted by and monies available as provided for in this Agreement.

## 11. ALTERNATIVE DISPUTE RESOLUTION.

- 11.1 Non-Binding Dispute Resolution. If any dispute arises out of or relates to this Agreement, or the asserted breach thereof, the Parties agree that the Parties shall first employ the non-binding mediation process which is set forth in Section 11.2 before initiating any other type of legal action.
- 11.2 Role of the Coordinating Committee and SCPPA Board; Nonbinding Mediation Procedure. If a dispute arises between the Parties under this Agreement the Parties may first attempt to resolve the dispute through the Coordinating Committee and if the Coordinating Committee is unable to resolve the dispute, the dispute shall be submitted to the Board of Directors. If the Board of Directors is unable to resolve the dispute, the Parties may then submit the dispute to non-binding mediation.

## 12. RELATIONSHIP OF THE PARTIES.

- 12.1 Separate and Several Interests. The covenants, obligations and liabilities of the Parties are intended to be several and not joint or collective and nothing herein contained shall ever be construed to create an association, joint venture, trust, partnership or other legal entity, or to impose a trust or partnership covenant, obligation or liability on or with regard to either or both of the Parties. Each Party shall be individually responsible for its own covenants, obligations and liabilities under this Agreement. Neither Party shall be under the control of or shall be deemed to control any other Party. Neither Party shall be the agent of or have a right or power to bind the other Party without its express written consent, except as expressly provided in this Agreement.

## 13. UNCONTROLLABLE FORCES.

- 13.1 Excuse of Performance by Reason of Uncontrollable Forces. Other than with



respect to the obligation of a Party to make payments as provided in this Agreement, neither Party shall be considered to be in default in the performance of any of its obligations under this Agreement when a failure of performance shall be due to an Uncontrollable Force. Nothing contained herein shall be construed so as to require a Party to settle any strike or labor dispute in which it may be involved. In the event a Party is rendered unable to fulfill any of its obligations under this Agreement by reason of an Uncontrollable Force, such Party shall give prompt written notice of such fact to the other Party and shall exercise due diligence to remove such inability with all reasonable dispatch. In such event, the Parties shall diligently and expeditiously determine how they may equitably proceed to carry out the objectives of this Agreement.

**14. BINDING OBLIGATIONS.**

14.1 All Obligations Binding. All of the obligations set forth in this Agreement shall bind the Parties and their successors and assigns.

**15. GENERAL PROVISIONS GOVERNING AGREEMENT.**

15.1 Severability. In the event that any of the terms, covenants or conditions of this Agreement or the application of any such term, covenant or condition, shall be held invalid as to any person or circumstance by a court of competent jurisdiction, such invalidity shall not affect any other term, covenant or condition of this Agreement and their application shall not be affected thereby, but shall remain in force and effect, unless a court of competent jurisdiction holds that the provisions are not separable from all other provisions of this Agreement.

15.2 Waiver Not to Effect Subsequent Events. Any waiver at any time by a Party of its rights with respect to a default or any other matter arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent default or matter.

15.3 Headings Not Binding. The headings and captions in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

**16. INDEMNITY AND RELATED MATTERS, POWER SALES AGREEMENT.**

16.1 Indemnification of Agent. In its capacity as Agent under this Agency Agreement, Agent shall be entitled to indemnification from SCPPA as set forth herein. SCPPA shall indemnify and hold harmless Agent, its board, officers, agents, attorneys, advisors, employees, and the employees of the governmental entity of which the Agent is a part, past, present or future (collectively, "Agent Indemnitees") from and against any and all claims, demands, liabilities, obligations, losses, damages (whether direct, indirect or consequential), penalties, actions, loss of profits, judgments, orders, suits, costs, expenses (including attorneys' fees and expenses) or disbursements of any kind or nature whatsoever in law, equity or otherwise (including, without limitation, death, bodily injury or personal injury to any person or damage or destruction to any property of Agent,

SCPPA or third persons) (collectively, "Losses") arising by reason of any actions, inactions, errors or omissions incident to the performance of this Agency Agreement (excluding gross negligence or willful misconduct which, unless otherwise agreed to by the Parties, are both to be determined and established by a court of competent jurisdiction in a final, non-appealable order) on the part of Agent Indemnitees. At Agent's option, SCPPA shall defend Agent Indemnitees from and against any and all Losses. If SCPPA, with Agent's consent, defends any Agent Indemnitee, Agent and Agent's City Attorney's Office (or other appropriate Agent counsel or authority, as appropriate) shall approve the selection of counsel, and Agent shall further approve any settlement or disposition, such approval not to be unreasonably withheld.

16.2 Obligations under the Power Sales Agreement. Notwithstanding any provision of this Agreement which might arguably be construed to the contrary, nothing in this Agreement shall affect LADWP's obligation, as a Project Participant, to make any payment or pay any cost required of it under the Power Sales Agreement.

16.3 Separate Capacities. The Parties acknowledge that LADWP, as Agent under and a Party to this Agency Agreement, acts in a legal capacity that is separate from its capacity as a Project Participant under its Power Sales Agreement. Accordingly, for purposes of this Agreement, the rights, entitlements, obligations and liabilities of LADWP, as Agent and a Party to this Agency Agreement, shall not apply to or otherwise be affected by, and shall be legally separate from the rights, entitlements, obligations, and liabilities of LADWP as a Project Participant under its Power Sales Agreement.

17. **REPRESENTATION AND GOVERNING LAW.** The Parties acknowledge that each Party was represented by counsel in the negotiation and execution of this Agreement. This Agreement was made and entered into in the County of Los Angeles and shall be governed by, interpreted and enforced in accordance with the laws of the State of California. All litigation arising out of, or relating to this Agreement, shall be brought in a State or Federal court in the County of Los Angeles in the State of California. The Parties irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of California and waive any defense of *forum non conveniens*.

18. **TERM AND EXPIRATION.**

18.1 Effective Date. This Agreement shall become effective and in full force and effect on the date the Power Sales Agreements have been entered into and are in effect with respect to all Project Participants (the "Effective Date").

18.2 Termination. This Agreement shall continue in force and effect from the Effective Date until the expiration of the term of the Power Sales Agreements and any extensions or replacements thereof; provided, however, that this Agreement may be terminated by either Party upon not less than three (3) years prior written notice to the other Party. Payment obligations of the Parties hereunder shall survive any termination of the Agreement until satisfied.

19. **ATTORNEYS FEES.** With respect to any dispute under this Agreement the Parties agree

that each Party shall bear its own attorneys fees and costs. Notwithstanding the forgoing, LADWP and SCPPA acknowledge and it is acknowledged and understood by the Project Participants that SCPPA's attorneys fees associated with any matter relating to the Project or this Agreement, including any dispute relating thereto, shall constitute a Project cost which shall be allocated and billed as set forth in Section 4 and Section 7 of the Power Sales Agreements.

**20. CONTRACT ADMINISTRATOR.** A contract administrator for this Agreement shall be designated by the individual authorized to receive notices on behalf of LADWP pursuant to Paragraph 21 herein, and each Party's contract administrator shall have the authority to administer this Agreement on behalf of its respective Party. Notwithstanding the foregoing, the contract administrators shall have no authority to amend this Agreement on behalf of the Parties.

**21. NOTICES.** Any notice, demand or request provided for in this Agreement shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by registered or certified mail, postage prepaid, to the persons specified below:

Southern California Public Power Authority  
Attention: Director of Project Administration  
1160 Nicole Court  
Glendora, California 91740

Los Angeles Department of Water and Power  
Attention: General Manager  
RE: Power System Contracts  
111 North Hope Street 921  
Los Angeles, California 90012

**22. AMENDMENTS.** The Parties acknowledge and agree that any amendment to this agreement shall be in writing and duly executed by the Parties.

*[SIGNATURE PAGE FOLLOWS]*

IN WITNESS WHEREOF, the parties hereto have duly caused this Agreement to be executed on their respective behalves by their duly authorized representatives.

SOUTHERN CALIFORNIA PUBLIC  
POWER AUTHORITY

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
RONALD E. DAVIS  
President

Attest: \_\_\_\_\_  
BILL D. CARNAHAN  
Assistant Secretary

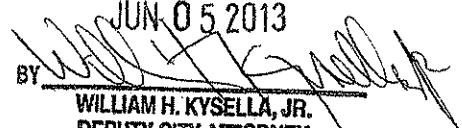
CITY OF LOS ANGELES acting by and through its  
DEPARTMENT OF WATER AND POWER

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
RONALD O. NICHOLS  
General Manager

APPROVED AS TO FORM AND LEGALITY  
CARMEN A. TRUTANICH, CITY ATTORNEY

And: \_\_\_\_\_  
Secretary

JUN 05 2013  
BY   
WILLIAM H. KYSELLA, JR.  
DEPUTY CITY ATTORNEY

**CONVENIENCE COPY**  
**FOR INFORMATIONAL PURPOSES**  
**OF “APPENDIX A OF THE**  
**POWER SALES AGREEMENT”**

## APPENDIX A

### DEFINITIONS

The following terms, whether in the singular or the plural, and initially capitalized, shall have the meanings specified below:

1. Act. All of the provisions contained in the California Joint Exercise of Powers Act found in Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, beginning at California Government Code Section 6500 et seq., as amended from time to time
2. Annual Budget. The budget approved by the Coordinating Committee and adopted by SCPPA pursuant to Section 5.4.1 of this Agreement not less than thirty (30) days nor more than sixty (60) days prior to the beginning of each Power Supply Year, including any amendments thereto, which shall show a detailed estimate of the Total Monthly Costs under the Power Sales Agreements and all credits, charges, revenues, income, or other funds to be applied to such costs, for and applicable to such Power Supply Year.
3. Billing Statement. The written statement prepared or caused to be prepared each Month by, or on behalf of, SCPPA which shall be based upon certain of the information in the Annual Budget and shall show for such Month the amount to be paid to SCPPA by a Project Participant in accordance with the provisions of Section 7 of its Power Sales Agreement.
4. Board of Directors. The Board of Directors of the Southern California Public Power Authority.
5. Capacity. The ability or potential to generate, produce or transfer electricity, expressed in kilowatts ("kW") or megawatts ("MW"), including, when feasible, ancillary or regulating services or other valuable non-energy products or services from a generating facility.
6. Capacity Amount. "Capacity Amount" means, with respect to a Project Participant, such respective amount of Facility Capacity as is specified in Appendix B.
7. Capacity Rights. "Capacity Rights" means the rights, whether in existence as of the Effective Date or arising thereafter during the term of this Agreement, of SCPPA to Capacity of the Facility, including resource adequacy, associated attributes and/or reserves or any of the foregoing purchased by SCPPA under the Power Purchase Agreement.
8. Chairperson. "Chairperson" is as defined in Section 6.1.
9. Delivery Commencement. "Delivery Commencement" shall have the definition set forth in the Power Purchase Agreement.
10. Compliance. Following a Payment Default, a Defaulting Project Participant shall be in

compliance with its payment obligations under its Power Sales Agreement if it (i) no later than the last day of the Cure Period fully pays all amounts owed as reflected in any Default Invoice; (ii) pays any monthly Billing Statement which comes due during the Cure Period; and (iii) replenishes any reduction made to the applicable operating reserve account or the Reserve Fund as a result of any Payment Default.

11. Consent Agreements. All consents to assignments and all agreements relating thereto entered into with any lender, financial institution or other Person for the purpose of consenting to the assignment of the rights of the Power Purchase Provider under the Power Purchase Agreement.
12. Contract Price. "Contract Price" means the respective purchase prices, as provided in Appendix A to the Power Purchase Agreement, for Facility Output, Delivered Energy and Replacement Energy, pre-operation, interim operation period, startup and test Energy, , as applicable, delivered at the respective Points of Delivery.
13. Coordinating Committee. The Coordinating Committee established in accordance with Section 6 of this Agreement.
14. Cost Share. "Cost Share" means and includes, with respect to any Project Participant, the Project Cost Share and the Delivery Point Output Cost Share, with respect to such Project Participant.
15. Cure Period. That period of time beginning on the date of a Payment Default and concluding thirty (30) days thereafter.
16. Cured Payment Default. A Payment Default which has been cured in accordance with Section 11.3 of this Agreement. If at any time during the Cure Period the Defaulting Project Participant is in Compliance, then the requirements of a Cured Payment Default shall be deemed to have been satisfied as of the date of receipt of such payments by SCPA and the Cure Period shall expire.
17. Default Invoice. An invoice during the Payment Default Period and the Cure Period issued to a Defaulting Project Participant pursuant to Section 11 of this Agreement that identifies the total defaulted amount owed, including late payment interest, to achieve a Cured Payment Default. During the Cure Period, the Default Invoice shall also include the amount that must be paid to achieve Compliance.
18. Defaulting Project Participant. A Project Participant that causes a Payment Default which has not been remedied and where the Defaulting Project Participant has not affected a Cured Payment Default.
19. Delivered Energy. "Delivered Energy" shall have the definition set forth in the Power Purchase Agreement.
20. Delivery Periods. Means the delivery periods consisting of the First Period and the Second Period as defined herein.

21. Delivery Point Output Cost Component. "Delivery Point Output Cost Component" is defined in Section 4.3.1.
22. Delivery Point Output Cost Share. "Delivery Point Output Cost Share" is defined in Section 4.1.
23. Delivery Term of the Power Purchase Agreement. The time period for the delivery of energy pursuant to the Power Purchase Agreement as set forth therein.
24. Designated Point of Delivery. "Designated Point of Delivery" means, at any time and with respect to a particular Project Participant, the Point of Delivery designated by such Project Participant at which such Project Participant is to receive its share of Facility Output or Replacement Energy as set forth in Appendix B herein, but only as allowed by and provided for in this Agreement and the Project Agreements.
25. Dynamic Scheduling. "Dynamic Scheduling" shall mean the automated scheduling of Energy from the Designated Point of Delivery with respect to a Project Participant to such Project Participant's control area or electric system, provided that said dynamic schedules adjust at four second intervals, or other intervals as specified by WECC, to match the amount of Energy actually delivered to such Designated Point of Delivery of the Project Participant from the Facility.
26. Energy. "Energy" shall have the definition set forth in the Power Purchase Agreement
27. Environmental Attributes. "Environmental Attributes" shall have the definition set forth in the Power Purchase Agreement.
28. Excess Energy. "Excess Energy" shall have the definition set forth in the Power Purchase Agreement.
29. Facility. "Facility" means all of the facilities including those resources described or defined as the Facility, the Site, Permits and facilities referred to in the Power Purchase Agreement or such portions of these facilities, interests, assets and rights as are provided SCPPA by way of the Power Purchase Agreement and the other Power Purchase and Security Agreements
30. Facility Capacity. "Facility Capacity" shall have the meaning provided in the Power Purchase Agreement.
31. Facility Energy. "Facility Energy" shall have the definition set forth in the Power Purchase Agreement.
32. Facility Credit Agreements. All agreements, assignments and security related documents associated with the financing of the Facility, or of the rights or interests held in connection with the Facility, by the Power Purchase Provider or any of its affiliates and any other agreements or documents providing for security for the performance of the obligations of the Power Purchase Provider.



33. Facility Lender. "Facility Lender" shall have the definition set forth in the Power Purchase Agreement.
34. Facility Output. All output, rights, and other tangible or intangible benefits, whatsoever, derived from the Facility and received by SCPPA, including without limitation, all Energy (including Facility Energy, Delivered Energy and Excess Energy as defined in the Power Purchase Agreement), Capacity Rights and Environmental Attributes, whether received by SCPPA under or pursuant to the Power Purchase Agreement or other applicable Project Agreement.
35. First Period. "First Period" shall have the definition set forth in the Power Purchase Agreement.
36. Fiscal Year. The twelve-month period commencing at 12:01 a.m. on July 1 of each year and ending at 12:01 a.m. on the following July 1, or such other time frame as determined by the Coordinating Committee or Board of Directors.
37. Force Majeure. "Force Majeure" shall have the definition set forth in the Power Purchase Agreement.
38. Guaranteed Generation. "Guaranteed Generation" shall have the definition set forth in the Power Purchase Agreement.
39. Heber Geothermal Company. Heber Geothermal Company, a California partnership.
40. Imperial Irrigation District. Imperial Irrigation District, an irrigation district of the state of California.
41. Initial Payment Default Date. The earlier of (i) the end of the fifth day following the first Payment Default for which no remedy in payment has occurred and been received by SCPPA, or (ii) the last day of the Month in which the first Payment Default has occurred for which no remedy in payment has occurred and been received by SCPPA.
42. Joint Powers Agreement. The "Southern California Public Power Authority Joint Powers Agreement" dated as of November 1, 1980, as amended and modified from time to time, entered into pursuant to the provisions of the Act, among SCPPA and its members.
43. LADWP. The City of Los Angeles acting by and through the Department of Water and Power.
44. Maximum Generation. "Maximum Generation" Shall have the definition set forth in the Power Purchase Agreement.
45. Major Contracts. The Project Agreements and, to the extent not finalized or effective on the effective date of an applicable project management agreement, any other contract or agreement so identified by the Coordinating Committee or the Board of Directors, as such contracts or agreements may be amended or supplemented from time to time.

46. Milestone. "Milestone" shall have the definition set forth in the Power Purchase Agreement.
47. Month. A calendar month.
48. Monthly Costs. "Monthly Costs" is defined in Section 7.1.
49. Operating Budget. The operating budget approved by the Board of Directors, which shall show a detailed estimate of all Project operating costs, including all revenues, income or other funds to be applied to such operating costs, for and applicable to a Power Supply Year.
50. Operating Reserve Depletion Date. The date that is two Months prior to the date on which SCPPA anticipates, assuming continued Payment Defaults by one or more Defaulting Project Participants, that the moneys in the operating reserve account held at any time by SCPPA will be fully depleted; provided, however, if as of the date on which a Payment Default occurs SCPPA determines that the moneys in the operating reserve account held by SCPPA will be fully depleted in less than two Months (or currently are fully depleted), then the Operating Reserve Depletion Date shall be deemed to have occurred when such a Payment Default occurs.
51. Output Entitlement Share. With respect to a particular Project Participant and during each Power Supply Year, the percentage entitlement, as set forth for such Project Participant in Appendix B of this Agreement, of the Facility Output or, if applicable, the Replacement Energy, delivered at such Project Participant's Designated Point of Delivery. The Output Entitlement Share of such Project Participant may be adjusted in connection with a revision of Appendix B as provided in and subject to the provisions of Sections 16.
52. Participants. The Project Participants.
53. Payment Default. A failure by a Project Participant to pay when due all of its Billing Statement for any Month.
54. Payment Default Period. That period of time during which a Payment Default exists.
55. Performance Security. "Performance Security" shall have the definition set forth in the Power Purchase Agreement.
56. Permit. "Permit(s)" shall have the definition set forth in the Power Purchase Agreement.
57. Person. "Person" means any individual, corporation, partnership, joint venture, limited liability company, association, joint stock company, trust, unincorporated organization, entity, government or other political subdivision.
58. Point(s) of Delivery. Point(s) of Delivery shall have the definition set forth in the Power Purchase Agreement.

59. Point(s) of Delivery Allocable Share. With respect to a particular Project Participant, the percentage share, as set forth for such Project Participant in Appendix B hereof, of the Facility Output at its respective designated Point of Delivery. The Point of Delivery Allocable Share of such Project Participant may be adjusted, but only in accordance with the terms and conditions of this Agreement, as provided for in connection with a revision of Appendix B as provided in and subject to the provisions of Section 16.
60. Power Purchase Agreement. The Power Purchase Agreement between Southern California Public Power Authority and Heber Geothermal Company, dated as of May 16, 2013, attached hereto in substantial form as Appendix D, as the same may be revised, modified or otherwise amended from time to time.
61. Power Purchase Agreement General and Administrative Cost Component. “Power Purchase Agreement General and Administrative Cost Component” is defined in Section 4.3.2.
62. Power Purchase and Security Agreements. The Power Purchase Agreement, the Security Instruments, Consent Agreements, Facility Credit Agreements, and any other consent to assignment or other agreement with any financial institution or Person relating to the Heber-1 Geothermal Energy Project or the Facility or any loan or other credit agreement associated with the Heber-1 Geothermal Energy Project or the Facility, or the Power Purchase Agreement. The Power Purchase and Security Agreements shall also include any instrument or form of security which affords any opportunity for the purchase of the Facility or acquisition, whether through foreclosure, or otherwise, Facility Credit Agreement or any other mortgage, Security Instrument, assignment, beneficial interest, collateral instrument or other device or mechanism providing for the ability to acquire the Heber-1 Geothermal Energy Project or the Facility or an ownership interest therein, as applicable.
63. Power Purchase Provider. Heber Geothermal Company as the counterparty to SCPPA under the Power Purchase Agreement, and the entity named under any applicable operating agreement to operate or otherwise run or manage the Facility, along with each of their successors, or any successors or assigns to the rights of these entities.
64. Power Sales Agreements. The Heber-1 Geothermal Energy Project Power Sales Agreements, dated for convenience as of May 16, 2013, as the same may hereafter be amended from time to time, entered into by SCPPA and each of the Project Participants for, among other things, the acquisition of the Output Entitlement Shares and other project related acquisitions.
65. Power Supply Year. The Fiscal Year, except that the first Power Supply Year shall begin on the first to occur of (i) the date SCPPA is obligated to pay any portion of the costs of the Project, (ii) the date of Delivery Commencement of the Facility, or (iii) the date of the first delivery of Energy to Purchaser pursuant to this Agreement.
66. Project (or Heber-1 Geothermal Energy Project). The term “Project” (or “Heber-1 Geothermal Energy Project”) shall be broadly construed to entail the aggregate of rights,

liabilities, interests and obligations of SCPPA pursuant to the Power Purchase Agreement, the Power Purchase and Security Agreements and the other Project Agreements, including but not limited to the rights, liabilities, interests and obligations associated with the Facility Output. The term Project shall also include those rights, liabilities, interests or obligations necessary or appropriate to carry out the functions specified in Section 6 and to utilize or deliver the Energy of the Facility as specified in Section 9.

67. Project Agreements. Any project management agreement, the Power Sales Agreements, each of the Power Purchase and Security Agreements, any operation and management agreement, other contracts for the purchase, procurement, delivery or transmission of Facility Output, and including the rights and interests under the Facility Credit Agreements or any other consents to assignments or agreements for assignment, any inter-creditor agreement, or any other agreements for scheduling, dispatching, tagging, movement or transmission of Facility Output, agreements to which SCPPA is a party relating to the administration or management of the Project.
68. Project Cost Share. "Project Cost Share" is defined in Section 4.4.
69. Project Manager. SCPPA or a designee or designees appointed by SCPPA to assist SCPPA to carry out SCPPA's responsibilities under the Power Sales Agreements, among other things.
70. Project Participant(s). Those entities executing Power Sales Agreements, together in each case with each entity's successors or assigns, identified as "Project Participants" in Appendix B of the Power Sales Agreements or Appendix C of the Power Sales Agreements and such additional entities executing Power Sales Agreements as may be added by way of a revision of Appendices A, B or C under the terms of this Agreement.
71. Project Rights. All rights and privileges of a Project Participant under its Power Sales Agreement, including but not limited to its Output Entitlement Share, its right to receive Facility Output from the Facility, and its right to vote on Coordinating Committee matters.
72. Project Rights and Obligations. Purchaser's Project Rights and obligations under the terms of this Agreement.
73. Prudent Utility Practices. "Prudent Utility Practices" shall have the meaning provided in the Power Purchase Agreement.
74. Renewable Electric Energy Resource Project. The aggregate of SCPPA's endeavors to acquire renewable energy and capacity and to facilitate acquisition of renewable electric generation and the means to deliver such generation either by way of the development agreement for the Renewable Electric Resource Project as described in Section 2.2 herein
75. Replacement Energy. "Replacement Energy" shall have the meaning provided in the Power Purchase Agreement.

76. Requirement of Law. “Requirement of Law” Shall have the meaning provided in the Power Purchase Agreement.
77. Reserve Fund Cost Component. “Reserve Fund Cost Component” is defined in Section 4.3.3.
78. Reserve Fund(s). Those reserve accounts deemed appropriate to afford a reliable source of funds for the payment obligations of the Project and, taking into account the variability of costs associated with the Project for the purpose of providing a reliable payment mechanism to address the ongoing costs associated with the Project.
79. Second Period. “Second Period” shall have the definition set forth in the Power Purchase Agreement.
80. Security and Assignment Agreements. The agreements and instruments entered into by the Power Purchase Provider or any affiliate thereof and, where applicable, SCPPA, including the Performance Security, and the agreements, instruments and mechanisms referenced or set forth in the Power Purchase Agreement to, among other things, secure certain performance requirements.
81. Security Instruments. The Security and Assignment Agreements, the Performance Security, the Facility Credit Agreements or other arrangement or agreement with the Facility Lender following a purchase of the rights and interests thereunder by SCPPA if applicable, and any and all instruments, agreements, assignments, mortgages, deeds of trusts or conveyances or other collateral arrangements entered into to secure the performance of the Power Purchase Provider or any affiliate thereof under the Power Purchase Agreement or any other of the Power Purchase and Security Agreements, or any lease or interest in real property used by or affecting the Facility, including without limitation any security interest conveyed by way of the Power Purchase Agreement or other agreement or instrument relating to the Project or any Project matter creating a security interest enforceable by SCPPA.
82. Site. “Site” shall have the definition set forth in the Power Purchase Agreement.
83. Step-Up Invoice. An invoice sent to a non-Defaulting Project Participant as a result of one or more Payment Defaults, which invoice shall separately identify any amount owed with respect to the monthly Billing Statement of one or more Defaulting Project Participants for, as the case may be, pursuant to Section 11.8.1 herein, the Total Monthly Costs reflected in the Defaulting Project Participant(s) unpaid monthly Billing Statement.
84. Study Project. “Study Project” has the meaning provided in the Joint Powers Agreement.
85. Supplementary Services. Those services in connection with the delivery of Energy involving additional transmission, interconnection arrangements, energy management, energy balancing, dispatching, tagging, scheduling, Dynamic Scheduling, transmitting, interconnecting, swapping, exchanging or other services associated with the transmission, use or disposition of Facility Output to be utilized by the Project Participants under the

Power Sales Agreements, and to otherwise provide for delivery and facilitate the disposition, movement, taking, receiving, accounting for, transferring and crediting the transfer of Facility Output from the respective Points of Delivery to any other points or destinations, as determined by the Project Participants. Supplementary Services include but are not limited to delivery point swaps, stranded energy/transmission curtailments, tie-point liquidity improvement, transmission loss savings, tie-point price spread optimization, on-peak/off-peak exchanges, peak shifting exchanges, seasonal exchanges, and both simultaneous or non- simultaneous green energy exchanges.

86. Supplementary Services Cost Component. “Supplementary Services Cost Component” is defined in Section 4.3.4.
87. Total Monthly Costs. “Total Monthly Costs” has the meaning described in Section 4.2.
88. Uncontrollable Forces. Any Force Majeure event and any cause beyond the control of any Party, and which by the exercise of due diligence such Party is unable to prevent or overcome, including but not limited to, failure or refusal of any other Person to comply with then existing contracts, an act of God, fire, flood, explosion, earthquake, strike, sabotage, pestilence, an act of the public enemy (including terrorism), civil or military authority including court orders, injunctions and orders of governmental agencies with proper jurisdiction or the failure of such agencies to act, insurrection or riot, an act of the elements, failure of equipment, a failure of any governmental entity to issue a requested order, license or permit, inability of any Party or any Person engaged in work on the Project to obtain or ship materials or equipment because of the effect of similar causes on suppliers or carriers. Notwithstanding the foregoing, Uncontrollable Forces as defined herein shall also include events of Force Majeure pursuant to the Power Purchase Agreement, as defined therein.
89. WECC. The Western Electricity Coordinating Council or its successor.