

**ORMESA GEOTHERMAL COMPLEX 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 MARCH 1, 2016**

---

TABLE OF CONTENTS

Continued

	Page
7.8 Comply With Laws and Regulations .....	6
7.9 Keep Accounting Records of Expenditures; Audit of Accounting Records .....	6
7.10 Prepare and Submit Estimates of Agency Costs .....	6
7.11 Obtain Cost Data .....	6
7.12 Assist in Budget Preparation .....	6
7.13 Provide Information .....	6
7.14 Provide Interface .....	6
7.15 Furnish Assistance and Information .....	6
7.16 Place and Maintain Insurance .....	6
7.17 Provide Information Regarding Defaults .....	6
7.18 Conduct All Other Activities Relating to Agency Work .....	6
<b>8. AGENCY COSTS.....</b>	<b>7</b>
8.1 Agency Costs .....	7
8.2 Costs Not Agency Costs .....	7
8.3 No Profit .....	8
8.4 Budget and Review Processes .....	8
<b>9. PAYMENT TO AGENT FOR AGENCY COSTS; AUDITS.....</b>	<b>8</b>
9.1 Payment and Audit Procedures .....	8
9.2 Disputed Invoices .....	8
<b>10. LIABILITY.....</b>	<b>9</b>
10.1 No Liability of SCPPA, Agent or Project Manager (within its capacity as the Project Manager), or Their Directors, Officers, Employees, Etc.; SCPPA's and Agent's and Project Manager's Directors, Officers, Employees Not Individually Liable .....	9
10.2 Extent of Exculpation; Enforcement of Rights in Equity .....	10
10.3 No Relief from Insurer's Obligations .....	10
10.4 SCPPA Directors Officers, Employees, Agents Not Liable; No General Liability of SCPPA .....	10
<b>11. ALTERNATIVE DISPUTE RESOLUTION.....</b>	<b>10</b>
11.1 Non-Binding Dispute Resolution .....	10
11.2 Nonbinding Mediation Procedure .....	10
<b>12. RELATIONSHIP OF THE PARTIES.....</b>	<b>10</b>

**TABLE OF CONTENTS**  
**Continued**

**APPENDICES**

APPENDIX A – Appendix A of the Power Sales Agreement

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 In pursuit of its goals of the development of renewable electric energy resources for SCPPA members desiring to participate in renewable energy projects, SCPPA has issued Requests for Proposals (“RFP”) for potential renewable electric resources to address SCPPA member power supply and renewable energy needs, and as a result of responses to that RFP SCPPA and two of its members, LADWP and IID (the “Project Participants”), have investigated the feasibility of a geothermal electric generating facility (the “Facility”) currently in existence, maintained and operated by Ormesa LLC, a Delaware limited liability company (the “Power Purchase Provider”), an affiliate of Ormat Nevada, Inc., a Delaware corporation. The Facility will continue to be located in Imperial County, California, on a site owned by the Power Purchase Provider and within the IID Balancing Authority Area.
- 2.3 SCPPA desires to enter into the Power Purchase Agreement with the Power Purchase Provider for the purchase of Energy and the associated Environmental Attributes from the Facility for the purpose of selling the Facility Output to the Project Participants pursuant to the Power Sales Agreements.
- 2.4 The Project Participants have participated with SCPPA in the negotiation of the Power Purchase Agreement and related agreements, arrangements and mechanisms for the procurement of the Facility Output by way of a transaction through which SCPPA purchases Facility Output.
- 2.5 In order to enable SCPPA to carry out the activities necessary for the management and administration of the Project on behalf of the Project Participants, the Project Participants and SCPPA have determined that it is desirable and necessary for SCPPA to enter into an agreement with LADWP to act as the Project Manager and as SCPPA’s agent in the administration and management of the Ormesa Geothermal Complex Energy Project on behalf of the Project Participants.
- 2.6 Section 5.8 of each of the Project Participant’s Power Sales Agreement provides for the designation of a Project Manager to administer the Project on behalf of and for the benefit of the Project Participants.
- 2.7 It is the purpose of this Agreement to carry forth the intendments of Section 5.8 of the Power Sales Agreements and to designate and appoint LADWP as Project Manager of the Ormesa Geothermal Complex Energy Project and to repose in LADWP, through this Agency Agreement, the power, authority and responsibility to act as the Agent of SCPPA in the management and administration of the Project on behalf of the Project Participants.

Agreement, LADWP shall serve as Agent and Project Manager for the duration of the term of the Power Sales Agreements. Except as provided in Section 18.2 of this Agreement, Agent shall not have the right to resign and may not be removed as Agent for the Project during the time which any of the Power Sales Agreements are in effect.

5.2 Agent's Performance of Agency Work in Accordance with Applicable Laws, Rules and Regulations. In carrying forth its Agency Work pursuant to the terms of this Agreement, Agent shall, in all material respects, observe all applicable laws, rules and regulations.

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

5.4 Procurement. Agent will use LADWP's procurement rules and policies unless other rules or policies are determined by Agent to be in the best interest of the Project.

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

6.1 Review Budgets. Review, modify and approve the budgets submitted pursuant to the applicable provisions of the Power Sales Agreements

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

6.3 Monitor Agency Work. Monitor the continuation and completion of Agency Work.

6.4 Make Recommendations and/or Modifications Regarding Agency Work. Make (i) recommendations to the Agent with respect to Agency Work; and/or (ii) modifications to Agency Work undertaken by Agent.

6.5 Provide Assistance. Provide such other assistance to the Agent in carrying out Agency Work as the Coordinating Committee or the Board of Directors shall deem reasonable and proper and as the Agent shall request.

6.6 Consider Relevant Matters. Consider any matter relating to SCPPA's interests proposed by the Agent, any member of the Board of Directors, any member of SCPPA's staff in connection with the Project.

6.7 Perform Other Functions and Duties. Perform such other functions and duties as may be required of SCPPA or by SCPPA in connection with SCPPA's interest in the Project.

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

Costs shall not include costs incurred by any Project Participant which are not attributable to Agency Work including the following:

- 8.2.1 To the extent not specifically included in Agency Costs, costs of studies conducted by any Project Participant to determine, for that Project Participant, the usefulness, economics, legal and regulatory implications, and feasibility of the Project and such Project Participant's costs of obtaining the entitlements or accommodations necessary to make the Project feasible for that particular Project Participant.
- 8.2.2 The costs of any Project Participant associated with the preparation and the negotiation of contracts between SCPPA and any Project Participant regarding the Project.
- 8.2.3 Costs incurred by each Project Participant in the various functions of the Board of Directors, the Coordinating Committee, or any committees established by the Board of Directors or the Coordinating Committee, and the expenses of its personnel while performing such functions.
- 8.3 No Profit. Agency Costs shall not include any profit or rate of return, but shall include reimbursement of costs as set forth in Section 8.1. The Agent shall not be obligated to make any expenditure or incur any obligation regarding Agency Work with respect to which it shall not be entitled to reimbursement under this Agreement.
- 8.4 Budget and Review Processes. As is the case with similar costs for other projects of SCPPA, Agency Costs shall be the subject of SCPPA's annual budget and periodic budget review processes.

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

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

- 10.2 Extent of Exculpation; Enforcement of Rights in Equity. The exculpation provision set forth in Section 10.1 hereof shall apply to all types of claims or actions including, but not limited to, claims or actions based on contract or tort. Notwithstanding the foregoing, either Party may protect and enforce its rights under this Agreement by a suit or suits in equity for specific performance of any obligation or duty of the other Party and the Agent may enforce by any legal means its right to payment for Agency Costs in accordance with the terms of this Agreement.
- 10.3 No Relief from Insurer's Obligations. Notwithstanding any provision of this Agreement, including the provisions of this Section 10, the provisions of Section 10.1 shall not be construed so as to relieve any insurer of its obligation to pay any insurance claims.
- 10.4 SCPPA Directors Officers, Employees, Agents Not Liable; No General Liability of SCPPA. It is hereby recognized and agreed that no officer, agent or employee of SCPPA shall be individually liable in respect of any undertakings by SCPPA under this Agreement. The Parties agree that the undertakings by SCPPA under this Agreement shall never constitute a debt or indebtedness of SCPPA within the meaning of any provision or limitation of the constitution or statutes of the State of California, and shall not constitute or give rise to a pecuniary liability of SCPPA or a charge against its general credit. Any provision of this Agreement to the contrary notwithstanding, the obligation of SCPPA under this Agreement to make or cause to be made payments shall be limited to those payments permitted by and monies available as provided for in this Agreement.

## 11. ALTERNATIVE DISPUTE RESOLUTION.

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

## 12. RELATIONSHIP OF THE PARTIES.

- 12.1 Separate and Several Interests. The covenants, obligations and liabilities of the Parties are intended to be several and not joint or collective and nothing herein contained shall ever be construed to create an association, joint venture, trust, partnership or other legal entity, or to impose a trust or partnership covenant, obligation or liability on or with regard to either or both of the Parties. Each Party



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

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

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

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

18. **TERM AND EXPIRATION.**

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

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: \_\_\_\_\_

Fred H. Mason  
President

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

BILL D. CARNAHAN  
Assistant Secretary

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

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

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

Name: MARCIE L. EDWARDS  
Title: GENERAL MANAGER

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

Name: BARBARA MOSCHOS  
Title: BOARD SECRETARY

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

APR 11 2016

BY

  
WILLIAM H. KYSELLA, JR.  
DEPUTY CITY ATTORNEY