

**APEX POWER PROJECT**

**POWER SALES AGREEMENT**

**BETWEEN**

**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**

**AND**

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

**Dated as of \_\_\_\_\_, 2013**

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**APEX POWER PROJECT  
POWER SALES AGREEMENT**

1. **PARTIES.** This Apex Power Project Power Sales Agreement (this "Power Sales Agreement"), made and entered into as of this day of \_\_\_\_\_, 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 municipal corporation organized and existing under the laws of the State of California, hereinafter designated as "LADWP." LADWP and SCPPA are each sometimes hereinafter referred to individually as "Party" and together as "Parties."
  
2. **RECITALS, CONSTRUCTION AND PRELIMINARY MATTERS.** The Recitals set forth herein and the facts, which follow, are incorporated into this Power Sales 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 Power Sales Agreement, the aim and purpose of this Power Sales Agreement and the intendments of the Parties with respect thereto. This Power Sales 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 carries forth the goals and objectives of the Parties as expressed herein. References to "Sections" and "Appendices" shall be to Sections and Appendices, as the case may be, of this Power Sales Agreement unless otherwise specifically provided. Section headings in this Power Sales Agreement are included herein for convenience of reference only and shall not constitute a part of this Power Sales 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 nonlimiting 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 Power Sales 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 or will supply electricity in the State of California, for the purpose of jointly and cooperatively undertaking planning, financing, development, acquisition, construction, reconstruction, improvement, enlargement, betterment, operation and maintenance of projects for the generation or transmission of electric energy in accordance with the Act.
  - 2.2 In 2012 pursuant to its request for proposals, LADWP received numerous proposals for acquisition of a combined cycle gas-fired electric generating facility and after its technical and economic evaluations LADWP narrowed the list of viable existing in-service combined cycle gas plants.
  - 2.3 In 2013 LADWP and SCPPA entered into the Combined Cycle Power Project Planning and Development Agreement ("Planning and Development Agreement") providing for SCPPA to

establish a study project with LADWP for the purpose of continuing the diligence and planning for the acquisition of an existing combined cycle gas-fired electric generating facility.

- 2.4 Based on the further investigation and diligence conducted under the Combined Cycle Power Project Planning and Development Agreement with SCPA, LADWP has determined that SCPA's acquisition of the Apex Power Plant located north of Las Vegas, Nevada, (the "Project" as defined in Appendix A and described in Appendix B) would best comply with its technical and economic criteria for the needed base-loaded combined cycle gas-fired generating capacity.
- 2.5 LADWP has participated with SCPA in the negotiation of the Asset Purchase Agreement and related agreements for the acquisition from Las Vegas Power Company, LLC of the Apex Power Project. In addition LADWP and SCPA have carried forth diligence investigations and plans with respect to providing Project financing.
- 2.6 To carry out the purposes and objectives set forth above, SCPA has entered into that certain Asset Purchase Agreement with Las Vegas Power Company, LLC, dated October 17, 2013 for the acquisition of the Apex Power Project and related auxiliary facilities (the "Asset Purchase Agreement" as defined in Appendix A).
- 2.7 To meet its need for base-loaded generation LADWP is entering into this Power Sales Agreement with SCPA to procure the long term supply of the electric generation of the Apex Power Project.
- 2.8 SCPA is to finance the Cost of Acquisition of the Apex Power Project through the issuance of its Bonds. This Power Sales Agreement entered into by SCPA with LADWP will, among other things, provide for payment by LADWP of amounts for SCPA's debt service on the Bonds, the costs of operation and maintenance of the Apex Power Project, costs of Project administration and related costs in consideration for receiving the Facility Output.
- 2.9 As part of the consideration for the Asset Purchase Agreement, SCPA is entering into the Energy Sales Agreement with Silver State Energy Association (the "Energy Sales Agreement" as defined in Appendix A).

3. **AGREEMENT.** For and in consideration of the promises and the mutual covenants and agreements herein set forth, and in order to pay SCPA for its costs of providing LADWP the Facility Output of the Project and other uses of the Project, it is agreed by and between the Parties hereto as follows.

4. **DEFINITIONS.** Appendix A to this Power Sales Agreement sets forth definitions of certain terms used in this Power Sales Agreement. The terms defined in Appendix A, in the Recitals hereof and 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, the Recitals hereof or as set out below:

4.1 **Cost of Acquisition.** The Cost of Acquisition shall equal the sum of the amounts described in Sections 4.1.1 through 4.1.18. SCPA shall apply, as a credit against the Cost of Acquisition, all receipts, revenues and other moneys received by it from any sale of surplus equipment, materials and supplies, all if and to the extent held in or paid into (without duplication) Funds, and as provided for in the Indenture.

4.1.1 All costs associated with Acquisition of the Project and its associated resources including all costs under the Asset Purchase Agreement and any related agreement, including without limitation the following costs, as applicable: (i) the purchase price under the Asset Purchase Agreement, (ii) the cost of planning, acquiring, and developing any Capital Improvements, (iii) the cost of the exercise of cure rights or

enforcement of rights with respect to any defaults by any counterparty under any agreements, deeds of trust, leases or other instruments relating to or affecting the Project, (iv) the cost of contracting for and facilitating the delivery of the output of the Project at the prescribed Point of Delivery or other prescribed location, (v) the cost of placing the Project into operation, concluding, terminating and decommissioning the Project, obtaining governmental approvals, certificates, permits, assurances, entitlements and licenses relating to the Project, including, where necessary, environmental entitlements, clearances or credits, heretofore or hereafter paid or incurred by SCPPA, (vi) all costs, expenses, obligations and liabilities associated with exercising all performance rights, options, benefits, entitlements, duties, liabilities and obligations under the Project Agreements, (vii) to the extent deemed appropriate by the Project Manager, the cost of procurement of rights associated with interconnection, transmission, and the dispatching, scheduling and delivery of energy and for otherwise facilitating the sale, disposition, movement, taking and accounting for energy (including planning and design costs) and (viii) the cost of those measures taken for the benefit of, and in connection with, the Project that the Board of Directors determines shall be included within this Section 4.1.1.

- 4.1.2 All costs and expenses for investigation, development and procurement of the Project, for performance studies, for feasibility, economic, and planning, for examination of legal, environmental and regulatory issues and for securing of legal, environmental or regulatory approvals, economic analyses, as well as costs for any leases, lease options, lease related rights, land, land rights, land options, resources, turbines, facilities, regulatory developments, investigation and analysis, and, if applicable, engineering, consultants, experts' fees, contractors' fees, processing fees, labor, materials, equipment, utility services and supplies, and legal fees and financing costs relating to and in connection with the Project.
- 4.1.3 The costs and expenses incurred in the issuance and sale of bonds, notes, certificates of participation, commercial paper or other evidences of indebtedness (tax-exempt or taxable) from time to time issued for the Project, the proceeds of which have been used or will be required to be applied to one or more purposes for which Bonds could be issued, including, without limitation, legal, accounting, engineering, consulting, financing, technical, fiscal agent and underwriting costs, fees and expenses, bond discount, insurance, rating agency fees, and all other costs and expenses incurred in connection with the authorization, sale and issuance of the Bonds.
- 4.1.4 Interest accruing in whole or in part on Bonds for such period as SCPPA may reasonably determine to be necessary in accordance with the provisions of the Indenture.
- 4.1.5 To the extent not included in Total Monthly Costs, the cost of any administrative, regulatory or judicial proceeding or any litigation associated with the Project Agreement, or any aspect of the operation, management or administration of the Project or in connection therewith.
- 4.1.6 To the extent not included in Total Monthly Costs, all costs incurred by SCPPA related to the acquisition of resources, agreements, rights, facilities and supplies for procurement, interconnection, transmission, sale, dispatching, scheduling, movement



and delivery and all other incidental costs necessary for and in connection with the Project.

- 4.1.7 To the extent not included in Total Monthly Costs, training and testing costs, which are properly allocable to the cost of acquisition and development of the Project.
- 4.1.8 To the extent not included in Total Monthly Costs, all costs of insurance, if any, applicable to the acquisition and development of and in connection with the Project.
- 4.1.9 To the extent not included in Total Monthly Costs, all costs relating to injury or damage claims or judgments paid by SCPPA in connection with the acquisition, development or implementation of the Project less proceeds of insurance, if any.
- 4.1.10 To the extent not included in Total Monthly Costs, legally required or permitted federal, state and local taxes relating to the Project.
- 4.1.11 All other costs incurred by SCPPA and properly allocable to the planning, acquisition and development of the Project, including, without limitation, all legal fees relating to the Project (including, but not limited to, legal fees incurred by SCPPA in the enforcement of any provision or provisions of the Project Agreements).
- 4.1.12 Working capital requirements and reserves in such amounts as shall be required during any development of the Project and for placing the Project or any component thereof in operation as deemed reasonably necessary by the Board of Directors, and as may be provided or required by the Indentures, and such additional amounts of working capital and reserves, as may be established pursuant to the Indentures.
- 4.1.13 Interest accrued in whole or in part on Bonds prior to and during any development of the Project or during any time period as SCPPA may reasonably determine necessary for placing the Project or any component thereof in operation in accordance with the provisions of the Indentures.
- 4.1.14 The deposit or deposits from the proceeds of Bonds issued to finance such costs in any Fund established pursuant to the Indentures to meet the Project Debt Service reserve requirements for the Bonds.
- 4.1.15 Without duplication with respect to amounts otherwise provided in this Section 4.1, the deposit or deposits from the proceeds of Bonds issued to finance such costs in any other Funds established pursuant to the Indentures which deposit or deposits are required or permitted by the Indentures.
- 4.1.16 The payment of principal, premium, if any, and interest when due (whether at the maturity of principal or at the due date of interest or upon redemption) of any note or other evidence of indebtedness, if any should exist, which is issued in anticipation of Bonds for the purpose of financing the Cost of Acquisition.
- 4.1.17 All costs required to be paid to the Project Manager pursuant to the Agency Agreement or any applicable agreement for project management which are applied or are to be applied thereunder to the payment of the Cost of Acquisition.
- 4.1.18 Without duplication, all other costs (including incidental financing costs and the costs of issuance of Bonds) financed by the issuance of Bonds (i) pursuant to

Section 13 of this Power Sales Agreement, (ii) for procurement of rights associated with the acquisition, production, generation, transmission, interconnecting, balancing, and delivery and for otherwise facilitating the dispatching, scheduling, disposition, movement, taking and accounting for Facility Output (including any planning and design costs) relating to, or for the benefit of, the Project that the Board of Directors determines shall be included within this Section 4.4.18, (iii) the acquisition of the Facility or the rights and interests under any of the Project Agreements; and (iv) any amounts required to be paid pursuant to section 148 of the Internal Revenue Code.

- 4.2 Effective Date. The date described in Section 20.1 hereof.
- 4.3 Federal Tax Exemption. The exclusion from Federal gross income of interest paid or to be paid on the Bonds.
- 4.4 Indenture Costs. The costs associated with any obligations imposed by or pursuant to the Indentures.
- 4.5 Monthly Power Costs. The costs payable by LADWP as described in Section 7.1 hereof.
- 4.6 Power Sales Agreement. This Apex Power Project Power Sales Agreement, as it may be amended or supplemented from time to time, entered into by SCPPA and LADWP.
- 4.7 Total Monthly Power Costs. All of SCPPA's costs to the extent not included in Cost of Acquisition or paid from the proceeds of Bonds, notes or other evidence of indebtedness issued in anticipation of Bonds, resulting from the ownership, management, administration, operation and maintenance of and renewals and replacements to the Project. SCPPA shall apply, as a credit against Total Monthly Power Costs, the Cost of Acquisition or Agency Costs (whichever is applicable), all receipts, revenues and other moneys received by SCPPA from surplus equipment, services, materials, supplies or Facility Output or from sales of Energy under the Energy Sales Agreement, as well as any interest on late payments of Billing Statements received by SCPPA and such other assessments to be applied as a credit against Total Monthly Power Costs pursuant to this Power Sales Agreement or the Indentures. Total Monthly Power Costs shall consist of (i) an operating cost component (described in Section 4.7.1), (ii) a fuel cost component (described in Section 4.7.2), (iii) an Indenture cost component (described in Section 4.7.3) and a Supplementary Services cost component (described in Section 4.7.4), and shall include, but not be limited to, the items of cost and expense referred to in this Section 4.7 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 the following Sections 4.7.1 and 4.7.3.3 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 Sections shall be appropriately adjusted so that any increase or decrease in the portion of the Annual Budget applicable to said Sections shall be evenly apportioned over the remaining Months of such Power Supply Year.
- 4.7.1 The operating cost component of the Total Monthly Power Costs shall consist of: one-twelfth of the costs of all Operating Work, operating expenses and all costs of producing and delivering the Facility Output of the Project during such Power Supply Year, including, but not limited to (i) ordinary operation and maintenance costs, costs of repairs, replacements and reconstruction of the Project that do not

entail Capital Improvements, administrative and general costs, costs relating to litigation (including attorneys' fees and disbursements and other amounts paid as a result of such litigation), insurance costs (including amounts to fund any self-insurance program), overhead costs, taxes required to be paid by SCPPA with respect to the Project, and any other costs payable by SCPPA in connection with the output of the Project, (ii) all costs of compliance by SCPPA with its indemnification obligations under Section 17.7 of this Power Sales Agreement, and (iii) 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 costs attributable to miscellaneous and incidental expenses in connection with the administration of the Project, all costs and expenses with respect to payment and performance of SCPPA's obligations under the Agency Agreement (including any and all payments, costs and expenses with respect to compliance with its indemnification obligations under Section 16 of the Agency Agreement or costs and expenses under any other agreement with the Project Manager), (iv) all Agency Costs, and (v) and all other expenses properly related to the conduct of such affairs of SCPPA; provided, however, that operating costs included under this Section 4.7.1 shall, with respect to Project Fuel costs, include only the fixed costs of Project Fuel, including but not limited to the following:

- 4.7.1.1 The cost of Project Fuel associated with Zero Net Load.
- 4.7.1.2 The cost of Project Fuel storage at the plant site, if any.
- 4.7.1.3 The cost associated with contract payments under minimum or guaranteed payment provisions for Project Fuel or Project Fuel transmission or transportation which are determined by the Project Manager and/or the Board of Directors to constitute fixed costs of Project Fuel.

Provided that , for the avoidance of doubt, in the event that LADWP shall elect to procure its own fuel pursuant to Section 9.10, the operating cost component of Total Monthly Power Costs for the period during which LADWP procures its own fuel shall include fuel costs as provided in Sections 4.7.1.1, 4.7.1.2 and 4.7.1.3 only if and to the extent such costs shall be applicable to Project Fuel.

- 4.7.2 The fuel cost component of Total Monthly Power Costs for any Month shall consist of the costs of Project Fuel and Project Fuel transmission and transportation budgeted for such Month as set forth in the fuel cost budget included in the Annual Budget and not otherwise included under Section 4.7.1; provided that, for the avoidance of doubt, if and to the extent LADWP shall elect to procure its own fuel pursuant to Section 9.10, such fuel cost component shall not be applicable for the period during which LADWP procures its own fuel for the Project.
- 4.7.3 The Indenture cost component of Total Monthly Power Costs shall consist of:
  - 4.7.3.1 The amount which SCPPA is required under the Indentures to pay or deposit during such Month into any funds or accounts established by the Indentures for Debt Service and for any reserve requirements for the Bonds or reserve requirements recommended by the Project Manager and approved by the Board of Directors, including replenishment (the

timing of which shall be in accordance with the provisions of this Power Sales Agreement and the Indentures) of any reserves drawn down as a result of any failure of LADWP to pay all or any portion of Monthly Power Costs; provided, however, such amounts shall not include amounts included in a Default Invoice as provided in Section 15.3 or Section 15.5 hereof for which SCPPA has received payment, or other payments received by SCPPA in accordance with Section 15 and used to replenish such reserves.

4.7.3.2 The amount which SCPPA is required to pay or deposit during such Month into any fund or account established by the Indentures for the payment of interest on notes or on other evidences of indebtedness issued in anticipation of the issuance of the Bonds.

4.7.3.3 One-twelfth of the amount (not otherwise included under any item in this Section 4.7.3 or in Section 4.7.1 or Section 4.7.2 hereof) which SCPPA is required under the Indentures to pay or deposit during such Power Supply Year into any other fund or account established by the Indentures, and shall include any amounts required to make up a deficiency in any fund or account required or permitted by the Indentures whether or not resulting from a default in payments by LADWP of amounts due under this Power Sales Agreement; provided, however, such amounts shall not include amounts included in a Default Invoice as provided in Section 15.3 or Section 15.5 hereof for which SCPPA has received payment, or other payments received by SCPPA in accordance with Section 15 and used to replenish such fund or account.

4.7.4 The Supplementary Services cost component of the Total Monthly Costs shall consist of all monthly costs incurred by SCPPA to the extent not included in Section 4.7.1, in connection with services for transmission, dispatching, scheduling, tagging, firming, balancing, swapping, exchanging or delivery of, and for otherwise facilitating the disposition, movement, taking, receiving, crediting and accounting for, the Facility Output provided for under this Power Sales Agreement.

## 5. OBLIGATIONS OF SCPPA AND LADWP.

5.1 Facility Output. SCPPA shall provide and LADWP shall purchase and take the Facility Output from the Project pursuant to the terms of this Power Sales Agreement. SCPPA will be responsible for planning, designing, engineering, financing, developing, acquiring, insuring, contracting for, administering, operating and maintaining the Project to effectuate the production, transfer, delivery and sale of Facility Output of the Project to LADWP. However, such sale and delivery of Facility Output shall exclude any ancillary services, such as reactive power, that SCPPA is required to supply under the Interconnection Agreement.

5.2 Project Deliverables. Commencing with the Effective Date of this Power Sales Agreement and continuing through the term of this Power Sales Agreement, in accordance with the terms otherwise provided herein, SCPPA shall carry forth those actions and implement those measures as may be necessary or desirable for the advancement or preservation of the rights and interests of LADWP and SCPPA with respect to the Project, including responsibilities for planning, designing, engineering, financing, developing, acquiring, insuring, contracting for, administering, operating and maintaining the Project to effectuate the production and

delivery of the Facility Output of the Project to LADWP at the Point of Delivery. SCPPA is authorized to exercise the powers vested in SCPPA pursuant to the Act, its Joint Powers Agreement and this Power Sales Agreement to carry forth LADWP's and SCPPA's objectives for the Project as set forth herein.

- 5.3 Project Costs to be Paid by LADWP. LADWP shall be responsible for and pay the Monthly Power Costs in accordance with Section 7 of this Agreement.
- 5.4 Project Manager; Procurement Actions. The Project Manager shall manage, operate, maintain and administer the Project, or cause the Project to be managed, operated, maintained and administered, as provided in the Agency Agreement. So long as LADWP is not in default under this Power Sales Agreement, procurement actions may be authorized and implemented by way of LADWP procurement rules and policies unless otherwise agreed to by LADWP and SCPPA.
- 5.5 Adoption of Annual Budget. SCPPA will prepare and submit to LADWP a proposed Project Annual Budget at least 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 (including, where applicable, a fuel budget and provision for the payment of costs of Capital Improvements which are not being financed by proceeds of Bonds) for such Power Supply Year as prepared with the collaboration of SCPPA and LADWP staff for approval by the Board of Directors. LADWP 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 30 nor more than 45 days prior to the beginning of such Power Supply Year and shall cause copies of such adopted Annual Budget to be delivered to LADWP; provided, however, the Annual Budget for the first Power Supply Year shall be prepared, considered, adopted and delivered in the most practicable manner available. As required from time to time during any Power Supply Year after seven days' notice to LADWP, SCPPA may, pursuant to the foregoing provisions for adopting the Apex Power Project Annual Budget, adopt an amended Annual Budget for and applicable to such Power Supply Year for the remainder of such Power Supply Year. The Annual Budget shall establish the basis for the monthly Billing Statements to be sent to LADWP, all as provided in Section 7 hereof.
- 5.6 Reports. SCPPA will prepare and issue the following reports to LADWP each quarter of a Power Supply Year:
  - 5.6.1 Financial and operating statement relating to the Project.
  - 5.6.2 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.
- 5.7 Records and Accounts. SCPPA will keep, or cause to be kept, accurate records and accounts of the facilities comprising the Project as well as of the operations of SCPPA relating to the Project, all in a manner similar to the FERC Uniform System of Accounts or other appropriate power project accounting systems. All transactions of SCPPA relating to the Project with respect to each Fiscal Year shall be subject to an annual audit. LADWP 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.

- 5.8 Provide Information. SCPPA agrees to make available or cause to be made available to LADWP all financial data and information pertaining to the Project. LADWP agrees to supply SCPPA, upon request, with such information, certifications and documentation as SCPPA shall reasonably determine to be requisite to and necessary or desirable for the procurement, development, management, financing, refinancing, operation and maintenance of the Project, including information reasonably available to allow SCPPA to respond to requests for such information from any federal, state or local regulatory or other authority.
- 5.9 Consultants and Advisors Available. SCPPA shall make available to LADWP at LADWP's request, all consultants and advisors, including, but not limited to, financial advisors and bond counsel, that are retained by SCPPA, and such consultants and advisors shall be authorized to consult with and advise LADWP with respect to any Project matters.
- 5.10 Deposit of Insurance Proceeds. SCPPA promptly shall deposit with the Trustee, the amount of insurance proceeds received by SCPPA as a result of damage or destruction to all or any portion of the Project, as and to the extent provided by the Indentures.
- 5.11 Compliance with Federal Tax Law Requirements. Notwithstanding anything to the contrary in this Power Sales Agreement, SCPPA and LADWP shall each take all actions necessary to comply in all respects with the Federal Tax Law Requirements applicable to any Bonds, and shall refrain from taking any action that would result in or cause non-compliance with the Federal Tax Law Requirements applicable to any Bonds.

**6. PROJECT ADMINISTRATION, MANAGEMENT DECISIONS AND THE BOARD OF DIRECTORS.**

- 6.1 Management Decisions and the Role of the Board of Directors. The actions carried forth pursuant to this Power Sales Agreement and the Project Agreements as well as the rights and obligations of SCPPA under this Power Sales Agreement, under the Project Agreements and under other agreements and arrangements pertaining to Project Matters, shall be subject to the control at all times of the Board of Directors. All actions to be taken by the Board of Directors upon the recommendation of the Project Manager, or as otherwise provided herein, shall take effect if the same shall be adopted by resolution, order or action of the Board of Directors, acting in accordance with the Joint Powers Agreement and by-laws of SCPPA. So long as LADWP is not in default under this Power Sales Agreement, actions concerning the Project taken by the Board of Directors shall only be carried forth with the participation of the LADWP representative, and voting on Project Matters with respect to this Project shall be carried forth in accordance with the voting procedures set forth in Section 10 of the Joint Powers Agreement and pursuant to the voting methodology described in Section 2(g) of the Joint Powers Agreement. LADWP's representative on the Board of Directors will participate in the Board of Directors meetings with respect to any Project Matter and will cooperate with SCPPA and the Board of Directors to provide for effective interchange of information relating to the Project and to provide coordination on a prompt and orderly basis to SCPPA, in connection with the various financial, administrative, technical and other matters which may arise from time to time relating to the planning, management, development, financing, engineering, management, acquisition, improving, insuring, contracting for, administration, operation and maintenance of the Project. All actions with respect to the Project taken by the Board of Directors shall be carried out in conformance with the Joint Powers Agreement; provided however, that if LADWP is in default under this Power Sales Agreement, upon the affirmative vote of the Board of Directors pursuant to Section 14 (c) of the Joint Powers Agreement, LADWP hereby acknowledges and agrees that its representative shall not be

entitled to vote on any Project Matter during the period of such default. Actions on Project Matters during the period of any such default shall instead be carried forth by the affirmative vote of all other members of the Board of Directors. Among other things, the Board of Directors shall, where applicable, be responsible for the following:

- 6.1.1 Oversight of Operating Procedures. When recommended by the Project Manager or when otherwise appropriate, the Board of Directors shall act upon and approve or modify those practices and procedures, as appropriate, to carry forth and manage the operations and obligations of the Project, including but not limited to those practices and procedures to be followed for dispatching, scheduling, delivering, controlling, tracking and accounting for Facility Output delivered pursuant to this Power Sales Agreement.
- 6.1.2 Problem, Issue and Dispute Resolution. The Board of Directors shall, to the extent practical or feasible, review, discuss and attempt to resolve any problems, issues or disputes among SCPPA, LADWP and the other SCPPA members or problems, issues or disputes among SCPPA, LADWP and any counterparty under the Project Agreements relating to the functioning or the administration, operation or management of the Project.
- 6.1.3 Budgeting. The Board of Directors shall review, modify and approve each Annual Budget and the revisions thereto in accordance with the provisions of this Power Sales Agreement. The Board of Directors also shall approve those budgets or other provisions for the payments associated with the Project or necessary for the administration of the Project.
- 6.1.4 Periodic Audits. The Board of Directors shall arrange for and approve the annual audit provided for in Section 6.2 of this Power Sales Agreement.
- 6.1.5 Bond Issuance. The Board of Directors shall be responsible for the approval of (i) each issuance of SCPPA indebtedness relating to the Project, (ii) each Indenture and each supplement or amendment to any Indenture relating to the Project, (iii) the selection of underwriters for each series of Bonds, (iv) the manner and timing of marketing (including of the manner of sale), amount, interest rates and other terms and conditions of each series of SCPPA indebtedness associated with the Project, and (v) any other action necessary or appropriate to carry forth Section 13 of this Power Sales Agreement.
- 6.1.6 Federal Tax Law Requirements. With respect to any Bonds, the Board of Directors, in consultation with SCPPA's bond counsel, shall develop and promulgate rules, procedures, and protocols, including the development and maintenance of relevant information and reporting procedures, and shall provide direction to LADWP with respect to the Federal Tax Law Requirements.
- 6.1.7 Project Agreements. The Board of Directors shall have the authority to review modify and approve, as appropriate, all amendments, modifications and supplements to the Project Agreements.
- 6.1.8 Future Developments. The Board of Directors shall, when appropriate, provide liaison among the members of SCPPA at the management level with respect to the direction of the Project and future developments arising with respect to the Project and shall carry out those measures necessary to address such developments.

- 6.1.9 **Project Description.** The Board of Directors shall be responsible to review, modify and act upon the recommendation of the Project Manager with respect to revisions of the description of the Project, which revisions shall be in accordance with Prudent Utility Practice, and SCPPA shall cause Appendix B hereof (entitled "Description of Apex Power Project Including Interconnection and Transmission Rights and Interests") to be revised to reflect such changes. Such changes as may occur in such manner with respect to the Project description shall be considered an element of the administration of this Power Sales Agreement.
- 6.1.10 **Other Matters.** The Board of Directors is authorized to carry forth any other action pertaining to the Project as may be necessary or appropriate to carry forth the purposes of this Power Sales Agreement and the Project Agreements and may perform such other functions and duties, including oversight of those matters and responsibilities which may be addressed by the Project Manager, as may be consistent with this Power Sales Agreement and the Project Agreements, or as may otherwise be appropriate.
- 6.2 **Periodic Audits.** When desired by SCPPA or LADWP to verify the financial condition of the Project or any component or cost of the Project, and whenever called for by regulatory requirements or SCPPA's financing arrangements, SCPPA shall arrange for annual audits by certified accountants, selected by the Board of Directors and experienced in electric utility accounting, of the books and accounting records of SCPPA, the Project Manager, and any cost reimbursable consultant or cost reimbursable contractor relevant to the operation of the Project, and such audit shall be completed and submitted to SCPPA as soon as reasonably practicable after the close of the Fiscal Year. SCPPA shall promptly furnish to LADWP copies of all audits. No more frequently than once every calendar year, LADWP may carry out or cause to be carried out, any further or other audit of the books and cost records of SCPPA and any cost reimbursable consultant or cost reimbursable contractor relevant to the construction and operation of the Project.
- 6.3 **Committees.** The Board of Directors may establish as needed committees including, but not limited to, auditing, legal, financial, engineering, operating, insurance, environmental and public information committees. The authority, membership, and duties of any committee shall be established by the Board of Directors; provided, however, such authority, membership or duties shall not conflict with the provisions of any of the Project Agreements. Each such committee shall be responsible to the Board of Directors.
- 6.4 **Written Record.** All actions, resolutions, determinations and reports made by the Board of Directors as required by this Power Sales Agreement shall be set forth in a written record or its minutes.
- 6.5 **Change in Representative.** LADWP shall promptly give notice to SCPPA of changes in the designation of its representative on any committee, and SCPPA shall promptly give notice to the LADWP of changes in the designation of its representative on any committee.
- 6.6 **Costs of Consultants.** Costs of consultants and others employed or appointed to perform the duties required hereunder shall be included in the Cost of Acquisition or Total Monthly Power Costs, as appropriate, and shall be billed to SCPPA or the Project Manager, as appropriate.



- 6.7 Compliance with the Indentures. It is recognized by SCPPA and LADWP that the planning, procurement, management, development, financing, engineering, acquisition, improvement, operation and maintenance of the Project must comply in all respects with requirements of the Indentures and all licenses, permits and regulatory provisions necessary for such planning, procurement, management, development, financing, engineering, acquisition, improvement, operation and maintenance and it is therefor agreed that no action of the Project Manager shall require SCPPA to act in any manner inconsistent with any such requirements or to refrain from acting as thereby required and if the Project Manager shall fail to make recommendations or act with respect to any matter in connection with an action that is required to be taken pursuant to any of the foregoing, SCPPA shall take such action as is appropriate to assure compliance with the foregoing.
- 6.8 Fuel Management Practices and Procedures. The Project Manager shall have the responsibility for formulating the practices and procedures for the management of fuel for the Project, including (i) programs and policies for the procurement of Project Fuel, the hedging of Project Fuel costs and determining values, quantities, expenses and costs of Project Fuel; (ii) procedures for billing Project Fuel procurement costs and for billing Project Fuel transmission or transportation costs; (iii) procedures setting forth the conditions for and the arrangements under which LADWP is entitled to procure its own fuel for use in the Facility consistent with the applicable provisions of this Power Sales Agreement, provided that such conditions and arrangements for LADWP to bring its own fuel shall be subject to any applicable limitations or restrictions provided in any existing Project Fuel contract of SCPPA; (iv) practices and procedures with respect to the amount of fuel for active storage and the rate of fuel consumption for General Service Requirements and the costs of startup; (v) practices and procedures for emergency purchases of Project Fuel in recognition of the needs of the Facility; and (vi) such other practices and procedures as may be necessary or appropriate for the management of fuel for the Project.

## 7. CHARGES AND BILLINGS.

- 7.1 Project Monthly Power Costs. The amount of the Monthly Power Costs to be paid by LADWP for a particular Month shall be the sum of the following:
- 7.1.1 The operating cost component (as provided in Section 4.7.1 hereof) for such Month.
  - 7.1.2 The fuel cost component for such Month for Project Fuel (as provided in Section 4.7.2 hereof).
  - 7.1.3 The Indenture cost component (as provided in Section 4.7.3 hereof) for such Month as such Indenture cost component has been reduced by interest earned on investments with respect to the Indenture if and to the extent not credited against the Cost of Acquisition.
  - 7.1.4 The Supplementary Services cost component (as provided in Section 4.7.4 hereof) for such Month.
- 7.2 Billing Statement. By the fifth calendar day of each Month during each Power Supply Year, SCPPA shall bill LADWP for the amount of Monthly Power Costs for the current Month by providing LADWP with a Billing Statement in accordance with the charges established pursuant to the provisions of this Power Sales Agreement. Such Billing Statement shall detail the costs described in Section 7.1 hereof and shall set forth, among other things, the amounts due for such Month by LADWP with respect to the items of Monthly Power Costs

set forth in Section 7.1, as such Monthly Power Costs may be adjusted from time to time in accordance with Sections 5 and 7 hereof. Such Billing Statement shall be paid by LADWP on or before 20 days after receipt of such Billing Statement.

- 7.3 Disputed Monthly Billing Statement. In case any portion of any Billing Statement received by LADWP from SCPPA shall be in bona fide dispute, LADWP 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 any interest actually earned on any overpayment, will be credited to LADWP by SCPPA after such determination; provided, however, that such interest shall not accrue on any overpayment that is acknowledged by SCPPA and returned to LADWP 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 LADWP with regard to SCPPA's position relative thereto within 30 days following receipt of written notification by LADWP of such dispute.
- 7.4 Reconciliation of Monthly Power Costs. As soon as practicable after the end of each Power Supply Year, SCPPA will submit to LADWP a detailed statement of the actual aggregate Monthly Power Costs and other amounts payable hereunder, including credits thereto, for all of the Months of such Power Supply Year, and the adjustments of the aggregate Monthly Power 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 5.6, 6.1.4 and 6.2. If, on the basis of the statement submitted as provided in this Section 7.4, the actual aggregate Monthly Power Costs and other amounts payable by LADWP for any Power Supply Year exceed the amount thereof which LADWP has been billed, LADWP shall pay SCPPA, within 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 Power Costs or other amounts payable by LADWP for any Power Supply Year are less than the amount thereof for which LADWP has been billed, SCPPA shall, unless otherwise directed by LADWP with respect to moneys owed to LADWP, credit such excess against LADWP's next monthly Billing Statement. In the event that the failure of LADWP to make its payments in accordance with this Power Sales Agreement shall have resulted in the application of amounts in any reserve or working capital fund in accordance with the Indentures to the payment of costs payable from such reserve or working capital fund, amounts thereafter paid to SCPPA by LADWP for application to such past due payments including interest shall be applied first to replenish such reserve or working capital fund, which application shall be reflected on the Billing Statement of LADWP in the next Month or Months as provided for in Section 15.
- 7.5 Reconciliation of Fuel Cost Budget. Except as otherwise recommended by the Project Manager and determined by the Board of Directors, as soon as practicable after the end of each three-month period of a Power Supply Year, SCPPA shall compare the actual Project Fuel costs payable during such period with the amount billed for the fuel cost component of the Monthly Power Costs during such period, and SCPPA shall increase or decrease, as necessary, the fuel cost component of LADWP's Billing Statement for the next Month to reflect the difference between the amount billed for the fuel cost component and the amount paid or payable for the fuel cost component for the previous three-month period. The Board of Directors may approve other fuel cost or procurement programs or methodologies.
- 7.6 Interest on Late Payments. If LADWP fails to pay any Billing Statement when due, interest shall accrue, to the extent permitted by law, at a rate equal to the greater of (i) one percent per

Month on the unpaid amount of the bill or (ii) the monthly equivalent of the "prime" rate of interest as noticed in the Federal Reserve's HR 15 weekly bulletin (or the subsequent equivalent thereof) as of the date of nonpayment, until such Billing Statement is paid.

- 7.7 Prepayment of Monthly Power Costs. LADWP may, at any time, pay moneys to SCPPA or utilize any credits due or amounts owed by SCPPA to LADWP under any Project Agreement for the purpose of prepaying any 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 LADWP 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 LADWP to SCPPA received at least five 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 LADWP's obligation under this Power Sales Agreement to make payments with respect to a Default Invoice as provided in Section 15 hereof.

## 8. PAYMENT OBLIGATIONS AND RATE COVENANT.

- 8.1 Unconditional Payment Obligation. Beginning with the earliest of (i) the date on which SCPPA pays or is obligated to pay any portion of the cost of the Project pursuant to this Agreement (ii) the date on which SCPPA first incurs or accrues costs associated with the issuance of the Bonds, (iii) the date to which all interest is capitalized (or otherwise paid by moneys from any fund or account under the Indentures other than the debt service fund thereunder) with respect to the Bonds or (iv) the date of the initial delivery of Facility Output and continuing through the term of this Power Sales Agreement, LADWP shall pay SCPPA the amounts of Total Monthly Power Costs set forth in the Billing Statements submitted by or on behalf of SCPPA to LADWP in accordance with the provisions of Section 7 hereof and, without duplication, any amount set forth in any Default Invoices received by LADWP as a result of the operation of Section 15 hereof, whether or not the Project or any part thereof 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 obligations of LADWP to make the payments to SCPPA under this Power Sales Agreement shall constitute a cost of purchased electric Energy, Capacity and Other Generation Attributes and an operating expense of LADWP payable solely from its electric revenue fund, including any legally available electric power system reserves. LADWP will annually in each and every fiscal year of LADWP during the term of this Power Sales 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 Power Sales Agreement until all payments required under this Power Sales Agreement have been paid in full.
- 8.3 Rate Covenant. LADWP will establish, maintain and collect rates and charges for the electric service of its electric system so as to provide revenues sufficient, together with any legally available electric power system reserves, to enable LADWP to pay to SCPPA all

amounts payable when due under this Power Sales Agreement and to pay all other amounts payable from, and all lawful charges against or liens on, the revenues of its electric system.

**9. GENERATION STATION CAPACITY, ENERGY AND FACILITY OUTPUT.**

- 9.1 Scheduling of Facility Output. At all times on and after the Effective Date, LADWP shall be entitled to schedule for its account Facility Output from the Project up to an amount equal to the Available Generating Capability of the Project.
- 9.2 Scheduling During Abnormal Operating Conditions. At all times on and after the Effective Date and upon the occurrence of abnormal operating conditions on LADWP's electric system, then, upon the request of LADWP, the Project Manager shall increase or decrease LADWP's schedule consistent with operating procedures approved by the Board of Directors.
- 9.3 Alternative Start-Up and Scheduling Procedures. In consultation with LADWP or otherwise in conformity with this Power Sales Agreement, the Project Manager may develop and implement, from time to time, start-up and scheduling procedures which, consistent with Prudent Utility Practices, are appropriate for the Project.
- 9.4 Scheduling Subject to Outages. Operation of the Project by the Project Manager shall be subject to scheduled outages or curtailments, operating emergencies and unscheduled outages or curtailments of the Project.
- 9.5 Scheduling Procedures. The Capacity and Energy of the Facility shall be scheduled or controlled by LADWP under practices and procedures developed by the Project Manager or otherwise, and approved by the Board of Directors pursuant to Section 6.1 hereof.
- 9.6 Control of Facility Output. The Facility Output shall be controlled in a manner which shall not unreasonably diminish the rights of LADWP to receive the Facility Output.
- 9.7 Obligations Regarding Start-Up Costs. LADWP shall be obligated to provide for such requirements for starting up and shutting down the Facility as shall comply with the procedures developed by the Project Manager or otherwise, and approved by the Board of Directors pursuant to Section 6.1 hereof.
- 9.8 Transmission From Point of Delivery. It is the obligation of LADWP to arrange for transmission and movement of its Energy from the Point of Delivery into its electric system or such other ultimate destination as determined by LADWP.
- 9.9 Disposal of Energy. Except as provided in Section 18 hereof, nothing herein shall prevent LADWP from disposing of its Energy under this Power Sales Agreement; provided, however, that such disposal shall be in accordance with the requirements of this Power Sales Agreement and shall not affect any of the obligations of LADWP under this Power Sales Agreement.
- 9.10 Procurement of LADWP Fuel. LADWP may elect to procure its own fuel in accordance with the provisions of the Fuel Management Practices and Procedures for use in the Facility.

**10. DELIVERY POINT ENTITLEMENTS.** SCPPA and LADWP shall cooperate to facilitate the delivery of Facility Output to LADWP through the use the Project switchyard and through the necessary generation ties and transmission facilities of the Apex Power Project to deliver the Facility

Output to the Point of Delivery as provided for in the Interconnection Agreement and the Transmission Service Agreements.

11. **METERING.** The Project Manager, pursuant to the Agency Agreement, will provide for operation of meters and will maintain or cause to be maintained all necessary metering equipment for determining the quantity of Energy delivered and for such other appropriate purposes, including but not limited to, tracking, tagging and identifying the Energy produced by the Project; provided, however, that LADWP may by arrangement with the Project Manager and at its own cost check existing metering or, with the approval of the Board of Directors, install additional metering equipment.
12. **PLEDGE OF PAYMENTS.** All or any portion of the payments required to be made by LADWP in accordance with or pursuant to any provision of this Power Sales Agreement may be pledged by SCPPA to secure the payment of the Bonds, and interest thereon, subject to the application thereof to such purposes and on such terms as provided in the Indentures securing the Bonds, and as required by the Act. SCPPA may assign to the Trustee its rights to receive from LADWP all or any portion of the payments to be made by LADWP pursuant to this Power Sales Agreement. SCPPA may direct LADWP to make all or any portion of such payments directly to the Trustee.
13. **ISSUANCE OF BONDS.**
  - 13.1 Issuance of Bonds. Bonds will be issued by SCPPA in accordance with this Power Sales Agreement, the provisions of the Indentures and the Act for the purpose of financing or refinancing the Cost of Acquisition of the Project.
  - 13.2 Additional Bonds. Additional Bonds may be issued by SCPPA in accordance with this Power Sales Agreement, the provisions of the Indentures and the Act at any time and from time to time in the event funds are required for the purpose of financing Capital Improvements (including costs relating thereto), and at the request or direction of the Board of Directors, SCPPA shall use its best efforts to issue such additional Bonds.
  - 13.3 Refunding Bonds. In the event that Monthly Power Costs may be reduced by the refunding of any of the Bonds or if required for the purpose of retiring any note or other evidence of indebtedness issued in anticipation of the issuance of Bonds, or in the event it shall otherwise be advantageous, in the opinion of SCPPA, to refund any Bonds, SCPPA may issue and sell refunding Bonds in accordance with the Indentures and the Act. SCPPA may covenant to issue Bonds for the purpose of retiring any note or other evidence of indebtedness issued in anticipation of the issuance of Bonds.
  - 13.4 Redemption or Payment of Bonds. SCPPA may issue such bonds, notes, certificates of participation, commercial paper, other evidences of indebtedness or other instruments, in accordance with the Indentures and the Act, as it may deem appropriate to facilitate the redemption or payment of Bonds.
  - 13.5 Bond-Related Documents. LADWP agrees to supply SCPPA, upon request, with such additional information and documentation, including opinions of counsel for LADWP, as SCPPA shall reasonably determine to be necessary or desirable to facilitate the issuance of Bonds, additional Bonds or refunding Bonds for the purposes described in this Section 13 and to comply with continuing disclosure requirements (including, but not limited to, requirements under S.E.C. Rule 15c2-12).

- 13.6 Opinions of Counsel. In connection with the issuance of Bonds, additional Bonds or Refunding Bonds for the purposes described in this Section 13, LADWP shall provide such opinions of counsel (in substantially the form as set forth in Appendix C with such modifications as shall be reasonably acceptable to SCPPA) as may be reasonably necessary, as determined by SCPPA, to facilitate the issuance of such Bonds.
- 13.7 LADWP to Provide Information Relevant to Compliance with Federal Tax Law Requirements. At such times and through such means as prescribed by the rules, procedures and protocols promulgated by SCPPA to address compliance with the applicable Federal Tax Law Requirements with respect to any Bonds, or pursuant to any request by SCPPA, LADWP shall provide SCPPA with a tax certificate relating to such Bonds, and such additional information and representations as necessary to establish LADWP's compliance with the Federal Tax Law Requirements, including, to the extent applicable, information and representations concerning the disposition or use of electric energy provided under this Power Sales Agreement or the disposition or use of any assets acquired with the proceeds of such Bonds.
- 13.8 Compliance with the Federal Tax Law Requirements. With respect to any Bonds, LADWP agrees that it will promptly act in accordance with written instructions which SCPPA may reasonably require from time to time in connection with the Federal Tax Law Requirements, and in addition LADWP will not at any time take any action, or fail to take any action, if such action or failure to take action would result in or cause non-compliance with Federal Tax Law Requirements. LADWP agrees to execute a new or revised tax certificate or provide such information or other assurance respecting past and future compliance with the Federal Tax Law Requirements applicable to any Bonds as may be reasonably requested by SCPPA. In connection therewith, LADWP shall cooperate with and provide to SCPPA such other information, representations and certifications as necessary for SCPPA's bond counsel to render an opinion or advice to the effect that any applicable Federal Tax Law Requirements are met.
- 13.9 SCPPA to Issue Rules, Procedures and Protocols. SCPPA shall develop and promulgate such rules, procedures and protocols, together with amendments thereto, as necessary, in consultation with SCPPA's bond counsel, to ensure compliance with any applicable Federal Tax Law Requirements, including to establish expectations regarding future compliance under applicable laws and regulations existing from time to time with respect to any Bonds, and shall include, without limitation, the appropriate reporting, documentation and certifications to establish and maintain compliance with the provisions of this Section 13.
14. **EXCESS BOND PROCEEDS.** In the event the proceeds derived from the sale of any Bonds exceed the aggregate amount required for the purposes for which such Bonds were issued, the amount of such excess shall be used to make up any deficiency existing in any funds or accounts under the Indentures in the manner therein provided, and any balance, subject to prior review and approval of SCPPA's bond counsel, shall (i) be used to retire, by purchase or redemption, Bonds in advance of maturity, (ii) be deposited into LADWP's project stabilization account, (iii) be deposited in any account established in accordance with Section 7.7 hereof, (iv) reduce the payments by LADWP required pursuant to Section 7 hereof, and in such event SCPPA will reduce such elements of the Monthly Power Costs as are necessary and appropriate or (v) be used for such other purpose as determined by the Project Manager and SCPPA.
15. **NONPERFORMANCE AND PAYMENT DEFAULT.**

- 15.1 Nonperformance by LADWP. If LADWP fails to perform any covenant, agreement or obligation under this Power Sales Agreement (excluding, except as otherwise provided in the last sentence of this Section 15.1, a failure to make a payment constituting a Payment Default during (i) the Payment Default Period, (ii) while in Compliance, during the Cure Period and (iii) the Suspension Period), SCPPA may, in the event the performance of any such obligation under this Power Sales Agreement remains unsatisfied after 30 days' prior written notice thereof to LADWP and a demand to so perform, take any action permitted by law to enforce its rights under this Power Sales Agreement and/or 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 LADWP with regard to its failure to so perform. Notwithstanding anything to the contrary in this Power Sales Agreement, SCPPA shall have the right at any time after written notice as provided in Section 15.2 below to bring an action for specific performance to perform any payment obligation of LADWP under this Power Sales Agreement.
- 15.2 Notice of Initial Payment Default. On or promptly after the Initial Payment Default Date of LADWP, SCPPA shall provide written notice to LADWP that as a result of a Payment Default its Project Rights may be subject to discontinuance, termination and disposal in accordance with this Section 15. Notice of such Payment Default shall be provided promptly by SCPPA to LADWP and to the Trustee.
- 15.3 Retention of Project Rights During Payment Default Period. During a Payment Default Period with respect to LADWP, its Project Rights shall not be discontinued, terminated or disposed of as provided for in Sections 15.7 or 15.10 as a result of such Payment Default regardless of the number of Payment Defaults by LADWP during such Payment Default Period. During such Payment Default Period, SCPPA shall include with LADWP's Billing Statement a separate Default Invoice. If LADWP pays in full such Billing Statement and Default Invoice by the due date of such Billing Statement, LADWP shall no longer be deemed in Default and its Project Rights shall not be subject to discontinuance, termination or disposal as provided for in this Section 15. LADWP shall make separate payments to SCPPA with respect to a Billing Statement and a Default Invoice.
- 15.4 Retention of Project Rights During Cure Period. So long as LADWP remains in Compliance during the Cure Period, its Project Rights shall not be discontinued, terminated or disposed of as provided for in this Section 15 during such Cure Period. Project Rights shall not be discontinued, terminated or disposed of as provided for in this Section 15 during such Cure Period. During such Cure Period, SCPPA shall include with LADWP's Billing Statement a Default Invoice.
- 15.5 Retention of Project Rights During Suspension Period. During a Suspension Period with respect to LADWP, its Project Rights shall not be discontinued, terminated or disposed of as provided for in Sections 15.9 or 15.10 of this Power Sales Agreement as a result of a Payment Default regardless of the number of Payment Defaults by LADWP during such Suspension Period; provided, however, that LADWP's right to receive Facility Output shall be suspended as provided in Section 15.8. During such Suspension Period, SCPPA shall include with LADWP's Billing Statement a separate Default Invoice. If LADWP pays in full such Billing Statement and Default Invoice, including late payment interest assessed by SCPPA in accordance with this Power Sales Agreement and no Short-Term Sales Agreement is in effect (other than any Short-Term Sales Agreement with LADWP, the payment of which is current), LADWP shall no longer be deemed in Default and its Project Rights shall not be subject to discontinuance, termination or disposal as provided for in Sections 15.9 and 15.10

of its Power Sales Agreement. The LADWP shall make separate payments to SCPPA with respect to a Billing Statement and a Default Invoice.

- 15.6 Cured Payment Default. If LADWP has satisfied the provisions of a Cured Payment Default, its Project Rights shall not be subject to discontinuance, termination or disposal as provided for in this Section 15 of its Power Sales Agreement as a result of any Payment Defaults associated with such Cured Payment Default.
- 15.7 Failure to Cure Payment Default During the Cure Period. If at any time during the Cure Period LADWP fails to be in Compliance, its Project Rights shall immediately and permanently be discontinued and terminated and its Project Rights and Obligations shall be disposed of by SCPPA in accordance with Section 15.10 of this Power Sales Agreement and procedures established by SCPPA; provided, however, that such discontinuance and termination shall not occur if LADWP within 10 business days of failing to be in Compliance prior to the Suspension Period provides to SCPPA a Suspension Request Notice, upon receipt of which will commence the Suspension Period. LADWP's obligation to make payments under this Power Sales Agreement shall not be eliminated or reduced except to the extent provided in Section 15.11. SCPPA shall provide to LADWP a separate monthly invoice of such payment obligations under this Power Sales Agreement, if any. SCPPA shall immediately notify the Project Manager, each of the other SCPPA members and the Trustee of any such discontinuance and termination of LADWP's Project Rights.
- 15.8 Suspension Period and Sales of Facility Output. If LADWP provides to SCPPA the Suspension Request Notice provided in Section 15.7, then SCPPA shall suspend, except as otherwise provided in this Section 15.8, the right of LADWP to receive Facility Output for the Suspension Period. From and after the receipt of the Suspension Request Notice, SCPPA shall use its best efforts, to the extent reasonably possible and economically beneficial, to offer all SCPPA members (including, in the sole and absolute discretion of SCPPA, LADWP if LADWP demonstrates, among other things, its ability to pay on a timely basis the purchase price of any Facility Output it seeks to purchase) and third parties, for sales pursuant to Short-Term Sales Agreements as determined by SCPPA, Facility Output or any portion thereof associated with Project Rights of LADWP on the best terms readily available pursuant to terms and conditions established by SCPPA; provided, however, that unless SCPPA determines otherwise, SCPPA shall not offer or permit the sale of the Facility Output or any portion thereof associated with the Project Rights of LADWP in such a manner or in such an amount as would, in the opinion of SCPPA's bond counsel, result in or cause non-compliance with the Federal Tax Law Requirements relating to (if applicable) the Bonds; and provided further, however, that without eliminating the obligation of LADWP to make payments under this Power Sales Agreement, including payment of the costs and expenses of SCPPA related to such default and sale, such payment obligation shall be satisfied to the extent that payments are received by SCPPA from the sale of Facility Output or any portion thereof associated with the Project Rights of LADWP.
- 15.9 Failure to Cure Payment Default During the Suspension Period. If LADWP is not in Compliance at the end of the Suspension Period, its Project Rights shall immediately and permanently be discontinued and terminated and its Project Rights and Obligations shall be disposed of by SCPPA in accordance with Section 15.10 of this Power Sales Agreement and procedures established by SCPPA; provided, however, LADWP's obligation to make payments under this Power Sales Agreement shall not be eliminated or reduced except to the extent provided in Section 15.11. SCPPA shall provide to LADWP a separate monthly invoice of such payment obligations under this Power Sales Agreement, if any. SCPPA shall



immediately notify the Project Manager, each of the other SCPPA members and the Trustee of such discontinuance and termination of LADWP's Project Rights.

15.10 Treatment of Project Rights and Obligations of LADWP Upon Discontinuance and Termination Pursuant to Section 15.7 or Section 15.9. In the event LADWP's Project Rights are discontinued and terminated pursuant to Section 15.7 or Section 15.9 of this Power Sales Agreement, SCPPA shall undertake or cause to be undertaken the following actions in the order indicated:

15.10.1 SCPPA shall offer to convey, transfer and assign to all the other members of SCPPA, on a temporary or permanent basis as determined by SCPPA, the Project Rights and Obligations of LADWP, and SCPPA shall so convey, transfer and assign on such basis so determined by SCPPA to (i) all requesting SCPPA members 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 LADWP, or (ii) all requesting SCPPA members 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 LADWP, all in accordance with the terms, conditions and procedures established by SCPPA. Each such requesting SCPPA member shall assume all, but not less than all, Project Rights and Obligations so conveyed, transferred and assigned to it by SCPPA and shall simultaneously enter into a power sales agreement with SCPPA in substantially the same form as this Power Sales Agreement.

15.10.2 If all of the Project Rights and Obligations of LADWP are not conveyed, transferred and assigned as provided in Section 15.10.1 of this Power Sales Agreement, SCPPA shall offer to convey, transfer and assign, on a temporary or permanent basis as determined by SCPPA, the remaining (or all, if applicable) Project Rights and Obligations of LADWP to third parties, all in accordance with the terms, conditions and procedures established by SCPPA; provided, however, that unless SCPPA determines otherwise, SCPPA shall not offer or permit the conveyance, transfer or assignment of the Project Rights and Obligations of LADWP in such a manner or in such an amount as would, in the opinion of SCPPA's bond counsel, result in or cause non-compliance with the Federal Tax Law Requirements relating to (if applicable) the Bonds. 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.

15.10.3 If, at any time or from time to time, any of the Project Rights and Obligations of LADWP are not conveyed, transferred and assigned as provided in Sections 15.10.1 or 15.10.2 of this Power Sales Agreement, SCPPA shall use its best efforts, to the extent reasonably possible and economically beneficial, to offer all SCPPA members and third parties, for long-term or short-term sale as determined by SCPPA, Facility Output or any portion thereof associated with such Project Rights on the best terms readily available pursuant to terms and conditions established by SCPPA; provided, however, that unless SCPPA determines otherwise, SCPPA shall not offer or permit the sale of the Facility Output or any portion thereof associated with the Project Rights of LADWP in such a manner or in such an amount as would, in the opinion of SCPPA's bond counsel, result in or cause non-compliance with the Federal Tax Law Requirements relating to (if applicable) the Bonds; and provided further, however, that without eliminating the obligation of LADWP to

make payments under this Power Sales Agreement, including payment of the costs and expenses of SCPPA related to such default and sale, such payment obligation shall be satisfied to the extent that payments are received by SCPPA from the sale of Facility Output or any portion thereof associated with the Project Rights of LADWP. If at the time of any Board of Directors meeting, any of the Project Rights and Obligations of LADWP are not conveyed, transferred and assigned as provided in Sections 15.10.1 or 15.10.2, the associated voting rights with respect to such Project Rights and Obligations shall be redistributed to the SCPPA members that have acquired Project Rights and Obligations of LADWP pursuant to Section 15.10.1 (but not to LADWP) so that the total voting rights remain at 100%.

- 15.11 Elimination or Reduction of Payment Obligations. Upon termination of LADWP's Project Rights pursuant to Section 15.7 or Section 15.9 and conveyance, transfer or assignment of LADWP's Project Rights and Obligations pursuant to Sections 15.10.1 or 15.10.2, or upon the suspension of LADWP's right to receive Facility Output pursuant to Section 15.8 and the sale of LADWP's Facility Output pursuant to such Section 15.8, LADWP's obligation to make payments under this Power Sales 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 such Project Rights and Obligations, less SCPPA's related costs and expenses; provided, however, such payment obligations for LADWP may be eliminated or reduced if no Bonds are outstanding or adequate provision for the payment thereof has been made in accordance with the provisions of the Indentures and SCPPA's Board of Directors, by resolution, determines to eliminate or reduce such payment obligations, which determination shall not be unreasonably withheld.
- 15.12 Use of Operating Reserve Account. With respect to a Payment Default by LADWP, funds in the operating reserve account under the applicable Indenture shall be used, to the extent necessary and to the extent available, to cover any deficiency in the operating account relating to such Indenture to pay for Apex Power Project operating expenses (as described in the Indentures). Any replenishing of the operating reserve account under an Indenture shall be in accordance with such Indenture.
- 15.13 Use and Replenishment of Debt Service Reserve Account. With respect to a Payment Default by LADWP, funds (or any surety bond or similar instrument) in the debt service reserve account(s) under the applicable Indenture shall be used, to the extent necessary and to the extent available, to cover any shortfall in the debt service account(s) relating to such Indenture to pay for Debt Service.
- 15.14 Application of Moneys Received from Default Invoices. SCPPA shall forward or cause to be forwarded to the Trustee for deposit into the revenue fund of the applicable Indenture, the applicable portion of moneys received with respect to the payment of Default Invoices.
- 15.15 Application of Moneys Received from Compliance Payments. Moneys received by or on behalf of SCPPA from LADWP to remain in Compliance with respect to a Payment Default shall be applied in the following manner:
- 15.15.1 With respect to LADWP's first payment to remain in Compliance, SCPPA shall forward or cause to be forwarded the moneys received to the Trustee to be deposited into the revenue fund of the applicable Indenture, as appropriate, in accordance with the Indenture.

- 15.15.2 With respect to LADWP's payments to remain in Compliance other than the first payment, SCPPA shall forward or cause to be forwarded the moneys received to the Trustee for deposit into the appropriate fund of the applicable Indenture, in accordance with the Indenture.
- 15.16 Application of Moneys Received from Sales of Facility Output. Moneys received by or on behalf of SCPPA from the sale of Facility Output related to LADWP's Project Rights and Obligations, as provided in Section 15.8 and Section 15.10.3 hereof, shall be applied in the following manner and order:
- 15.16.1 SCPPA shall forward or cause to be forwarded to the Trustee for deposit into the appropriate fund of the applicable Indenture, the applicable portion of such moneys in accordance with the Indenture.
- 15.16.2 Following consultation with the Board of Directors, SCPPA shall determine the disposition of any other moneys received from such sales of Facility Output for the purpose of assuring that all of SCPPA's obligations to meet the requirements of the Indentures are fully satisfied. Subject to Section 15.11, LADWP shall have no claim or right to any such moneys.
- 15.17 SCPPA Transmission Entitlements in an Event of Default. In the event of a default or failure to be in Compliance which results in the permanent discontinuance, termination and disposition of the Project Rights of LADWP pursuant to the provisions of this Section 15, notwithstanding anything to the contrary in this Power Sales Agreement, LADWP shall cooperate with SCPPA to make transmission available at the Point of Delivery. Also for avoidance of doubt, in the event of a default under this Power Sales Agreement, LADWP covenants that it shall, upon the written request of SCPPA, observe and continue to perform its obligations under all Project Agreements to which it is a party including, but not limited to the Agency Agreement, the Interconnection Agreement and the Transmission Service Agreements.

## 16. CHARACTER, CONTINUITY OF SERVICE.

- 16.1 Curtailment of Deliveries. The Project Manager may temporarily interrupt or curtail deliveries of Facility Output to LADWP if the Project Manager determines that such interruption or curtailment is necessary in case of emergencies or in order to install equipment in or make repairs to or replacements, investigations or inspections of the Project facilities or to perform other maintenance work on the Project facilities; provided, however, that such interruption or curtailment shall not relieve LADWP of its obligation to make payments under this Power Sales Agreement. In accordance with the applicable provisions of the Agency Agreement, after informing LADWP regarding any such planned interruption or curtailment, giving the reason therefore, and stating the probable duration thereof, the Project Manager will, to the best of its ability, schedule such interruption or curtailment at a time which will cause the least interference with the operations of LADWP.
- 16.2 Uncontrollable Forces. SCPPA shall not be required to provide, and SCPPA shall not be liable for failure to provide, service under this Power Sales 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 to obtain any required governmental permits, licenses or approvals to enable SCPPA to manage, repair or operate any Project facilities; provided,

however, that LADWP shall not thereby be relieved of its obligations to make payments under this Power Sales Agreement.

## 17. OBLIGATIONS AND LIABILITY.

- 17.1 LADWP's Obligations. LADWP shall be solely responsible and liable for its performance under this Power Sales Agreement and for the maintenance and operation of its respective properties not included as part of the Project.
- 17.2 No Liability of SCPPA or LADWP, or Their Directors, Officers, Employees, Etc.; SCPPA's and LADWP's and Project Manager's (within its capacity as Project Manager) Directors, Officers, Employees Not Individually Liable. Both Parties agree that neither SCPPA, LADWP, the Project Manager, nor any of their past, present or future directors, officers, board members, agents, attorneys, advisors and/or employees (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 any of the other 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 or SCPPA shall relieve SCPPA or LADWP from their respective obligations under this Agreement, including, without limitation, LADWP's obligation to make payments required under Section 8.1 of this Agreement and SCPPA's obligation to make payments under Section 17.7 of this Agreement, or under any other Project Agreements. The provisions of this Section 17.2 shall not be construed so as to relieve the Project Manager from any obligation under this Agreement 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 LADWP, nor any of their past, present or future directors, officers, board members, agents, attorneys, advisors, employees, 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 17.2 or in any other provision of this Agreement shall affect LADWP'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 or the Agency Agreement.
- 17.3 Extent of Exculpation; Enforcement of Rights. The exculpation provision set forth in Section 17.2 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 Power Sales 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 the

other Party, including, without limitation, any costs payable to SCPA and any costs payable to LADWP in accordance with Section 7.3 hereof.

- 17.4 Indemnification for Claims of Retail Customers. LADWP shall assume all liability for any claim, action or judgment, whether or not caused by negligence, arising out of or in connection with electric service to any of its retail customers caused by the operation or failure of operation of (i) the Project or any portion thereof described in this Power Sales Agreement, or (ii) any interconnection or transmission facilities or portion thereof under the Interconnection Agreement or the Transmission Service Agreements, and shall indemnify and hold SCPA harmless from any such claim, action or judgment (including reasonable attorneys' fees and other costs of defense).
- 17.5 Determination and Enforcement of Rights. Notwithstanding the provisions of Sections 17.2, 17.3 and 17.4 hereof, each of LADWP or SCPA, as applicable, may determine, protect and enforce its respective rights under this Power Sales Agreement or any Project Agreement by a suit or suits in equity for specific performance of, or declaratory action with respect to, any obligation or duty hereunder or thereunder.
- 17.6 No Relief From Insurer's Obligations. Notwithstanding any provision in this Power Sales Agreement to the contrary, including but not limited to the provisions in this Section 17, the provisions of this Section 17 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.
- 17.7 Indemnification of Project Participant. SCPA undertakes and agrees, to the extent permitted by law, to indemnify and hold harmless LADWP as the Project Participant, its directors, board members, officers, employees, agents, attorneys and advisors, past, present or future (collectively, "Project Participant Indemnitees") for 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 the Project Participant, SCPA or third persons) (collectively, "Losses") which may be imposed on, incurred by or asserted against the Project Participant arising by any manner of breach of this Power Sales Agreement by SCPA, or the negligent acts, errors, omissions or willful misconduct incident to the performance of this Power Sales Agreement on the part of SCPA or any of SCPA's directors, board members, officers, employees, agents and advisors, past, present or future. At the Project Participant's option, SCPA shall defend the Project Participant Indemnitees from and against any and all Losses. If SCPA, with the Project Participant's consent, defends any Project Participant Indemnitee or the Project Participant, the Project Participant's City Attorney shall approve the selection of counsel, and the Project Participant shall further approve any settlement or disposition, such approval not to be unreasonably withheld. Nothing in this Section 17.7 or in any other provision of this Power Sales Agreement shall affect the Project Participant's obligation to make any payment in accordance with Section 8.1 of this Powers Sales Agreement or to pay any other amounts or costs required to be paid by it under this Power Sales Agreement.
- 17.8 No General Liability of SCPA. The undertakings by SCPA under this Power Sales Agreement shall never constitute a debt or indebtedness of SCPA 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.

17.9 Separate Legal Capacity. The Parties acknowledge that LADWP, in its capacity as Project Manager under the Agency Agreement, acts in a legal capacity that is separate from its capacity as Project Participant and a Party under this Power Sales Agreement. Accordingly, for purposes of this Power Sales Agreement and applicable Project Agreements, the rights, entitlements, obligations and liabilities of LADWP, as Project Participant and a Party under this Power Sales 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.

## 18. RESTRICTIONS ON DISPOSITION.

18.1 Limitations Concerning Project Use. LADWP recognizes that certain Federal Tax Law Requirements, if applicable, limit the arrangements permitted with respect to sale, assignment or other disposition of Project Rights and Obligations, including the Facility Output. LADWP shall comply with the rules, procedures and protocols promulgated by SCPPA pursuant to Section 13.9 with respect to compliance with Federal Tax Law Requirements, as applicable, to any Bonds. Except as provided in Section 15 hereof and except that such is not otherwise inconsistent with any other provision of this Power Sales Agreement, no sale, assignment or other disposition of all or any portion of LADWP's Project Rights and Obligations, including use of Facility Output shall be effective until (i) LADWP shall have given prior written notice thereof to SCPPA and (ii) unless waived by SCPPA after consultation with SCPPA's bond counsel, SCPPA's bond counsel shall have rendered an opinion that such sale, assignment or other disposition or use of Facility Output will not result in or cause non-compliance with any applicable Federal Tax Law Requirements and will not be inconsistent with this Power Sales Agreement. Notwithstanding the immediately preceding sentence, LADWP may (without giving such notice or obtaining such opinion) contract to provide the Facility Output to which it is entitled hereunder in a transaction which complies with guidelines established by the Board of Directors and approved by SCPPA's bond counsel from time to time pursuant to this Section 18.1.

18.2 Restrictions on Elimination of Payment Obligations. No sale, assignment or other disposition of LADWP's Project Rights and Obligations to any person or entity ("Assignee") pursuant to Section 18.1 that occurs when any Bonds are outstanding shall release LADWP from its payment obligations under this Power Sales Agreement; provided, however, such payment obligations may be eliminated or reduced if no Bonds are outstanding or adequate provisions for the payment thereof have been made in accordance with the provisions of the Indenture and provided further (i) such Assignee shall assume and agree to fully perform and discharge the Project Rights and Obligations under this Power Sales Agreement, (ii) such Assignee shall have a corporate or long-term senior unsecured credit rating not less than that of LADWP, and (iii) the Board of Directors, by resolution, determines to eliminate or reduce such payment obligations, which determination shall not be unreasonably withheld.

18.3 Restrictions on Disposition of LADWP's Entire System. LADWP shall not sell, lease or otherwise dispose of all or substantially all of its electric system except on 90 days' prior written notice to SCPPA and, in any event, shall not so sell, lease or otherwise dispose of the same unless the following conditions shall be met: (i) LADWP shall assign its Project Rights and Obligations hereunder to such purchaser, lessee or disposee of said electric system, and such purchaser, lessee or disposee shall assume and agree fully to perform and discharge all such Project Rights and Obligations under this Power Sales Agreement; (ii) such sale, lease or other disposition shall not, in and of itself, cause the rating of any Bond (without giving effect to any credit enhancement) to be downgraded, suspended or withdrawn (which fact

shall be evidenced by letters of the rating agencies then rating the Bonds); (iii) SCPPA shall determine (which determination shall not be unreasonably withheld) that such sale, lease or other disposition will not adversely affect the value of this Power Sales Agreement as security for the payment of the Indenture cost component; and (iv) unless waived by SCPPA after consultation with SCPPA's bond counsel, SCPPA's bond counsel shall render an opinion that such sale, lease or other disposition will not result in or cause non-compliance with any applicable Federal Tax Law Requirements with respect to any Bonds.

18.4 Successors and Assigns. Subject in all respects to Sections 15 and 18 hereof, the Project Rights and Obligations under this Power Sales Agreement shall inure to the benefit of and shall be binding upon the respective successors and assigns of the parties to this Power Sales Agreement.

19. **REIMBURSEMENT OF PROJECT DEVELOPMENT COSTS.** Within 45 days after the first issuance of Bonds, all of the following costs and expenses paid by LADWP prior to the date of such first issuance, to the extent reimbursable under applicable tax law and regulations, shall be reimbursed to it from proceeds of the Bonds (in an amount determined by the Board of Directors): costs relating to the Acquisition of Project assets; costs of feasibility studies; engineering, legal and financing expenses; costs of obtaining permits, licenses and approvals or other governmental authorizations, options on land or rights therein; costs of preparing agreements or other documents; and any down payments on Project assets and other pre-acquisition costs relating to the Project, whether such costs or expenses were incurred by SCPPA under the Planning and Development Agreement by and between SCPPA and LADWP or otherwise.

20. **EFFECTIVE DATE AND TERM.**

20.1 Effective Date. This Power Sales Agreement shall become effective as of the Effective Date reflected in Section 1 hereof when this Power Sales Agreement shall have been duly approved, executed and delivered by SCPPA and LADWP. This Power Sales Agreement may be executed in any number of counterparts, each of which shall constitute an original.

20.2 Term of Agreement. The term of this Power Sales Agreement shall begin on the day this Power Sales Agreement becomes effective pursuant to Section 20.1 hereof. Unless terminated earlier pursuant to Sections 20.4 and subject to Section 23 hereof, the term of this Power Sales Agreement shall expire on the later of the date SCPPA's Joint Powers Agreement (including any extensions thereof) expires or the date on which all Bonds and the interest thereon shall have been paid in full or adequate provision for such payment shall have been made and the Bonds are no longer outstanding.

20.3 Transfer of SCPPA Interest Upon Expiration of this Power Sales Agreement. Except as provided in Section 20.4 hereof, upon the expiration of the term of this Power Sales Agreement pursuant to Section 20.2 hereof, SCPPA shall transfer to LADWP and LADWP shall assume ownership of the Project (including all rights and obligations of SCPPA under all Project Agreements) as evidenced by an ownership agreement developed by SCPPA and LADWP, unless otherwise agreed to by SCPPA and LADWP. The purchase price and consideration to be paid to SCPPA by LADWP for such transfer shall consist of the payments made by LADWP pursuant to this Power Sales Agreement prior to the date of such transfer.

20.4 Termination of Agreement before Expiration Date. Notwithstanding the expiration date set forth in Section 20.2 hereof, this Power Sales Agreement shall terminate on the date, if any, on which:

20.4.1 All Bonds and the interest thereon shall have been paid in full or adequate provision for such payment shall have been made and the Bonds are no longer outstanding; and either: or

20.4.2 SCPPA notifies LADWP that this Power Sales Agreement is superseded as a result of LADWP having (i) become the owner of the Project under some form of ownership agreement, (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 after having become an owner of the Project under some form of ownership agreement. The purchase price and consideration to be paid to SCPPA by LADWP with respect to any such superseding arrangement shall consist of the payments made by LADWP pursuant to this Power Sales Agreement prior to the effective date of the superseding arrangement;

## 21. **RELATIONSHIP TO AND COMPLIANCE WITH OTHER INSTRUMENTS.**

21.1 SCPPA and LADWP to Facilitate Transfer of Entire Facility Output. SCPPA and LADWP shall use their best efforts to enter into the necessary agreements and arrangements to transfer 100 percent of the Facility Output.

21.2 Agreement Subject to Indentures. It is recognized by the parties hereto that SCPPA, in undertaking the planning, development, financing, acquisition, operation and maintenance of the Project, must comply with the requirements of the Indentures and all licenses, permits and approvals or other governmental authorizations necessary for such planning, development, financing, acquisition, operation and maintenance and it is therefore agreed that this Power Sales Agreement is made subject to the provisions of the Indentures and all such licenses, permits, approvals and governmental authorizations.

21.3 Comply With Indentures. SCPPA covenants and agrees for the benefit of LADWP to comply in all material respects with all terms, conditions and covenants of the Indentures and all licenses, permits, approvals and governmental authorizations relating to the Project, provided that SCPPA shall not be prevented from contesting the validity or applicability of any such licenses, permits, approvals and governmental authorizations in good faith by appropriate proceedings.

22. **SEVERABILITY.** In case any one or more of the provisions of this Power Sales 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 Power Sales 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 Power Sales Agreement.

## 23. **CONDITIONS TO TERMINATION OR AMENDMENT; NO MATERIAL REDUCTION IN PAYMENTS.**

23.1 Not Reduce the Payments Pledged as Security for the Bonds. So long as any of the Bonds are outstanding under any Indenture, this Power Sales Agreement shall not be terminated, amended, modified or otherwise altered in any manner which will materially reduce the



payments pledged as security for the Bonds or extend the time of such payments provided herein or which will materially impair or materially adversely affect the rights of the owners from time to time of the Bonds.

- 23.2 Continuing Compliance with Federal Tax Law Requirements. Notwithstanding anything contained in this Power Sales Agreement to the contrary, all obligations of SCPPA and LADWP with respect to compliance with Federal Tax Law Requirements with respect to any Bonds shall survive any termination of this Power Sales Agreement until such time as all Bonds to which such Federal Tax Law Requirements shall apply shall have been fully paid or redeemed and discharged or such earlier time as SCPPA shall determine upon consultation with SCPPA's bond counsel, or SCPPA's bond counsel shall have rendered an opinion to the effect that such Federal Tax Law Requirements shall no longer be applicable.
24. **GOVERNING LAW.** This Power Sales Agreement shall be interpreted, governed by and construed under the laws of the State of California.
25. **ARBITRATION.** If a dispute arises between the Parties which the Board of Directors is unable to resolve, the Parties may, but shall not be required to, submit the dispute to arbitration.
26. **NOTICES.** Any notice, demand or request provided for in this Power Sales 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  
Executive Director  
1160 Nicole Court  
Glendora, CA 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

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

SOUTHERN CALIFORNIA PUBLIC  
POWER AUTHORITY

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

CITY OF LOS ANGELES ACTING BY AND THROUGH  
ITS DEPARTMENT OF WATER AND POWER

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

APPROVED AS TO FORM AND LEGALITY  
MICHAEL N. FEUER, CITY ATTORNEY

OCT 31 2013

BY: \_\_\_\_\_  
TIMOTHY J. CHUNG  
DEPUTY CITY ATTORNEY

APPENDIX A  
APEX POWER PROJECT  
DEFINITIONS

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

1. Acquisition. The procurement of those resources, contracts, rights, benefits, entitlements and arrangements as may be necessary, desirable or appropriate to the Project to further SCPPA's and LADWP's goals and those associated administrative structures and services procured, retained or acquired on behalf of LADWP as part of the Project and which have been approved by the Board of Directors. Acquisition includes, without limitation, the procurement of such assets, resources or services on behalf of the Project as shall be found to be appropriate by the Board of Directors and, as applicable, associated financings, and all rights and entitlements associated with the acquisition, development and implementation of the Project.
2. Agency Agreement. The agreement entitled Apex Power Project Agency Agreement dated as of \_\_\_\_\_ 2013 and entered into by and between SCPPA and LADWP under which LADWP will develop, manage, operate, administer and maintain the Project, or cause the Project to be developed, managed, operated, administered and maintained, in accordance with the Project Agreements and under which LADWP will act in its capacity as the agent of SCPPA in the development, management, administration, operation and maintenance of the Project.
3. Agency Costs. The Agency Costs as defined in Section 4.1 of the Agency Agreement.
4. Asset Purchase Agreement. The Asset Purchase Agreement, dated as of October 17 2013, by and between Las Vegas Power Company, LLC and SCPPA.
5. Annual Budget. The budget adopted by SCPPA pursuant to Section 5.4 of this Power Sales Agreement not less than 30 days nor more than 45 days prior to the beginning of each Power Supply Year, including any revisions, modifications or amendments thereto.
6. Available Generating Capability. The capability at any time of the Facility to deliver Energy at the Point of Delivery less allocated General Service Requirements, subject to operating limitations required by law or regulatory permit or license.
7. 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 Apex Power Project Annual Budget and shall show for such Month the amount to be paid to SCPPA by LADWP in accordance with the provisions of Section 7 of the Power Sales Agreement.
8. Board of Directors. "Board of Directors" means the Board of Directors of SCPPA.
9. Bondholder. Any person who shall be the registered or beneficial owner of any Bond or Bonds.
10. Bonds. The bonds, notes or other evidences of indebtedness issued by SCPPA and outstanding pursuant to the provisions of the Indentures to finance or refinance the Cost of Acquisition of the Project. The term "Bonds" shall be inclusive of all bonds, notes, certificates of participation, commercial paper or other evidences of indebtedness (whether or not the interest thereon is exempt from taxation) issued or incurred by SCPPA and outstanding pursuant to the provisions

of the Indentures to finance or refinance the Cost of Acquisition of the Project. Bonds shall include but not be limited to any bond anticipation notes, any bridge loan bonds, any draw down bonds, the bonds, notes, certificates of participation, commercial paper or other evidences of indebtedness issued or incurred by SCPPA to redeem or refund any bond anticipation notes, bridge loan bonds or draw down bonds, and any and all other obligations which SCPPA issues or incurs relating to the Apex Power Project. Bonds shall also include any additional Bonds and subordinate bonds issued or incurred pursuant to the provisions of Section 13 of the Power Sales Agreement as well as any refunding Bonds issued pursuant to the provisions of Sections 13 of the Power Sales Agreement. Bonds may constitute categories of bonds eligible for certain tax benefits under the Internal Revenue Code, including but not limited to tax-exempt bonds, tax credit bonds, or qualified bonds under the Internal Revenue Code.

11. CAMD means the Clean Air Markets Division of the United States Environmental Protection Agency, or any similarly functioning successor agency.
12. Capacity. The ability or potential to generate, produce or transfer electricity, expressed in kilowatts ("kW") or megawatts ("MW"), including ancillary services or other valuable non-energy products or services from a generating station.
13. Capacity Rights. means the rights during the term of the Power Sales Agreement, to capacity, resource adequacy, associated attributes and/or reserves or any of the foregoing associated with the electric generating capability of the Facility, including the right to resell such rights.
14. Capital Improvements. Any unit of property (as generally prescribed by the FERC Accounts), property right, land or land right which is a replacement, repair, addition, improvement or betterment to the Project or for the benefit of the Project, including any transmission facilities, and the betterment of land or land rights or the enlargement or betterment of any such unit of property constituting a part of the Project which is (i) consistent with Prudent Utility Practice and determined necessary and/or desirable by the Board of Directors and in accordance with the Agency Agreement or (ii) required by any governmental agency having jurisdiction over the Project and approved by the Board of Directors.
15. Company Interconnection Facilities. The "Company Interconnection Facilities" as defined in the Interconnection Agreement.
16. Compliance. During the Cure Period, LADWP shall be in compliance with its payment obligations under the Power Sales Agreement if it no later than the first day of the Cure Period (or such later date that the Default Invoice is received by LADWP): (i) pays each monthly Billing Statement when due issued during the Cure Period; and (ii) pays at least 1/3 of the deficiency (determined on an aggregate basis for the three Default Invoices due during the Cure Period) it caused to the operating reserve account and the debt service reserve account(s) of the applicable Indenture with each monthly Default Invoice payment during the Cure Period, including late payment interest assessed by SCPPA in accordance with the Power Sales Agreement. During the Suspension Period, LADWP shall be in Compliance with its payment obligations under the Power Sales Agreement if (i) it has paid each monthly Billing Statement and each Default Invoice, including late payment interest assessed by SCPPA in accordance with the Power Sales Agreement and (ii) no Short-Term Sales Agreement is in effect (other than any Short-Term Sales Agreement with LADWP, the payment of which is current).

17. Cost of Acquisition. The Cost Acquisition as defined in Section 4.1 of the Power Sales Agreement.
18. Cost Report. An after-the-fact report by work activity categories of the actual costs of Operating Work.
19. Cure Period. That period of time beginning on the 25th day of the second Month following the Initial Payment Default Date and ending on the 25th day of the fifth Month following the Initial Payment Default Date.
20. Cured Payment Default. With respect to LADWP's Payment Default(s) that occurred within the applicable Payment Default Period, LADWP shall have (i) paid each monthly Billing Statement when due during the Cure Period and (ii) at the same time as the payment of each Monthly Billing Statement during the Cure Period, paid at least 1/3 of the deficiency (determined on an aggregate basis for the cumulative amount of all Default Invoices due during the Cure Period) to the extent such deficiency caused reductions in the operating reserve account and the debt service reserve account(s) under the applicable Indenture with each monthly Default Invoice payment during the Cure Period, including late payment interest assessed by SCPPA in accordance with the Power Sales Agreement; provided, however, if at any time during the Cure Period LADWP is in Compliance and, in addition, pays in full the aggregate remaining amount due as set forth in the Default Invoice, then the requirements of a Cured Payment Default shall be deemed to have been satisfied as of the date of receipt of such payment by SCPPA and the Cure Period shall expire.
21. Debt Service. "Debt Service" shall have the meaning ascribed thereto in the Indentures.
22. Default Invoice. Prior to the Suspension Period, an invoice during the Payment Default Period and the Cure Period issued to LADWP concurrently with its Monthly Billing Statement, 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. During the Suspension Period, an invoice issued to a LADWP, concurrently with its Monthly Billing Statement, that includes the total defaulted amount owed, including late payment interest.
23. Energy. The accumulated amount of electricity produced over a stated time interval, expressed in kilowatt hours ("kWh") or megawatt hours ("MWh").
24. Energy Sales Agreement. The Energy Sales Agreement by and between SCPPA and Silver State Energy Association that becomes effective upon the Closing (as defined in the Asset Purchase Agreement), as such Agreement may be hereafter amended.
25. Executive Director. The Executive Director of Southern California Public Power Authority.
26. Facility. The Apex Generating Facility as described in Appendix B, including the Generator Interconnection Facilities, along with such Capital Improvements as may be added thereto from time to time.
27. Facility Output. The output of the Facility, including all rights, and other tangible or intangible benefits derived from the Facility, including without limitation all Energy, Capacity Rights and when and if applicable, Other Generation Attributes.

28. Federal Tax Law Requirements. “Federal Tax Law Requirements” shall mean, with respect to the issuer of Bonds, any and all requirements and limitations to which any specified type or category of Bonds are subject under the Internal Revenue Code or related Treasury regulations in order that such specified Bonds initially qualify and maintain qualification as that type or category of Bonds.
29. FERC. The Federal Energy Regulatory Commission or its successor.
30. FERC Uniform System of Accounts. The “Uniform Systems of Accounts prescribed for Class A and B Public Utilities and Licensees” as prescribed and, from time to time, as amended or modified or substitution therefor made by FERC, whether or not SCPPA is subject to FERC jurisdiction.
31. 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 Board of Directors.
32. Fuel Agreement. Any agreement for the purchase, transportation, disposition, management and storage of fuel used in the production of Energy by the Project.
33. Fuel Expense. The type of fuel-related costs referenced in FERC Account 501 (Fuel).
34. Fuel Management Practices and Procedures. The fuel management practices and procedures formulated by the Project Manager as provided in Section 6.8.
35. Fund or Funds. Any fund or account created under the Indenture.
36. General Service Requirements. The Capacity and Energy required for operation of the generating unit auxiliaries and other equipment and systems used or required at the Facility in connection with the operation and maintenance of the Facility.
37. Generator Interconnection Facilities. The equipment and facilities of the Facility described as Generator Interconnection Facilities in Appendix B of this Agreement.
38. Governmental Authority. “Governmental Authority” means any Federal, state, regional, city, or local government, any intergovernmental association or political subdivision thereof, or other governmental, regulatory or administrative agency, court, commission, administration, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority, or any Person acting as a delegate or agent of any such entity.
39. Indenture Costs. “Indenture Costs” shall have the meaning set forth in Section 4.5 of the Power Sales Agreement.
40. Indentures. The indentures of trust, trust agreements and other similar agreements with respect to the Bonds, between SCPPA and the Trustee, as from time to time amended and supplemented in conformity with their provisions. Indentures shall include, but not be limited to, any and all indentures in connection with any bridge loans, bond anticipation notes or other notes, or draw down bonds or with respect to any other type of bonds, and the indentures of trust, trust agreements or other similar agreements entered into between SCPPA and the Trustee to effect the redemption or refunding of any bridge loans, bond anticipation notes or other notes, draw

down bonds or other bonds, as from time to time amended and supplemented in conformity with their provisions and the provisions of the Power Sales Agreement.

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. Interconnection Agreement. The Interconnection and Operation Agreement, dated July 1, 2001 between Nevada Power Company and SCPPA (as assignee thereof pursuant to the Asset Purchase Agreement) for interconnection of the Facility with the Harry Allen 500 kV Substation, as such Interconnection and Operation Agreement may be amended or supplemented.
43. Interconnection and Transmission Rights and Interests. The Interconnection and Transmission Rights and Interests of the Project, as described in Appendix B of this Agreement.
44. Internal Revenue Code. The Internal Revenue Code of 1986, as amended.
45. Joint Powers Agreement. The “Southern California Public Power Authority Joint Powers Agreement” dated as of November 1, 1980, as amended and modified, entered into pursuant to the provisions of the Act, between SCPPA and its members.
46. Maximum Generating Capability. The maximum net capability of the Facility to produce Energy, determined at the Point of Delivery, for sustained periods under conditions existing from time to time.
47. Minimum Generating Capability. The lowest net capability of the Facility to produce Energy, determined at the Point of Delivery, at which the Facility can be maintained in service reliably on a continuous basis under automatic control.
48. Month. A calendar month.
49. Monthly Power Costs. The Monthly Power Costs as specified in Section 4 and Section 7 of the Power Sales Agreement. For avoidance of doubt “Apex Power Project Monthly Power Costs” and “Monthly Power Costs” shall have the same meaning.
50. Operating Agreement. Any agreement made in connection with the performance of Operating Work, as it may be amended or supplemented from time to time.
51. Operating Budget. The operating budget approved by the Board of Directors, which shall show a detailed estimate of all Project operating costs, including a fuel budget, and all revenues, income or other funds to be applied to such operating costs, for and applicable to a Power Supply Year.
52. Operating Work. All work and activities in connection with the operation and maintenance of the Project, including without limitation all engineering, negotiating and administering contracts, planning, mitigating impacts, purchasing, repairing, maintaining, environmental monitoring, inspection, quality control, testing and start-up activities, recruitment and training of operating personnel, load dispatching and scheduling activities, supervising, expediting, budgeting, insuring, accounting, protecting, operating and managing activities, public information services

and services of consultants and legal counsel, renewals, replacements, reconstruction, and Capital Improvements, and activities related to securing requisite permits, licenses, approvals and certificates from governmental agencies or regulatory authorities.

53. Other Generation Attributes. To the extent applicable to the Project, any and all current or future fuel, emissions, air quality, or other environmental characteristics, credits, benefits, reductions, offsets, or allowances, howsoever entitled, named, registered, created, measured, allocated, validated, hereafter recognized or deemed of value, by applicable law, regulation, or voluntary program of any Governmental Authority or other Person resulting from the use of generation or the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water attributable to the Facility during the term of the Power Sales Agreement or the generation, purchase, sale, or use of energy from or by the Facility during the term of the Power Sales Agreement, that are now or hereafter deemed of value by Participant, and include without limitation any of the same arising out of legislation or regulation concerned with oxides of nitrogen, sulfur, carbon, or any other greenhouse gas or chemical compound, with particulate matter, soot, or mercury, or implementing the United Nations Framework Convention on Climate Change (the "UNFCCC"), the Kyoto Protocol to the UNFCCC, or any similar international, federal, state or local program or crediting "early action" with a view thereto, or laws or regulations involving or administered by the CAMD, and all other rights to report ownership of those generation attributes set forth above to any Person, including all evidences (if any) thereof, to the extent that Other Generation Attributes may be treated as separate from the Energy and Capacity Rights produced from the Facility.
54. Output Costs. For any Power Supply Year, the costs, other than financing and refinancing costs, associated with the Project.
55. Output Entitlement. The entitlement of LADWP to the Facility Output in any Power Supply Year which entitlement shall be equal to all Facility Output. LADWP's Output Entitlement shall equal one hundred percent (100%) of all such Facility Output associated with the Project.
56. Payment Default. A failure by LADWP to pay when due all of its Billing Statement for any Month.
57. Payment Default Period. That period of time beginning on the Initial Payment Default Date and ending on the 24th day of the second Month following the Initial Payment Default Date.
58. Person. "Person" means any individual, corporation, partnership, joint venture, limited liability company, association, joint stock company, trust, unincorporated organization, entity, public agency, government or other political subdivision.
59. Planning and Development Agreement. The Combined Cycle Power Project Planning and Development Agreement between the City of Los Angeles acting by and through its Department of Water and Power and SCPPA, dated as of 2013, as it may be amended or supplemented from time to time.
60. Point of Delivery. The Mead 230 kV Substation or such other point of delivery as determined by the Parties.
61. Power Sales Agreement. The Power Sales Agreement as defined in Section 4 of the Apex Power Project Power Sales Agreement.



62. Power Supply Year. The Fiscal Year, except that the first Power Supply Year shall begin on the Effective Date..
63. Project. The Facility and the Interconnection and Transmission Rights and Interests as described in Appendix B of the Power Sales Agreement, (entitled "Description of the Apex Power Project Including Interconnection and Transmission Rights and Interests"), as amended from time to time and shall include Capital Improvements. For purposes of the Power Sales Agreement the term "Project" and "Apex Power Project" shall have the same meaning.
64. Project Agreements. The Agency Agreement, the Indentures, the Power Sales Agreement, the Asset Purchase Agreement, the Interconnection Agreement, the Transmission Service Agreements, the Fuel Agreements, the Operating Agreements, the Energy Sales Agreement, other agreements to which SCPPA or the Project Manager is a party relating to the ownership, feasibility or operation of the Project and any other agreements which the Board of Directors and LADWP agree to designate as Project Agreements, as such agreements may be supplemented or amended from time to time.
65. Project Fuel. The natural gas procured or acquired by or on behalf of SCPPA for use in the Facility.
66. Project Manager. LADWP acting as Project Manager, in its capacity as agent for and on behalf of SCPPA under the Agency Agreement or, if the Agency Agreement shall no longer be in force and effect, SCPPA or a designee or designees appointed by SCPPA to assist SCPPA to carry out SCPPA's responsibilities under the Power Sales Agreement.
67. Project Matter. The term "Project Matter" shall have the definition specified in the Joint Powers Agreement.
68. Project Participant. LADWP in its capacity as a Party to the Power Sales Agreement, together with its successors and assigns.
69. Project Rights. All rights and privileges of LADWP under the Power Sales Agreement, including but not limited to its right to Facility Output in accordance with its Output Entitlement, its right to schedule Capacity and/or Energy from the Project, and its right to vote on Project Matters on the Board of Directors.
70. Project Rights and Obligations. All Project Rights and all obligations of LADWP under the Power Sales Agreement.
71. Prudent Utility Practice. Any of the practices, methods and acts, which, in the exercise of reasonable judgment in the light of the facts (including but not limited to the practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry prior thereto) known at the time the decision was made, would have been expected to accomplish the desired result at the lowest reasonable cost consistent with good business practices, reliability, safety and expedition, taking into account the fact that Prudent Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts which could have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition. Prudent Utility Practice includes due regard for manufacturers' warranties and requirements of governmental agencies of competent jurisdiction and shall apply not only to functional parts of

the Project, but also to appropriate structures, landscaping, painting, signs, lighting, other facilities and public relations programs reasonably designed to promote public enjoyment, understanding and acceptance of the Project.

72. Short-Term Sales Agreement. Any agreement for the sale of Facility Output entered into between SCPPA and the purchaser thereof as provided in Section 15.8 of the Power Sales Agreement. The term of a Short-Term Sales Agreement shall not extend beyond the date that is two years from the applicable Initial Payment Default Date.
73. Suspension Period. That period of time beginning with the receipt by SCPPA of the Suspension Request Notice as provided in Section 15.7 of the Power Sales Agreement and ending on the earlier of (i) the date upon which LADWP is in Compliance during the Suspension Period or (ii) two years following the applicable Initial Payment Default Date.
74. Supplementary Services. The services set forth in Section 4.7.4 of the Power Sales Agreement.
75. Suspension Request Notice. The written notice given by LADWP to SCPPA pursuant to Section 15.7 of the Power Sales Agreement.
76. Transmission Service Agreements. The Service Agreement No. 98-A2 (225 MW) for Long-term Firm Point-to-Point Transmission Service effective June 15 2008, by and between Nevada Power Company and SCPPA (as assignee thereof pursuant to the Asset Purchase Agreement) and the Service Agreement No. 99-A2 (275 MW) for Long-term Firm Point-to-Point Transmission Service by and between Nevada Power Company and SCPPA (as assignee thereof pursuant to the Asset Purchase Agreement), in each case as the same may be extended, amended, renewed or supplemented from time to time.
77. Trustee. The bank or other financial institution at the time serving as trustee under the Indentures.
78. Uncontrollable Forces. 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 or entity 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 or entity engaged in work on the Project to obtain or ship materials or equipment because of the effect of similar causes on suppliers or carriers, or inability of SCPPA to sell or issue its Bonds.
79. Zero Net Load. The load upon the Facility when the generation station's gross output equals its General Service Requirements.

## APPENDIX B

### DESCRIPTION OF THE APEX POWER PROJECT INCLUDING INTERCONNECTION AND TRANSMISSION RIGHTS AND INTERESTS

The Facility includes two combustion turbine generators with dry-low oxides of nitrogen, natural gas-fired combustors, and three-phase, synchronous, hydrogen-cooled generators; two heat recovery steam generators with three pressure stages that are equipped with duct firing and power augmentation capabilities; a single-reheat condensing steam turbine generator with a three-phase, synchronous, and hydrogen-cooled generator; and other equipment and facilities ancillary to or associated therewith. The heat recovery steam generators utilize a Selective Catalytic Reduction System to control the formation of oxides of nitrogen. The exhaust from the steam turbine is condensed in an air-cooled condenser.

Generator Interconnection Facilities include plant telemetering outputs, Facility communications, switchyard, control house, and protection relays as described further in the Interconnection Agreement, circuit breakers, three VA Tech generator step-up transformers and all other equipment and facilities associated therewith, up to but not including the isolation air switches on the generator side of the 525 kV generator tie line referred to below.

The Facility is located on approximately ninety (90) acres of land, approximately 30 miles northeast of Las Vegas, Clark County, Nevada. The Facility real properties consist of a fee interest in the land, and various easements and other rights under property agreements, control and administrative buildings, right-of-way and other instruments required for the operation of the Facility.

The Project includes the Interconnection and Transmission Rights and Interests consisting of (i) the rights and interests of SCPPA under the Interconnection Agreement related to the delivery of Facility Energy over the Company Interconnection Facilities of Nevada Power Company, including the 525 kV 3.13 mile generator tie line from the Generator Interconnection Facilities of the Facility to the point of interconnection at the Harry Allen 500 kV Substation, together with associated rights and interests, and (ii) the rights and interests of SCPPA under the Transmission Service Agreements with respect to the delivery of Facility Energy from the Harry Allen 500 kV Substation to the Point of Delivery, together with associated rights and interests.

APPENDIX C

OPINION OF COUNSEL TO THE CITY OF LOS ANGELES  
ACTING BY AND THROUGH ITS DEPARTMENT OF WATER AND POWER

Board of Directors  
Southern California Public Power Authority  
c/o Executive Director  
1160 Nicole Court  
Glendora, CA 91740  
Pasadena, California 91101

[Dated as of the date of the Bond Closing]

Underwriter(s)

Bond Insurer(s) or Bank(s)

Ladies and Gentlemen:

We have acted as counsel to the City of Los Angeles, acting by and through the Department of Water and Power ("LADWP") under the Apex Power Project Power Sales Agreement, dated for convenience as of \_\_\_\_\_ 2013 (the "Power Sales Agreement"), between LADWP and Southern California Public Power Authority ("SCPPA").

We have examined originals or copies of those records and documents we considered appropriate for purposes of this opinion. As to relevant factual matters, we have relied upon, among other things, LADWP's factual representations.

We have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals and the conformity with originals of all documents submitted to us as copies. To the extent LADWP's obligations depend on the enforceability of the Power Sales Agreement against SCPPA, we have assumed that the Power Sales Agreement is enforceable against SCPPA.

From such examination, on the basis of our reliance upon the assumptions in this opinion and our consideration of those questions of law we considered relevant, and subject to the limitations and qualifications in this opinion, we are of the opinion that:

1. LADWP is a municipal corporation organized and existing under the laws of the State of California and authorized under The Los Angeles City Charter to furnish retail electricity within its service area.
2. LADWP is empowered under The Los Angeles City Charter to enter into the Power Sales Agreement and to perform its obligations thereunder.
3. The Power Sales Agreement has been duly authorized, executed and delivered by LADWP and, assuming due authorization, execution and delivery by SCPPA of such Power Sales Agreement, constitutes the legal, valid and binding obligation of LADWP enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization and other similar laws affecting creditors' rights generally and to general principles of equity, to the exercise of judicial

discretion in appropriate cases, and to the limitations on legal remedies against municipal corporations in the State of California.

Certain documents that are ancillary to the Power Sales Agreement may provide that they are to be governed by the laws of the State of Nevada. We express no opinion as to those laws or their applicability to matters covered by this opinion.

Our opinion in paragraph 3 as to enforceability is subject to the unenforceability of provisions waiving a right to a jury trial. Also, a court may refuse to enforce a provision of the Power Sales Agreement if it deems that such provision is in violation of public policy.

We express no opinion with respect to a party's ability to collect attorneys' fees and costs in an action if such party is not the prevailing party in that action (we call your attention to the effect of Section 1717 of the California Civil Code, which provides that where a contract permits one party thereto to recover attorneys' fees, the prevailing party in any action to enforce any provision of the contract shall be entitled to recover its reasonable attorneys' fees).

We express no opinion as to any provision requiring written amendments or waivers insofar as it suggests that oral or other modifications, amendments or waivers could not be effectively agreed upon by the parties or that the doctrine of promissory estoppel might not apply.

It is our opinion that no person, other than SCPPA, has setoff rights against payments due under the Power Sales Agreement from LADWP. We express no opinion with respect to any indemnification, contribution, penalty, choice of law, choice of forum, choice of venue, severability or waiver provisions contained in the Power Sales Agreement.

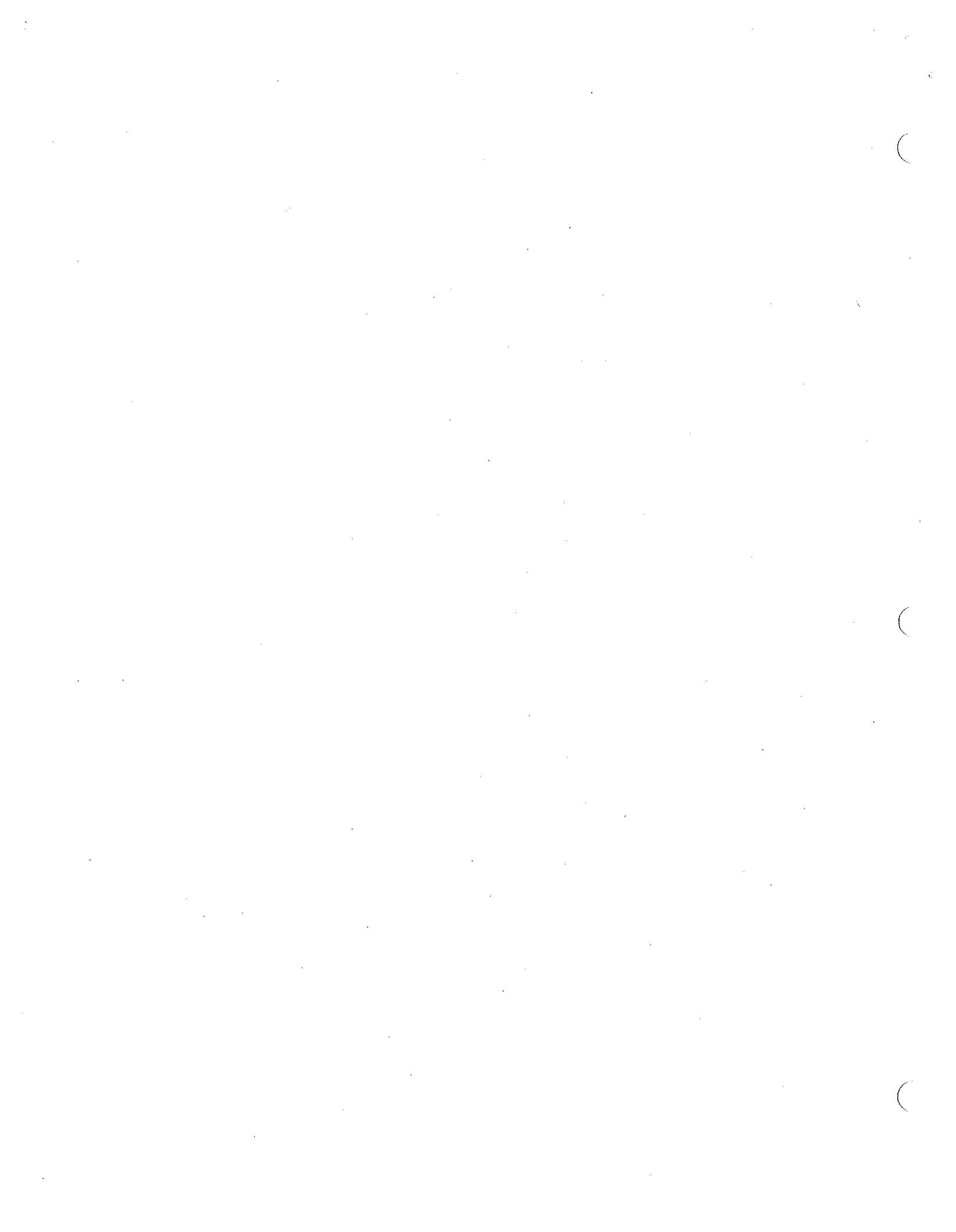
We express no opinion as to any agreement or document referred to in the Power Sales Agreement or incorporated into the Power Sales Agreement by reference, or any agreement other than the Power Sales Agreement itself, or the effect of any such agreement or document on the opinions herein stated.

The opinions expressed are matters of professional judgment and are not a guarantee of result. The law covered by this opinion is limited to the present law of the State of California. We express no opinion as to the laws of any other jurisdiction.

This opinion may be relied upon only by the addressees hereto in connection with the issuance of the Bonds (as described in the Power Sales Agreement). It may not be used or relied upon for any other purpose or by any other person, nor may copies be delivered to any other person, without in each instance our prior written consent, except that this opinion may be included in the closing binder memorializing the Power Sales Agreement.

This opinion is expressly limited to the matters set forth above, and we render no opinion, whether by implication or otherwise, as to any other matters. This letter speaks only as of the date hereof and we assume no obligation to update or supplement this opinion to reflect any facts or circumstances that arise after the date of this opinion that come to our attention, or any future changes in laws. This opinion is given in an official capacity and not personally and no personal liability shall derive herefrom.

Very truly yours,



**APEX POWER 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, AS AGENT**

**Dated as of \_\_\_\_\_, 2013**

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**APPENDICES**

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DEFINITIONS FOR INFORMATIONAL PURPOSES

## APEX POWER PROJECT

### AGENCY AGREEMENT

1. **PARTIES.** This Apex Power Project Agency Agreement (this "Agreement"), dated for convenience as of this day of , 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 corporation and 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 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 as a party to the Power Sales Agreement and the participant in the Apex Power Project may be referred to in this Agreement, as the "Project Participant."
  
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. 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," shall be to Sections 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 nonlimiting 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.

- 2.2 LADWP is a California municipal corporation and utility, created and existing pursuant to the Los Angeles City Charter, which provides electric energy to its citizens through its municipally owned electric system. LADWP is one of the parties to the SCPPA Joint Powers Agreement and is one of the eleven founding member municipalities which formed SCPPA. Since the initial creation of SCPPA pursuant to the Joint Powers Agreement LADWP has acted/[participated?], in part, through SCPPA's Board of Directors to carry out generation, transmission and other projects through SCPPA.
- 2.3 SCPPA was established, designed and brought to fruition principally through the substantial devotion of resources, the creative efforts, and the prescience, foresight and vision of LADWP, in order to create a viable joint powers authority with the objective of representing and carrying forth the common goals, the common aspirations and the common objectives of all municipally owned electric utilities, both large and small, which are situated in Southern California.
- 2.4 Pursuant to the terms of the Act, and its Joint Powers Agreement, SCPPA has the power, for the purpose of promoting, maintaining and operating electric generation and transmission, to plan, develop, contract for, finance, acquire, design, undertake, own, construct, operate and administer projects involving systems, methodologies and programs for the acquisition, supply procurement and delivery of secure, long term reliable supplies of electric power and to cause such projects to be planned, developed, contracted for, financed, acquired, designed, constructed, operated, maintained, and administered and to provide by agreement for the performance and carrying out of any such activities.
- 2.5 In 2012 pursuant to its request for proposals, LADWP received numerous proposals for acquisition of a combined cycle gas-fired electric generating facility and after its technical and economic evaluations LADWP narrowed the list of viable existing in-service combined cycle gas plants.
- 2.6 In 2013 LADWP and SCPPA entered into the Combined Cycle Power Project Planning and Development Agreement providing for SCPPA to establish a study project with LADWP for the purpose of continuing the diligence and planning for the acquisition of an existing combined cycle gas-fired electric generating facility.
- 2.7 Based on the further investigation and diligence conducted under the Combined Cycle Power Project Planning and Development Agreement with SCPPA, LADWP has determined that SCPPA's acquisition of the Apex combined cycle gas-fired electric generating facility would best comply with its technical and economic criteria for the needed base-loaded generating capacity.
- 2.8 LADWP has participated with SCPPA in the negotiation of the Asset Purchase Agreement and related agreements for the acquisition from Las Vegas Power Company of the Apex Power Project. In addition LADWP and SCPPA have carried forth due diligence investigations and plans with respect to providing project financing.
- 2.9 To carry out the purposes and objectives set forth above, SCPPA has entered into the Asset Purchase Agreement with Las Vegas Power Company for the acquisition of the Apex Power Project including related auxiliary facilities.

- 2.10 To meet its need for base-loaded generation LADWP is entering into the Power Sales Agreement with SCPPA to procure a long term supply of the electric generation of the Apex Power Project.
- 2.11 The Power Sales Agreement provides for the Project Manager, as Agent for SCPPA under this Apex Power Project Agency Agreement, to develop, manage, operate, improve, administer and maintain the Apex Power Project, or cause the Apex Power Project to be developed, managed, operated, improved, administered and maintained, in accordance with the Project Agreements.
- 2.12 SCPPA and LADWP desire that the development, management, operation, improvement, administration and maintenance of the Apex Power Project be carried forth through this Apex Power Project Agency Agreement and the Parties intend that these activities, as applicable, be carried out on behalf of SCPPA by LADWP as the Agent pursuant to this Agreement.
- 2.13 As part of the consideration for the purchase by SCPPA of the Apex Power Project, SCPPA is entering into the Energy Sales Agreement (the "Energy Sales Agreement" as defined in Appendix A of the Power Sales Agreement) with Silver State Energy Association..
- 2.14 It is the intention of the Parties, acting through this Apex Power Project Agency Agreement to repose in LADWP the right, power and authority to develop, manage, operate, improve, administer and maintain the Apex Power Project, or cause the Apex Power Project to be developed, managed, operated, improved, administered and maintained, in accordance with the Project Agreements under which LADWP will act as the Agent for SCPPA with respect to activities associated with the Apex Power Project, including the development, management, administration, improvement, operation and maintenance of the Apex Power Project.

3. **AGREEMENT.** For and in consideration of the premises and the mutual covenants and agreements hereinafter set forth, and in order to carry forth the objectives of the Power Sales Agreement and to appoint LADWP as Agent with respect to the Apex Power Project, the Parties agree as herein set forth.

4. **DEFINITIONS.** Appendix A of the Power Sales Agreement (a copy of which for the convenience of the Parties is set forth in Appendix A of this Agency Agreement) sets 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 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 Agreement. Except for the definition of the term "Project", the definitions in Appendix A shall be equally applicable to the Power Sales Agreement and this Agency Agreement. 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 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, in its capacity as agent for and on behalf of SCPPA under this Agreement, including acting in its capacity as Project Manager, and as such agent shall be responsible, in accordance with the terms of this Agreement, for carrying out the Agency Work in its capacity as Agent for and 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 GE Long Term Service Agreement. The Long Term Service Agreement, dated as of June 16, 2004, as amended January 3, 2012, by and between General Electric International, Inc. and SCPPA (as assignee thereof as provided in the Asset Purchase Agreement), as such Agreement may be hereafter further amended or supplemented, together with the related Guaranty issued by General Electric Company.
- 4.7 Operation and Maintenance Agreements. The Wood Group Operation and Maintenance Agreement, the GE Long Term Service Agreement and all other Operating Agreements in connection with the performance of Operating Work.
- 4.8 Project. The Project as defined in the Apex Power Project Power Sales Agreement. The Project shall, among other things, entail the rights, liabilities, interests and obligations of the Project Participant. For purposes of this Agreement the terms "Project" and "Apex Power Project" shall have the same meaning.
- 4.9 Water Agreement. The Water Agreement, dated as of June 5, 2001, among Las Vegas Valley Water District, SCPPA (as assignee of the Las Vegas Power Company), as amended by Amendment No 1, dated November 14, 2005 and by the Consent to Assignment and Amendment No. 2, becoming effective upon the Closing (as defined in the Asset Purchase Agreement), by and among Las Vegas Valley Water District, Las Vegas Power Company and SCPPA and by Silver State Energy Association solely for purposes of Section 3 of such Amendment No. 2, as such Agreement may be hereafter amended.
- 4.10 Wood Group Operation and Maintenance Agreement. The Wood Group Operation and Maintenance Agreement, dated February 12, 2007 and extended February 12, 2013 by and between Wood Group Power Operations (West), Inc. and SCPPA (as assignee thereof as provided in the Asset Purchase Agreement), as amended by the Amendment that becomes effective upon the Closing (as defined in the Asset Purchase Agreement), and as such Agreement may be hereafter amended.

## 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, and agrees to act in the capacity as Agent for and on behalf of SCPPA under this Agreement. LADWP in its capacity as the Agent shall act as Project Manager for the Apex Power Project. Unless this Agreement is otherwise terminated pursuant to Section 18.2 of this Agreement, LADWP shall serve as Agent, including as Project Manager, for the duration of the Power Sales Agreement. Agent shall not have the right to resign and may not be removed as Agent for the Project under this Agreement during the time that the Power Sales Agreement is 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 Procurement. In its procurement actions under this Agreement LADWP may utilize its procurement rules and policies.
- 5.4 Compliance with the Federal Tax Law Requirements. Notwithstanding anything to the contrary in this Agreement, each of SCPPA and LADWP shall take such actions in the administration of the Project and the performance of this Agreement as may be necessary, if applicable, to comply with the Federal Tax Law Requirements on the Bonds, and each shall refrain from taking any action that would adversely affect compliance with the Federal Tax Law Requirements.

6. **RIGHTS, DUTIES AND RESPONSIBILITIES OF SCPPA.** SCPPA shall have the following rights, duties and responsibilities under this Agreement:

- 6.1 General Responsibilities. SCPPA will be responsible for planning, designing, financing, developing, constructing, insuring, contracting for, improving, administering, operating, and maintaining the Project to effectuate the production, transfer, delivery and sale to the Project Participant of Facility Output from the Project.
- 6.2 Adoption of Annual Budget. SCPPA will prepare and submit to the Project Participant a proposed Annual Budget for each Power Supply Year in accordance with Section 5.5 of the Power Sales Agreement. In connection with the preparation of such Annual Budget, SCPPA shall incorporate therein the Operating Budget (including provision for the payment of costs of Capital Improvements which are not to be financed by Bond proceeds) for such Power Supply Year as prepared by the Agent pursuant to this Agreement and reviewed, modified and approved by the Board of Directors.
- 6.3 Billing of Monthly Power Costs. SCPPA shall bill LADWP as the sole Project Participant in the Project for Monthly Power Costs in accordance with Section 7 of the Power Sales Agreement.
- 6.4 Financial Data and Information. SCPPA shall make available or cause to be made available to LADWP both in its capacity as the Project Manager and as the Agent under this Agreement all financial data and information pertaining to the Project.

7. **ACTIVITIES TO BE PERFORMED BY LADWP AS AGENT.** The activities to be performed

by LADWP, as the Agent under this Agreement, shall include the following:

- 7.1 Make Periodic Reports. Make periodic reports to SCPPA and the Project Participant regarding the operation of the Facility, Operating Work, and any relevant operating information including, generation and transmission information, statistical, financial and administrative reports, and other similar reports, records, or information which may be requested by the Board of Directors.
- 7.2 Operating Budget. Preparing and submitting a proposed annual Operating Budget to SCPPA at least four months prior to the beginning of each Power Supply Year; provided, however, the initial Operating Budget shall be prepared, considered, adopted and delivered in the most practical manner available. Each Operating Budget shall be given to the Board of Directors for its review, modification and approval along with all other information necessary for the initial forecasts and schedules for Operating Work and each work-activity category thereof.
- 7.3 Adjustments to Operating Budget. Preparing and submitting to the Board of Directors on the first business day of the second full quarter following the beginning of each Power Supply Year (except such preparation and submittal regarding the initial Operating Budget pursuant to Section 7.2 hereof shall occur the first business day of the second full quarter following the Effective Date) until the completion of Operating Work, for the Board of Directors' review, modification and approval, recommendations concerning:
  - 7.3.1 Any revisions to the annual Operating Budget submitted pursuant to Section 7.2 hereof.
  - 7.3.2 Any revisions to the forecasts and schedules for Operating Work and each work-activity category thereof, and a reconciliation between current updated and most recent forecasts and schedules.
- 7.4 Recommendations. Recommending to the Board of Directors the review, modification and/or approval of the following:
  - 7.4.1 The policies, criteria, and procedures for determining the Maximum Generating Capability, the Minimum Generating Capability and the Available Generating Capability of the Facility, and the General Service Requirements and detailed practices and procedures for operating and maintaining the Project and for the scheduling, controlling and delivery of Available Generating Capability.
  - 7.4.2 The policies for maintaining the spare parts inventory for the Facility and the materials and supplies inventory.
  - 7.4.3 The policies for conducting performance and efficiency testing with respect to the Facility.
  - 7.4.4 The practices and procedures to be followed for starting up and shutting down the Facility.
  - 7.4.5 Capital Improvements and related items as the Agent deems necessary.



- 7.4.6 Written statistical and administrative reports and information and other similar records.
- 7.4.7 The schedules for planned maintenance outages including the policies for selection and utilization of maintenance contractors for contract maintenance included in the budgets with respect to the Facility; in formulating and approving such schedules, consideration shall be given to system conditions which may prevail during such planned maintenance outages.
- 7.4.8 The practices and procedures for scheduling Capacity and Energy.
- 7.4.9 The policies, criteria and procedures for selection and utilization of any contractors and operational consultants with respect to the Facility.
- 7.5 Billings. Provide assistance to SCPPA with respect to the preparation and rendering of billings to the Project Participant in accordance with the terms and provisions of the Power Sales Agreement.
- 7.6 Inform SCPPA. Promptly inform SCPPA regarding significant factors which may affect or have affected Agency Work or SCPPA's interests.
- 7.7 Expend Funds for Agency Costs. Expend moneys for Agency Costs in accordance with this Agreement.
- 7.8 Arrange Services for Agency Work and Operating Work:. Negotiate, arrange for, administer, perform and enforce Operation and Maintenance Agreements and other contracts for furnishing, purchasing, procuring and obtaining from any source (including pursuant to contracts between the Agent and third parties) studies, supplies, engineering services, construction services, legal services, or other services necessary for the performance and completion of Agency Work, Operating 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, Operating 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.
- 7.9 Operation and Maintenance Agreements. Administering, supervising, monitoring, performing and enforcing the Wood Group Operation and Maintenance Agreement, the GE Long Term Service Agreement, the Interconnection Agreement, the Transmission Service Agreements and the Water Agreement, and negotiating, administering, performing and enforcing all other Operating Agreements and all Fuel Agreements and any other Project Agreements on behalf of SCPPA, all of which shall be in compliance with the Power Sales Agreement, this Agreement and the other Project Agreements. Each such agreement may be entered into by the Agent, unless (i) SCPPA shall enter into such agreement as the party thereof pursuant to the Power Sales Agreement or this Agreement, (ii) SCPPA enters into such agreement based on its determination that such agreement relates to the issuance of Bonds, or (iii) the Agent recommends that SCPPA enter into and execute such agreement. In the case of an agreement so recommended for execution by

SCPPA, an authorized officer shall be designated by SCPPA to execute on SCPPA's behalf such agreement recommended by the Agent for execution by SCPPA.

- 7.10 Comply With Laws and Regulations. Comply with any and all laws and regulations applicable to the performance of Agency Work.
- 7.11 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.
- 7.12 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 Power Supply Year, the Agent's estimate of Agency Costs for the Power Supply Year to which such Annual Budget applies.
- 7.13 Assist in Budget Preparation. Assist in the preparation of the Annual Budget, including the provision of information relating to potential Capital Improvements.
- 7.14 Render Requisitions. To the extent required by the Project Agreements or any resolution of the Board of Directors, prepare, execute and file with the Trustee under the Indentures, any requisition or other request for disbursement of funds necessary under the Project Agreements.
- 7.15 Communicate with Trustee. Communicate with the Trustee under the Indentures as requested by SCPPA, or as otherwise necessary in the performance of Agency Work.
- 7.16 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.
- 7.17 Furnish Assistance and Information. Furnish, upon request, to SCPPA any assistance and information reasonably available pertaining to Agency Work and the Project.
- 7.18 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 performance of SCPPA's obligations under this Agreement and under any of the Project Agreements to which SCPPA is a party in such form and amounts as the Board of Directors determines necessary or as Agent may otherwise believe to be appropriate or as may be desirable to protect against potential exposures (but in any event no lesser amount and form of insurance than that specified by the Board of Directors), or as required by law.
- 7.19 Enforcing Claims. Enforcing or causing the enforcement of all claims against contractors, subcontractors and suppliers arising out of Operating Work.
- 7.20 Provide Information Regarding Defaults. Keep SCPPA fully and promptly informed of any default by any party under any of the Project Agreements of which Agent has knowledge.

- 7.21 Project Manager. Providing the services and performing the activities set forth in the Power Sales Agreement or this Agreement to be provided or performed by the Project Manager or Agent.
- 7.22 Services Relating to the Energy Sales Agreement. Provide for and perform services in accordance with Prudent Utility Practice (i) for the purchase by SCPPA of Energy to fulfill SCPPA's obligations for the sale of Energy under the Energy Sales Agreement and (ii) for the sale and delivery of such Energy pursuant to the Energy Sales Agreement, including the following:
- 7.22.1 Identifying, planning, negotiating arranging for or purchasing Energy in the forward markets or from other sources and selling such Energy, all for and on behalf of SCPPA in order to enable SCPPA to carry out its obligations under the Energy Sales Agreement, including procurement of Energy from LADWP's power system determined by LADWP to be available for sale under the Energy Sales Agreement, and arranging, making, entering into, executing and performing agreements therefor.
  - 7.22.2 Determining and negotiating, arranging, entering into, executing and performing contractual arrangements for obtaining transmission rights and services for the delivery of the purchased Energy to the point of delivery under the Energy Sales Agreement.
  - 7.22.3 Scheduling of Energy and transmission services in compliance with applicable protocols and tariffs and with the applicable energy and transmission service agreements, and providing for applicable electronic tagging with respect to deliveries of Energy.
  - 7.22.4 Providing contract administration and management services for the purchase, transmission, sale and delivery by SCPPA of the Energy, including arrangements for the delivery and payment for the purchased Energy and the delivery and invoicing for the Energy sold under the Energy Sales Agreement.
  - 7.22.5 Monitoring and furnishing information and reports as to applicable energy and transmission service contract performance, scheduling of Energy and transmission services, generation and transmission service curtailments and service emergencies.
  - 7.22.6 Provide operational and administrative coordination and interface with Energy providers and purchasers and, as necessary, third parties.
  - 7.22.7 Provide for compliance with energy and transmission service agreements and applicable regulatory requirements with respect to the purchase of Energy and the sale and delivery of such Energy under the Energy Sales Agreement.
  - 7.22.8 Perform and conduct all other services and activities necessary to enable SCPPA to carry out its obligations and responsibilities and to realize the benefits under the Energy Sales Agreement and related agreements.

7.23 Conduct All Other Activities Relating to Agency Work, Operating Work and Supplementary Services. Conduct all other activities deemed necessary to carry forth Agency Work, Operating 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 for labor, services, transportation, studies and other Agency Work, 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 procured in accordance with Section 7.18 related to Agency Work or SCPPA's performance under this Agreement.

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 Agency Work and any other duties and responsibilities under this Agreement.

8.1.4 All costs paid by the Agent for any studies, reports or other documents obtained from the Project Participant, provided that the Project Participant shall not have been reimbursed for such costs.

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 the Power Sales Agreement, resulting from, arising out of or connected with the performance of Agency Work, including negligent or grossly negligent acts or omissions, but excluding willful misconduct of the Agent, its Board of Water and Power Commissioners, its City Council or its respective officers or employees.

8.2 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. Notwithstanding the foregoing, Agent may receive

incidental profit derived from performance of Section 7.22 and the Project Participant may receive profit from the sale of its share of Facility Output to third parties, provided such sales do not conflict with the Indentures or Federal Tax Law Requirements. *[NEED TO DISCUSS: We do not want this provision to prevent LADWP from potential profit on sales of energy to SSEA under the Energy Sales Agreement or potential sales of Energy to other third parties as long as they do not exceed the amounts that must be used within its traditional service area for purposes of keeping the tax exemption on the portion of the Bonds (75%/25% split).]*

- 8.3 Budget and Review Processes. As is the case with similar costs for other projects of SCPA, Agency Costs shall be the subject of SCPA'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 SCPA requests and requisitions for payment of items of Agency Costs incurred or paid. SCPA shall pay or cause to be paid the amount of each such request or requisition within 30 days after its receipt thereof. Each such request or requisition shall conform to the requirements of the Indentures or any other borrowing instrument entered into by SCPA from time to time, to the extent the funds to pay such request or requisition are to be paid from funds held under the Indentures such instrument. At such reasonable times as shall be requested by SCPA, the books and cost records of the Agent relevant to Agency Costs shall be subject to audit by or on behalf of SCPA.
- 9.2 Disputed Invoices. In case any portion of any invoice received by SCPA from Agent shall be in bona fide dispute, SCPA 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 SCPA by Agent after such determination; provided, however, that such interest shall not accrue on any overpayment that is acknowledged by Agent and returned to SCPA by the fifth calendar day 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 SCPA with regard to Agent's position relative thereto within 30 days following receipt of written notification by SCPA of such dispute.

## 10. LIABILITY.

- 10.1 No Liability of SCPA or Agent, Their Directors, Officers, Etc.; SCPA and Agent's Directors, Officers, Employees, Not Individually Liable. Both Parties agree that neither SCPA nor the Agent (including LADWP in its capacity as Project Manager), nor any of their past, present or future directors, officers, employees, board members, agents, attorneys or advisors (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, fines, 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) suffered by any Released Party as a result of the action or inaction or performance or non-performance by any of the Released Parties under this Agreement or any Project Agreement (excluding grossly negligent acts or omissions and willful misconduct which, unless otherwise agreed by the Parties, is to be determined and established by a court of competent jurisdiction in a final, nonappealable 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 grossly negligent acts or omissions or willful misconduct which, unless otherwise agreed by the Parties, is to be determined and established by a court of competent jurisdiction in a final, nonappealable order). Notwithstanding the foregoing, no such action or inaction or performance or non-performance by 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 or any other Project Agreement. The provisions of this Section 10.1 shall not be construed so as to relieve the Agent from any obligation under this Agreement or any other applicable Project Agreement. It is also hereby recognized and agreed that no member of the Board of Directors, the Agent nor their officers, employees, board members, agents, attorneys or advisors shall be individually liable in respect of any undertakings by any of the Released Parties under this Agreement or any Project 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. 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 No General Liability of SCPPA. 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. 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 under the Indentures, the SCPPA Joint Powers Agreement, the Power Sales Agreement or as provided for in this Agreement.
- 10.5 No Warranty for Agent Services. All services provided by Agent are provided on an "as is" basis. Agent disclaims all warranties, express or implied, statutory or otherwise, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

## 11. ALTERNATIVE DISPUTE RESOLUTION.

- 11.1 Nonbinding 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 this Section 11 before initiating any other type of legal action.
- 11.2 Role of the SCPPA Board; Nonbinding Mediation Procedure. If a dispute arises between the Parties under this Agreement, 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 the 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. The term "uncontrollable force" shall be any cause beyond the control of the Party affected, including but not limited to failure of or threat of failure of facilities, flood, earthquake, tornado, storm, fire, lightning, epidemic, war, terrorism, riot, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority, and action or non-action by, or inability to obtain the necessary authorizations or approvals from, any governmental agency or authority, which by exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome. 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 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.
- 15.2 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. LADWP in its capacity as Agent (including its capacity as Project Manager) under this Agreement, shall be entitled to indemnification from SCPPA as set forth herein. SCPPA shall, to the extent permitted by law, indemnify and hold harmless Agent, its Board of Water and Power Commissioners, its City Council, officers, employees, agents, attorneys and advisors, past, present or future when acting for Agent (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 LADWP, SCPPA or third persons) (collectively, "Losses") arising by reason of any actions, inactions, errors or omissions incident to the performance of this Agreement (including negligent or grossly negligent acts or omissions and excluding willful misconduct which, unless otherwise agreed by the Parties, is to be determined and established by a court of competent jurisdiction in a final, nonappealable 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 the Los Angeles City Attorney's Office shall approve the selection of counsel, and Agent shall further approve any settlement or disposition, such approval not to be unreasonably withheld. For the avoidance of doubt, all payments as and for indemnification by SCPPA under this Section 16.1, together with any other amount payable by SCPPA under this Section 16.1, shall constitute costs of SCPPA under this Agreement.
- 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 the obligation of LADWP, as the Project Participant, to make any payment or to pay any cost required of it under the Power Sales Agreement.
- 16.3 Separate Legal Capacities. The Parties acknowledge that LADWP, as Agent under and a Party to this Agreement, acts in a legal capacity that is separate from its capacity as the Project Participant under the Power Sales Agreement. Accordingly, for purposes of this Agreement, the rights, entitlements, obligations and liabilities of LADWP, as Agent and a Party to 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 as the Project Participant under the Power Sales Agreement.



17. **GOVERNING LAW.** This Agreement was made and entered into in the City of Los Angeles and shall be governed by, interpreted and enforced in accordance with the laws of the State of California, without regard to conflict of law principles.
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 between the SCPPA and LADWP shall have been entered into and is in effect. (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 Agreement and any extensions or replacement thereof; provided, however, that this Agreement may be terminated by either Party upon not less than three years prior written notice to the other Party, provided that no such termination shall become effective so long as the Power Sales Agreement shall be in effect. Payment obligations of the Parties hereunder shall survive any termination of this Agreement until satisfied.
19. **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.
20. **VENUE.** 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.
21. **NO 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 understand 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 Agreement.
22. **REPRESENTATION AND NOTICES.** The parties acknowledge that each party was represented by counsel in the negotiation and execution of this Agreement. 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  
Executive Director,  
1160 Nicole Court  
Glendora, CA 91740

City of Los Angeles acting by and through the Department of Water and Power  
General Manager  
RE: Power System Contracts

111 North Hope Street  
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.

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: \_\_\_\_\_

Attest: \_\_\_\_\_

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

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

By: \_\_\_\_\_

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

APPROVED AS TO FORM AND LEGALITY  
MICHAEL N. FEUER, CITY ATTORNEY

OCT 31 2013

BY: \_\_\_\_\_  
TIMOTHY J. CHUNG  
DEPUTY CITY ATTORNEY

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

APPENDIX A  
APEX POWER PROJECT  
DEFINITIONS

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

1. Acquisition. The procurement of those resources, contracts, rights, benefits, entitlements and arrangements as may be necessary, desirable or appropriate to the Project to further SCPPA's and LADWP's goals and those associated administrative structures and services procured, retained or acquired on behalf of LADWP as part of the Project and which have been approved by the Board of Directors. Acquisition includes, without limitation, the procurement of such assets, resources or services on behalf of the Project as shall be found to be appropriate by the Board of Directors and, as applicable, associated financings, and all rights and entitlements associated with the acquisition, development and implementation of the Project.
2. Agency Agreement. The agreement entitled Apex Power Project Agency Agreement dated as of \_\_\_\_\_ 2013 and entered into by and between SCPPA and LADWP under which LADWP will develop, manage, operate, administer and maintain the Project, or cause the Project to be developed, managed, operated, administered and maintained, in accordance with the Project Agreements and under which LADWP will act in its capacity as the agent of SCPPA in the development, management, administration, operation and maintenance of the Project.
3. Agency Costs. The Agency Costs as defined in Section 4.1 of the Agency Agreement.
4. Asset Purchase Agreement. The Asset Purchase Agreement, dated as of October 17 2013, by and between Las Vegas Power Company, LLC and SCPPA.
5. Annual Budget. The budget adopted by SCPPA pursuant to Section 5.4 of this Power Sales Agreement not less than 30 days nor more than 45 days prior to the beginning of each Power Supply Year, including any revisions, modifications or amendments thereto.
6. Available Generating Capability. The capability at any time of the Facility to deliver Energy at the Point of Delivery less allocated General Service Requirements, subject to operating limitations required by law or regulatory permit or license.
7. 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 Apex Power Project Annual Budget and shall show for such Month the amount to be paid to SCPPA by LADWP in accordance with the provisions of Section 7 of the Power Sales Agreement.
8. Board of Directors. "Board of Directors" means the Board of Directors of SCPPA.

9. Bondholder. Any person who shall be the registered or beneficial owner of any Bond or Bonds.
10. Bonds. The bonds, notes or other evidences of indebtedness issued by SCPPA and outstanding pursuant to the provisions of the Indentures to finance or refinance the Cost of Acquisition of the Project. The term "Bonds" shall be inclusive of all bonds, notes, certificates of participation, commercial paper or other evidences of indebtedness (whether or not the interest thereon is exempt from taxation) issued or incurred by SCPPA and outstanding pursuant to the provisions of the Indentures to finance or refinance the Cost of Acquisition of the Project. Bonds shall include but not be limited to any bond anticipation notes, any bridge loan bonds, any draw down bonds, the bonds, notes, certificates of participation, commercial paper or other evidences of indebtedness issued or incurred by SCPPA to redeem or refund any bond anticipation notes, bridge loan bonds or draw down bonds, and any and all other obligations which SCPPA issues or incurs relating to the Apex Power Project. Bonds shall also include any additional Bonds and subordinate bonds issued or incurred pursuant to the provisions of Section 13 of the Power Sales Agreement as well as any refunding Bonds issued pursuant to the provisions of Sections 13 of the Power Sales Agreement. Bonds may constitute categories of bonds eligible for certain tax benefits under the Internal Revenue Code, including but not limited to tax-exempt bonds, tax credit bonds, or qualified bonds under the Internal Revenue Code.
11. CAMD means the Clean Air Markets Division of the United States Environmental Protection Agency, or any similarly functioning successor agency.
12. Capacity. The ability or potential to generate, produce or transfer electricity, expressed in kilowatts ("kW") or megawatts ("MW"), including ancillary services or other valuable non-energy products or services from a generating station.
13. Capacity Rights. means the rights during the term of the Power Sales Agreement, to capacity, resource adequacy, associated attributes and/or reserves or any of the foregoing associated with the electric generating capability of the Facility, including the right to resell such rights.
14. Capital Improvements. Any unit of property (as generally prescribed by the FERC Accounts), property right, land or land right which is a replacement, repair, addition, improvement or betterment to the Project or for the benefit of the Project, including any transmission facilities, and the betterment of land or land rights or the enlargement or betterment of any such unit of property constituting a part of the Project which is (i) consistent with Prudent Utility Practice and determined necessary and/or desirable by the Board of Directors and in accordance with the Agency Agreement or (ii) required by any governmental agency having jurisdiction over the Project and approved by the Board of Directors.
15. Company Interconnection Facilities. The "Company Interconnection Facilities" as defined in the Interconnection Agreement.
16. Compliance. During the Cure Period, LADWP shall be in compliance with its payment obligations under the Power Sales Agreement if it no later than the first day

of the Cure Period (or such later date that the Default Invoice is received by LADWP): (i) pays each monthly Billing Statement when due issued during the Cure Period; and (ii) pays at least 1/3 of the deficiency (determined on an aggregate basis for the three Default Invoices due during the Cure Period) it caused to the operating reserve account and the debt service reserve account(s) of the applicable Indenture with each monthly Default Invoice payment during the Cure Period, including late payment interest assessed by SCPPA in accordance with the Power Sales Agreement. During the Suspension Period, LADWP shall be in Compliance with its payment obligations under the Power Sales Agreement if (i) it has paid each monthly Billing Statement and each Default Invoice, including late payment interest assessed by SCPPA in accordance with the Power Sales Agreement and (ii) no Short-Term Sales Agreement is in effect (other than any Short-Term Sales Agreement with LADWP, the payment of which is current).

17. Cost of Acquisition. The Cost Acquisition as defined in Section 4.1 of the Power Sales Agreement.
18. Cost Report. An after-the-fact report by work activity categories of the actual costs of Operating Work.
19. Cure Period. That period of time beginning on the 25th day of the second Month following the Initial Payment Default Date and ending on the 25th day of the fifth Month following the Initial Payment Default Date.
20. Cured Payment Default. With respect to LADWP's Payment Default(s) that occurred within the applicable Payment Default Period, LADWP shall have (i) paid each monthly Billing Statement when due during the Cure Period and (ii) at the same time as the payment of each Monthly Billing Statement during the Cure Period, paid at least 1/3 of the deficiency (determined on an aggregate basis for the cumulative amount of all Default Invoices due during the Cure Period) to the extent such deficiency caused reductions in the operating reserve account and the debt service reserve account(s) under the applicable Indenture with each monthly Default Invoice payment during the Cure Period, including late payment interest assessed by SCPPA in accordance with the Power Sales Agreement; provided, however, if at any time during the Cure Period LADWP is in Compliance and, in addition, pays in full the aggregate remaining amount due as set forth in the Default Invoice, then the requirements of a Cured Payment Default shall be deemed to have been satisfied as of the date of receipt of such payment by SCPPA and the Cure Period shall expire.
21. Debt Service. "Debt Service" shall have the meaning ascribed thereto in the Indentures.
22. Default Invoice. Prior to the Suspension Period, an invoice during the Payment Default Period and the Cure Period issued to LADWP concurrently with its Monthly Billing Statement, 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. During the Suspension Period, an invoice issued to a LADWP,

concurrently with its Monthly Billing Statement, that includes the total defaulted amount owed, including late payment interest.

23. Energy. The accumulated amount of electricity produced over a stated time interval, expressed in kilowatt hours ("kWh") or megawatt hours ("MWh").
24. Energy Sales Agreement. The Energy Sales Agreement, between SCPPA and Silver State Energy Association, becoming effective upon the Closing (as defined in the Asset Purchase Agreement), as such Agreement may be hereafter amended.
25. Executive Director. The Executive Director of Southern California Public Power Authority.
26. Facility. The Apex Generating Facility as described in Appendix B, including the Generator Interconnection Facilities, along with such Capital Improvements as may be added thereto from time to time.
27. Facility Output. The output of the Facility, including all rights, and other tangible or intangible benefits derived from the Facility, including without limitation all Energy, Capacity Rights and when and if applicable, Other Generation Attributes.
28. Federal Tax Law Requirements. "Federal Tax Law Requirements" shall mean, with respect to the issuer of Bonds, any and all requirements and limitations to which any specified type or category of Bonds are subject under the Internal Revenue Code or related Treasury regulations in order that such specified Bonds initially qualify and maintain qualification as that type or category of Bonds.
29. FERC. The Federal Energy Regulatory Commission or its successor.
30. FERC Uniform System of Accounts. The "Uniform Systems of Accounts prescribed for Class A and B Public Utilities and Licensees" as prescribed and, from time to time, as amended or modified or substitution therefor made by FERC, whether or not SCPPA is subject to FERC jurisdiction.
31. 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 Board of Directors.
32. Fuel Agreement. Any agreement for the purchase, transportation, disposition, management and storage of fuel used in the production of Energy by the Project.
33. Fuel Expense. The type of fuel-related costs referenced in FERC Account 501 (Fuel).
34. Fund or Funds. Any fund or account created under the Indenture.
35. General Service Requirements. The Capacity and Energy required for operation of the generating unit auxiliaries and other equipment and systems used or required at the Facility in connection with the operation and maintenance of the Facility.



36. Generator Interconnection Facilities. The equipment and facilities of the Facility described as Generator Interconnection Facilities in Appendix B of this Agreement.
37. Governmental Authority. "Governmental Authority" means any Federal, state, regional, city, or local government, any intergovernmental association or political subdivision thereof, or other governmental, regulatory or administrative agency, court, commission, administration, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority, or any Person acting as a delegate or agent of any such entity.
38. Indenture Costs. "Indenture Costs" shall have the meaning set forth in Section 4.5 of the Power Sales Agreement.
39. Indentures. The indentures of trust, trust agreements and other similar agreements with respect to the Bonds, between SCPPA and the Trustee, as from time to time amended and supplemented in conformity with their provisions. Indentures shall include, but not be limited to, any and all indentures in connection with any bridge loans, bond anticipation notes or other notes, or draw down bonds or with respect to any other type of bonds, and the indentures of trust, trust agreements or other similar agreements entered into between SCPPA and the Trustee to effect the redemption or refunding of any bridge loans, bond anticipation notes or other notes, draw down bonds or other bonds, as from time to time amended and supplemented in conformity with their provisions and the provisions of the Power Sales Agreement.
40. 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.
41. Interconnection Agreement. The Interconnection and Operation Agreement, dated July 1, 2001 between Nevada Power Company and SCPPA (as assignee thereof pursuant to the Asset Purchase Agreement) for interconnection of the Facility with the Harry Allen 500 kV Substation, as such Interconnection and Operation Agreement may be amended or supplemented.
42. Interconnection and Transmission Rights and Interests. The Interconnection and Transmission Rights and Interests of the Project, as described in Appendix B of this Agreement.
43. Internal Revenue Code. The Internal Revenue Code of 1986, as amended.
44. Joint Powers Agreement. The "Southern California Public Power Authority Joint Powers Agreement" dated as of November 1, 1980, as amended and modified, entered into pursuant to the provisions of the Act, between SCPPA and its members.
45. Maximum Generating Capability. The maximum net capability of the Facility to produce Energy, determined at the Point of Delivery, for sustained periods under conditions existing from time to time.

46. Minimum Generating Capability. The lowest net capability of the Facility to produce Energy, determined at the Point of Delivery, at which the Facility can be maintained in service reliably on a continuous basis under automatic control.
47. Month. A calendar month.
48. Monthly Power Costs. The Monthly Power Costs as specified in Section 4 and Section 7 of the Power Sales Agreement. For avoidance of doubt "Apex Power Project Monthly Power Costs" and "Monthly Power Costs" shall have the same meaning.
49. Operating Agreement. Any agreement made in connection with the performance of Operating Work, as it may be amended or supplemented from time to time.
50. Operating Budget. The operating budget approved by the Board of Directors, which shall show a detailed estimate of all Project operating costs, including a fuel budget, and all revenues, income or other funds to be applied to such operating costs, for and applicable to a Power Supply Year.
51. Operating Work. All work and activities in connection with the operation and maintenance of the Project, including without limitation all engineering, negotiating and administering contracts, planning, mitigating impacts, purchasing, repairing, maintaining, environmental monitoring, inspection, quality control, testing and start-up activities, recruitment and training of operating personnel, load dispatching and scheduling activities, supervising, expediting, budgeting, insuring, accounting, protecting, operating and managing activities, public information services and services of consultants and legal counsel, renewals, replacements, reconstruction, and Capital Improvements, and activities related to securing requisite permits, licenses, approvals and certificates from governmental agencies or regulatory authorities.
52. Other Generation Attributes. To the extent applicable to the Project, any and all current or future fuel, emissions, air quality, or other environmental characteristics, credits, benefits, reductions, offsets, or allowances, howsoever entitled, named, registered, created, measured, allocated, validated, hereafter recognized or deemed of value, by applicable law, regulation, or voluntary program of any Governmental Authority or other Person resulting from the use of generation or the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water attributable to the Facility during the term of the Power Sales Agreement or the generation, purchase, sale, or use of energy from or by the Facility during the term of the Power Sales Agreement, that are now or hereafter deemed of value by Participant, and include without limitation any of the same arising out of legislation or regulation concerned with oxides of nitrogen, sulfur, carbon, or any other greenhouse gas or chemical compound, with particulate matter, soot, or mercury, or implementing the United Nations Framework Convention on Climate Change (the "UNFCCC"), the Kyoto Protocol to the UNFCCC, or any similar international, federal, state or local program or crediting "early action" with a view thereto, or laws or regulations involving or administered by the CAMD, and all other rights to report ownership of those generation attributes set forth above to any Person, including all evidences (if

any) thereof, to the extent that Other Generation Attributes may be treated as separate from the Energy and Capacity Rights produced from the Facility.

53. Output Costs. For any Power Supply Year, the costs, other than financing and refinancing costs, associated with the Project.
54. Output Entitlement. The entitlement of LADWP to the Facility Output in any Power Supply Year which entitlement shall be equal to all Facility Output. LADWP's Output Entitlement shall equal one hundred percent (100%) of all such Facility Output associated with the Project.
55. Payment Default. A failure by LADWP to pay when due all of its Billing Statement for any Month.
56. Payment Default Period. That period of time beginning on the Initial Payment Default Date and ending on the 24th day of the second Month following the Initial Payment Default Date.
57. Person. "Person" means any individual, corporation, partnership, joint venture, limited liability company, association, joint stock company, trust, unincorporated organization, entity, public agency, government or other political subdivision.
58. Planning and Development Agreement. The Combined Cycle Power Project Planning and Development Agreement between the City of Los Angeles acting by and through its Department of Water and Power and SCPPA, dated as of 2013, as it may be amended or supplemented from time to time.
59. Point of Delivery. The Mead 230 kV Substation or such other point of delivery as determined by the Parties.
60. Power Sales Agreement. The Power Sales Agreement as defined in Section 4 of the Apex Power Project Power Sales Agreement.
61. Power Supply Year. The Fiscal Year, except that the first Power Supply Year shall begin on the Effective Date..
62. Project. The Facility and the Interconnection and Transmission Rights and Interests as described in Appendix B of the Power Sales Agreement, (entitled "Description of the Apex Power Project Including Interconnection and Transmission Rights and Interests"), as amended from time to time and shall include Capital Improvements. For purposes of the Power Sales Agreement the term "Project" and "Apex Power Project" shall have the same meaning.
63. Project Agreements. The Agency Agreement, the Indentures, the Power Sales Agreement, the Asset Purchase Agreement, the Interconnection Agreement, the Transmission Service Agreements, the Fuel Agreements, the Operating Agreements, the Energy Sales Agreement, other agreements to which SCPPA or the Project Manager is a party relating to the ownership, feasibility or operation of the Project and any other agreements which the Board of Directors and LADWP agree to

designate as Project Agreements, as such agreements may be supplemented or amended from time to time.

64. Project Manager. LADWP acting as Project Manager, in its capacity as agent for and on behalf of SCPPA under the Agency Agreement or, if the Agency Agreement shall no longer be in force and effect, SCPPA or a designee or designees appointed by SCPPA to assist SCPPA to carry out SCPPA's responsibilities under the Power Sales Agreement.
65. Project Matter. The term "Project Matter" shall have the definition specified in the Joint Powers Agreement.
66. Project Participant. LADWP in its capacity as a Party to the Power Sales Agreement, together with its successors and assigns.
67. Project Rights. All rights and privileges of LADWP under the Power Sales Agreement, including but not limited to its right to Facility Output in accordance with its Output Entitlement, its right to schedule Capacity and/or Energy from the Project, and its right to vote on Project Matters on the Board of Directors.
68. Project Rights and Obligations. All Project Rights and all obligations of LADWP under the Power Sales Agreement.
69. Prudent Utility Practice. Any of the practices, methods and acts, which, in the exercise of reasonable judgment in the light of the facts (including but not limited to the practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry prior thereto) known at the time the decision was made, would have been expected to accomplish the desired result at the lowest reasonable cost consistent with good business practices, reliability, safety and expedition, taking into account the fact that Prudent Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts which could have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition. Prudent Utility Practice includes due regard for manufacturers' warranties and requirements of governmental agencies of competent jurisdiction and shall apply not only to functional parts of the Project, but also to appropriate structures, landscaping, painting, signs, lighting, other facilities and public relations programs reasonably designed to promote public enjoyment, understanding and acceptance of the Project.
70. Short-Term Sales Agreement. Any agreement for the sale of Facility Output entered into between SCPPA and the purchaser thereof as provided in Section 15.8 of the Power Sales Agreement. The term of a Short Term Sales Agreement shall not extend beyond the date that is two years from the applicable Initial Payment Default Date.
71. Suspension Period. That period of time beginning with the receipt by SCPPA of the Suspension Request Notice as provided in Section 15.7 of the Power Sales Agreement and ending on the earlier of (i) the date upon which LADWP is in

Compliance during the Suspension Period or (ii) two years following the applicable Initial Payment Default Date.

72. Supplementary Services. The services set forth in Section 4.7.4 of the Power Sales Agreement.
73. Suspension Request Notice. The written notice given by LADWP to SCPPA pursuant to Section 15.7 of the Power Sales Agreement.
74. Transmission Service Agreements. The Service Agreement No. 98-A2 (225 MW) for Long-term Firm Point-to-Point Transmission Service effective June 15 2008, by and between Nevada Power Company and SCPPA (as assignee thereof pursuant to the Asset Purchase Agreement) and the Service Agreement No. 99-A2 (275 MW) for Long-term Firm Point-to-Point Transmission Service by and between Nevada Power Company and SCPPA (as assignee thereof pursuant to the Asset Purchase Agreement), in each case as the same may be extended, amended, renewed or supplemented from time to time.
75. Trustee. The bank or other financial institution at the time serving as trustee under the Indentures.
76. Uncontrollable Forces. 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 or entity 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 or entity engaged in work on the Project to obtain or ship materials or equipment because of the effect of similar causes on suppliers or carriers, or inability of SCPPA to sell or issue its Bonds.
77. Zero Net Load. The load upon the Facility when the generation station's gross output equals its General Service Requirements.

