

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

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

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

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

WHEREAS, the Board approved the SCPPA Phase II Renewable Development Agreement under Resolution No. 013-049, which continued to authorize LADWP to participate with other members of SCPPA for the purpose of investigating and performing due diligence on potential new eligible renewable energy resource options; and

WHEREAS, SCPPA, pursuant to the needs of its members, under the Phase II Renewable Development Agreement, issued a Request for Proposal (RFP), a competitive process, for the purchase and/or acquisition of eligible renewable energy resources; and

WHEREAS, SCPPA received over 90 responses to its RFP, which included the Don A. Campbell 2 Geothermal Energy Project (DAC2), proposing the sale of 16.2 megawatts (MW) of renewable energy from geothermal power generating facilities to be developed and constructed in Mineral County; Nevada; and

WHEREAS, DAC2, which is owned by ORNI 37, LLC (ORNI 37) a wholly-owned subsidiary of Ormat Nevada, Inc., was selected to provide renewable energy from geothermal power generating facilities to SCPPA for the benefit of LADWP; and

WHEREAS, SCPPA and ORNI 37 plan to enter into a Power Purchase Agreement (PPA) for SCPPA to purchase all of the energy, environmental attributes and generating capacity rights from the 16.2 MW DAC2 Project for a 20-year term; and

WHEREAS, the DAC2 Power Sales Agreement (PSA) No. BP 14-032 sets forth mutual covenants and agreements between LADWP and SCPPA for LADWP's acquisition of 16.2 MW of the metered output, associated environmental attributes, and generating capacity rights associated with DAC2; and

WHEREAS, the DAC2 Agency Agreement (AA) No. BP 14-033 provides for the designation of LADWP as the project manager to administer and manage DAC2 for and on behalf of SCPPA, and sets forth mutual covenants and agreements between SCPPA and LADWP in order to enable SCPPA to carry out activities necessary for administration of DAC2 on behalf of LADWP; and

WHEREAS, DAC2 is an expansion of the Wild Rose Geothermal Project, subsequently renamed Don A. Campbell 1 (DAC1), which has been delivering 13.71 MW to LADWP since December 6, 2013, where SCPPA buys 16.2 MW from ORNI 47 LLC (ORNI 47), owner of the DAC1 Project, and sells the power to LADWP and the City of Burbank pursuant to DAC1 PPA which transaction was authorized by the Los Angeles City Council (City Council), by ordinance, on April 3, 2013; and

WHEREAS, to construct the new DAC2 Project, ORNI 37 will develop new facilities as well as share existing sites, geothermal resource, rights and interests in the right of way and transmission and interconnection facilities with DAC1.

NOW, THEREFORE, BE IT RESOLVED that PSA No. BP 14-032 and AA No. BP 14-033 by and between LADWP and SCPPA, now on file with the Secretary of the Board and approved as to form and legality by the City Attorney, be and the same are hereby approved.

BE IT FURTHER RESOLVED that the Board requests that pursuant to Los Angeles City Charter Section 101 and 674, the City Council approve, by ordinance, PSA No. BP 14-032 and AA No. BP 14-033 and the Board is authorized to act on and approve all future amendments to PSA No. BP 14-032 and AA No. BP 14-033, provided that such amendments are ministerial and administrative in nature and do not increase the costs or extend the term of the agreements, without further approved by the City Council.

BE IT FURTHER RESOLVED that the Board shall review and act on material matters to be decided by LADWP as Project Manager pursuant to PSA No. BP 14-032 and AA No. BP 14-033.

BE IT FURTHER RESOLVED that the energy and environmental attributes acquired from PSA No. BP 14-032 shall be credited towards LADWP's RPS Policy compliance requirements.

BE IT FURTHER RESOLVED that the President or the Vice President of this Board, or General Manager, or such person as the General Manager shall designate in writing, and the Secretary, Assistant Secretary, or the Acting Secretary of the Board, are hereby authorized and directed to execute PSA No. BP 14-032 and AA No. BP 14-033 for and on behalf of LADWP, upon approval by the City Council by ordinance.

BE IT FURTHER RESOLVED that the Chief Accounting Employee of LADWP, upon proper certification, is authorized and directed to draw demands on the Power Revenue Fund, in payment of the obligations arising under PSA No. BP 14-032 and AA No. BP 14-033.

I HEREBY CERTIFY that the foregoing is a full, true, and correct copy of the resolution adopted by the Board of Water and Power Commissioners of the City of Los Angeles at its meeting held FEB 03 2015

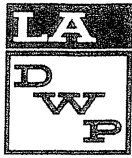

Secretary

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

DEC 18 2014

BY


VAUGHN MINASSIAN
DEPUTY CITY ATTORNEY



BOARD LETTER APPROVAL

RANDY S. HOWARD
Senior Assistant General Manager
Power System

MARCIE L. EDWARDS
General Manager

DATE: January 22, 2015

SUBJECT: Don A. Campbell 2 Geothermal Energy Project (DAC 2 Project), Power Sales Agreement (PSA) No. BP 14-032 and Agency Agreement (AA) No. BP 14-033 between the Los Angeles Department of Water and Power (LADWP) and Southern California Public Power Authority (SCPPA)

SUMMARY

Approval of PSA No. BP 14-032 and AA No. BP 14-033, between LADWP and SCPPA, is required for LADWP to acquire 16.2 megawatt (MW) of renewable energy from geothermal resources. The PSA authorizes SCPPA to enter into a Power Purchase Agreement (PPA) with ORNI 37 LLC, seller and developer (ORNI 37 and/or Seller) of the proposed DAC2 Project, in Mineral County, Nevada, to purchase power from the Seller, and to sell it to LADWP at \$81.25 per megawatt-hour (MWh) fixed, beginning December 31, 2016, for 20 years. The AA provides for the designation of LADWP as the Project Manager to administer the Project for and on behalf of SCPPA.

The DAC2 Project would be constructed as an expansion phase of the Don A. Campbell 1 Geothermal Energy Project, formerly known as the Wild Rose Geothermal Energy Project (DAC1 Project) which began commercial operation on December 6, 2013, and presently delivers 13.71 MW of energy to LADWP. The energy and environmental attributes from DAC2 Project will be delivered to Mead 230-Kilovolt (kV) and Crystal 500-kV Substations which are directly connected to LADWP's transmission system.

To obtain authorization to apply the energy and environmental attributes received under the PSA towards the state mandated compliance requirements of LADWP's Renewables Portfolio Standard Policy and Enforcement Program (RPS Policy).

Los Angeles City Council (City Council) approval is required by ordinance pursuant to Los Angeles City Charter (Charter) Section 674.

RECOMMENDATION

It is recommended that the Board of Water and Power Commissioners (Board) adopt the attached Resolution recommending City Council approval, by Ordinance, of PSA

No. BP 14-032 to purchase 16.2 MW of geothermal energy and AA No. BP 14-033 for project management services with SCPPA per Charter Section 674.

ALTERNATIVES CONSIDERED

On February 1, 2014, SCPPA issued a Request for Proposal (RFP) for Renewable Energy and Energy Storage Projects and received over 90 proposals; 11 of them were from geothermal developers. The DAC2 Project was selected for the following reasons:

- Lowest Price, including energy and transmission cost to Point of Delivery (POD)
- Project location fits in LADWP's long-term coal replacement strategy
- Baseload energy with insignificant integration cost and high capacity factor
- POD is within LADWP's Balancing Authority with available transmission capacity
- Continuity and expansion of a plant already in service
- Experienced developer

Proposed energy would contribute approximately 1.67 percent towards LADWP's 2020 RPS mandates.

Alternatives considered to the DAC2 Project included other geothermal projects which would be more expensive and the intermittent resources projects such as solar or wind which would require significant integration cost into the LADWP grid. Consequently, LADWP would need to start negotiations with another developer for renewable energy that may not meet the criteria mentioned above and could potentially be at less favorable terms.

FINANCIAL INFORMATION

The PPA has the following terms:

- Generation Capacity: 16.2 MW
- Capacity Factor: 95 percent
- Fixed Energy Price: \$81.25 per MWh with no annual escalation

The total energy received from the DAC2 Project is approximately 130,000 MWh annually. The estimated average cost for this energy is expected to be approximately \$11 million annually and \$219 million over the 20-year term. There is no purchase option of the DAC2 Project associated with this PPA.

The funds will be used to purchase renewable energy and environmental attributes as part of LADWP's RPS Policy.

Funding is budgeted in Power Revenue Fund's Fuel and Purchased Power budget. The project is expected to have a potential average rate impact of 0.02 cents per Kilowatt hour (kWh) through 2030 compared to the projected average cost of natural gas energy generation. Ratepayers will benefit with the use of geothermal renewable energy that reduces fossil fuel consumption and emissions.

BACKGROUND

LADWP's electric generation can be separated into three basic categories: base, intermediate and peak load units. Base load units derive their energy from operating generation stations on a constant, 24 hours a day, 7 days a week basis, that historically is needed to supply LADWP customers a majority of the time. Intermediate load units are utilized to satisfy periodic energy demand fluctuations. Peak load units are utilized to address short-term seasonal or emergency needs. Unlike the intermittent resources, such as wind and solar, which require significant system integration, base load resources such as geothermal, incur insignificant integration cost.

The DAC2 Project provides a reliable, sustainable, base load renewable energy which will be utilized in the same manner as the base energy generation which is an important part of the long-term coal replacement strategy for LADWP.

LADWP's RPS Policy

The RPS Policy represents the guiding principles of the LADWP to implement renewable resources. The RPS Policy was amended in December 2013 to comply with regulatory requirements of the California Renewable Energy Resources Act, also referred to as SB2 (1X), which requires publicly owned utilities (POUs), such as the LADWP, to supply 25 percent of its energy from renewable by 2016 and 33 percent by 2020. The RPS Policy was amended in accordance with Section No. 399.30(e) of the Public Utilities Code (PUC).

LADWP's Integrated Resource Plan (IRP)

LADWP's IRP presents several potential strategies for meeting LADWP's regulatory mandates and policy objectives for increasing renewable energy generation, reducing greenhouse gas emissions, maintaining electric power service reliability, and minimizing the financial impact on ratepayers.

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

- Comply with the California Renewable Energy Resources Act, SB2 (1X)
- Maintain a high level of electric service reliability by taking advantage of the geographic diversity of renewable projects
- Maximize the use of existing LADWP assets such as substations with balancing authority, and transmission lines with extra capacity
- Take advantage of the benefits of clustering resources to optimize efficiency for operations and maintenance of facilities

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

SCPPA

SCPPA is a non-profit joint power agency formed in 1980 to facilitate joint power and transmission projects for the benefit of the Southern California municipal utilities. SCPPA's members include LADWP, the cities of Anaheim, Azusa, Banning, Burbank, Cerritos, Colton, Glendale, Pasadena, and Riverside as well as the Imperial Irrigation District. On April 4, 2006, the Board approved the SCPPA Phase I Renewable Development Agreement No. 96125-76 under Resolution No. 006-157, subsequently superseded and replaced by the Phase II Renewable Development Agreement No. 12-020 which the Board approved on August 22, 2012 by adoption of Resolution No. 013-049, which authorized LADWP to participate with other members of SCPPA for the purpose of investigating and performing due diligence on potential new renewable resource options.

On February 1, 2014, SCPPA issued an RFP, a competitive selection process, for the purchase of renewable energy resources. SCPPA received proposals from developers having the capability to provide renewable energy from various sources, such as solar, wind, biomass, landfill gas, and geothermal. Eleven proposals were from geothermal developers including one from Ormat Nevada Inc. (Ormat).

Selection Criteria

This Project was chosen based on a detailed comparison of each of the projects submitted to the SCPPA RFP and evaluated by the LADWP's selection criteria. The selection criteria included:

- Lowest Price: \$81.25 per MWh, fixed price, when compared to \$107.63, average of other geothermal proposals. Price also includes transmission cost and expected losses.
- Insignificant Integration Costs: Geothermal resource will incur insignificant integration cost when compared to intermittent resources, such as wind and solar.
- Firm Baseload 24 Hours, 7 Days a Week Generation and Highly Available Energy: Energy will be predictable and easy to forecast and schedule. Project will provide base load energy with a 95 percent capacity factor.
- Environmental: Geothermal technology produces near zero air emission and lowest environmental impact. The Project uses a closed-loop system where geothermal fluid is extracted from and injected back to the source.
- Available Transmission and Accessible POD: Project will utilize existing transmission infrastructure. POD will be at the LADWP's Mead 230-kV and Crystal 500-kV.
- Continuity: DAC2 Project is an expansion of the DAC1 Project, which has been delivering 13.71 MW of renewable geothermal energy to LADWP since December 6, 2013. SCPPA buys 16.2 MW from ORNI 47 LLC (ORNI 47), an affiliate of Ormat and owner of the DAC1 Project, and sells the power to LADWP and the City of Burbank pursuant to DAC1 PPA which was approved by the Los Angeles City Council on April 3, 2013.

- Experienced Developer: Ormat is a leading geothermal company and supplies 1,750 MW of gross capacity worldwide including 626 MW (net) in the United States.

PPA Between SCPPA and ORNI 37

SCPPA is entering into the PPA with ORNI 37, a Delaware Limited Liability Company registered in the State of Nevada, and an affiliate of Ormat. Ormat is in turn an affiliate of Ormat Technologies Inc., a Delaware Corporation. LADWP is the only participant in this SCPPA Project.

The PPA provides that Seller will sell to SCPPA a net of 16.2 MW (approximately 130,000 MWh annually) of renewable energy and associated environmental attributes from the Project, located in Mineral County, Nevada, for a 20-year delivery term, beginning December 31, 2016. The POD will be at the Mead 230-kV and Crystal 500-kV Substations through NV Energy's One Nevada Transmission Line (On-Line). During curtailments, Seller is allowed, alternatively, to deliver energy to the El Dorado 500-kV Substation, or the Gonder IPP 230-kV Substation, only at the condition if after June 2027, LADWP shall have the transmission rights and capacity at the Intermountain Power Project (IPP) Substation to accept the energy and transmit it to the Adelanto Switching Station. The purchase price for delivered energy is \$81.25 per MWh fixed for the 20-year term. Under this PPA, there is no option to purchase the DAC2 Project.

For each contract year, the annual guaranteed generation of the Project energy delivered to the POD is 90 percent of the 16.2 MW nominal net capacity and may deplete a maximum of 0.5 percent yearly. To the extent there is a shortfall of guaranteed energy delivered, that replacement energy will be made up in the following maximum of two contract years.

PSA No. BP 14-032 Between SCPPA and LADWP

Under the terms of the PSA, the LADWP contractually agrees:

- To purchase from SCPPA the electric output from DAC 2 Project, 16.2 MW of renewable geothermal energy and associated environmental rights and attributes beginning December 31, 2016.
- To pay \$81.25 per MWh, fixed price, for approximately 130,000 MWh of geothermal energy annually, totaling \$11 million annually and \$219 million over the 20-year term.

The PSA also:

- Identifies the roles, rights, and obligations of SCPPA and LADWP including, but not limited to, project deliverables, project manager, setting up of an annual budget, accounting, and reporting requirements.
- Establishes LADWP as the Project Manager for the purpose of project control, communication, and coordination with SCPPA.

- Establishes payment mechanisms including, but not limited to, payment pledges, charges and billing procedures, and interest payments.
- Establishes the rights and obligations of SCPPA and LADWP under the PSA to deliver energy, capacity, environmental attributes.
- Encompasses other agreements and obligations including, but not limited to, nonperformance and payment defaults, and liability conditions to termination or amendments.
- Addresses other services such as delivery procedures, transmission, and dynamic scheduling.

AA No. BP 14-033 Between SCPPA and LADWP

The AA designates LADWP as the Project Manager to manage and administer the Project for and on behalf of SCPPA in order to enable SCPPA to carry out activities necessary for the planning, development, and acquisition of the Project.

The mutual covenants and agreements addressed by the AA include:

- Identifying the roles and obligations of SCPPA and LADWP in connection with project reviews, monitoring, accounting, billing, reporting, and controls, including the setting up of an annual budget and reporting requirements.
- Establishing payment mechanisms, and billing procedures including, but not limited to, payments between LADWP and SCPPA for costs, and charges, related to the Project.
- Establishing a 20 year term for the AA to be the same as the term of the PSA.

Risk Management Provisions

The PPA provides performance securities for various stages of construction and through the life of the PPA, which SCPPA can draw upon if certain conditions are not met. Seller shall pay SCPPA liquidated damages if it fails to meet the following PPA milestones:

- Power Block Construction (July 1, 2016): \$6,840 per day up to \$615,600
- Commercial Operation (December 31, 2016): \$20,520 per day up to \$1,847,000

After Facility COD and until the end of the PPA term, Seller is required to maintain a Delivery Term Security of \$8 million.

In the event there is a shortfall of energy that has not been made up by the replacement energy, Seller shall pay SCPPA liquidated damages, an amount for each MWh of remaining Shortfall Energy equal to the positive difference, if any, obtained by subtracting the amount that Buyer would have paid had Facility Energy equal to the amount of Shortfall Energy been delivered to the POD from the Replacement Price.

The CAO Report (attached) was completed on January 16, 2015.

ENVIRONMENTAL DETERMINATION

In accordance with the California Environmental Quality Act (CEQA), it has been determined that PSA No. BP 14-032 for 16.2 MW of geothermal capacity from the DAC2 Project in Mineral County, Nevada, and AA No. BP 14-033 for project management services with SCPA are statutorily exempt pursuant to Section 15277 of the CEQA Guidelines. This section states that CEQA does not apply to any project located outside of California which is subject to environmental impact review pursuant to the National Environmental Policy Act (NEPA). In addition, this project would not result in any emissions or discharges that would have a significant effect on the environment in the State of California, which would be subject to CEQA.

Because the United States Department of Interior, Bureau of Land Management (BLM) exercises jurisdiction over the involved leased federal lands, the DAC1 Project and DAC2 Project are and have been subject to compliance with NEPA. BLM issued a Record of Decision pursuant to NEPA for DAC1 on October 5, 2012, and a Determination of NEPA Adequacy for DAC2 on September 23, 2014.

In accordance with the California Code of Regulations Title 20, Chapter 11, Section 2903(b)(1), the DAC 2 Project is determined to be compliant with the Emission Performance Standard.

CITY ATTORNEY

The Office of the City Attorney reviewed and approved the Resolution, PSA, and AA as to form and legality.

ATTACHMENTS

- Resolution
- DAC2 PPA
- PSA
- AA
- CAO Report

OFFICE OF THE CITY ADMINISTRATIVE OFFICER

Date: January 16, 2015

CAO File No. 0150-10310-0000

Council File No.

Council District: outside City limits

To: The Mayor
The City Council

From: Miguel A. Santana, City Administrative Officer *MAS*

Reference: Communication from the Department of Water and Power dated December 17, 2014; referred by the Mayor for report on January 7, 2015

Subject: **POWER SALES AGREEMENT WITH SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY NO. BP 14-032 AND RELATED AGENCY AGREEMENT NO. BP 14-033 FOR THE DON A. CAMPBELL 2 GEOTHERMAL ENERGY PROJECT**

SUMMARY

The Department of Water and Power (DWP) proposes to enter into a Power Sales Agreement (PSA), No. BP 14-032, with the Southern California Public Power Authority (SCPPA), to purchase renewable geothermal energy from SCPPA for the Don A. Campbell 2 Geothermal Energy Project (DAC2). The Agreement, beginning December 31, 2016, results in an average annual expenditure of \$11 million for purchased energy with a total projected cost of \$219 million for the 20-year term.

The significant terms of the PSA are as follows:

- Commercial Operation Date (COD) is estimated in December 2016;
- Amount of power provided to DWP is 16.2 MW;
- 130,000 MWh annually of energy output;
- Fixed price per megawatt hour (MWh) of \$81.25 with no escalation through the term.

The PSA also enables SCPPA to enter into a Power Purchase Agreement (PPA) with ORNI 37, LLC, owner of a proposed DAC2 power plant, to obtain the renewable energy and environmental attributes towards Renewable Portfolio Standard (RPS) exclusively for DWP. Additionally, the DWP proposes to enter into an Agency Agreement (AA), No. BP 14-033, with SCPPA which designates DWP as the Project Manager to administer the DAC2 Project for and on behalf of SCPPA.

The DAC2 Project would be an expansion phase of the existing Don A. Campbell 1 Geothermal Energy Project (DAC1), formerly known as the Wild Rose Geothermal Energy Project, approved

by City Council on April 3, 2013, C.F. No. 13-0294, which commenced commercial operation on December 6, 2013. The City of Burbank receives up to 2.49 MW of the 16.2 MW of total energy output from DAC1. All 16.2 MW of energy output from DAC2 is produced exclusively for DWP. The comparison cost of energy per MW and energy output is shown below:

Project	Cost Per MWh	Energy Output Received-DWP
DAC1	\$99.00	13.71 MW
DAC2	\$81.25	16.2 MW

The energy from DAC2 Project will be delivered to Mead 230-Kilovolt (kV) and Crystal 500-kV Substations which are directly connected to LADWP's transmission system.

The 16.2 MW of geothermal energy from DAC2 represents 1.67 percent of the Department's Renewables Portfolio Standard (RPS) requirement in 2020 and will provide enough energy to initially serve more than 22,500 homes.

RISK MANAGEMENT/CANCELLATION

The PPA provides for performance securities for various stages of construction and through the term of the Agreement, which DWP can draw on if certain conditions are not met. In order to better secure the credit risk, SCPPA obtained a Performance Security furnished by the seller in the aggregate amount of \$2.5 million on the effective date and \$8 Million on the Commercial Date of Operation. A failure to meet the following milestones will result in the damages as listed below:

DAC2 Milestones and Penalty Schedule	Cost per Day	Maximum Cost
Failure to achieve Power Block Construction Milestone (7/1/16)	\$6,840	\$615,600
Failure to achieve the Commercial Operation Milestone (12/31/16)	\$20,520	\$1,847,000

The Agreement also contains a Force Majeure Event cancellation provision, which is commonly found in many agreements, providing for the termination of the Agreement with DAC2 due to an uncontrollable condition such as a disaster or act of God, preventing one of the parties from performing obligations listed in the Agreement

THE DON A. CAMPBELL 2 GEOTHERMAL ENERGY PROJECT

The proposed DAC2 Project is a geothermal energy facility located on federal government land managed by the United States Department of Interior Bureau of Land Management (BLM) in the western portion of Gabbs Valley, in Mineral County, Nevada. The geothermal energy will be delivered to the Mead Substation located in Boulder City, Nevada which connects to the DWP transmission system. There is no purchase option of the DAC2 Project associated with this PPA.

DAC2 provides the opportunity to enhance the already successful geothermal energy production in Nevada, which is an integral part of DWP's coal replacement strategy for the Intermountain Power Plant in Utah.

The DAC2 Project was selected for the following reasons:

- Lowest price, including energy and transmission cost to the POD;
- Project location fits the DWP's long term coal replacement strategy;
- Baseload energy with insignificant integration cost and high capacity factor;
- POD is within DWP's Balancing Authority with available transmission capacity;
- Continuity and expansion of a plant already in service;
- Geothermal energy provides for a reliable source of renewable energy that is not subject to weather conditions.
- Experienced developer.

For each contract year, the annual guaranteed generation of the Project energy delivered to the Point of Delivery (POD) is 90 percent of the 16.2 MW nominal net capacity. However, actual delivery is expected to be higher as generation is projected to decrease by a maximum of 0.5 percent yearly. To the extent there is a shortfall of guaranteed energy delivered, the replacement energy will be made up in the following maximum of two contract years.

City Council approval of this PSA and AA is required pursuant to City Charter Sections 373 regarding rules for long-term contracts and 674(a) (1) and (2) regarding the purchase of power generating capacity. The proposed Resolution, PSA, and AA have been reviewed by the City Attorney and approved as to form and legality. Since the Agency Agreement will be administered by DWP staff, City Charter Section 1022 regarding the use of independent contractors is not applicable.

RECOMMENDATION

That the Council, subject to the concurrence of the Mayor, approve an Ordinance that approves the Resolution of the Board of Water and Power Commissioners that requests the execution of:

(a) Power Sales Agreement No. BP 14-032 between DWP and the Southern California Public Power Authority to purchase up to 16.2 megawatts of geothermal power annually through the ORNI 37, LLC for electric energy from the Don A. Campbell 2 Geothermal Energy Project located in Gabbs Valley, in Mineral County, Nevada; and

(b) Agency Agreement No. BP 14-033 between DWP and the Southern California Public Power Authority, which designates DWP as the Project Manager to administer the project for and on behalf of SCPA.

FISCAL IMPACT STATEMENT

The proposed Agreements will have no direct impact on the City General Fund. The Power Revenue Fund will provide an average annual expenditure of \$11 million annually for 20 years, or \$219 million total over the 20 year duration of the Agreement. Funding is budgeted in the Power Revenue Fund's Fuel and Purchased Power Budget.

TIME LIMIT FOR COUNCIL ACTION

The City Attorney advises that there is no time limitation for items approved by ordinance.

MAS:MCD:06150077

APPENDIX

BACKGROUND

In 2002, the California Legislature passed Senate Bill (SB) 1078 which established the California Renewable Portfolio Standard. SB 1078 requires privately owned utilities and encourages public owned utilities to increase their use of renewable energy resources until 20 percent of generation is obtained from renewables by the year 2017. The RPS Policy was amended in December 2013 to comply with regulatory requirements of the California Renewable Energy Resources Act, also known as SB2 (1X) which requires publicly owned utilities, such as the DWP, to supply 25 percent of its energy from renewable sources by 2016 and 33 percent by 2020. The RPS Policy was amended in accordance with Section No. 399.30(e) of the Public Utilities Code.

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

The Southern California Public Power Authority (SCPPA) is a non-profit joint powers authority. SCPPA was formed in 1980 for the purpose of planning, financing, developing, acquiring, constructing, operating and maintaining projects for the generation and transmission of electric energy. The members include the municipal utilities of the cities of Anaheim, Azusa, Banning, Burbank, Cerritos, Colton, Glendale, Los Angeles, Pasadena, Riverside, and the Imperial Irrigation District. SCPPA is governed by a Board of Directors, which consists of representatives from each of its members. The management of SCPPA is under the direction of an Executive Director, who is appointed by the Board. SCPPA's role has evolved over the years to include legislative advocacy at the state and national levels. SCPPA currently holds capacity entitlements in various projects and 100 percent of the output is sold and controlled by its member utilities.

REQUEST FOR RENEWABLE ENERGY PROPOSALS

In February 2014, Southern California Public Power Authority (SCPPA) issued a Request for Proposals (RFP) for the purchase and/or acquisition of renewable energy sources. More than 90 proposals were received from developers with the capability to provide renewable energy from various sources such as solar, wind, cycle gas and geothermal. Eleven proposals were from geothermal developers including one from Ormat Nevada Inc. (Ormat).

The industry average cost for all new and existing geothermal projects submitted to SCPPA for the 2014 RFP ranges from \$87.86 to \$129.99 with an average of \$107.63 per MWh. Some of the proposals do not include the transmission costs, which can add up to \$17 per MWh to the cost. A recent survey of industry-wide energy prices comparing the approximate costs per MWh for other sources of energy and prices are provided below for comparison:

<u>Source of Energy</u>	<u>Cost per MWh</u>
Solar Photovoltaic-PPA	\$77
Solar Photovoltaic-LA Solar	\$143
Solar Photovoltaic-Owens	\$130
Solar Customer-Net Metered	\$67 (incentive only)
Solar Feed-In-Tariff	\$161

<u>Source of Energy</u>	<u>Cost per MWh</u>
Wind	\$111
Geothermal	\$101
New Combined Cycle Gas	\$91
New Simple Cycle Gas	\$241

INTEGRATED RESOURCE PLAN

DWP's Integrated Resource Plan (IRP) presents several strategies for meeting the regulatory mandates and policy objectives for increasing renewable energy generation, reducing greenhouse gas emissions, maintaining electric power service reliability and minimizing the financial impact on ratepayers.

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

- Comply with the California Renewable Energy Resources Act, SB2 (1X);
- Maintain a high level of electric service reliability by taking advantage of the geographic diversity of renewable projects;
- Maximize the use of existing DWP assets such as substations with balancing authority and transmission lines with extra capacity;
- Take advantage of the benefits of clustering resources to optimize efficiency for operations and maintenance of facilities.

ORNI 37, LLC

The PPA provides for DAC2 to deliver geothermal energy on a long term basis. Therefore, it is in the best interest of DWP and SCPA to partner with a viable company to provide this energy. The seller, ORNI 37, LLC is a wholly-owned affiliate of Ormat Nevada, Inc. who is fully owned by Ormat Technologies, Inc. (Ormat). Ormat is a leading geothermal energy developer in the U.S. and world-wide. The company currently owns and operates 1,750MW of geothermal energy projects world-wide (626 are in the U.S.) and currently employs 480 workers in the U.S. A large number of the staff members are devoted to geothermal energy development, construction, financing, commercial operation and facilities maintenance. Based on Ormat's experience and knowledge in geothermal energy and development, in addition to the financial statements submitted to DWP, the Department states that the risk is minimal.

DON A CAMPBELL 2 GEOTHERMAL ENERGY PROJECT

POWER SALES AGREEMENT

BETWEEN

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

AND

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

Dated as of December 18, 2014

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DON A CAMPBELL 2 GEOTHERMAL ENERGY PROJECT

POWER SALES AGREEMENT

1. **PARTIES.** This Don A Campbell 2 Geothermal Energy Project Power Sales Agreement (this "Agreement"), is dated for convenience as of the 18th day of December, 2014, by and between the SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY, a joint powers agency and a public entity organized under the laws of the State of California, hereinafter designated as "SCPPA," created under the provisions of the Act, and the CITY OF LOS ANGELES acting by and through the Department of Water and Power, a California municipality. The CITY OF LOS ANGELES is also periodically designated in this Agreement as "LADWP" or as "Purchaser." LADWP and SCPPA are also sometimes herein referred to individually as a "Party" and together as the "Parties."

2. **RECITALS, CONSTRUCTION AND PRELIMINARY MATTERS.** The Recitals set forth herein and the facts, which follow, are incorporated into this Agreement by reference for all purposes. The facts and the circumstances of the Parties contained in the Recitals, among others, represent the background and framework for this Agreement, the aim and purpose of this Agreement and the intendments of the Parties with respect thereto. This Agreement has been reviewed by attorneys for both Parties and shall not be interpreted with reference to the rules of construction providing for construction against a Party responsible for drafting or creating a particular provision or section, but should instead be interpreted in a manner which broadly carries forth the goals and objectives of the Parties as expressed herein. References to "Sections," and "Appendices," shall be to Sections, and Appendices as the case may be, of this Agreement unless otherwise specifically provided. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose nor given any substantive effect. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. The use herein of the word "include" or "including", when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not 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" as defined in Appendix A), by its members, which are municipalities and an irrigation district that supply, among other things, electrical energy in the State of California, for the purpose of jointly and cooperatively undertaking the planning, financing, development, acquisition, construction, improvement, betterment, operation, and maintenance, of projects for the generation or transmission of electric energy, including the development and implementation of systems and frameworks for the acquisition and delivery of secure, long-term reliable supplies of renewable electric energy.

- 2.2 Pursuant to the terms of the Act, 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, manage, operate, maintain and administer projects involving systems, methodologies and programs for the acquisition, supply procurement and delivery of secure, long-term reliable supplies of renewable electric energy, including geothermal electric energy, and to cause such projects to be planned, developed, contracted for, financed, acquired, designed, undertaken, constructed, managed, operated, maintained and administered and to provide by agreement for the performance and carrying out of any such activities.
 - 2.3 Purchaser is a chartered California municipality which provides electric energy to its citizens through its municipally owned electric system. Purchaser 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, Purchaser has acted, in part, through SCPPA's Board of Directors to carry out generation, transmission and other projects through SCPPA.
 - 2.4 Purchaser has participated with SCPPA in negotiations with Ormat Nevada, Inc. of an agreement and related arrangements for purchase of the electric output of the Don A. Campbell 2 Geothermal Energy Project (the "Project" as defined in Appendix A), and SCPPA is to enter into a Power Purchase Agreement, which is incorporated herein by this reference, with an affiliate of Ormat Nevada Inc. providing for purchase of the electric output and associated rights, benefits and credits from the Project.
 - 2.5 The Purchaser has a need for the electric output and associated rights, benefits and credits of the Project which comply with environmental and energy procurement laws, and has determined to enter into this Power Sales Agreement with SCPPA to purchase the electric output and associated rights, benefits and credits of the Project from SCPPA.
3. **AGREEMENT.** For and in consideration of the premises and the mutual covenants and agreements hereinafter set forth, and in order to pay SCPPA for its costs of the Facility Output, the Parties agree as herein set forth.
 4. **DEFINITIONS.** Appendix A to this Agreement sets forth definitions of certain terms used in this Agreement. The terms defined in Appendix A 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 or as set out below:
 - 4.1 Agreement. This Agreement, as it may be amended, modified or supplemented from time to time.
 - 4.2 Effective Date. The date described in Section 15.1 hereof.

4.3 Power Costs. All of SCPPA's costs resulting from SCPPA's contracting for, providing for, accommodating, and facilitating the Project and from its administration of the Project, including costs arising under the Power Purchase Agreement or other Project Agreements. SCPPA shall apply, as a credit against Power Costs, any receipts, revenues and other monies received by SCPPA to be applied as a credit against any Power Costs pursuant to this Agreement or any other Project Agreement. Power Costs shall, as applicable, consist of (i) the Output cost component (described in Section 4.3.1), (ii) the General and Administrative cost component (described in Section 4.3.2), (iii) a Reserve Fund cost component (described in Section 4.3.3), and (iv) a Supplementary Services cost component to the extent SCPPA incurs such costs (described in Section 4.3.4), and Power Costs shall include, but not be limited to the items of costs and expense referred to in the Power Purchase Agreement and other Project Agreements and this Section 4.3 that are accrued or paid by SCPPA during each month of each Power Supply Year, as shall be set forth in the Annual Budget for such Power Supply Year.

4.3.1 The Output cost component of Power Costs for each Month shall consist of the costs of the Facility Output or Replacement Energy for such month.

4.3.2 The General and Administrative cost component of the Power Costs for each Month shall consist of the administrative and general costs with respect to the Project, including (i) legal fees, costs relating to litigation (including disbursements and other amounts paid as a result of such litigation), insurance costs (including amounts to fund any self-insurance program), overhead costs, any taxes required to be paid by SCPPA with respect to Facility Output or the Project, (ii) all expenses incurred in enforcing the Power Purchase Agreement and other Project Agreements, (iii) all costs of compliance by SCPPA with its indemnification obligations under Section 13 of this Agreement and (iv) all costs related to the conducting of the business of SCPPA with respect to the Project including the applicable salaries, fees for legal, engineering, financial and other services all other costs attributable to miscellaneous and incidental expenses in connection with the administration of the Project, all costs, expenses and payment and performance obligations of SCPPA under the Project Agency Agreement, including without limitation, any and all payments, costs and expenses with respect to compliance with its indemnification obligations under Section 17.1 of the Project Agency Agreement, or under any other agreement with the Agent under the Project Agency Agreement, and all other expenses properly related to the conduct of such affairs of SCPPA.

4.3.3 The Reserve Fund costs component of Power Costs for a Month shall consist of the costs for such Month of SCPPA, if any, necessary to establish and maintain the Reserve Funds at the level

deemed prudent and appropriate by the SCPPA Board of Directors and Purchaser.

4.3.4 The Supplementary Services cost component of Power Costs for a Month shall consist of all costs for such Month of SCPPA, if any, to the extent not included in Sections 4.3.1, 4.3.2 and 4.3.3, in connection with services for transmission, dispatching, scheduling, tagging, firming, balancing, swapping, exchanging or delivery and for otherwise facilitating the disposition, movement, taking, receiving, crediting and accounting for the Facility Output provided for under this Agreement. The Supplementary Services cost component of Power Costs shall also entail all monthly costs incurred by SCPPA, if any, which are necessary to move or otherwise handle delivery of the Facility Output from the Point of Delivery to one or more specified delivery point(s) as determined by Purchaser pursuant to Sections 9.2 and 9.3.

4.4 Monthly Costs. The costs payable by the Purchaser as described in Section 7.1 hereof.

5. PURCHASE AND SALE OF FACILITY OUTPUT AND THE OBLIGATIONS OF SCPPA AND THE PURCHASER.

5.1 Purchase and Sale of Facility Output. In accordance with the terms and conditions of this Agreement, commencing on the earliest of (i) the date SCPPA is obligated to pay any portion of the costs of the Project, (ii) the effective date of the Power Purchase Agreement, or (iii) the date of the first delivery of energy to Purchaser pursuant to this Agreement, and continuing through the term of this Agreement, except as otherwise provided herein, SCPPA shall provide Purchaser any and all products, rights, and benefits, whether tangible or intangible received or obtained by SCPPA with respect to the Project, including without limitation Facility Output, or, if applicable, Replacement Energy, and Purchaser shall be responsible for and pay any and all costs, liabilities and obligations associated with the acquisition of such products, rights, and benefits, which shall include without limitation all costs, liabilities and obligations associated with Facility Output, or Replacement Energy, as applicable, under the Power Purchase Agreement and any other applicable Project Agreement, or associated with the acquisition of such products, rights and benefits, including, without limitation, all costs, credits, liabilities and obligations associated with Facility Output or Replacement Energy, applicable, under the Power Purchase Agreement and any other applicable Project Agreement.

5.2 Facility Output and Deliverables. SCPPA shall provide and Purchaser shall purchase and receive the Facility Output or Replacement Energy pursuant to the terms of this Agreement. To the extent permitted by the Power Purchase Agreement, the applicable Project Agreements, or otherwise determined by the Board of Directors, SCPPA will endeavor to take such actions or implement such measures as may be necessary or desirable for the utilization,

maintenance or preservation of the rights and interests of the Purchaser in the Project including, if appropriate, such enforcement actions or other measures as the Board of Directors deems to be in the Purchaser's best interests. To the extent not inconsistent with the Power Purchase Agreement or other applicable Project Agreements, SCPPA may also be reposed with responsibilities for administering the Project in order to effectuate the delivery and sale of the Facility Output to Purchaser. To the extent such services are available and can be carried forth in accordance with the Power Purchase Agreement or other applicable Project Agreements, SCPPA shall also provide such other services, as approved by the Board of Directors, as may be deemed necessary to secure the benefits and/or satisfy the obligations associated with the Power Purchase Agreement or other applicable Project Agreements. SCPPA shall use its best efforts, on behalf of Purchaser to secure the benefits of the transactions contemplated under the Power Purchase Agreement or other applicable Project Agreements, and shall endeavor to maintain and secure the rights and benefits accruing to SCPPA through the Power Purchase Agreement and the other applicable Project Agreements. SCPPA is authorized to exercise the powers vested in SCPPA pursuant to the Act, its Joint Powers Agreement and this Agreement, on behalf of the Purchaser to fully carry forth Purchaser's objectives in the Project as set forth herein.

5.3 Project Manager; Procurement Actions. The Project Manager shall administer the Project, or cause the Project to be administered, including in the capacity as Buyer's Agent as defined under the Power Purchase Agreement, as provided in the Project Agency Agreement, or, if LADWP is no longer Project Manager, as provided in any other project management or agency agreement or, as applicable, through the Power Purchase Agreement. So long as LADWP is not in default under this Agreement, procurement actions shall be authorized by way of LADWP procurement rules and policies unless otherwise agreed to by LADWP and the Board of Directors.

5.4 Adoption of Annual Budget. The Annual Budget and any amendments to the Annual Budget shall be prepared and approved in accordance with Sections 5.4.1 or 5.4.2, respectively.

5.4.1 SCPPA will prepare and submit to Purchaser a proposed Annual Budget at least 60 days prior to the beginning of each Power Supply Year. In connection with the preparation of the Annual Budget, SCPPA shall incorporate therein the Operating Budget for such Power Supply Year as prepared by the Project Manager and approved by the Board of Directors. Purchaser 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 60 days prior to the beginning of such Power Supply Year and shall cause copies of such adopted Annual Budget to be delivered to the Purchaser; provided, however, the Annual Budget for the first Power Supply Year shall be prepared,

considered, adopted and delivered in the most practicable manner available prior to Commercial Operation of the Facility. As required from time to time during any Power Supply Year after seven days written notice to the Purchaser, SCPPA may, pursuant to the foregoing provisions for adopting the Annual Budget, adopt an amended Annual Budget for and applicable to such Power Supply Year for the remainder of such Power Supply Year. The Annual Budget shall establish the basis for monthly Billing Statements to be sent to the Purchaser, as provided in Section 7 hereof.

5.4.2 Any adjustment, and any other or further mechanism for adjustment, as may be required to address the variability of costs of operation of the Project at any time during the Power Supply Year or the variability of or addition to any other Annual Budget component, may be incorporated into the Annual Budget as provided above, or any amendment to an Annual Budget at any time during any Power Supply Year upon the seven days written notice to the Purchaser as set forth in Section 5.4.1.

5.5 Reports. SCPPA will prepare and issue to Purchaser the following reports each quarter of a Power Supply Year:

5.5.1 Financial and operating statement relating to the Project.

5.5.2 Variance report comparing the costs in the Annual Budget versus actual costs, and the status of other cost-related issues with respect to the Project.

5.6 Records and Accounts. SCPPA will keep, or cause to be kept, accurate records and accounts of each of the properties and facilities comprising the Project as well as of the operations relating to the Project, all in a manner similar to accepted accounting methodologies associated with similar projects. All transactions of SCPPA relating to the Project with respect to each Fiscal Year shall be subject to an annual audit. Purchaser shall have the right at its own expense to examine and copy the records and accounts referred to above on reasonable notice during regular business hours.

5.7 Purchaser to Provide Information. Purchaser agrees to supply SCPPA, upon request, with such information, documentation and certifications as SCPPA shall reasonably determine to be requisite to and necessary or desirable for the administration and ongoing activities of the Project, including information reasonably available to allow SCPPA to respond to requests for such information from any federal, state or local regulatory body or other authority.

5.8 SCPPA to Provide Information. SCPPA shall furnish or cause to be furnished to Purchaser all reports, records, plans, data, documents and other information provided to SCPPA or the Project Manager by the Power Purchase Provider

or otherwise obtained by SCPPA, in each case, under and pursuant to the Power Purchase Agreement.

- 5.9 Consultants and Advisors Available. SCPPA shall make available to the Project Manager, any consultants and advisors including legal counsel that are retained by SCPPA with respect to the Project, and any such consultant's counsel and advisors shall be authorized to consult with and advise the Project Manager on Project matters.
- 5.10 Liquidated Damages. Any amounts paid to SCPPA as and for Performance Damages or Shortfall Liquidated Damages by the Power Purchase Provider shall be remitted to Purchaser.

6. PROJECT MANAGEMENT.

- 6.1 Project Manager Responsibilities. The Project Manager shall have the following responsibilities:
- 6.1.1 Review, develop and, if appropriate, recommend all budgets and revisions thereof prepared and submitted by SCPPA pursuant to any applicable agreement.
- 6.1.2 Review, develop, and, if appropriate, recommend any systems or procedures for adjustment of the Annual Budget or any alternative methodologies for budgeting or billing as set forth in Section 5 and Section 7 of this Agreement.
- 6.1.3 Make recommendations to the Board of Directors or to the counterparties to any of the Project Agreements, as appropriate, with respect to the development, operation and ongoing administration of the Project.
- 6.1.4 Review, develop, and if appropriate, modify rules, procedures and protocols for the administration of the Project or Project Agreements, including rules, procedures and protocols for the management of the costs of the Facility and the scheduling, handling, tagging, dispatching and crediting of Facility Output and the handling and crediting of Environmental Attributes associated with the Facility.
- 6.1.5 Review, develop, and if appropriate modify rules, procedures and protocols for the monitoring, inspection and the exercise of due diligence activities in connection with the Project and the operation of the Facility.
- 6.1.6 Review, and, if appropriate, modify or otherwise act upon, the form or content of any written statistical, administrative, or operational reports, geothermal energy related data, electric generation information, geothermal energy production data,

technical information, facility reliability data, transmission information, forecasting scheduling, dispatching, tagging, parking, firming, exchanging, balancing, movement, or other delivery information, regulatory matters or requirements, and other information and other similar records or matters pertaining to the Project which are furnished to the Project Manager by SCPPA, or by parties to Project Agreements, experts, consultants or others.

- 6.1.7 In coordination with the Board of Directors, review, and, if appropriate, recommend, modify or approve rules, procedures, and protocols with respect to the Project.
- 6.1.8 Review, formulate and, if appropriate, modify, or otherwise act upon, practices and procedures to be followed by the Purchaser for, among other things, the production, scheduling, tagging, transmission, delivery, firming, balancing, exchanging, crediting, tracking, monitoring, remarketing, sale or disposition of Facility Output.
- 6.1.9 Review, formulate and modify, if necessary, the schedule of planned activities with respect to the performance of any Project Agreement, including the policies for selection and utilization of contractors and consultants included in the budgets with respect to the Project. In formulating and approving such schedules, consideration may be given, if possible, to the Purchaser's electric system conditions, which may prevail during such planned activities.
- 6.1.10 Review, and if appropriate, recommend, or otherwise act upon any matters or issues associated with Operating Work and any other matters or issues which may arise in the administration of the Project.
- 6.1.11 Review and act upon any matters involving the Project Development Security or the Delivery Term Security and any guarantee or other letter of credit delivered to or for the benefit of SCPPA by the Power Purchase Provider or any other counterparty to any Project Agreement in connection with the Project and take such actions or make such recommendations as may be appropriate or desirable in connection therewith.
- 6.1.12 Review, and, if appropriate, recommend, modify, or approve policies or programs formulated by the Project Manager or any counterparty under any Project Agreement for determining or estimating geothermal energy resources or the values, quantities, volumes or costs of renewable energy from the Facility.

- 6.1.13 Review, and, if appropriate, recommend costs of Operating Work and submit to the Board of Directors any budget revisions or other provisions for the payment thereof.
 - 6.1.14 Review, and, if appropriate, recommend SCPPA's insurance program with respect to the Project (as applicable) including, without limitation, the establishment of any self-insurance program and the maximum amount or amounts of any uninsured claim.
 - 6.1.15 Review, and where appropriate, recommend the implementation of metering technologies and methodologies appropriate for the delivery, accounting for, transferring and crediting of Facility Output to the Points of Delivery.
 - 6.1.16 Review, and where appropriate, recommend the implementation of practices and procedures to carry forth the provisions of Section 9 hereof.
 - 6.1.17 Review, examine, modify and where appropriate, recommend or approve the implementation of methods for addressing curtailments or other interruptions.
 - 6.1.18 Identify, or develop criteria to identify, contracts or agreements relating to work or Operating Work that shall be deemed to be Major Contracts under any applicable project management agreement.
 - 6.1.19 Make recommendations to the Board of Directors with respect to the application of the payments, if any, received by SCPPA from the Project Development Security, the Delivery Term Security and the amounts, if any, received by SCPPA as a result of a Default by the Power Purchase Provider under the Power Purchase Agreement, provided that, such payments or amounts shall, in any event, be applied to one or more of the following purposes: (i) a credit against Power Costs, or (ii) distribution to Purchaser.
 - 6.1.20 Perform such other functions and duties as may be provided for under this Agreement, the Power Purchase Agreement, the Ancillary Documents, or any other applicable Project Agreement, or as may otherwise be appropriate or beneficial to the Project.
- 6.2 Management Decisions and the Role of Board of Directors. The rights and obligations of SCPPA under the Project Agreements shall be subject to the ultimate control at all times of the Board of Directors. SCPPA through the Board of Directors shall have, in addition to the duties and responsibilities set forth elsewhere in this Agreement, the following duties and responsibilities, among others:

- 6.2.1 Dispute Resolution. The Board of Directors shall endeavor to review, discuss and attempt to resolve any disputes among SCPPA, the Purchaser and the counterparties under the Project Agreements relating to the Project, the operation and management of the Facility and SCPPA's rights and interests in the Facility.
- 6.2.2 Scheduling Procedures. When recommended by the Project Manager, or when otherwise appropriate, the Board of Directors shall act upon and approve or modify the practices and procedures to be followed by the Purchaser for the scheduling, delivering, controlling and allocating Facility Output associated with the Project.
- 6.2.3 Project Agreements. The Board of Directors shall have the authority to approve the Project Agreements and to review modify and approve, as appropriate, all amendments, modifications and supplements to the Project Agreements.
- 6.2.4 Budgeting. The Board of Directors shall review, modify and approve each Annual Budget and the revisions thereto in accordance with Section 5.4 of this Agreement.
- 6.2.5 Application of Certain Payments Under the Power Purchase Agreement. The Board of Directors shall review, modify and approve the recommendations of the Project Manager, made pursuant to Section 6.1.18 of this Agreement as to the application of any payments or amounts received by SCPPA from the Project Development Security and Delivery Term Security or as a result of a Default by the Power Purchase Provider under the Power Purchase Agreement; provided that, such payments and amounts shall be applied to one or more of the purposes set forth in Section 6.1.18.
- 6.2.6 Other Matters. The Board of Directors is authorized to perform such other functions and duties, including oversight of those matters and responsibilities addressed by the Project Manager, as may be provided for under this Power Sales Agreement and under the other Project Agreements, or as may otherwise be appropriate.
- 6.3 Periodic Audits. The Board of Directors may arrange for the annual audit under Section 5.6 of this Agreement by certified accountants, selected by SCPPA and experienced in electric generation or electric utility accounting, of the books and accounting records of SCPPA, and where deemed appropriate the Project Manager, the Power Purchase Provider (to the extent provided under the Power Purchase Agreement) and any counterparty under any other Project Agreement to the extent allowable, and any cost reimbursable consultant or cost reimbursable contractor with respect to 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 Purchaser copies of all audits. No more frequently than once every calendar year, the Purchaser may, at its sole cost and expense, audit or cause to be audited the books and cost records of SCPPA, the Project Manager, the counterparty under any Project Agreement to the extent so provided in the applicable Project Agreement, and any cost reimbursable consultant or cost reimbursable contractor with respect to the Project.

- 6.4 Committees. The Board of Directors may establish as needed subcommittees including, but not limited to, auditing, legal, financial, engineering, mechanical, weather, geologic, operating, insurance, governmental relations, environmental and public information subcommittees. The authority, membership, and duties of any subcommittee 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.
- 6.5 Costs of Consultants. Costs of consultants and others employed or appointed by the Board of Directors to perform the duties required hereunder shall be included in the Power Costs, as appropriate, and shall be billed to SCPPA or the Project Manager.

7. CHARGES AND BILLINGS.

- 7.1 Monthly Costs. The amount of Monthly Costs which shall be paid by Purchaser for a particular Month shall be the sum of the following:
- 7.1.1 The Output cost component of Power Costs (as provided in Section 4.3.1 hereof) for such Month.
 - 7.1.2 The General and Administrative cost component of Power Costs (as provided in Section 4.3.2 hereof) for such Month.
 - 7.1.3 The Reserve Fund cost component of Power Costs (as provided in Section 4.3.3 hereof, for such Month.
 - 7.1.4 The Supplementary Services cost component of Power Costs (as provided in Section 4.3.4 hereof) for such Month.
- 7.2 Billing Statement. By the fifth calendar day of each Month during each Power Supply Year, SCPPA shall bill Purchaser for the amount of Monthly Costs to be paid by Purchaser for the current Month by providing Purchaser with a Billing Statement in accordance with the charges established pursuant to the provisions of this Agreement; provided that, such Billing Statement, with respect to the cost of Facility Output provided by SCPPA to Purchaser under this Agreement, shall also include with respect to the performance by SCPPA or the counterparty under and pursuant to applicable Project Agreements, a charge or credit to Purchaser with respect to the costs or revenues attributable to Purchaser pursuant to and under any applicable Project 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 Purchaser with respect to the items of Monthly Costs set forth in Section 7.1, as such Monthly Costs may be adjusted from time to time in accordance with Section 5 and this Section 7. Such Billing Statement shall be paid by Purchaser on or before 20 days after receipt of such Billing Statement.

- 7.3 Adoption of Alternative Billing Statement Procedures. The Project Manager may recommend the adoption of an alternative Billing Statement billing methodology in connection with the Purchaser's Billing Statement with respect to the Power Costs and the costs associated with any Project Agreement. Such alternative Billing Statement procedures may be placed into effect with the approval of the same by resolution of the Board of Directors. Any such alternative Billing Statement billing methodology shall be fiscally prudent, financially sound and shall assure coverage of all potential and actual costs and obligations of SCPPA.
- 7.4 Disputed Monthly Billing Statement. In case any portion of any Billing Statement received by Purchaser from SCPPA shall be in bona fide dispute, Purchaser shall pay SCPPA the full amount of such Billing Statement and, upon determination of the correct amount, the difference between such correct amount and such full amount, if any, including interest at the rate received by SCPPA on any overpayment, will be credited to Purchaser by SCPPA after such determination; provided, however, that such interest shall not accrue on any overpayment that is acknowledged by SCPPA and returned to Purchaser by the fifth calendar day following the receipt by SCPPA of the disputed overpayment. In the event such Billing Statement is in dispute, SCPPA will give consideration to such dispute and will advise Purchaser with regard to SCPPA's position relative thereto within 30 days following receipt of written notification by Purchaser of such dispute.
- 7.5 Reconciliation of Monthly Costs. As soon as practicable after the end of each Power Supply Year, SCPPA will submit to Purchaser a detailed statement of the actual aggregate Monthly Costs and other amounts payable hereunder, including any credits thereto, for all of the Months of such Power Supply Year, and the adjustments of the aggregate Monthly Costs and other amounts payable hereunder, if any, for any prior Power Supply Year, based on the annual audit of accounts provided for in Section 6.3. If, on the basis of the statement submitted as provided in this Section 7.5, the actual aggregate Monthly Costs and other amounts payable by the Purchaser for any Power Supply Year exceed the amount thereof which Purchaser has been billed, Purchaser 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 7.5, the actual aggregate Monthly Costs or other amounts payable by the Purchaser for any Power Supply Year are less than the amount for which Purchaser has been billed, SCPPA shall, unless otherwise directed by Purchaser with respect to moneys owed to it, credit such excess against Purchaser's next monthly Billing Statement.

- 7.6 Other or Additional Cost Reconciliation Mechanisms. The Board of Directors may, by resolution, authorize or prescribe other billing, payment, costing and cost reconciliation mechanisms to address such billing, payment, costing and cost reconciliation issues as may from time to time arise with respect to the Project.
- 7.7 Interest on Late Payments. If Purchaser fails to pay any Billing Statement when due, interest shall accrue, to the extent permitted by law, at a rate equal to the lesser of (i) one percent per Month (12% per annum) 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 on the unpaid amount of the bill, until such Billing Statement is paid.
- 7.8 Prepayment of Monthly Costs. Purchaser may, at any time, pay moneys to SCPPA or utilize any credits due or amounts owed by SCPPA to Purchaser with respect to the Project for the purpose of prepaying its monthly Billing Statement. Such moneys and amounts owed by SCPPA under any Project Agreement shall be deposited into an account established by, or at the direction of, SCPPA. Consistent with SCPPA's investment policy, moneys in such account shall be invested pursuant to instructions provided to SCPPA by Purchaser and all investment income shall be credited to such account. Payment of the amount of any monthly Billing Statement or Default Invoice shall be made from moneys available in such account to the extent set forth in written directions from Purchaser to SCPPA received at least five business days prior to the due date of such payment. Any credit or prepayment with respect to its monthly Billing Statement shall not relieve or reduce Purchaser's other obligations under this Agreement.

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

- 8.1 Unconditional Payment Obligation. Beginning with the earliest of (i) the date SCPPA is obligated to pay any portion of the costs of the Project, (ii) the date of Commercial Operation of the Facility, or (iii) the date of the first delivery of Facility Output to Purchaser and continuing through the term of this Agreement, Purchaser shall pay SCPPA the amounts of Monthly Costs set forth in the Billing Statements submitted by or on behalf of SCPPA to Purchaser in accordance with the provisions of Section 7 hereof and, without duplication, any amount set forth in any Default Invoice received by Purchaser as a result of the operation of Section 11 hereof, whether or not this Agreement has been terminated, or the Project or any part thereof has been completed, is functioning, producing, operating or operable or its output is suspended, interrupted, interfered with, reduced or curtailed or terminated in whole or in part, and such payments shall not be subject to reduction whether by offset or otherwise and shall not be conditional upon the performance or nonperformance by any party of any agreement for any cause whatsoever.

- 8.2 Source of Payments. The Purchaser hereby represents and warrants that the obligations of Purchaser to make the payments to SCPPA under this Agreement shall constitute a cost of purchased power and an operating expense of Purchaser payable solely from its power revenue fund, including any and all legally available power system reserves. Purchaser will annually in each and every fiscal year of Purchaser during the term of this Agreement include in its power system budget, whether or not any other items are included, an appropriation from the revenues of its power system (including moneys derived from sales to third parties) sufficient to satisfy all the payments required to be made in such year under this Agreement until all payments required under this Agreement have been paid in full.
- 8.3 Rate Covenant. Purchaser will establish, maintain and collect rates and charges for the electric service of its power system each year so as to provide revenues sufficient, together with any legally available power system reserves, to enable Purchaser to pay to SCPPA all amounts payable when due under this Agreement and to pay all other amounts payable from, and all lawful charges against or liens on, the revenues of its power system.
- 8.4 Authorizations. The Purchaser hereby represents and warrants that no order, approval, consent or authorization of any governmental or public agency, authority or person, is required on the part of the Purchaser for the execution and delivery by the Purchaser of this Agreement, or the performance by the Purchaser of its obligations under this Agreement, except for such as have been obtained.
- 8.5 Conflicts. Purchaser represents and warrants to SCPPA as of the Effective Date that, to Purchaser's knowledge, the execution and delivery of this Agreement by Purchaser, and Purchaser's performance thereunder will not constitute a default under any agreement or instrument to which it is a party, or any order, judgment, decree or ruling of any court that is binding on Purchaser, or a violation of any applicable law of any governmental authority, which default or violation would have a material adverse effect on the financial condition of Purchaser's power revenue fund.
- 8.6 Litigation. Purchaser represents and warrants to SCPPA as of the Effective Date that, to Purchaser's knowledge, except as disclosed, there are no actions, suits or proceedings pending against Purchaser (service of process on Purchaser having been made) in any court that questions the validity of the authorization, execution or delivery by Purchaser of this Agreement, or the enforceability as to Purchaser of this Agreement.

9. OTHER TERMS AND SERVICES.

- 9.1 Delivery Procedures. Prior to the time at which any Energy will be delivered to Purchaser from the Facility, Purchaser will schedule and shall be obligated to take delivery of the Energy to be delivered under this Agreement. The Facility Output generated and produced from the Project shall be scheduled

and delivered to Purchaser at the Points of Delivery under the practices and procedures approved pursuant to Section 6.2, as applicable.

- 9.2 Other Services and Transmission From Point of Delivery. It is the obligation of Purchaser to receive the Facility Output and to arrange for delivery of such Facility Output to its ultimate destination or destinations after having reached the Point of Delivery, as determined by Purchaser. However, to the extent specified by the Purchaser, and to the extent practicable for SCPPA to do so, SCPPA shall assist in arranging for Supplementary Services and for such additional transmission, interconnection arrangements, energy management, firming, shaping, swaps, exchanges or other services associated with the transmission, use or disposition of Facility Output to be utilized by the Purchaser and to provide for delivery, accounting for, transferring and crediting the ownership and transfer of Facility Output from the Point of Delivery to any other points or destinations, as determined by the Purchaser.
- 9.3 Energy Services. Except as otherwise provided in this Agreement, nothing herein shall prevent or restrict Purchaser from providing for its own transmission, energy management services, firming, balancing, or exchanging services or otherwise using or dispatching its Energy under this Agreement; provided, however, that such services, use or activities shall not affect any of the obligations of Purchaser under this Agreement.
- 9.4 Balancing Agent and Dynamic Scheduling. Upon the request of Purchaser, SCPPA shall either (i) retain an agent to maintain and balance Purchaser's hourly Energy schedules in accordance with WECC protocols ("Balancing Agent"), including the provision or absorption of imbalance energy to accommodate any intra-hour fluctuations of Facility Output as compared to Purchaser's Energy schedule and maintaining a balancing account of accumulated imbalance energy to be settled by adjusting future Purchaser Energy schedules, (ii) arrange for Dynamic Scheduling from the Point of Delivery to Purchaser's control area or electric system, including the procurement and installation of scheduling hardware, software, and communications equipment necessary to effectuate Dynamic Scheduling, or (iii) address the costs, charges or consequences of such imbalances, fluctuations, variability, intermittency, or like conditions through other mechanisms or methodologies which are mutually agreeable to the Purchaser and SCPPA.
- 9.5 Transfer of Environmental Attributes to Purchaser. SCPPA shall transfer all Environmental Attributes received by SCPPA under the Power Purchase Agreement to Purchaser in the same manner by which SCPPA receives Environmental Attributes.

10. PROJECT SPECIFIC MATTERS AND PURCHASER RIGHTS AND OBLIGATIONS UNDER PROJECT AGREEMENTS.

- 10.1 Rights and Obligations under the Project Agreements. Notwithstanding anything to the contrary contained herein: (i) the obligation of SCPPA to

deliver to Purchaser the Facility Output during the Delivery Term of the Power Purchase Agreement is limited to the Facility Output which SCPPA receives from the Power Purchase Provider (or the Facility, as applicable) for redelivery to Purchaser hereunder during such time; (ii) the obligation of SCPPA (or the Power Purchase Provider) to deliver Replacement Energy hereunder during the Delivery Term of the Power Purchase Agreement is limited to the Replacement Energy which SCPPA receives at the Point of Delivery under the Power Purchase Agreement, (iii) the obligation of SCPPA to pay any amount to Purchaser hereunder or to give credits against amounts due from Purchaser hereunder is limited to amounts SCPPA receives in connection with the transaction to which the payment or credit relates (or is otherwise available to SCPPA in connection with this Agreement for which such payment or credit relates); (iv) any purchase costs, operating costs, energy costs, capacity costs, environmental attribute costs, transmission costs, tax costs, insurance costs, indemnifications, other costs or other charges for which SCPPA is responsible under the Project Agreements shall be considered purchase costs, operating costs, energy costs, capacity costs, environmental attribute costs, transmission costs, tax costs, insurance costs, indemnifications, other costs or other charges incurred by SCPPA and payable by Purchaser; and (v) any Force Majeure under the Power Purchase Agreement or other event of force majeure affecting the delivery of energy pursuant to applicable provisions of the Project Agreements shall be considered an event caused by Uncontrollable Forces affecting SCPPA with respect to the delivery of energy and/or environmental attributes hereunder and SCPPA forwarding to Purchaser notices and information from the Power Purchase Provider concerning an event of Force Majeure upon receipt thereof shall be sufficient to constitute a notice that Uncontrollable Forces have occurred pursuant to Section 12.3 of this Agreement. Any net proceeds received by SCPPA from the sale of Guaranteed Generation by the Power Purchase Provider to any third-party purchaser as a result of a Force Majeure event or failure by SCPPA to accept delivery of Energy pursuant to the Power Purchase Agreement and any reimbursement received by SCPPA for purchase of Replacement Energy shall be remitted by SCPPA to Purchaser.

11. NONPERFORMANCE AND PAYMENT DEFAULT.

- 11.1 Nonperformance by Purchaser. If Purchaser shall fail to perform any covenant, agreement or obligation under this Agreement or shall cause SCPPA to be in default with respect to any undertaking entered into for the Project or to be in default under the Power Purchase Agreement, or any other Project Agreement, as applicable, or cause a default to occur pursuant to such agreements, SCPPA may, in the event the performance of any such obligation remains unsatisfied after 30 days' prior written notice thereof to the Purchaser and a demand to so perform, take any action permitted by law to enforce its rights under this Agreement, including but not limited to termination of this Agreement, and/or (unless SCPPA has already taken action pursuant to the immediately following sentence) bring any suit, action or proceeding at law or in equity as may be necessary or appropriate to recover damages and/or

enforce any covenant, agreement or obligation against the Purchaser with regard to its failure to so perform.

- 11.2 Notice of Payment Default. On or promptly following the Initial Payment Default Date by Purchaser, SCPPA shall issue a Default Invoice and shall provide written notice to Purchaser that as a result of a Payment Default it is in default under this Agreement and has assumed the status of the Defaulting Purchaser and that Purchaser's Project Rights are subject to discontinuance, termination and disposal in accordance with Sections 11.4 and 11.5 of this Agreement. In addition to the foregoing, the Notice of Payment Default shall specify that five days after the issuance of the written notice of Payment Default by SCPPA, deliveries of Facility Output to the Purchaser pursuant to this Agreement shall be thereafter suspended until such time as Purchaser is in Compliance. SCPPA may take any action through or in conjunction with the Power Purchase Provider or any other counterparty under a Project Agreement or with the Project Manager, if applicable, to expeditiously carry forth the provisions of this Section 11.
- 11.3 Cured Payment Default. Except as provided in Section 11.2, if after a Payment Default, Purchaser cures such Payment Default within 30 days (the Cure Period) its Project Rights shall not be subject to discontinuance, termination or disposal as provided for in Sections 11.4 and 11.5 of this Agreement as a result of any Payment Default associated with such Cured Payment Default.
- 11.4 Failure to Cure Payment Default. If at any time 30 days after an uncured Payment Default by Purchaser, Purchaser fails to be in Compliance, Purchaser's Project Rights shall immediately be discontinued and terminated and its Project Rights and Obligations shall be disposed of by SCPPA in accordance with Section 11.5 hereof; provided, however, the Defaulting obligation to make payments under this Agreement shall not be eliminated or reduced except to the extent provided in Section 11.6. SCPPA shall provide to the Defaulting Purchaser a separate monthly invoice of any such payment obligations under this Agreement. SCPPA shall immediately notify the Project Manager, and such others as SCPPA deems appropriate, of such discontinuance and termination of a Defaulting Purchaser's Project Rights.
- 11.5 Treatment of the Defaulting Purchaser's Project Rights and Obligations upon Payment Default. In the event Defaulting Purchaser's Project Rights are discontinued and terminated pursuant to Section 11.4 hereof, SCPPA shall undertake or cause to be undertaken the following actions in the order indicated:
- 11.5.1 SCPPA shall, to the extent SCPPA in its discretion determines it appropriate, offer to convey, transfer and assign, on a temporary or permanent basis as determined by SCPPA, the Defaulting Purchaser's Project Rights and Obligations to third parties, all in accordance with applicable law. Each such requesting third party shall assume all, but not less than all, Project Rights and

Obligations so conveyed, transferred and assigned to it by SCPPA.

- 11.5.2 If, at any time or from time to time, any of the Project Rights and Obligations of the Defaulting Purchaser is not conveyed, transferred and assigned as provided in Sections 11.5.1 and 11.5.2 hereof, SCPPA shall use its best efforts, to the extent reasonably possible and economically beneficial, to offer third parties for long-term or short-term sale as determined by SCPPA, Facility Output associated with such Project Rights and Obligations or to remarket or resell such Facility Output, or cause the same to be remarketed or resold; provided however, that without eliminating the Defaulting Purchaser's obligation to make payments under this Power Sales Agreement, including payment of SCPPA's costs and expenses related to such default and sale, such payment obligation shall be satisfied to the extent that payments are received by SCPPA from the remarketing or sale of Facility Output associated with Defaulting Project Rights.
- 11.6 Elimination or Reduction of Payment Obligations. Upon termination of Defaulting Purchaser's Project Rights pursuant to Section 11.5 and conveyance, transfer or assignment of Defaulting Purchaser's Project Rights and Obligations pursuant to Section 11.5.1, the Defaulting Purchaser's obligation to make payments under this Agreement (notwithstanding anything to the contrary herein) 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 the Defaulting Purchaser's Project Rights and Obligations, less SCPPA's related costs and expenses; provided, however, such payment obligations for the Defaulting Purchaser may be eliminated or reduced to the extent permitted by law, if the Board of Directors, by resolution, determines to eliminate or reduce such payment obligations, which determination shall not be unreasonably withheld.
- 11.7 Application of Moneys Received from a Default Invoice. Moneys received by or on behalf of SCPPA from the payment of a Default Invoice or from payments from the Defaulting Purchaser to remain in Compliance shall be applied as shall be determined by the Board of Directors.
- 11.8 Application of Moneys Received from Sale of Facility Output. Moneys received by or on behalf of SCPPA from the sale of Facility Output related to the Defaulting Purchaser's Project Rights and Obligations, as provided in Section 11.5.2 hereof, shall be applied as determined by the Board of Directors. Unless the Board of Directors determines otherwise, or except as otherwise required by law, the Defaulting Purchaser shall have no claim or right to any such moneys.

12. CHARACTER, CONTINUITY OF SERVICE.

- 12.1 Outages, Interruptions and Curtailment of Energy Deliveries. The Power Purchase Provider or other counterparty may under certain conditions set forth in the applicable provisions of a Project Agreement or other applicable operating agreement, interrupt or curtail deliveries of Facility Output to Purchaser under prescribed circumstances pursuant to the applicable provisions of a Project Agreement or other applicable operating agreement. Should such an interruption or curtailment occur Purchaser shall be credited with such revenues as are credited or paid to SCPPA on Purchaser's behalf and shall be obligated to pay any costs incurred by SCPPA attributable to Purchaser which are payable by SCPPA pursuant to the Power Purchase Agreement, other applicable Project Agreement or other applicable operating agreement. SCPPA or the Project Manager (if other than SCPPA) or SCPPA's agent will use its best efforts to apprise Purchaser of potential outages, interruptions or curtailments, the reason therefor and the probable duration thereof, when such outages, interruptions or curtailments can be deemed likely to occur.
- 12.2 Outages, Interruptions and Curtailment of Energy from the Facility. Following SCPPA's purchase or acquisition of the Facility, SCPPA or its agent or the Project Manager, as applicable, may temporarily interrupt or curtail deliveries of Facility Output to Purchaser if SCPPA or its agent or the Project Manager, as applicable, shall determine that such interruption or curtailment is necessary in the case of an emergency or in order to take out of service the Facility or any portion thereof; or to install equipment in or make repairs to or replacements, investigations and inspections of or to perform other maintenance work on the Facility or any portion thereof; provided, however, that such interruption or curtailment shall not relieve Purchaser of its obligations to make payments under this Agreement. After informing Purchaser regarding any such planned interruption or curtailment, giving the reason therefor, and stating the probable duration thereof, SCPPA, its agent or the Project Manager, as applicable, will to the best of its ability schedule such interruption or curtailment at a time which will cause the least interference with the system operations of Purchaser.
- 12.3 Uncontrollable Forces. SCPPA shall not be required to provide, and SCPPA shall not be liable for failure to provide, Facility Output or other service under this Agreement when such failure or the cessation or curtailment of or interference with the service is caused by Uncontrollable Forces or by the inability of SCPPA, the Power Purchase Provider (to the extent allowed under the Power Purchase Agreement) or other applicable counterparty to obtain any required governmental permits, licenses or approvals to enable SCPPA or the Power Purchase Provider, as applicable, to acquire, administer or operate the Project; provided, however, that Purchaser shall not thereby be relieved of its obligations to make payments under this Agreement except to the extent SCPPA is so relieved pursuant to the other applicable Project Agreements.

13. LIABILITY.

- 13.1 No Liability of SCPPA or Purchaser, Their Directors, Officers, Etc.; SCPPA, Purchaser's and Project Manager's Directors, Officers, Employees Not Individually Liable. Both Parties agree that neither SCPPA, the Purchaser, the Project Manager, nor any of their past, present or future directors, officers, 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, actions, loss of profits, judgments, orders, suits, costs, expenses (including attorneys' fees and expenses) or disbursements of any kind or nature whatsoever in law, equity or otherwise (including, without limitation, death, bodily injury or personal injury to any person or damage or destruction to any property of Purchaser, SCPPA, the Project Manager or third persons) suffered by any Released Party as a result of the action or inaction or performance or non-performance by the Power Purchase Provider or any of the Released Parties under this Agreement or any Project Agreement (excluding gross negligence 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 actions or inactions or performance or non-performance by any of the other Released Parties under this Agreement or any Project Agreement (excluding gross negligence 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). Notwithstanding the foregoing, no such action or inaction or performance or non-performance by any of the Released Parties shall relieve SCPPA or Purchaser from their respective obligations under this Agreement, including, without limitation, Purchaser's obligation to make payments required under Section 8.1 of this Agreement and SCPPA's obligation to make payments under Section 13.6 of this Agreement, or under any other Project Agreement. The provisions of this Section 13.1 shall not be construed so as to relieve the Project Manager or the Power Purchase Provider from any obligation (or liability in the case of the Power Purchase Provider) under this Agreement, the Power Purchase Agreement or any other applicable Project Agreement. It is also hereby recognized and agreed that no member of the Board of Directors, the Project Manager or the Purchaser, nor their officers, employees, board members, agents, attorneys or advisors, or member of SCPPA in its capacity as a member of SCPPA, shall be individually liable in respect of any undertakings by any of the Released Parties under this Agreement or any Project Agreement. Nothing in this Section 13.1 or in any other provision of this Agreement shall affect Purchaser's obligation to make any payment in accordance with Section 8.1 of this Agreement or to pay any other amounts or costs required to be paid by it under this Agreement.
- 13.2 Extent of Exculpation; Enforcement of Rights. The exculpation provision set forth in Section 13.1 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 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 monetary damages owed by the other Party in accordance with the terms of this Agreement.

- 13.3 Determination or Enforcement of Rights. Notwithstanding Section 13.1 and 13.2 hereof, Purchaser or SCPPA may determine, protect and enforce its rights under this Agreement or any Project Agreement by a suit(s) in equity for specific performance of, or declaratory action with respect to, any obligation or duty hereunder or thereunder.
- 13.4 No Relief From Insurer's Obligations. Notwithstanding any provision in this Agreement to the contrary, including but not limited to the provisions in this Section 13, the provisions of this Section 13 shall not be construed or applied so as to relieve any insurer of its obligation to pay any insurance claims in accordance with any applicable insurance policy.
- 13.5 No General Liability of SCPPA. The undertakings under this Agreement by SCPPA, or the Project Manager in its capacity as such, shall never constitute a debt or indebtedness of SCPPA or the Project Manager within the meaning of any provision or limitation of the Constitution or statutes of the State of California, and shall not constitute or give rise to a charge against its general credit.
- 13.6 Indemnification of Purchaser. SCPPA undertakes and agrees, to the extent permitted by law, to indemnify and hold harmless Purchaser, its directors, board members, officers, employees, agents, attorneys and advisors, past, present or future (collectively, "Purchaser 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 Purchaser, SCPPA or third persons) (collectively, "Losses") which may be imposed on, incurred by or asserted against Purchaser arising by manner of any breach of this Agreement by SCPPA, or the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement on the part of SCPPA or any of SCPPA's directors, board members, officers, employees, agents and advisors, past, present or future. At Purchaser's option, SCPPA shall defend such Purchaser Indemnitees from and against any and all Losses. If SCPPA, with Purchaser's consent, defends any such Purchaser Indemnitee, Purchaser and the Purchaser's City Attorney shall approve the selection of counsel, and Purchaser shall further approve any settlement or disposition, such approval not to be unreasonably withheld. Nothing in this Section 13.6 or in any other

expire on the date SCPPA's Joint Powers Agreement (including any extensions thereof) expires, except that the term of this Agreement shall expire earlier upon agreement by the Parties to this Agreement that the term of this Agreement shall expire on the date on which the term of the Power Purchase Agreement expires in accordance with its terms and on which all of the obligations of the parties under the Power Purchase Agreement and all of the obligations of the parties under the Project Agreements have been fully performed and satisfied and no such obligations under the Power Purchase Agreement or any Project Agreement shall then be outstanding; provided, however, that in no event shall the term of this Agreement expire so long as the Power Purchase Agreement is of any force or effect.

15.4 Termination of Agreement before Expiration Date. Notwithstanding the expiration date set forth in Section 15.3 hereof, this Agreement shall terminate on the date on which the Power Purchase Agreement shall no longer be of any force or effect and all the obligations of the parties under the Power Purchase Agreement and all of the obligations of the parties under the Project Agreements have been fully performed and satisfied and no such obligations under the Power Purchase Agreement or any Project Agreement shall then be outstanding.

16. **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.

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

18. **ARBITRATION AND ATTORNEYS' FEES.** If a dispute arises between the Parties which the Board of Directors is unable to resolve, the Parties may by mutual agreement submit the dispute to mediation or non-binding arbitration. With respect to any such dispute the Parties agree that each Party shall bear its own attorneys' fees and costs. Notwithstanding the foregoing, Purchaser and SCPPA recognize and agree that SCPPA's attorneys' fees associated with any matter relating to the Project or this Agreement, including any dispute relating thereto, shall constitute a Power Cost which shall be allocated and billed as set forth in Sections 4 and 7 of this Agreement.

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

Southern California Public Power Authority
Attention: Executive Director
1160 Nicole Court
Glendora, California 91740

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

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

[SIGNATURE PAGE FOLLOWS]

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

SOUTHERN CALIFORNIA PUBLIC
POWER AUTHORITY

Dated: _____

By: _____
RONALD E. DAVIS
President

Attest: _____
BILL D. CARNAHAN
Assistant Secretary

DEPARTMENT OF WATER AND POWER
OF THE CITY OF LOS ANGELES BY
BOARD OF WATER AND POWER COMMISSIONERS
OF THE CITY OF LOS ANGELES

Dated: _____

By: _____
MARCIE L. EDWARDS
General Manager

And: _____
BARBARA E. MOSCHOS
Board Secretary

APPROVED AS TO FORM AND LEGALITY
MICHAEL N. PETER, CITY ATTORNEY
DEC 18 2014
BY _____
VAUGHN MINASSIAN
DEPUTY CITY ATTORNEY

APPENDIX A

DEFINITIONS

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

1. Act. All of the provisions contained in the California Joint Exercise of Powers Act found in Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, beginning at California Government Code Section 6500 et seq., as amended from time to time.
2. Ancillary Documents. "Ancillary Documents" shall have the definition set forth in the Power Purchase Agreement.
3. Annual Budget. The budget adopted by SCPPA pursuant to Section 5.4.1 of this Agreement not less than 30 days nor more than 60 days prior to the beginning of each Power Supply Year, including any amendments thereto, which shall show a detailed estimate of Power Costs under this Agreement and all credits, charges, revenues, income, or other funds to be applied to such costs, for and applicable to such Power Supply Year.
4. Balancing Agent. "Balancing Agent" shall have the meaning set forth in Section 9.4.
5. Billing Statement. The written statement prepared or caused to be prepared each Month by, or on behalf of, SCPPA which shall be based upon certain of the information in the Annual Budget and shall show for such Month the amount to be paid to SCPPA by Purchaser in accordance with the provisions of Section 7 of this Agreement.
6. Board of Directors. The Board of Directors of the Southern California Public Power Authority.
7. Capacity. The ability or potential to generate, produce or transfer electricity, expressed in kilowatts ("kW") or megawatts ("MW"), including, when feasible, ancillary or regulating services or other valuable non-energy products or services from a generating facility.
8. Capacity Rights. "Capacity Rights" means the rights, whether in existence as of the Effective Date or arising thereafter during the term of this Agreement, to Capacity, resource adequacy, associated attributes and/or reserves or any of the foregoing associated with the electric generating capability of the Facility.
9. Commercial Operation. "Commercial Operation" shall have the definition set forth in the Power Purchase Agreement.
10. Compliance. Following a Payment Default, the Defaulting Purchaser shall be in compliance with its payment obligations under this Agreement if it (i) no later than the last day of the Cure Period fully pays all amounts owed as reflected in any Default Invoice; (ii) pays any monthly Billing Statement which comes due during the Cure Period; and (iii) replenishes any

reduction made to the applicable operating reserve account or other Reserve Fund as a result of any Payment Default.

11. Consent Agreements. All consents to assignments and all agreements relating thereto entered into with any lender, financial institution or other Person for the purpose of consenting to the assignment of the rights or securing the obligations of the Power Purchase Provider under the Power Purchase Agreement.
12. Cure Period. That period of time beginning on the date of a Payment Default and concluding thirty (30) days thereafter.
13. Cured Payment Default. A Payment Default which has been cured in accordance with Section 11.3 of this Agreement. If at any time during the Cure Period the Defaulting Purchaser is in Compliance, then the requirements of a Cured Payment Default shall be deemed to have been satisfied as of the date of receipt of such payments by SCPPA and the Cure Period shall expire.
14. Default. "Default" shall have the definition set forth in the Power Purchase Agreement.
15. Default Invoice. An invoice during the Payment Default Period and the Cure Period issued to the Defaulting Purchaser pursuant to Section 11 of this Agreement that identifies the total defaulted amount owed, including late payment interest, to achieve a Cured Payment Default. During the Cure Period, the Default Invoice shall also include the amount that must be paid to achieve Compliance.
16. Defaulting Purchaser. In the event that Purchaser causes a Payment Default which has not been remedied and where Purchaser has not effected a Cured Payment Default.
17. Delivered Energy. "Delivered Energy" shall have the definition set forth in the Power Purchase Agreement.
18. Delivery Term of the Power Purchase Agreement. The time period for the delivery of Energy pursuant to the Power Purchase Agreement as set forth therein.
19. Delivery Term Security. "Delivery Term Security" shall have the definition set forth in the Power Purchase Agreement.
20. Dynamic Scheduling. "Dynamic Scheduling" shall mean the automated scheduling of Energy from the Point of Delivery to Purchaser's control area or electric system, provided that said dynamic schedules adjust at four second intervals, or other intervals as specified by WECC, to match the amount of Energy actually delivered to the Point of Delivery from the Facility.
21. Energy. "Energy" shall include both Energy and any Replacement Energy, as those terms are defined in the Power Purchase Agreement.
22. Environmental Attributes. "Environmental Attributes" shall have the definition set forth in the Power Purchase Agreement.

23. Excess Energy. “Excess Energy” shall have the definition set forth in the Power Purchase Agreement.
24. Facility. “Facility” means all of the facilities and real and personal properties and resources and rights and interests, all as described or defined as the Facility in the Power Purchase Agreement and all related assets and rights, interests and obligations associated with such facilities, including the rights, interests and obligations under the Ancillary Documents.
25. Facility Output. All output, rights, and other tangible or intangible benefits derived from the Facility, whatsoever, including without limitation all Energy (including Replacement Energy as defined in the Power Purchase Agreement), Capacity Rights and Environmental Attributes, whether received by SCPPA under or pursuant to the Power Purchase Agreement or other applicable Project Agreement.
26. 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.
27. Force Majeure. “Force Majeure” shall have the definition set forth in the Power Purchase Agreement.
28. Guaranteed Generation. “Guaranteed Generation” shall have the meaning provided in the Power Purchase Agreement.
29. 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.
30. Joint Powers Agreement. The “Southern California Public Power Authority Joint Powers Agreement” dated as of November 1, 1980, as amended and modified from time to time, entered into pursuant to the provisions of the Act, among SCPPA and its members.
31. LADWP. The City of Los Angeles acting by and through the Department of Water and Power.
32. Major Contracts. The Project Agreements and, to the extent not finalized or effective on the effective date of this Agreement, any other contract or agreement so identified by the Board of Directors, as such contracts or agreements may be amended or supplemented from time to time.
33. Month. A calendar month.
34. Monthly Costs. “Monthly Costs” is defined in Section 7.1.
35. Moody’s. “Moody’s” shall mean Moody’s Investor Services, Inc.

36. Operating Budget. The operating budget approved by the Board of Directors which shall show a detailed estimate of all Project operating costs, including all revenues, income or other funds to be applied to such operating costs for and applicable to a Power Supply Year.
37. Operating Work. All work and activities in connection with the administration of the Project, including without limitation, negotiating and administering contracts, planning, mitigating impacts, inspecting, investigating and monitoring all aspects of the Project, performing modeling functions, economic analysis, quality control, testing and evaluating, electric energy and environmental attribute procurement, regulatory efforts, tagging, interconnecting, transmission, dispatching, firming, balancing, exchanging and scheduling activities, supervising, expediting, budgeting, accounting, tracking, registering, protecting, and managing activities, public information services and services of consultants, contactors and legal counsel, and activities related to securing requisite permits, franchises, licenses, approvals, entitlements, credits and certificates from governmental agencies and authorities.
38. Payment Default. A failure by the Purchaser to pay when due all of its Billing Statement for any Month.
39. Payment Default Period. That period of time during which a Payment Default exists.
40. Performance Damages. "Performance Damages" shall mean the liquidated damages set forth in Section 3.7(a) and Section 3.7(b), as applicable, of the Power Purchase Agreement.
41. Performance Security. "Performance Security" shall have the definition set forth in the Power Purchase Agreement.
42. Permit. "Permit" shall have the definition set forth in the Power Purchase Agreement.
43. Person. "Person" means any individual, corporation, partnership, joint venture, limited liability company, association, joint stock company, trust, unincorporated organization, entity, government or other political subdivision.
44. Points of Delivery. The points at which Energy is to be delivered to the Purchaser pursuant to the Power Purchase Agreement or any other agreement with the Power Purchase Provider, or such other points of delivery as authorized and determined by the Board of Directors.
45. Power Costs. "Power Costs" has the meaning described in Section 4.3.
46. Power Purchase Agreement. The Power Purchase Agreement between Southern California Public Power Authority and ORNI 37 LLC, dated as of December 18, 2014, attached hereto as Appendix D, as the same may be amended from time to time.
47. Power Purchase Provider. ORNI 37 LLC, as the counterparty to SCPPA under the Power Purchase Agreement, and any other entity named under any applicable agreement to operate or otherwise run or manage the Facility, along with each of their successors, or any successors or assigns to the rights of these entities.

48. Power Supply Year. The Fiscal Year, except that the first Power Supply Year shall begin on the first to occur of (i) the date SCPPA is obligated to pay any portion of the costs of the Project, (ii) the date of Commercial Operation of the Facility, or (iii) the date of the first delivery of Energy to Purchaser pursuant to this Agreement. Further, the first Power Supply Year shall end on the last day of the then current Fiscal Year.
49. Project or Don A Campbell 2 Geothermal Energy Project. The term “Project” or “Dona A Campbell Phase 2 Geothermal Energy Project” shall be broadly construed to entail the aggregate of rights, liabilities, interests and obligations of SCPPA pursuant to the Power Purchase Agreement and the other Project Agreements, including but not limited to all rights, liabilities, interests and obligations associated with the Facility Output. The term Project shall also include those rights, liabilities, interests or obligations necessary or appropriate to carry out the functions specified in Section 6 and to utilize or deliver the energy of the Facility as specified in Section 9.
50. Project Agency Agreement. The Don A Campbell 2 Geothermal Energy Project Agency Agreement between Southern California Public Power Authority and the city of Los Angeles acting by and through the Department of Water and Power, dated as of December 18, 2014, as the same may be amended from time to time.
51. Project Agreements. This Agreement, any project management agreement, the Power Purchase Agreement, each of the Project Agreements as defined in the Power Purchase Agreement and other Ancillary Documents, the Project Agency Agreement or any other agreement of SCPPA with the Project Manager, other contracts and leases, easements, rights of way and other arrangements or agreements associated with the Facility, if any, any other agreement for the delivery or transmission of Facility Output, any consents to assignments or agreements for assignment, any agreements for scheduling, dispatching, exchanging, tagging, movement or transmission of Facility Output, and any agreements relating to the administration or management of the Facility.
52. Project Development Security. “Project Development Security” shall have the definition set forth in the Power Purchase Agreement.
53. Project Manager. LADWP, in its capacity as agent for and on behalf of SCPPA under the Project Agency Agreement or if the Project 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 this Agreement.
54. Project Rights. All rights and privileges of the Purchaser under this Agreement, including but not limited to its right to receive Facility Output from the Facility.
55. Project Rights and Obligations. The Purchaser’s Project Rights and obligations under the terms of this Agreement.
56. Prudent Utility Practices. “Prudent Utility Practices” shall have the meaning provided in the Power Purchase Agreement.

57. Replacement Energy. “Replacement Energy” shall have the definition set forth in the Power Purchase Agreement.
58. Reserve Fund cost component. “Reserve Fund cost component” is defined in Section 4.3.3.
59. Reserve Fund(s). Those reserve accounts deemed appropriate to afford a reliable source of funds for the payment obligations of the Project and, taking into account the variability of costs associated with the Project for the purpose of providing a reliable payment mechanism to address the ongoing costs associated with the Project.
60. S & P. “S&P” shall mean Standard & Poor’s Financial Services LLC.
61. Shortfall Liquidated Damages. Shortfall Liquidated Damages shall have the definition set forth in the Power Purchase Agreement
62. Supplementary Services. Those services in connection with the delivery of Energy involving additional transmission, interconnection arrangements, energy management, firming, shaping, energy balancing, dispatching, tagging, scheduling, Dynamic Scheduling, transmitting, interconnecting, swapping, exchanging or other services associated with the transmission, use or disposition of Facility Output to be utilized by the Purchaser under this Agreement, and to otherwise provide for delivery and facilitate the disposition, movement, taking, receiving, accounting for, transferring and crediting the ownership and transfer of Facility Output from the Point of Delivery to any other points or destinations, as determined by the Purchaser. Supplementary Services include but are not limited to delivery point swaps, stranded energy/transmission curtailments, tiepoint liquidity improvement, transmission loss savings, tiepoint price spread optimization, on-peak/off-peak exchanges, peak shifting exchanges, seasonal exchanges, and both simultaneous or non-simultaneous green energy exchanges.
63. Supplementary Services cost component. “Supplementary Services cost component” is defined in Section 4.3.4.
64. Transmission System. “Transmission System” shall have the meaning set forth in the Power Purchase Agreement.
65. Uncontrollable Forces. Any Force Majeure event and any cause beyond the control of any Party, and which by the exercise of due diligence such Party is unable to prevent or overcome, including but not limited to, failure or refusal of any other Person to comply with then existing contracts, an act of God, fire, flood, explosion, earthquake, strike, sabotage, pestilence, an act of the public enemy (including terrorism), civil or military authority including court orders, injunctions and orders of governmental agencies with proper jurisdiction or the failure of such agencies to act, insurrection or riot, an act of the elements, failure of equipment, a failure of any governmental entity to issue a requested order, license or permit, or inability of any Party or any Person engaged in work on the Project to obtain or ship materials or equipment because of the effect of similar causes on suppliers or carriers. Notwithstanding the foregoing, Uncontrollable Forces as defined herein shall also include events of Force Majeure pursuant to the Power Purchase Agreement, as defined therein.

66. WECC. The Western Electricity Coordinating Council, or its successor.

**DON A CAMPBELL 2 GEOTHERMAL PROJECT
AGENCY AGREEMENT**

BETWEEN

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

AND

THE CITY OF LOS ANGELES ACTING BY AND THROUGH

THE DEPARTMENT OF WATER AND POWER

Dated as of December 18, 2014

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APPENDICES

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**DON A CAMPBELL 2 GEOTHERMAL ENERGY PROJECT
AGENCY AGREEMENT**

1. **PARTIES.** This Don A Campbell 2 Geothermal Project Agency Agreement, dated for convenience as of the 18th day of December, 2014, by and between the SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY, a joint powers agency and a public entity organized under the laws of the State of California, hereinafter designated as “SCPPA,” or “the Authority” created under the provisions of the Act, and the CITY OF LOS ANGELES acting by and through the DEPARTMENT OF WATER AND POWER a California municipal utility created by and existing pursuant to the Charter of the City of Los Angeles. The CITY OF LOS ANGELES acting by and through the DEPARTMENT OF WATER AND POWER is also periodically referred to in this Project Agency Agreement as “LADWP” or as “Agent”. LADWP and SCPPA are also sometimes referred to herein, with respect to this Project Agency Agreement, individually as the “Party” and together as the “Parties”.

2. **RECITALS, CONSTRUCTION AND PRELIMINARY MATTERS.** The Recitals set forth herein and the facts which follow are incorporated into this Project Agency Agreement by reference for all purposes. This Project Agency 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” or “Appendix” shall be to Sections or the Appendix of this Project Agency Agreement unless otherwise specifically provided. Section headings in this Project Agency Agreement are included herein for convenience of reference only and shall not constitute a part of this Project Agency 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 Project Agency Agreement is made with reference to the following facts among others:

2.1 SCPPA was created pursuant to provisions contained in the Joint Exercise of Powers Act found in Chapter 5 of Division 7 of Title 1 of the Government Code of California, as amended from time to time (the “Act”), by its members, which are municipalities and an irrigation district that supply, among other things, electrical energy, in the State of California, for the purpose of jointly and cooperatively undertaking the planning, financing, development, acquisition, construction, improvement, betterment, operation, and maintenance, of projects for the generation or transmission of electric energy, including the development and implementation of systems and frameworks for the acquisition and delivery of secure, long term reliable supplies of renewable electric energy.

2.2 LADWP is a California municipal 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 founding member

municipalities which formed SCPPA. Since the initial creation of SCPPA pursuant to the Joint Powers Agreement, LADWP has acted, in part, through SCPPA's Board of Directors to carry out generation, transmission and other projects through SCPPA.

2.3 SCPPA is entering into the Power Purchase Agreement with ORNI 37 LLC, an affiliate of Ormat Nevada, Inc.

2.4 SCPPA is entering into the Power Sales Agreement with LADWP under which SCPPA will sell to LADWP, as the Purchaser thereunder, and LADWP will purchase from SCPPA the Facility Output.

2.5 The Power Sales Agreement provides for the designation of a Project Manager to administer the Project on behalf of SCPPA.

2.6 It is the purpose of this Project Agency Agreement to carry forth the intendment of the Power Sales Agreement by designating LADWP as Project Manager of the Project with the responsibilities provided in the Power Sales Agreement, and to carry out certain of SCPPA's rights under the Power Purchase Agreement by designating LADWP as Buyer's Agent to make certain determinations, and perform and carry out certain functions as provided in the Power Purchase Agreement, and otherwise to repose in LADWP, through this Project Agency Agreement, the power, authority and responsibility to act as the Agent (including as Project Manager and as Buyer's Agent) for and on behalf of SCPPA in the management and administration of the 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 objectives of the Power Sales Agreement and certain administrative functions of the Power Purchase Agreement, to designate LADWP as such Agent (including as Project Manager and as Buyer's Agent) of the 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 Project Agency Agreement) sets forth, where applicable, the defined terms of this Project Agency Agreement between SCPPA and LADWP. The definitions in said Appendix A shall be applicable to this Project Agency Agreement. All 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. The definitions in Appendix A shall be equally applicable to the Power Sales Agreement and this Project 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 or in Appendix A hereto and initially capitalized, shall have the meaning ascribed thereto in said Appendix A or as set out below:

4.1 Agency Costs. The costs, as set forth in Section 9 hereof, of carrying out Agency Work.

4.2 Agency Work. The activities to be performed by the Agent, including in its capacity as Project Manager pursuant to Section 7 of this Project Agency Agreement and in its capacity as Buyer's Agent pursuant to Section 8 of this Project Agency Agreement.

4.3 Agent. The City of Los Angeles acting by and through the Department of Water and Power, as agent for SCPPA, including in its capacity as Project Manager, which shall be responsible, in accordance with the terms of this Project Agency Agreement, for carrying out the Agency Work on behalf of SCPPA, and including in its capacity as Buyer's Agent,

which shall have the responsibilities provided for Buyer's Agent in the Power Purchase Agreement.

4.4 Effective Date. The date described in Section 19.1 hereof.

4.5 Project Agency Agreement. This Don A Campbell 2 Geothermal Energy Project Agency Agreement, as it may be amended, modified or supplemented from time to time.

5. APPOINTMENT OF AGENT.

5.1 Appointment of Agent. In accordance with the terms and conditions of this Project Agency 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 Project Agency Agreement. LADWP hereby accepts such appointment, designation, authorization and direction. Agent shall act as Project Manager for the Project and as Buyer's Agent under the Power Purchase Agreement. Unless this Project Agency Agreement is otherwise terminated pursuant to Section 19.2 of this Project Agency Agreement, LADWP shall serve as Agent, including in its capacity as Project Manager, for the duration of the Power Sales Agreement. Except as provided in Section 19.2 hereof, Agent shall not have the right to resign and may not be removed as Agent for the Project during the time which 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 Project Agency Agreement Agent shall, in all material respects, observe all applicable laws, rules and regulations.

5.3 Other Agents. The Authority shall at all times have the right to appoint another agent or agents to perform, apart from and concurrent with this Project Agency Agreement, activities relative to the Project.

5.4 Procurement. So long as LADWP is not in default under the Power Sales Agreement, the Agent will use LADWP's procurement rules and policies unless other rules or policies are determined by the Board of Directors and Agent to be in the best interests of the Project.

6. **RIGHTS, DUTIES AND RESPONSIBILITIES OF SCPPA.** The rights, duties and responsibilities of SCPPA shall include its duties and responsibilities of the Board of Directors set forth in the Power Sales Agreement and shall also include the following rights, duties and responsibilities that implement, define and add to such responsibilities of the Board of Directors:

6.1 SCPPA's Role. SCPPA acting by and through its Board of Directors or the Executive Director, as applicable, shall have the following rights duties and responsibilities under this Project Agency Agreement:

6.1.1 Review Budgets: review, modify and approve the budgets submitted pursuant to the applicable provisions of the Power Sales Agreement

6.1.2 Review Agency Cost Estimates: Review, modify and approve the estimates of Agency Costs submitted by the Agent pursuant to this Project Agency Agreement.

- 6.1.3 Monitor Agency Work: Monitor the continuation and completion of Agency Work.
- 6.1.4 Make Recommendations and/or Modifications Regarding Agency Work: Make (i) recommendations to the Agent with respect to Agency Work and/or (ii) modifications to Agency Work to be undertaken by Agent.
- 6.1.5 Provide Assistance: Provide such other assistance to the Agent in carrying out Agency Work as the Board of Directors shall deem reasonable and proper and as the Agent shall request.
- 6.1.6 Consider Relevant Matters: Consider any matter relating to SCPPA's interests proposed by the Agent, any member of the Board of Directors or any member of SCPPA's staff.
- 6.1.7 Perform Other Functions and Duties: Perform such other functions and duties as may be required of SCPPA in connection with SCPPA's interests in the Project.

7. **AGENT'S ACTIVITIES TO BE PERFORMED BY LADWP AS PROJECT MANAGER.** The activities to be performed by LADWP, as the Agent under this Project Agency Agreement, shall include its responsibilities as Project Manager set forth in the Power Sales Agreement and shall also include the following activities (exclusive of those activities to be undertaken, performed and carried out as Buyer's Agent as provided in Section 8 hereof) that implement, define and add to such responsibilities:

- 7.1 Make Periodic Reports. Make periodic reports to SCPPA regarding the operation of the Facility, Operating Work, and any relevant operating information and reports, including generation and transmission information, statistical, financial and administrative reports, and other similar reports, records, or information which may be helpful to or requested by the Board of Directors.
- 7.2 Operating Budget. Prepare and submit 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. Prepare and submit 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 on 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, the following 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 Submit Recommendations. Submit recommendations from time to time to the Board of Directors, for review, modification and approval or disapproval with respect to the following:
- 7.4.1 Recommend policies, criteria, protocols or procedures which will carry forth SCPPA's rights responsibilities and obligations pursuant to the Project Agreements and, when appropriate, recommend practices, protocols and procedures relating to the operation and maintenance of the Facility.
- 7.4.2 Recommend, when applicable and appropriate, policies, criteria, protocols or procedures for the maintenance of inventories for spare parts, materials or supplies.
- 7.4.3 To the extent appropriate and permissible pursuant to the Power Purchase Agreement recommend policies, protocols and procedures for conducting tests or performance of other services with respect to the Facility.
- 7.5 Billings. Prepare in the manner and at the times required by the Power Sales Agreement and submit to SCPPA proposed billings to be rendered by SCPPA to the Purchaser 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 Project Agency Agreement.
- 7.8 Investments. Schedule, select, direct, execute, maintain records of, and provide monthly reports to SCPPA concerning, investments of moneys in accordance with reasonable and customary business practices relating to the administration of such investments.
- 7.9 Arrange Services for Agency Work and Operating Work; Administer Contracts; Agent's Employees. Negotiate, arrange for, administer, perform and enforce all contracts for furnishing, purchasing, procuring and obtaining from any source (including pursuant to contracts between the Agent and third parties) studies, supplies, engineering services, legal services, or other services necessary for the performance and completion of Agency Work, 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.
- 7.10 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, costs, and 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 the Agent's estimate of Agency Costs to be used in preparing the Operating Budget with respect to the Project for each Fiscal Year.
- 7.13 Obtain Cost Data. Obtain and furnish to SCPPA, as applicable, cost data, projections and budgets which may be received from the Power Purchase Provider.
- 7.14 Assist in Budget Preparation. To the extent requested by SCPPA, assist in the preparation of the Annual Budget.
- 7.15 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.
- 7.16 Furnish Assistance and Information. Upon request, furnish to SCPPA any assistance and information reasonably available pertaining to Agency Work and the Project.
- 7.17 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 Project Agency Agreement and under any Project Agreement 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 desirable to protect against potential exposures, or as required by law.
- 7.18 Provide Information Regarding Defaults. Keep the Purchaser and SCPPA fully and promptly informed of any default by any party under any of the Project Agreements of which Agent has knowledge.
- 7.19 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 Project Agency Agreement.

8. AGENT'S ACTIVITIES TO BE PERFORMED BY LADWP AS BUYER'S AGENT.

- 8.1 Buyer's Agent Activities. The activities to be performed by LADWP, as Agent under the Project Agency Agreement, shall include making certain determinations and performing and carrying out certain functions to be made, performed or carried out by the Buyer's Agent pursuant to the Power Purchase Agreement. In those cases where the Power Purchase Agreement provides for such activities to be undertaken, performed or carried out by SCPPA or Buyer's Agent, such activities shall be undertaken, performed and carried out by Buyer's Agent, unless otherwise provided by the SCPPA Board of Directors.

9. **AGENCY COSTS.**

9.1 **Agency Costs.** Agency Costs shall include the following:

- 9.1.1 All costs approved by the Agent of labor, services, transportation and studies, including costs of legal counsel and consultation fees, performed by the Agent or by others, in connection with this Project Agency Agreement, together with all costs approved by the Agent of facilities utilized in such performance. All costs (including premiums or deposits to self-insurance funds) of insurance related to Agency Work procured in accordance with Section 7.16.
 - 9.1.2 Payroll and other expenses of employees of the Agent while performing work in connection with this Project Agency 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.
 - 9.1.3 Costs of the Agent associated with performing its duties and responsibilities under this Project Agency Agreement.
 - 9.1.4 All costs paid by the Agent for any studies, reports or other documents or information obtained from the Purchaser or the Power Purchase Provider.
 - 9.1.5 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 17.1 of this Project Agency 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 acts or omissions but excluding grossly negligent acts or willful misconduct (which unless otherwise agreed to by the Parties, are both to be determined and established by a court of competent jurisdiction in a final, non-appealable order) of the Agent, its Board of Water and Power Commissioners, or its respective officers, employees or employees of the municipal entity of which Agent is a part.
 - 9.1.6 Except as otherwise included as Agency Costs in this Section 9, Agency Costs shall include all costs, to the extent not covered by insurance, of the Agent in its capacity as Project Manager incurred or paid in connection with the performance of its responsibilities as provided in the Power Sales Agreement.
- 9.2 **No Profit.** The Agent shall not receive any profit under this Project Agency 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 Project Agency Agreement.

- 9.3 Budget and Review Processes. As is the case with similar costs for other projects of SCPPA, Agency Costs shall be the subject of SCPPA's Annual Budget and periodic budget review processes.

10. PAYMENT TO AGENT FOR AGENCY COSTS; AUDITS.

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

11. LIABILITY.

- 11.1 No Liability of SCPPA, Agent (including in its Capacity as Project Manager and in its Capacity as Buyer's Agent), or Their Directors, Officers, Employees, Etc.; SCPPA's and Agent's Directors, Officers, Employees Not Individually Liable. Both Parties agree that neither Party, nor any of their past, present or future directors, officers, board members, agents, attorneys, advisors, employees or employees of the governmental entity of which the Agent is a part (collectively, the "Released Parties") shall be liable to any other of the Released Parties for any and all claims, demands, liabilities, obligations, losses, damages (whether direct, indirect or consequential), penalties, actions, loss of profits, judgments, orders, suits, costs, expenses (including attorneys' fee and expenses) or disbursements of any kind or nature whatsoever in law, equity or otherwise (including, without limitation, death, bodily injury or personal injury to any person or damage or destruction to any property of any of the Released Parties) suffered by any Released Party as a result of the action or inaction or performance or non-performance by the Power Purchase Provider or any of the Released Parties under this Project Agency Agreement or any Project Agreement (excluding gross negligence or willful misconduct which unless otherwise agreed to by the Parties, are both to be determined and established by a court of competent

jurisdiction in a final, non-appealable order). Each Party shall release each of the other Released Parties from any claim or liability that such Party may have cause to assert as a result of any action or inaction or performance or non-performance by the Released Parties under this Project Agency Agreement or any Project Agreement (excluding gross negligence or willful misconduct which unless otherwise agreed to by the Parties, are both to be determined and established by a court of competent jurisdiction in a final, non-appealable order). Notwithstanding the foregoing, no such action or inaction or performance or non-performance of any of the Released Parties shall relieve either Party from its respective obligations under this Project Agency Agreement, including either Party's obligation to make payments required under this Project Agency Agreement, the Power Purchase Agreement or any other Project Agreement. The provisions of this Section 11.1 shall not be construed so as to relieve the Agent from any obligation under this Project Agency Agreement, the Power Purchase Agreement or any other applicable Project Agreement. The Parties also hereby recognize and agree that neither Party's past, present or future directors, officers, board members, agents, attorneys, advisors, employees or employees of the governmental entity of which the Agent is a part shall be individually liable in respect of any undertakings by any of the Released Parties under this Project Agency Agreement or any Project Agreement. Notwithstanding any provision of this Project Agency Agreement which might arguably be construed to the contrary, nothing in this Section 11 shall affect LADWP's obligation as the Purchaser under the Power Sales Agreement to make any payment or pay any cost required of it under the Power Sales Agreement.

- 11.2 Extent of Exculpation; Enforcement of Rights in Equity. The exculpation provision set forth in Section 11.1 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 Project Agency 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 Project Agency Agreement.
- 11.3 No Relief From Insurer's Obligations. The provisions of Section 11.1 shall not be construed so as to relieve any insurer of its obligation to pay any insurance claims.
- 11.4 SCPPA Directors Officers, Employees, Agents Not Liable; No General Liability of SCPPA. It is hereby recognized and agreed that no officer, agent or employee of SCPPA shall be individually liable in respect of any undertakings by SCPPA under this Project Agency Agreement. The undertakings by SCPPA under this Project Agency Agreement shall never constitute a debt or indebtedness of SCPPA within the meaning of any provision or limitation of the constitution or statutes of the State of California, and shall not constitute or give rise to a pecuniary liability of SCPPA or a charge against its general credit. Any provision of this Project Agency Agreement to the contrary notwithstanding, the obligation of SCPPA under this Project Agency Agreement to make or cause to be made payments shall be limited to those payments permitted by and monies available as provided for in this Project Agency Agreement.
- 11.5 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.

12. ALTERNATIVE DISPUTE RESOLUTION.

- 12.1 Non-Binding Dispute Resolution. If any dispute arises out of or relates to this Project Agency 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 12 before initiating any other type of legal action.
- 12.2 Role of the SCPPA Board of Directors; Nonbinding Mediation Procedure. If a dispute arises between the Parties under this Project Agency 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.

13. RELATIONSHIP OF THE PARTIES.

- 13.1 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 Project Agency Agreement. Neither Party shall be under the control of or shall be deemed to control any other Party. Neither Party shall be the agent of or have a right or power to bind the other Party without its express written consent, except as expressly provided in this Project Agency Agreement.

14. UNCONTROLLABLE FORCES.

- 14.1 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 Project Agency Agreement, neither Party shall be considered to be in default in the performance of any of its obligations under this Project Agency 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 Project Agency 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 Project Agency Agreement.

15. BINDING OBLIGATIONS.

- 15.1 All Obligations Binding. All of the obligations set forth in this Project Agency Agreement shall bind the Parties and their successors and assigns.

16. GENERAL PROVISIONS GOVERNING AGREEMENT.

- 16.1 Severability. In the event that any of the terms, covenants or conditions of this Project Agency Agreement or the application of any such term, covenant or condition, shall be held invalid as to any person or circumstance by any court having jurisdiction in the premises, all other terms, covenants or conditions of this Project Agency Agreement and their application shall not be affected thereby, but shall remain in force and effect, unless a court holds that the provisions are not separable from all other provisions of this Project Agency Agreement.
- 16.2 Waiver Not to Effect Subsequent Events. Any waiver at any time by a Party of its rights with respect to a default or any other matter arising in connection with this Project Agency Agreement shall not be deemed a waiver with respect to any subsequent default or matter.
- 16.3 Headings Not Binding. The headings and captions in this Project Agency Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Sections of this Project Agency Agreement.

17. INDEMNITY AND RELATED MATTERS; POWER SALES AGREEMENT.

- 17.1 Indemnification of Agent. In its capacity as Agent under this Project Agency Agreement, including in its capacity as Project Manager and in its capacity as Buyer's Agent, Agent shall be entitled to indemnification from SCPPA as set forth herein. SCPPA shall indemnify and hold harmless Agent, its Board of Water and Power Commissioners, its City Council, officers, agents, attorneys, advisors and employees, past, present or future (collectively, "Agent Indemnitees") from and against any and all claims, demands, liabilities, obligations, losses, damages (whether direct, indirect or consequential), penalties, actions, loss of profits, judgments, orders, suits, costs, expenses (including attorneys' fees and expenses) or disbursements of any kind or nature whatsoever in law, equity or otherwise (including, without limitation, death, bodily injury or personal injury to any person or damage or destruction to any property of Agent, SCPPA or third persons) (collectively, "Losses") arising by reason of any actions, inactions, errors or omissions incident to the performance of this Project Agency Agreement (excluding gross negligence or willful misconduct which, unless otherwise agreed to by the Parties, are both to be determined and established by a court of competent jurisdiction in a final, 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 Agent's 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.
- 17.2 Obligations under the Power Sales Agreement. Notwithstanding any provision of this Project Agency Agreement which might arguably be construed to the contrary, nothing in

this Project Agency Agreement shall affect LADWP's obligation, as the Purchaser, to make any payment or pay any cost required of it under the Power Sales Agreement.

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

18. **GOVERNING LAW**. This Project Agency Agreement has been 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.

19. **TERM AND EXPIRATION**.

19.1 Effective Date. This Project Agency Agreement as executed by the Parties shall become effective and in full force and effect on the date the Power Sales Agreement has been entered into and is in effect. (the "Effective Date").

19.2 Termination. This Project Agency 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 replacements thereof; provided, however, that this Project Agency Agreement may be terminated by either Party upon not less than three years prior written notice to the other Party. Payment obligations of the Parties hereunder shall survive any termination of this Project Agency Agreement until satisfied.

20. **VENUE**. All litigation arising out of, or relating to this Project Agency 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. **ATTORNEYS FEES**. With respect to any dispute under this Project Agency Agreement the Parties agree that each Party shall bear its own attorneys fees and costs. Notwithstanding the forgoing, LADWP and SCPPA acknowledge that SCPPA's attorney's fees associated with any matter relating to the Project or this Project Agency 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 Project Agency Agreement. Any notice, demand or request provided for in this Project Agency 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, California 91740

City of Los Angeles acting by and through the Department of Water and Power
General Manager
111 North Hope Street
Los Angeles, California 90012

23. **AMENDMENTS.** The Parties acknowledge and agree that any amendment to this Project Agency Agreement shall be in writing and duly executed by the Parties.

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

SOUTHERN CALIFORNIA PUBLIC
POWER AUTHORITY

By: _____

Dated: _____

Attest: _____

DEPARTMENT OF WATER AND POWER
OF THE CITY OF LOS ANGELES BY
BOARD OF WATER AND POWER COMMISSIONERS
OF THE CITY OF LOS ANGELES

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

DEC 18 2014

BY

VAUGHN MINASSIAN
DEPUTY CITY ATTORNEY

By: _____

MARCIE L. EDWARDS
General Manager

Dated: _____

And: _____

BARBARA E. MOSCHOS
Board Secretary

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

APPENDIX A OF THE POWER SALES AGREEMENT

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

1. Act. All of the provisions contained in the California Joint Exercise of Powers Act found in Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, beginning at California Government Code Section 6500 et seq., as amended from time to time.
2. Ancillary Documents. "Ancillary Documents" shall have the definition set forth in the Power Purchase Agreement.
3. Annual Budget. The budget adopted by SCPPA pursuant to Section 5.4.1 of this Agreement not less than 30 days nor more than 60 days prior to the beginning of each Power Supply Year, including any amendments thereto, which shall show a detailed estimate of Power Costs under this Agreement and all credits, charges, revenues, income, or other funds to be applied to such costs, for and applicable to such Power Supply Year.
4. Balancing Agent. "Balancing Agent" shall have the meaning set forth in Section 9.4.
5. Billing Statement. The written statement prepared or caused to be prepared each Month by, or on behalf of, SCPPA which shall be based upon certain of the information in the Annual Budget and shall show for such Month the amount to be paid to SCPPA by Purchaser in accordance with the provisions of Section 7 of this Agreement.
6. Board of Directors. The Board of Directors of the Southern California Public Power Authority.
7. Capacity. The ability or potential to generate, produce or transfer electricity, expressed in kilowatts ("kW") or megawatts ("MW"), including, when feasible, ancillary or regulating services or other valuable non-energy products or services from a generating facility.
8. Capacity Rights. "Capacity Rights" means the rights, whether in existence as of the Effective Date or arising thereafter during the term of this Agreement, to Capacity, resource adequacy, associated attributes and/or reserves or any of the foregoing associated with the electric generating capability of the Facility.
9. Commercial Operation. "Commercial Operation" shall have the definition set forth in the Power Purchase Agreement.
10. Compliance. Following a Payment Default, the Defaulting Purchaser shall be in compliance with its payment obligations under this Agreement if it (i) no later than the last day of the Cure Period fully pays all amounts owed as reflected in any Default Invoice; (ii) pays any monthly Billing Statement which comes due during the Cure Period; and (iii) replenishes any reduction made to the applicable operating reserve account or other Reserve Fund as a result of any Payment Default.

11. Consent Agreements. All consents to assignments and all agreements relating thereto entered into with any lender, financial institution or other Person for the purpose of consenting to the assignment of the rights or securing the obligations of the Power Purchase Provider under the Power Purchase Agreement.
12. Cure Period. That period of time beginning on the date of a Payment Default and concluding thirty (30) days thereafter.
13. Cured Payment Default. A Payment Default which has been cured in accordance with Section 11.3 of this Agreement. If at any time during the Cure Period the Defaulting Purchaser is in Compliance, then the requirements of a Cured Payment Default shall be deemed to have been satisfied as of the date of receipt of such payments by SCPPA and the Cure Period shall expire.
14. Default. "Default" shall have the definition set forth in the Power Purchase Agreement.
15. Default Invoice. An invoice during the Payment Default Period and the Cure Period issued to the Defaulting Purchaser pursuant to Section 11 of this Agreement that identifies the total defaulted amount owed, including late payment interest, to achieve a Cured Payment Default. During the Cure Period, the Default Invoice shall also include the amount that must be paid to achieve Compliance.
16. Defaulting Purchaser. In the event that Purchaser causes a Payment Default which has not been remedied and where Purchaser has not effected a Cured Payment Default.
17. Delivered Energy. "Delivered Energy" shall have the definition set forth in the Power Purchase Agreement.
18. Delivery Term of the Power Purchase Agreement. The time period for the delivery of Energy pursuant to the Power Purchase Agreement as set forth therein.
19. Delivery Term Security. "Delivery Term Security" shall have the definition set forth in the Power Purchase Agreement.
20. Dynamic Scheduling. "Dynamic Scheduling" shall mean the automated scheduling of Energy from the Point of Delivery to Purchaser's control area or electric system, provided that said dynamic schedules adjust at four second intervals, or other intervals as specified by WECC, to match the amount of Energy actually delivered to the Point of Delivery from the Facility.
21. Energy. "Energy" shall include both Energy and any Replacement Energy, as those terms are defined in the Power Purchase Agreement.
22. Environmental Attributes. "Environmental Attributes" shall have the definition set forth in the Power Purchase Agreement.
23. Excess Energy. "Excess Energy" shall have the definition set forth in the Power Purchase Agreement.

24. Facility. "Facility" means all of the facilities and real and personal properties and resources and rights and interests, all as described or defined as the Facility in the Power Purchase Agreement and all related assets and rights, interests and obligations associated with such facilities, including the rights, interests and obligations under the Ancillary Documents.
25. Facility Output. All output, rights, and other tangible or intangible benefits derived from the Facility, whatsoever, including without limitation all Energy (including Replacement Energy as defined in the Power Purchase Agreement), Capacity Rights and Environmental Attributes, whether received by SCPPA under or pursuant to the Power Purchase Agreement or other applicable Project Agreement.
26. 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.
27. Force Majeure. "Force Majeure" shall have the definition set forth in the Power Purchase Agreement.
28. Guaranteed Generation. "Guaranteed Generation" shall have the meaning provided in the Power Purchase Agreement.
29. 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.
30. Joint Powers Agreement. The "Southern California Public Power Authority Joint Powers Agreement" dated as of November 1, 1980, as amended and modified from time to time, entered into pursuant to the provisions of the Act, among SCPPA and its members.
31. LADWP. The City of Los Angeles acting by and through the Department of Water and Power.
32. Major Contracts. The Project Agreements and, to the extent not finalized or effective on the effective date of this Agreement, any other contract or agreement so identified by the Board of Directors, as such contracts or agreements may be amended or supplemented from time to time.
33. Month. A calendar month.
34. Monthly Costs. "Monthly Costs" is defined in Section 7.1.
35. Moody's. "Moody's" shall mean Moody's Investor Services, Inc.
36. Operating Budget. The operating budget approved by the Board of Directors which shall show a detailed estimate of all Project operating costs, including all revenues, income or other funds to be applied to such operating costs for and applicable to a Power Supply Year.

37. Operating Work. All work and activities in connection with the administration of the Project, including without limitation, negotiating and administering contracts, planning, mitigating impacts, inspecting, investigating and monitoring all aspects of the Project, performing modeling functions, economic analysis, quality control, testing and evaluating, electric energy and environmental attribute procurement, regulatory efforts, tagging, interconnecting, transmission, dispatching, firming, balancing, exchanging and scheduling activities, supervising, expediting, budgeting, accounting, tracking, registering, protecting, and managing activities, public information services and services of consultants, contactors and legal counsel, and activities related to securing requisite permits, franchises, licenses, approvals, entitlements, credits and certificates from governmental agencies and authorities.
38. Payment Default. A failure by the Purchaser to pay when due all of its Billing Statement for any Month.
39. Payment Default Period. That period of time during which a Payment Default exists.
40. Performance Damages. "Performance Damages" shall mean the liquidated damages set forth in Section 3.7(a) and Section 3.7(b), as applicable, of the Power Purchase Agreement.
41. Performance Security. "Performance Security" shall have the definition set forth in the Power Purchase Agreement.
42. Permit. "Permit" shall have the definition set forth in the Power Purchase Agreement.
43. Person. "Person" means any individual, corporation, partnership, joint venture, limited liability company, association, joint stock company, trust, unincorporated organization, entity, government or other political subdivision.
44. Points of Delivery. The points at which Energy is to be delivered to the Purchaser pursuant to the Power Purchase Agreement or any other agreement with the Power Purchase Provider, or such other points of delivery as authorized and determined by the Board of Directors.
45. Power Costs. "Power Costs" has the meaning described in Section 4.3.
46. Power Purchase Agreement. The Power Purchase Agreement between Southern California Public Power Authority and ORNI 37 LLC, dated as of December 18, 2014, attached hereto as Appendix D, as the same may be amended from time to time.
47. Power Purchase Provider. ORNI 37 LLC, as the counterparty to SCPPA under the Power Purchase Agreement, and any other entity named under any applicable agreement to operate or otherwise run or manage the Facility, along with each of their successors, or any successors or assigns to the rights of these entities.
48. Power Supply Year. The Fiscal Year, except that the first Power Supply Year shall begin on the first to occur of (i) the date SCPPA is obligated to pay any portion of the costs of the Project, (ii) the date of Commercial Operation of the Facility, or (iii) the date of the first delivery of Energy to Purchaser pursuant to this Agreement. Further, the first Power Supply Year shall end on the last day of the then current Fiscal Year.

49. Project or Don A Campbell 2 Geothermal Energy Project. The term “Project” or “Dona A Campbell Phase 2 Geothermal Energy Project” shall be broadly construed to entail the aggregate of rights, liabilities, interests and obligations of SCPPA pursuant to the Power Purchase Agreement and the other Project Agreements, including but not limited to all rights, liabilities, interests and obligations associated with the Facility Output. The term Project shall also include those rights, liabilities, interests or obligations necessary or appropriate to carry out the functions specified in Section 6 and to utilize or deliver the energy of the Facility as specified in Section 9.
50. Project Agency Agreement. The Don A Campbell 2 Geothermal Energy Project Agency Agreement between Southern California Public Power Authority and the city of Los Angeles acting by and through the Department of Water and Power, dated as of December 18, 2014, as the same may be amended from time to time.
51. Project Agreements. This Agreement, any project management agreement, the Power Purchase Agreement, each of the Project Agreements as defined in the Power Purchase Agreement and other Ancillary Documents, the Project Agency Agreement or any other agreement of SCPPA with the Project Manager, other contracts and leases, easements, rights of way and other arrangements or agreements associated with the Facility, if any, any other agreement for the delivery or transmission of Facility Output, any consents to assignments or agreements for assignment, any agreements for scheduling, dispatching, exchanging, tagging, movement or transmission of Facility Output, and any agreements relating to the administration or management of the Facility.
52. Project Development Security. “Project Development Security” shall have the definition set forth in the Power Purchase Agreement.
53. Project Manager. LADWP, in its capacity as agent for and on behalf of SCPPA under the Project Agency Agreement or if the Project 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 this Agreement.
54. Project Rights. All rights and privileges of the Purchaser under this Agreement, including but not limited to its right to receive Facility Output from the Facility.
55. Project Rights and Obligations. The Purchaser’s Project Rights and obligations under the terms of this Agreement.
56. Prudent Utility Practices. “Prudent Utility Practices” shall have the meaning provided in the Power Purchase Agreement.
57. Replacement Energy. “Replacement Energy” shall have the definition set forth in the Power Purchase Agreement.
58. Reserve Fund cost component. “Reserve Fund cost component” is defined in Section 4.3.3.
59. Reserve Fund(s). Those reserve accounts deemed appropriate to afford a reliable source of funds for the payment obligations of the Project and, taking into account the variability of

costs associated with the Project for the purpose of providing a reliable payment mechanism to address the ongoing costs associated with the Project.

60. S & P. "S&P" shall mean Standard & Poor's Financial Services LLC.
61. Shortfall Liquidated Damages. Shortfall Liquidated Damages shall have the definition set forth in the Power Purchase Agreement
62. Supplementary Services. Those services in connection with the delivery of Energy involving additional transmission, interconnection arrangements, energy management, firming, shaping, energy balancing, dispatching, tagging, scheduling, Dynamic Scheduling, transmitting, interconnecting, swapping, exchanging or other services associated with the transmission, use or disposition of Facility Output to be utilized by the Purchaser under this Agreement, and to otherwise provide for delivery and facilitate the disposition, movement, taking, receiving, accounting for, transferring and crediting the ownership and transfer of Facility Output from the Point of Delivery to any other points or destinations, as determined by the Purchaser. Supplementary Services include but are not limited to delivery point swaps, stranded energy/transmission curtailments, tiepoint liquidity improvement, transmission loss savings, tiepoint price spread optimization, on-peak/off-peak exchanges, peak shifting exchanges, seasonal exchanges, and both simultaneous or non-simultaneous green energy exchanges.
63. Supplementary Services cost component. "Supplementary Services cost component" is defined in Section 4.3.4.
64. Transmission System. "Transmission System" shall have the meaning set forth in the Power Purchase Agreement.
65. Uncontrollable Forces. Any Force Majeure event and any cause beyond the control of any Party, and which by the exercise of due diligence such Party is unable to prevent or overcome, including but not limited to, failure or refusal of any other Person to comply with then existing contracts, an act of God, fire, flood, explosion, earthquake, strike, sabotage, pestilence, an act of the public enemy (including terrorism), civil or military authority including court orders, injunctions and orders of governmental agencies with proper jurisdiction or the failure of such agencies to act, insurrection or riot, an act of the elements, failure of equipment, a failure of any governmental entity to issue a requested order, license or permit, or inability of any Party or any Person engaged in work on the Project to obtain or ship materials or equipment because of the effect of similar causes on suppliers or carriers. Notwithstanding the foregoing, Uncontrollable Forces as defined herein shall also include events of Force Majeure pursuant to the Power Purchase Agreement, as defined therein.
66. WECC. The Western Electricity Coordinating Council, or its successor.