

# **EXHIBIT “B”**

**MILFORD WIND CORRIDOR PHASE I 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 October 1, 2007**

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- A - POWER SALES AGREEMENT DEFINITIONS
- B - SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY PROCUREMENT CODE

# MILFORD WIND CORRIDOR PHASE I PROJECT

## AGENCY AGREEMENT

1. **PARTIES.** This Milford Wind Corridor Phase I Project Agency Agreement, is made and entered into as of this 1<sup>st</sup> day of October, 2007, by and between the SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY, a joint powers agency and a public entity organized under the laws of the State of California, hereinafter designated as "SCPPA," or "the Authority" created under the provisions of the Act, and the CITY OF LOS ANGELES acting by and through the DEPARTMENT OF WATER AND POWER a California municipal utility created by and existing pursuant to the Charter of the City of Los Angeles. The CITY OF LOS ANGELES acting by and through the DEPARTMENT OF WATER AND POWER is also periodically referred to in this Agreement as "LADWP" or "the Department" or as "Agent". LADWP and SCPPA are also sometimes referred to herein, with respect to this Agreement, individually as the "Party" and together as the "Parties". In addition, LADWP and certain members of SCPPA participating in the Project may be referred to in this Agreement, individually as "Purchaser" or collectively as "Project Participants."
2. **RECITALS, CONSTRUCTION AND PRELIMINARY MATTERS.** The Recitals set forth herein and the facts which follow are incorporated into this Agreement by reference for all purposes. This Agreement has been reviewed by attorneys for both Parties and shall not be interpreted with reference to the rules of construction providing for construction against a Party responsible for drafting or creating a particular provision or section, but should instead be interpreted in a manner which broadly carries forth the goals and objectives of the Parties as expressed herein. References to "Sections," "Annexes," "Appendices," "Schedules" and "Exhibits" shall be to Sections, Annexes, Appendices, Schedules and Exhibits, as the case may be, of this Agreement unless otherwise specifically provided. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. The use herein of the word "include" or "including", when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not nonlimiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter. This Agreement is made with reference to the following facts among others:
  - 2.1 SCPPA was created pursuant to provisions contained in the Joint Exercise of Powers Act found in Chapter 5 of Division 7 of Title 1 of the Government Code of California, as amended from time to time (the "Act"), by its members, which are municipalities and an irrigation district that supply, among other things, electrical energy, in the State of California, for the purpose of jointly and cooperatively undertaking the planning, financing, development, acquisition, construction, improvement, betterment, operation, and maintenance, of projects for the generation or transmission of electric energy, 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 SCPPA was established, designed and brought to fruition principally through the substantial devotion of resources, the creative efforts, and the prescience, foresight and vision of LADWP, in order to create a viable joint powers authority with the objective of representing and carrying forth the common goals, the common aspirations and the common objectives of all municipally owned electric utilities, both large and small, which are situated in Southern California.
- 2.3 Pursuant to the terms of the Act, and its Joint Power Agreement, SCPPA has the power, for the purpose of promoting, maintaining and operating electric generation and transmission, to plan, develop, contract for, finance, acquire, design, undertake, own, construct, operate and administer projects involving systems, methodologies and programs for the acquisition, supply procurement and delivery of secure, long term reliable supplies of renewable electric energy and to cause such projects to be planned, developed, contracted for, financed, acquired, designed, constructed, operated, maintained, and administered and to provide by agreement for the performance and carrying out of any such activities.
- 2.4 During the past decade the Project Participants have experienced the imposition of a substantial number of new environmental laws, rules, regulations and policies and revised resource requirements which have effectively required the Project Participants to shift generation assets to increasingly turn to and rely upon renewable forms of energy generation, including wind generation, as a significant part of the generation resource portfolio necessary and appropriate to their electric systems. This shift to renewable energy and wind generation has created an ever increasing need for the development of secure long term arrangements for the delivery of energy from wind generation facilities so that the Project Participants will be able to carry out their objectives to reliably supply their customers with renewable electric energy.
- 2.5 In pursuit of the Project goals of the Renewable Electric Energy Resource Project, the Project Participants have identified potential wind energy generation resources which are anticipated to initially be owned and operated by Milford Wind Corridor Phase I, LLC, and which are contemplated to be situated within the Milford wind corridor area located north of the town of Milford, Utah. The Project Participants desire to obtain the Facility Output of this Facility and also provide for a means for the further management and administration of this Project.
- 2.6 SCPPA, on behalf of the Project Participants plans to enter into a Power Purchase Agreement for the benefit of the Project Participants, with Milford Wind Corridor Phase I, LLC, for the acquisition of wind energy resources situated in Beaver and Millard Counties, Utah. SCPPA is undertaking or causing to be undertaken the preparation and planning for the acquisition of these wind energy resources through the Power Purchase Agreement to purchase the Facility Output from the Facility.
- 2.7 The Project Participants have also carried out extensive investigations, studies and technical analyses of the alternative methodologies and structures for the potential acquisition of wind generation to determine the most reliable framework with the best

pricing attributes to provide the best value to each representative's respective renewable generation portfolio. The Project Participants have concluded that the prepaid transaction described in the Power Purchase Agreement provides the best means to achieve secure reliable long-term supplies of wind generation.

- 2.8 The Project Participants have concluded that prepaying for wind generation pursuant to the structure, design and planned methodology which has been investigated, and is contemplated herein, as part of the Project will materially assist the Project Participants in carrying out their critical operating and business objectives to provide a long-term supply of wind energy for the generation needs of the Project Participants. SCPPA, LADWP and the cities of Burbank and Pasadena anticipate that the Facility Output produced by the Project will be utilized to serve their renewable energy needs within their respective service areas and will materially assist each of respective utility in meeting its required renewable portfolios standard.
- 2.9 To carry forth the objectives set forth herein, the Parties contemplate that SCPPA will enter into the Power Purchase Agreement which will provide, in part, for prepayment for Guaranteed Energy and will acquire those rights and those obligations including such purchase rights and obligations as shall inure to SCPPA under that agreement for and on behalf of the Project Participants in accordance with each Project Participants Output Entitlement Share and Output Cost Share including all of the rights, benefits and entitlements and all of the duties, obligations, and liabilities accruing through SCPPA associated with the Power Purchase Agreement and the receipt of Facility Output under and pursuant to the terms of the Power Purchase Agreement.
- 2.10 In order to secure the performance of Milford Wind Corridor Phase I, LLC, in connection with all of its obligations and requirements under the Power Purchase Agreement SCPPA has endeavored to provide for various legal mechanisms including a deed of trust and other provisions to secure the leasehold and other real property interests associated with the generating assets of Milford Wind Corridor Phase I, LLC, which have been designated for the provision of electric energy to satisfy the requirements of the Power Purchase Agreement. It is the intention of the Parties that the Project Participants shall be reposed with the rights, benefits, liabilities, obligations and risks accruing to SCPPA pursuant to the provisions of these instruments in accordance with each Project Participant's Output Entitlement Share and Output Cost Share.
- 2.11 The Project Participants desire and intend through this Agreement to provide the necessary framework and mechanism for the administration of the Project whether by way of (i) the Facility Output purchase provisions in the Power Sales Agreement, (ii) the initial purchase buyout obligation pursuant to the Power Purchase Agreement at the commencement of the life of the Facility, (iii) the exercise of the purchase option under the Power Purchase Agreement to own the Facility at a time after Commercial Operation, or (iv) the Performance Security and after having delivered substantial Facility Output to the Project Participants.
- 2.12 SCPPA desires to proceed with the economic design, structuring, financing, Acquisition, development, implementation, operation and administration of the Project.

- 2.13 SCPPA will take or cause to be taken all steps necessary to cause to be secured, such contracts, instruments, rights and entitlements and all such governmental entitlements, permits, licenses and approvals as are necessary for the Project, and will then proceed as appropriate with, all measures necessary for the financing, acquisition and development of the Project, including, where advisable, the prepayment for Guaranteed Energy. To the extent provided through the Project Agreements SCPPA will carry forth those measures as directed by the Project Participants, associated with the operation and maintenance of those interests and facilities designated as part of the Project to provide a secure source of renewable energy for the Project Participants contracting with SCPPA therefore pursuant to the terms and conditions of the Project Agreements.
- 2.14 In order to enable SCPPA to carry out the activities necessary to the planning, development, acquisition, maintenance, improvement, administration and operation of the Project on behalf of the Project Participants, it has been 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 Project on behalf of the collective Project Participants.
- 2.15 SCPPA is entering into Power Sales Agreements with each Project Participant for the purpose of carrying out the Project Participants purposes in the Project subject to the application thereof to such purposes and on such terms as provided in the Indenture and as required by the Act. SCPPA shall further provide for the administration, operation and maintenance of the Project through the application of the payments required to be made by the Project Participants to SCPPA in accordance with the provisions of the Power Sales Agreements entered into by the Project Participants.
- 2.16 The Project Participants contemplate that SCPPA will provide for the further implementation, administration, operation and maintenance of the Project through the application of the payments required to be made pursuant to the Power Sales Agreements in accordance with the provisions of the individual agreements entered into between SCPPA and each respective Project Participant.
- 2.17 Section 5.3 of each of the Power Sales Agreements provides for the designation of a Project Manager to administer the Project on behalf of and for the benefit of all of the Project Participants.
- 2.18 It is the Purpose of this Agreement to carry forth the intendments of Section 5.3 of the Power Sales Agreements of all of the Project Participants and to designate and appoint LADWP as Project Manager of the Project and to repose in the LADWP through this Agency Agreement the power, authority and responsibility to act as the Agent for the Project Participants in the management and administration of the Project.
3. **AGREEMENT.** For and in consideration of the premises and the mutual covenants and agreements hereinafter set forth, and in order to carry forth the objectives of the Power Sales Agreements and to appoint LADWP as Project Manager for the Project, the Parties agree as herein set forth.
4. **DEFINITIONS.** Appendix A to this Agreement sets forth the defined terms of this Agreement between SCPPA and LADWP. Except for the definition of the term "Agreement" the definitions in Appendix A shall be applicable to this Agreement. The term "Agreement" is as defined in Section



4.4 herein. All other terms which are not specifically defined in this Section 4, when initially capitalized, shall have the meaning ascribed in Appendix A attached hereto. 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 the Appendices hereto and initially capitalized, shall have the meaning ascribed in Appendix A or as set out below:

- 4.1 Agency Costs. The costs, as set forth in Section 8 hereof, of carrying out Agency Work.
- 4.2 Agency Work. The activities to be performed by the Agent pursuant to Section 7 of this Agreement.
- 4.3 Agent. The City of Los Angeles acting by and through the Department of Water and Power, which shall be responsible, in accordance with the terms of this Agreement, for carrying out the Agency Work on behalf of SCPPA.
- 4.4 Agreement. This Agreement, as it may be amended, modified or supplemented from time to time.
- 4.5 Effective Date. The date described in Section 1 hereof.
- 4.6 Federal Tax Exemption. With respect to any Bonds that, when initially issued, are the subject of an opinion of Bond Counsel to the effect that interest thereon is excluded from gross income for federal income tax purposes, the exclusion of interest on such Bonds from the gross income of the owners thereof for federal income tax purposes.

## 5. APPOINTMENT OF AGENT.

- 5.1 Appointment of Agent. In accordance with the terms and conditions of this Agreement SCPPA hereby appoints, designates, authorizes and directs LADWP to carry out, as agent for and on behalf of SCPPA, Agency Work in accordance with the terms of this Agreement. LADWP hereby accepts such appointment, designation, authorization and direction. Agent shall act as Project Manager on behalf of the Project Participants. LADWP shall serve as Agent and Project Manager for the duration of the Power Sales Agreements. 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 SCPPA Procurement Code. The Parties acknowledge that a copy of the SCPPA General Procurement Code is attached hereto as Appendix B. In its capacity as agent for SCPPA under this Agreement, whenever its duties under this Agreement shall call upon it to potentially enter into procurement transactions, LADWP shall, when possible and practicable, follow the SCPPA Procurement Code as set forth in Appendix B.
- 5.3 Maintenance of the Federal Tax Exemption. Notwithstanding anything to the contrary in this Agreement, each of SCPPA and LADWP shall take such actions in the administration of the Project and the performance of this Agreement as may be necessary, if applicable, to maintain the Federal Tax Exemption of the Bonds, and each shall refrain from taking any action that would adversely affect the Federal Tax Exemption.

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

6.1 SCPPA's Role. SCPPA acting by and through the Coordinating Committee, the Board of Directors or any authorized member of SCPPA's staff, as applicable, shall have the following rights, duties and responsibilities under this Agreement:

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

6.1.2 Review Agency Cost Estimates. Review, modify and approve the estimates of Agency Costs submitted by the Agent pursuant to this 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 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 or Coordinating Committee 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, the Board of Directors, the Coordinating Committee, or any Project Participant.

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 interest.

**7. ACTIVITIES TO BE PERFORMED BY LADWP AS AGENT.** LADWP shall have the following the rights, duties and responsibilities under this Agreement:

7.1 Make Periodic Reports. Make periodic reports to the Coordinating Committee regarding the operation of the Facility and Operating Work, including meteorological and wind reports, generation and transmission information, statistical and administrative reports, and other similar reports, records, or information which may be helpful to or requested by the Coordinating Committee or the Board of Directors.

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

7.2.1 Recommend policies, criteria or procedures which will carry forth SCPPA's rights responsibilities and obligations pursuant to the Power Purchase Agreement and the Power Sales Agreements, and, when appropriate, recommend practices and procedures relating to the operation and maintenance of the Facility.

- 7.2.2 Recommend, when applicable and appropriate, policies, criteria or procedures for the maintenance of inventories for spare parts, materials or supplies.
- 7.2.3 To the extent appropriate and permissible pursuant to the Power Purchase Agreement recommend policies and procedures for conducting tests or performance measurements with respect to the Facility.
- 7.2.4 Recommend, when applicable and appropriate, policies, criteria and procedures for selection and utilization of maintenance contractors and operational consultants with respect to the Facility.
- 7.2.5 Recommend, when applicable, Capital Improvements as appropriate.
- 7.3 Billings. Prepare and render, in the manner and at the times required by the Power Sales Agreements, billings to the Project Participants in accordance with the terms and provisions of the Power Sales Agreements.
- 7.4 Inform SCPPA. Promptly inform SCPPA regarding significant factors which may affect or have affected Agency Work or SCPPA's interest.
- 7.5 Expend Monies for Agency Costs. Expend moneys for Agency Costs in accordance with this Agreement.
- 7.6 Investments. Schedule, select, direct, execute, maintain records of, and provide monthly reports to SCPPA concerning, all investments of monies under and in accordance with the Indenture.
- 7.7 Arrange Services for Agency Work, Operating Work and Supplemental Services; Administer Contracts; Agent's Employees. Negotiate, arrange for, administer, and enforce all contracts for furnishing, purchasing, procuring and obtaining from any source (including pursuant to contracts between the Agent and third parties) engineering services, legal services, studies and supplies necessary for the performance and completion of Agency Work, Operating Work, or Supplemental Services. LADWP shall furnish conformed copies of any contracts or other related documentation to SCPPA. In performing Agency Work or Operating Work, the Agent may use its own employees and equipment and facilities owned or directly leased by the Agent without obtaining any consent or approval of SCPPA.
- 7.8 Comply With Laws and Regulations. Comply with any and all laws and regulations applicable to the performance of Agency Work.
- 7.9 Keep Accounting Records of Expenditures; Audit of Accounting Records. Keep and maintain records of moneys expended, obligations incurred, sunk (unrecoverable) costs, credits accrued; and maintain for auditing by SCPPA those accounting records used by the Agent for the purpose of accumulating financial and statistical data for Agency Work.
- 7.10 Prepare and Submit Estimates of Agency Costs. Prepare and submit to SCPPA, for use by SCPPA in preparing its annual budget with respect to the Project for each fiscal year, the Agent's estimate of Agency Costs for the fiscal year to which such budget applies.

- 7.11 Obtain Cost Data. Obtain and furnish to SCPPA cost data, projections and budgets from the construction manager or operation manager in accordance with the Project Agreements.
- 7.12 Assist in Budget Preparation. To the extent requested by SCPPA, assist in the preparation of the Annual Budget, including the provision of information relating to potential Capital Improvements
- 7.13 Render Requisitions. To the extent required by the Project Agreements or any resolution of the Board of Directors, prepare, execute and file with the Project Trustee under the Indenture or the fiscal agent under any applicable fiscal agency agreement, any requisition or other request for disbursement of funds necessary under the Project Agreements.
- 7.14 Communicate with Trustee. Communicate with the Project Trustee under the Indenture as requested by SCPPA, or as otherwise necessary in the performance of Agency Work.
- 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 under the Project Agreements.
- 7.16 Provide Interface. Provide interface between SCPPA and the Project Participants with respect to the administration of the Power Purchase Agreement.
- 7.17 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.
- 7.18 Place and Maintain Insurance. Procure or cause to be procured and maintain or cause to be maintained in force insurance coverage with respect to Agency Work or SCPPA's interests which are usual and customary consistent with Prudent Utility Practice. The form and amounts of such insurance(s) shall be based on necessary, appropriate, and reasonable commercial availability.
- 7.19 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.
- 7.20 Conduct All Other Activities Relating to Agency Work, Operating Work, and Supplemental Services. Conduct all other activities necessary to bring Agency Work, Operating Work, and Supplemental Services 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. SCPPA shall reimburse LADWP for Agency Costs incurred or paid by LADWP, including the following:
  - 8.1.1 All costs approved by the Agent of labor, goods, services, transportation and studies, including costs of legal counsel and consultation fees, performed by the

Agent or by others, in connection with this Agreement, together with all costs approved by the Agent of facilities utilized in such performance. All costs (including premiums, deductibles, and/or deposits to self-insurance funds) of insurance related to Agency Work procured in accordance with Section 7.18.

- 8.1.2 Payroll and other expenses of employees of the Agent while performing Agency Work, including applicable overhead costs and labor loading charges, including but not limited to time-off allowances, payroll taxes, workers' compensation insurance, retirement and death benefits and other employee benefits.
  - 8.1.3 Costs of the Agent associated with performing its duties and responsibilities under this Agreement.
  - 8.1.4 All costs paid by the Agent for any studies, reports or other documents obtained from any Project Participant.
- 8.2 Costs Not Agency Costs. SCPPA shall not be responsible for 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, and such costs, if any, shall not be Agency Costs. In addition Agency Costs shall not include costs incurred by any Project Participant which are not attributable to Agency Work, including the following:
- 8.2.1 To the extent not specifically included in Agency Costs, costs of studies conducted by any Project Participant to determine, for that Project Participant, the usefulness, economics, legal and regulatory implications, and feasibility of the project and such Project Participant's costs of obtaining the entitlements or accommodations necessary to make the project feasible for that particular Project Participant.
  - 8.2.2 Except as may otherwise be provided by SCPPA, through the Board of Directors, the costs of any Project Participant associated with the preparation and the negotiation of contracts between SCPPA and any Project Participant regarding the Project.
  - 8.2.3 Except as may otherwise provided by SCPPA through the Board of Directors, costs incurred by each Project Participant in the various functions of the Board of Directors, the Coordinating Committee, or any committees established by the Board of Directors or the Coordinating Committee, and the expenses of its personnel while performing such functions.
- 8.3 No Profit. The Agent shall not receive any profit under this Agreement or any Project Agreement, nor shall the Agent be obligated to make any expenditure or incur any obligation regarding Agency Work with respect to which it shall not be entitled to reimbursement under this Agreement.
- 8.4 Budget and Review Processes. As is the case with similar costs for other projects of SCPPA, Agency Costs shall be the subject of SCPPA's annual budget and periodic budget review processes.

9. PAYMENT TO AGENT FOR AGENCY COSTS; AUDITS.

- 9.1 Payment and Audit Procedures. From time to time, and at such times (not more than monthly) as the Agent shall determine, it shall submit to SCPPA requests and requisitions for payment of items of Agency Costs incurred or paid. SCPPA shall pay or cause to be paid the amount of each such request or requisition within 30 days after its receipt thereof. 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.
- 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 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.

10. LIABILITY.

- 10.1 No Liability of SCPPA, Agent, Directors, Officers, Etc.; SCPPA Directors, Officers, Employees, Project Manager Not Individually Liable. The Parties agree that neither Party, nor any of their directors, officers, or employees shall be liable to the other Party for any and all claims, including loss of profits, direct or consequential loss, or damage suffered by either Party as a result of (i) the performance or non-performance by Agent or its directors, officers, and employees under this Agreement (including negligent or grossly negligent acts or omissions and excluding willful misconduct) or (ii) the performance or non-performance of SCPPA, or any of its directors, officers, or employees under this Agreement (including negligent or grossly negligent acts or omissions and excluding willful misconduct). The Parties release each other and their respective directors, officers, and employees from any claim or liability that either Party may have cause to assert against each other as a result of any actions or inactions of the other Party under this Agreement (including negligent or grossly negligent acts or omissions and excluding willful misconduct). No such performance or non-performance of either Party shall relieve the other Party from its obligations under this Agreement, including its obligation to make payments required under this Agreement. The provisions of this Section 10.1 shall not be construed so as to relieve either Party from any obligation under this Agreement. It is also hereby recognized and agreed that no member of the Board of Directors, Agent, nor their officers or employees or member of SCPPA in its capacity as a member of SCPPA, shall be individually liable in respect of any undertakings by either Party under this Agreement.
- 10.2 Extent of Exculpation; Enforcement of Rights in Equity. The exculpation provision set forth in Section 10.1 hereof shall apply to all types of claims or actions including, but not

limited to, claims or actions based on contract or tort. Notwithstanding the foregoing, either Party may protect and enforce its rights under this Agreement by a suit or suits in equity for specific performance of any obligation or duty of the other Party and the Agent may enforce by any legal means its right to payment for Agency Costs in accordance with the terms of this Agreement.

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

## 11. ALTERNATIVE DISPUTE RESOLUTION.

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

## 12. RELATIONSHIP OF THE PARTIES.

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

**13. UNCONTROLLABLE FORCES.**

13.1 Excuse of Performance by Reason of Uncontrollable Forces. Other than with respect to the obligation of a Party to make payments as provided in this Agreement, neither Party shall be considered to be in default in the performance of any of its obligations under this Agreement when a failure of performance shall be due to an uncontrollable force. The term "uncontrollable force" shall be any cause beyond the control of the Party affected, including but not limited to failure of or threat of failure of facilities, flood, earthquake, tornado, storm, fire, lightning, epidemic, war, terrorism, riot, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority, and action or non-action by, or inability to obtain the necessary authorizations or approvals from, any governmental agency or authority, which by exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome. Nothing contained herein shall be construed so as to require a Party to settle any strike or labor dispute in which it may be involved. In the event a Party is rendered unable to fulfill any of its obligations under this Agreement by reason of an uncontrollable force, such Party shall give prompt written notice of such fact to the other Party and shall exercise due diligence to remove such inability with all reasonable dispatch. In such event, the Parties shall diligently and expeditiously determine how they may equitably proceed to carry out the objectives of this Agreement.

**14. BINDING OBLIGATIONS.**

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

**15. GENERAL PROVISIONS GOVERNING AGREEMENT.**

15.1 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 any court having jurisdiction in the premises, all other terms, covenants or conditions of this 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 Agreement.

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

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

**16. GOVERNING LAW.** This Agreement was made and entered into in the City of Los Angeles and shall be governed by, interpreted and enforced in accordance with the laws of the State of California, without regard to conflict of law principles.



**17. TERM AND EXPIRATION.**

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

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

18. **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.

19. **VENUE.** All litigation arising out of, or relating to this Agreement, shall be brought in a State or Federal court in the County of Los Angeles in the State of California. The Parties irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of California and waive any defense of forum non conveniens.

20. **ATTORNEYS FEES.** With respect to any dispute under this Agreement the Parties agree that each Party shall bear its own attorneys fees and costs. Notwithstanding the forgoing, LADWP and SCPPA acknowledge and understand that SCPPA's attorneys fees associated with any matter relating to the Project or this Agreement, including any dispute relating thereto, shall constitute a Project cost which shall be allocated and billed as set forth in Section 4 and Section 7 of the Power Sales Agreements.

21. **CONTRACT ADMINISTRATOR.** A contract administrator for this Agreement shall be designated by the individual authorized to receive notices on behalf of Purchaser pursuant to Paragraph 22 herein, and each Party's contract administrator shall have the authority to administer this Agreement on behalf of its respective Party. Notwithstanding the foregoing, the contract administrators shall have no authority to amend this Agreement on behalf of the Parties.

22. **REPRESENTATION AND NOTICES.** The parties acknowledge that each party was represented by counsel in the negotiation and execution of this Agreement. Any notice, demand or request provided for in this Agreement shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by registered or certified mail, postage prepaid, to the persons specified below:

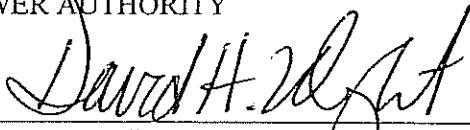
Southern California Public Power Authority  
Attn: Executive Director  
225 South Lake Avenue, Suite 1250  
Pasadena, California 91101


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

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

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

SOUTHERN CALIFORNIA PUBLIC  
POWER AUTHORITY

By:   
\_\_\_\_\_  
DAVID H. WRIGHT  
President

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