

**ORMAT NORTHERN NEVADA GEOTHERMAL PORTFOLIO**

**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 OCTOBER 20, 2016**

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## TABLE OF CONTENTS

	Page
<b>ORMAT NORTHERN NEVADA GEOTHERMAL PORTFOLIO .....</b>	<b>1</b>
<b>AGENCY AGREEMENT .....</b>	<b>1</b>
<b>1. PARTIES .....</b>	<b>1</b>
<b>2. RECITALS .....</b>	<b>1</b>
<b>3. AGREEMENT .....</b>	<b>2</b>
<b>4. DEFINITIONS .....</b>	<b>2</b>
4.1 Agency Costs .....	3
4.2 Agency Work .....	3
4.3 Agent .....	3
4.4 Agreement .....	3
4.5 Effective Date .....	3
<b>5. APPOINTMENT OF AGENT .....</b>	<b>3</b>
5.1 Appointment of Agent .....	3
5.2 Agent's Performance of Agency Work in Accordance with Applicable Laws, Rules and Regulations .....	3
5.3 Other Agents .....	3
5.4 Procurement .....	4
<b>6. RIGHTS, DUTIES AND RESPONSIBILITIES OF SCPPA .....</b>	<b>4</b>
6.1 Review Budgets .....	4
6.2 Review Agency Cost Estimates .....	4
6.3 Monitor Agency Work .....	4
6.4 Make Recommendations and/or Modifications Regarding Agency Work .....	4
6.5 Provide Assistance .....	4
6.6 Consider Relevant Matters .....	4
6.7 Perform Other Functions and Duties .....	4
<b>7. ACTIVITIES TO BE PERFORMED BY LADWP AS AGENT .....</b>	<b>4</b>
7.1 Make Periodic Reports .....	4
7.2 Submit Recommendations .....	4
7.3 Billings .....	5
7.4 Inform SCPPA .....	5
7.5 Expend Funds for Agency Costs .....	5
7.6 Reserve Fund Investments .....	5

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

	<b>Page</b>
7.7 Arrange Services for Agency Work; Administer Contracts; Agent's Employees.....	5
7.8 Comply With Laws and Regulations.....	5
7.9 Keep Accounting Records of Expenditures; Audit of Accounting Records.....	5
7.10 Prepare and Submit Estimates of Agency Costs.....	5
7.11 Obtain Cost Data.....	5
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>6</b>
8.1 Agency Costs.....	6
8.2 Costs Not Agency Costs.....	7
8.3 No Profit.....	7
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>8</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.....	8
10.2 Extent of Exculpation; Enforcement of Rights in Equity.....	9
10.3 No Relief from Insurer's Obligations.....	9
10.4 SCPPA Directors Officers, Employees, Agents Not Liable; No General Liability of SCPPA.....	9
<b>11. ALTERNATIVE DISPUTE RESOLUTION.....</b>	<b>10</b>
11.1 Non-Binding Dispute Resolution.....	10
11.2 Nonbinding Mediation Procedure.....	10

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

	<b>Page</b>
<b>12. RELATIONSHIP OF THE PARTIES.....</b>	<b>10</b>
12.1 Separate and Several Interests.....	10
<b>13. UNCONTROLLABLE FORCES.....</b>	<b>10</b>
13.1 Excuse of Performance by Reason of Uncontrollable Forces.....	10
<b>14. BINDING OBLIGATIONS.....</b>	<b>11</b>
14.1 All Obligations Binding.....	11
<b>15. GENERAL PROVISIONS GOVERNING AGREEMENT.....</b>	<b>11</b>
15.1 Severability.....	11
15.2 Waiver Not to Effect Subsequent Events.....	11
<b>16. INDEMNITY AND RELATED MATTERS; POWER SALES AGREEMENT.....</b>	<b>11</b>
16.1 Indemnification of Agent.....	11
16.2 Obligations under the Power Sales Agreement.....	11
16.3 Separate Capacities.....	12
<b>17. REPRESENTATION AND GOVERNING LAW.....</b>	<b>12</b>
<b>18. TERM AND EXPIRATION.....</b>	<b>12</b>
18.1 Effective Date.....	12
18.2 Termination.....	12
<b>19. ATTORNEYS FEES.....</b>	<b>12</b>
<b>20. CONTRACT ADMINISTRATOR.....</b>	<b>12</b>
<b>21. NOTICES.....</b>	<b>13</b>
<b>22. AMENDMENTS.....</b>	<b>13</b>

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

**APPENDICES**

APPENDIX A – Appendix A of the Power Sales Agreement

## ORMAT NORTHERN NEVADA GEOTHERMAL PORTFOLIO

### AGENCY AGREEMENT

1. **PARTIES.** This Ormat Northern Nevada Geothermal Portfolio Agency Agreement (this "Agreement"), is dated for convenience as of this 20<sup>th</sup> day of October, 2016, by and between the SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY, a joint powers agency and a public entity organized under the laws of the State of California, hereinafter designated as "SCPPA," or "the Authority" created under the provisions of the Act, and the CITY OF LOS ANGELES acting by and through the DEPARTMENT OF WATER AND POWER a California municipal utility created by and existing pursuant to the Charter of the City of Los Angeles. The CITY OF LOS ANGELES acting by and through the DEPARTMENT OF WATER AND POWER is also periodically referred to in this Agreement as "LADWP" or "the Department" or as "Agent". LADWP and SCPPA are also sometimes referred to herein, with respect to this Agreement, individually as the "Party" and together as the "Parties."
  
2. **RECITALS.** This Agreement has been reviewed by attorneys for both Parties and shall not be interpreted with reference to the rules of construction providing for construction against a Party responsible for drafting or creating a particular provision or section, but should instead be interpreted in a manner which broadly carries forth the goals and objectives of the Parties as expressed herein. References to "Sections," "Annexes," "Appendices," "Schedules" and "Exhibits" shall be to Sections, Annexes, Appendices, Schedules and Exhibits, as the case may be, of this Agreement unless otherwise specifically provided. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. The use herein of the word "include" or "including", when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter. This Agreement is made with reference to the following facts among others:
  - 2.1 SCPPA was created pursuant to provisions contained in the Joint Exercise of Powers Act found in Chapter 5 of Division 7 of Title 1 of the Government Code of California, as amended from time to time (the "Act"), by its members, which are municipalities and an irrigation district that supply, among other things, electrical energy, in the State of California, for the purpose of jointly and cooperatively undertaking the planning, financing, development, acquisition, construction, improvement, betterment, operation, and maintenance, of projects for the generation or transmission of electric energy, including the development and implementation of systems and frameworks for the acquisition and delivery of secure, long-term reliable supplies of renewable electric energy.

- 2.2 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 one of its members, LADWP facilities, have investigated the feasibility of geothermal electric generating facilities (the "Facilities" or "Project") currently in existence or to be developed, the Energy from which is to be acquired and sold to SCPPA under the Power Purchase Agreement by ONGP LLC, a Delaware limited liability company (the "Power Purchase Provider"), an affiliate of Ormat Nevada, Inc., a Delaware corporation. The Facilities will be located in northern Nevada.
- 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 Facilities for the purpose of selling the Project Energy to the Purchaser pursuant to the Power Sales Agreement.
- 2.4 The Purchaser has participated with SCPPA in the negotiation of the Power Purchase Agreement and related agreements, arrangements and mechanisms for the procurement of the Project Output by way of a transaction through which SCPPA purchases the Project 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 Purchaser, the Purchaser 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 Ormat Northern Nevada Geothermal Portfolio on behalf of LADWP, as Purchaser.
- 2.6 Section 5.8 of the Power Sales Agreement provides for the designation of a Project Manager to administer the Project on behalf of and for the benefit of the Purchaser.
- 2.7 It is the purpose of this Agreement to carry forth the intendments of Section 5.8 of the Power Sales Agreement and to designate and appoint LADWP as Project Manager of the Ormat Northern Nevada Geothermal Portfolio 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 LADWP in its capacity as the Purchaser.
3. **AGREEMENT.** For and in consideration of the promises and the mutual covenants and agreements hereinafter set forth, and in order to carry forth the objectives of the Power Sales Agreement and to appoint LADWP as Project Manager for the Ormat Northern Nevada Geothermal Portfolio, the Parties agree as herein set forth.
4. **DEFINITIONS.** Appendix A of the Power Sales Agreement (a copy of which is set forth in Appendix A of this Agreement) sets forth, where applicable, the defined terms of

this Agreement. The definitions in Appendix A shall be applicable to this Agreement. All other terms which are not specifically defined in this Section 4, when initially capitalized, shall have the meaning ascribed in the Power Sales Agreement or the Power Purchase Agreement. The terms defined in Appendix A and in this Section 4, whether in the singular or plural, unless specifically provided otherwise, when used herein or in Appendix A and initially capitalized, shall have the meaning ascribed thereto in the Power Sales Agreement and the Power Purchase Agreement or as set out below:

- 4.1 Agency Costs. The costs, as set forth in Section 8 hereof, for carrying out Agency Work.
- 4.2 Agency Work. The activities to be performed by the Agent pursuant to Section 7 of this Agreement.
- 4.3 Agent. The City of Los Angeles acting by and through the Department of Water and Power, which shall be responsible, in accordance with the terms of this Agreement, for carrying out the Agency Work on behalf of SCPPA.
- 4.4 Agreement. This Agreement, as it may be amended, modified or supplemented from time to time.
- 4.5 Effective Date. The date described in Section 18.1.

## 5. APPOINTMENT OF AGENT.

- 5.1 Appointment of Agent. In accordance with the terms and conditions of this Agreement SCPPA hereby appoints, designates, authorizes and directs LADWP to carry out, as agent for SCPPA, Agency Work in accordance with the terms of this Agreement. LADWP hereby accepts such appointment, designation, authorization and direction. Agent shall act as Project Manager on behalf of the LADWP in its capacity as Purchaser for the Energy of the Ormat Northern Nevada Geothermal Portfolio. Unless this Agreement is otherwise terminated pursuant to Section 18.2 of this Agreement, LADWP shall serve as Agent and Project Manager for the duration of the term of the Power Sales Agreement. 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 the Power Sales Agreement is in effect.
- 5.2 Agent's Performance of Agency Work in Accordance with Applicable Laws, Rules and Regulations. In carrying forth its Agency Work pursuant to the terms of this Agreement, Agent shall, in all material respects, observe all applicable laws, rules and regulations.
- 5.3 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 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 Agreement.

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

7.1 Make Periodic Reports. Make periodic reports to SCPPA regarding the operation of the Project and any relevant operating information and reports, generation and transmission information, statistical, financial and administrative reports, and other similar reports, records, or information which may be helpful to or requested by the Board of Directors.

7.2 Submit Recommendations. Submit recommendations from time to time to SCPPA or if appropriate, to the Board of Directors, for potential review, modification and approval or disapproval with respect to the following subjects:

7.2.1 Recommend policies, criteria or procedures which will carry forth SCPPA's rights, responsibilities and its obligations pursuant to the Project Agreements.

- 7.2.2 To the extent appropriate and permissible pursuant to the Power Purchase Agreement, recommend policies and procedures for conducting tests or performance measurements with respect to the Facilities.
- 7.3 Billings. Prepare and provide to SCPPA, in the manner and at the times required by the Power Sales Agreement, billings to the Purchaser in accordance with the terms and provisions of the Power Sales Agreement.
- 7.4 Inform SCPPA. Promptly inform SCPPA regarding significant factors which may affect or have affected Agency Work or SCPPA's interests.
- 7.5 Expend Funds for Agency Costs. Expend moneys for Agency Costs in accordance with this Agreement.
- 7.6 Reserve Fund Investments. Schedule, select, direct, execute, maintain records of, and provide monthly reports to SCPPA concerning, Reserve Fund investments of moneys in accordance with reasonable and customary business practices relating to the administration of such investments.
- 7.7 Arrange Services for Agency Work; Administer Contracts; Agent's Employees. Negotiate, arrange for, administer, perform and enforce all contracts for furnishing, purchasing, procuring and obtaining from any source (including pursuant to contracts between the Agent and third parties) studies, supplies, engineering services, legal services, or other services necessary for the performance and completion of Agency Work including 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, the Agent may use its own employees and equipment and office facilities owned or directly leased by the Agent without obtaining any consent or approval of SCPPA.
- 7.8 Comply With Laws and Regulations. Comply with any and all laws and regulations applicable to the performance of Agency Work.
- 7.9 Keep Accounting Records of Expenditures; Audit of Accounting Records. Keep and maintain records of moneys expended, obligations incurred, 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 Purchaser with respect to the administration of the Power Purchase Agreement.
- 7.15 Furnish Assistance and Information. Furnish, upon request, to SCPPA 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 determines necessary or appropriate, or as required by law.
- 7.17 Provide Information Regarding Defaults. Keep SCPPA fully and promptly informed of any default by any party under any of the Project Agreements of which Agent has knowledge.
- 7.18 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.

## 8. AGENCY COSTS.

### 8.1 Agency Costs. Agency Costs shall include the following:

8.1.1 All costs approved by the Agent of labor, services, transportation and studies, including costs of legal counsel and consultation fees, performed by the Agent or by others, in connection with this Agreement, together with all costs approved by the Agent for facilities utilized in such performance. All costs (including premiums or deposits to self-insurance funds) of insurance related to Agency Work procured in accordance with Section 7.16.

8.1.2 Payroll and other expenses of employees of the Agent while performing work in connection with this Agreement, including applicable overhead costs and labor loading charges, including but not limited to time-off allowances, payroll taxes, workers' compensation insurance, retirement and death benefits and other employee benefits.

- 8.1.3 Costs of the Agent associated with performing its duties and responsibilities under this Agreement.
- 8.1.4 All costs paid by the Agent for any studies, reports or other documents obtained from Purchaser.
- 8.1.5 Costs of the Agent, to the extent not provided for by insurance, of discharging or paying any liability and loss, damage and expense, including costs and expenses for attorneys' fees and other costs of defending, settling or otherwise administering claims, liabilities or losses arising out of workers' compensation or employer's liability claims or by reason of property damage or injuries to or death of any person or persons or by reason of claims of any and every character, or costs that should be paid or provided to Agent to satisfy indemnification obligations under Section 16.1 of this Agreement or other costs that should be paid or provided to Agent to satisfy indemnification obligations under the Power Sales Agreement, resulting from, arising out of or connected with the performance of Agency Work, including negligent acts or omissions, but excluding grossly negligent acts or willful misconduct (which unless otherwise agreed to by the Parties, are both to be determined and established by a court of competent jurisdiction in a final, non-appealable order) of the Agent, its Board of Water and Power Commissioners, or its respective officers, employees or employees of the municipal entity of which Agent is a part.
- 8.2 Costs Not Agency Costs. Costs incurred by the Agent which (i) are not attributable to the activities, duties and functions to be performed by the Agent pursuant to Section 7 of this Agreement; and (ii) have not been approved by SCPPA under this Agreement shall not be Agency Costs. In addition Agency Costs shall not include costs incurred by LADWP as Purchaser 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 LADWP as Purchaser to determine the usefulness, economics, legal and regulatory implications, and feasibility of the Project and the Purchaser's costs of obtaining the entitlements or accommodations necessary to make the Project feasible.
- 8.2.2 The costs associated with the preparation and the negotiation of contracts between SCPPA and the Purchaser regarding the Project.
- 8.2.3 Costs incurred by Purchaser in the various functions of the Board of Directors, or any committees established by the Board of Directors 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 consideration to such dispute and will advise SCPPA with regard to Agent's position relative thereto within thirty (30) days following receipt of written notification by SCPPA of such dispute.

## 10. LIABILITY.

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

or non-performance by the Power Purchase Provider or any of the Released Parties under this Agreement or any Project Agreement (excluding gross negligence or willful misconduct which unless otherwise agreed to by the Parties, are both to be determined and established by a court of competent jurisdiction in a final, non-appealable order). Each Party shall release each of the other Released Parties from any claim or liability that such Party may have cause to assert as a result of any action or inaction or performance or non-performance by the Released Parties under this Agreement or any Project Agreement (excluding gross negligence or willful misconduct which unless otherwise agreed to by the Parties, are both to be determined and established by a court of competent jurisdiction in a final, non-appealable order). Notwithstanding the foregoing, no such action or inaction or performance or non-performance of any of the Released Parties shall relieve either Party from its respective obligations under this Agreement, including either Party's obligation to make payments required under this Agreement or any other Project Agreement. The provisions of this Section 10.1 shall not be construed so as to relieve the Agent or the Power Purchase Provider from any obligation (or liability in the case of the Power Purchase Provider) under this Agreement or any other applicable Project Agreement. The Parties also hereby recognize and agree that neither Party's past, present or future directors, officers, board members, agents, attorneys, advisors, employees or employees of the governmental entity of which the Agent is a part shall be individually liable in respect of any undertakings by any of the Released Parties under this Agreement or any Project Agreement. Notwithstanding any provision of this Agreement which might arguably be construed to the contrary, nothing in this Section 10.1 shall affect LADWP's obligation, as Purchaser under its Power Sales Agreement, to make any payment or pay any cost required of it under its Power Sales Agreement.

- 10.2 Extent of Exculpation; Enforcement of Rights in Equity. The exculpation provision set forth in Section 10.1 hereof shall apply to all types of claims or actions including, but not limited to, claims or actions based on contract or tort. Notwithstanding the foregoing, either Party may protect and enforce its rights under this Agreement by a suit or suits in equity for specific performance of any obligation or duty of the other Party and the Agent may enforce by any legal means its right to payment for Agency Costs in accordance with the terms of this Agreement.
- 10.3 No Relief from Insurer's Obligations. Notwithstanding any provision of this Agreement, including the provisions of this Section 10, the provisions of Section 10.1 shall not be construed so as to relieve any insurer of its obligation to pay any insurance claims.
- 10.4 SCPPA Directors Officers, Employees, Agents Not Liable; No General Liability of SCPPA. It is hereby recognized and agreed that no officer, agent or employee of SCPPA shall be individually liable in respect of any undertakings by SCPPA under this Agreement. The 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 by submitting the dispute to the Board of Directors. If the Board of Directors is unable to resolve the dispute, the Parties may then submit the dispute to non-binding mediation.

## **12. RELATIONSHIP OF THE PARTIES.**

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

## **13. UNCONTROLLABLE FORCES.**

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

**14. BINDING OBLIGATIONS.**

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

**15. GENERAL PROVISIONS GOVERNING AGREEMENT.**

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

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

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

16.1 Indemnification of Agent. In its capacity as Agent under this Agreement, Agent shall be entitled to indemnification from SCPPA as set forth herein. SCPPA shall indemnify and hold harmless Agent, its board, officers, agents, attorneys, advisors, employees, and the employees of the governmental entity of which the Agent is a part, past, present or future (collectively, "Agent Indemnitees") from and against any and all claims, demands, liabilities, obligations, losses, damages (whether direct, indirect or consequential), penalties, actions, loss of profits, judgments, orders, suits, costs, expenses (including attorneys' fees and expenses) or disbursements of any kind or nature whatsoever in law, equity or otherwise (including, without limitation, death, bodily injury or personal injury to any person or damage or destruction to any property of Agent, SCPPA or third persons) (collectively, "Losses") arising by reason of any actions, inactions, errors or omissions incident to the performance of this 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 the Purchaser under the Power Sales Agreement. Accordingly, for purposes of this Agreement, the rights, entitlements, obligations and liabilities of LADWP, as Agent and a Party to this Agreement, shall not apply to or otherwise be affected by, and shall be legally separate from the rights, entitlements, obligations, and liabilities of LADWP as the Purchaser under the 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 Agreement has been entered into and is in effect with respect to the Purchaser (the "Effective Date").
- 18.2 Termination. This Agreement shall continue in force and effect from the Effective Date until the expiration of the term of the Power Sales Agreement and any extensions or replacements thereof; provided, however, that this Agreement may be terminated by either Party upon not less than three (3) years prior written notice to the other Party. Payment obligations of the Parties hereunder shall survive any termination of the Agreement until satisfied.
19. **ATTORNEYS FEES.** With respect to any dispute under this Agreement the Parties agree that each Party shall bear its own attorneys' fees and costs. Notwithstanding the foregoing, LADWP and SCPPA acknowledge that SCPPA's attorneys fees associated with any matter relating to the Project or this Agreement, including any dispute relating thereto, shall constitute a Project cost which shall be allocated and billed as set forth in Section 4 and Section 7 of the Power Sales Agreement.
20. **CONTRACT ADMINISTRATOR.** A contract administrator for this Agreement shall be designated by the individual authorized to receive notices on behalf of LADWP pursuant to Section 21 herein, and such contract administrator shall have the authority to administer this Agreement on behalf of LADWP. Notwithstanding the foregoing, the contract administrator shall have no authority to amend this Agreement on behalf of LADWP.

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

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

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

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

[SIGNATURE PAGE FOLLOWS]

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

SOUTHERN CALIFORNIA PUBLIC POWER  
AUTHORITY

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

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

Fred H. Mason  
President

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

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

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


Name: David H. Wright  
Title: General Manager

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

Name: Barbara Moschos  
Title: Board Secretary

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

NOV 16 2016

BY   
WILLIAM H. KYSELLA, JR.  
DEPUTY CITY ATTORNEY

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