

RED CLOUD WIND 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 _____, 2020

TABLE OF CONTENTS

1.	PARTIES.....	1
2.	RECITALS, CONSTRUCTION AND PRELIMINARY MATTERS.....	1
3.	AGREEMENT	2
4.	DEFINITIONS	2
4.1	Agency Agreement.....	3
4.2	Agency Costs.....	3
4.3	Agency Work	3
4.4	Agent	3
4.5	Effective Date.....	3
5.	APPOINTMENT OF AGENT	3
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.....	3
5.5	Compliance with the Federal Tax Law Requirements	3
6.	RIGHTS, DUTIES AND RESPONSIBILITIES OF SCPPA	3
6.1	SCPPA's Role	4
7.	ACTIVITIES TO BE PERFORMED BY LADWP AS AGENT	4
7.1	Make Periodic Reports	4
7.2	Operating Budget	4
7.3	Adjustments to Operating Budget	4
7.4	Submit Recommendations.....	5
7.5	Billings	5
7.6	Inform SCPPA.....	5
7.7	Expend Funds for Agency Costs	5
7.8	Investments.....	5
7.9	Arrange Services for Agency Work and Operating Work; Administer Contracts; Agent's Employees	6
7.10	Comply With Laws and Regulations.....	6
7.11	Keep Accounting Records of Expenditures; Audit of Accounting Records	6
7.12	Prepare and Submit Estimates of Agency Costs	6
7.13	Obtain Cost Data.....	6
7.14	Assist in Budget Preparation	6
7.15	Render Requisitions	6

TABLE OF CONTENTS (Continued)

7.16	Communicate with Project Trustee or Lender.....	6
7.17	Provide Information	6
7.18	Furnish Assistance and Information.....	6
7.19	Place and Maintain Insurance.....	7
7.20	Provide Information Regarding Defaults	7
7.21	Conduct All Other Activities Relating to Agency Work, Operating Work and Supplementary Services	7
8.	AGENCY COSTS	7
8.1	Agency Costs.....	7
8.2	Costs Not Agency Costs.....	8
8.3	No Profit.....	8
8.4	Budget and Review Processes.....	8
9.	PAYMENT TO AGENT FOR AGENCY COSTS; AUDITS	8
9.1	Payment and Audit Procedures	8
9.2	Disputed Invoices	9
10.	LIABILITY	9
10.1	No Liability of SCPPA, Agent (including in its capacity as Project Manager), or Their Directors, Officers, Employees, Etc	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
10.5	No Warranty for Agent Services	10
11.	ALTERNATIVE DISPUTE RESOLUTION	10
11.1	Non-Binding Dispute Resolution	10
11.2	Role of the SCPPA Board of Directors; Nonbinding Mediation Procedure	10
12.	RELATIONSHIP OF THE PARTIES	11
12.1	Separate and Several Interests	11
13.	UNCONTROLLABLE FORCES	11
13.1	Excuse of Performance by Reason of Uncontrollable Forces	11
14.	BINDING OBLIGATIONS	11
14.1	All Obligations Binding	11
15.	GENERAL PROVISIONS GOVERNING AGREEMENT	11
15.1	Severability.....	11
15.2	Waiver Not to Effect Subsequent Events	11

TABLE OF CONTENTS
(Continued)

15.3	Headings Not Binding	11
16.	INDEMNITY AND RELATED MATTERS, POWER SALES AGREEMENT	12
17.	GOVERNING LAW	12
18.	TERM AND EXPIRATION	12
18.1	Effective Date.....	12
18.2	Termination	12
19.	VENUE	13
20.	ATTORNEYS FEES	13
21.	REPRESENTATION AND NOTICES.....	13
22.	AMENDMENTS.....	13

APPENDICES

A -	CONVENIENCE COPY FOR INFORMATIONAL PURPOSES OF APPENDIX A TO THE POWER SALES AGREEMENT - DEFINITIONS	
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RED CLOUD WIND PROJECT

AGENCY AGREEMENT

- 1. PARTIES.** This Red Cloud Wind Project Agency Agreement (the “Agency Agreement” or the “Agreement”), dated for convenience as of this ____ day of _____, 2020, 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 Agency Agreement as “LADWP” or as “Agent”. LADWP and SCPPA are also sometimes referred to herein, with respect to this Agency Agreement, individually as the “Party” and together as the “Parties”.
- 2. RECITALS, CONSTRUCTION AND PRELIMINARY MATTERS.** The Recitals set forth herein and the facts which follow are incorporated into this Agency Agreement by reference for all purposes. This Agency Agreement has been reviewed by attorneys for both Parties and shall not be interpreted with reference to the rules of construction providing for construction against a Party responsible for drafting or creating a particular provision or section, but shall instead be interpreted in a manner which broadly carries forth the goals and objectives of the Parties as expressed herein. References to “Sections” or “Appendix” shall be to Sections or the Appendix of this Agency Agreement unless otherwise specifically provided. Section headings in this Agency Agreement are included herein for convenience of reference only and shall not constitute a part of this Agency Agreement for any other purpose or be given any substantive effect. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. The use herein of the word “include” or “including”, when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not 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 Agency Agreement is made with reference to the following facts among others:

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

Angeles City Charter, which provides electric energy to its citizens through its municipally owned electric system. LADWP is one of the parties to the SCPPA Joint Powers Agreement and is one of the eleven founding member municipalities which formed SCPPA. Since the initial creation of SCPPA pursuant to the Joint Powers Agreement, LADWP has acted, in part, through SCPPA's Board of Directors to carry out generation, transmission and other projects through SCPPA.

- 2.3 To carry forth the objectives of the Parties to this Agency Agreement, SCPPA (i) is entering into the Power Purchase Agreement with [TBD], an affiliate of Pattern SC Holdings LLC, and (ii) in addition, will enter into other Power Purchase and Security Agreements which, along with other applicable provisions of the Power Purchase Agreement, will potentially provide SCPPA with certain purchase rights and obligations with respect to the Project and certain related facilities and property, all as shall inure to SCPPA for and on behalf of LADWP, including all of the rights, benefits and entitlements and all of the duties, obligations, and liabilities under the Power Purchase and Security Agreements accruing through SCPPA, including the receipt of Facility Products under and pursuant to the terms of the Power Purchase Agreement and the Power Sales Agreement.
 - 2.4 SCPPA is entering into the Power Sales Agreement with LADWP under which SCPPA will sell to LADWP, as the Purchaser thereunder, and LADWP will purchase from SCPPA, the Facility Products.
 - 2.5 The Power Sales Agreement provides for the designation of a Project Manager to administer the Project on behalf of SCPPA.
 - 2.6 It is the purpose of this Agency Agreement to carry forth the intendment of the Power Sales Agreement and to designate and appoint LADWP as Project Manager of the Project and to repose in LADWP, through this Agency Agreement, the power, authority and responsibility to act as the Agent (including as Project Manager) for and on behalf of SCPPA in the management and administration of the Project.
3. **AGREEMENT.** For and in consideration of the premises and the mutual covenants and agreements hereinafter set forth, and in order to carry forth the objectives of the Power Sales Agreement and to appoint LADWP as Agent (including as Project Manager) of the Project, the Parties agree as herein set forth.
 4. **DEFINITIONS.** Appendix A of the Red Cloud Wind Project Power Sales Agreement, dated as of the date hereof, by and between SCPPA and LADWP (the "Power Sales Agreement") (a copy of which for the convenience of the Parties is set forth in Appendix A of this Agency Agreement), sets forth, where applicable, the defined terms of this Agency Agreement between SCPPA and LADWP. The definitions in said Appendix A shall be applicable to this Agency Agreement. All terms which are not specifically defined in this Section 4, when initially capitalized, shall have the respective meanings ascribed to such terms in Appendix A of the Power Sales Agreement. The definitions in Appendix A shall be equally applicable to the Power Sales Agreement and this Agency Agreement. The terms defined in said Appendix A and in this Section 4, whether in the singular or plural, unless specifically provided otherwise, when used herein or in Appendix A hereto and initially capitalized, shall have the meaning ascribed thereto in said Appendix A or as set out below:

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

5. APPOINTMENT OF AGENT.

- 5.1 Appointment of Agent. In accordance with the terms and conditions of this Agency Agreement, SCPPA hereby appoints, designates, authorizes and directs LADWP to carry out, as agent for and on behalf of SCPPA, Agency Work in accordance with the terms of this Agency Agreement. LADWP hereby accepts such appointment, designation, authorization and direction. Agent shall act as Project Manager for the Project. Unless this Agency Agreement is otherwise terminated pursuant to Section 18.2 of this Agency Agreement, LADWP shall serve as Agent, including in its capacity as Project Manager, for the duration of the Power Sales Agreement. Except as provided in Section 18.2 hereof, Agent shall not have the right to resign and may not be removed as Agent for the Project during the time which the Power Sales Agreement is in effect.
- 5.2 Agent's Performance of Agency Work in Accordance with Applicable Laws, Rules and Regulations. In carrying forth its Agency Work pursuant to the terms of this Agency Agreement Agent shall, in all material respects, observe all applicable laws, rules and regulations.
- 5.3 Other Agents. The Authority shall at all times have the right to appoint another agent or agents to perform, apart from and concurrent with this Agency 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 the Agent to be in the best interests of the Project.
- 5.5 Compliance with the Federal Tax Law Requirements. Notwithstanding anything to the contrary in this Agency Agreement, each of SCPPA and LADWP shall take such actions in the administration of the Project and the performance of this Agency Agreement as may be necessary, if applicable, to comply with the Federal Tax Law Requirements on any Bonds, and each shall refrain from taking any action that would adversely affect compliance with the Federal Tax Law Requirements.

6. RIGHTS, DUTIES AND RESPONSIBILITIES OF SCPPA. The rights, duties and responsibilities of SCPPA shall include its duties and responsibilities of the Board of Directors set forth in the Power Sales Agreement and shall also include the following rights, duties and

responsibilities that implement, define and add to such responsibilities of the Board of Directors:

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

- 6.1.1 Review Budgets: Review, modify and approve the budgets submitted pursuant to the applicable provisions of the Power Sales Agreement.
- 6.1.2 Review Agency Cost Estimates: Review, modify and approve the estimates of Agency Costs submitted by the Agent pursuant to this Agency Agreement.
- 6.1.3 Monitor Agency Work: Monitor the continuation and completion of Agency Work.
- 6.1.4 Make Recommendations and/or Modifications Regarding Agency Work: Make (i) recommendations to the Agent with respect to Agency Work and/or (ii) modifications to Agency Work to be undertaken by Agent.
- 6.1.5 Provide Assistance: Provide such other assistance to the Agent in carrying out Agency Work as the Board of Directors shall deem reasonable and proper and as the Agent shall request.
- 6.1.6 Consider Relevant Matters: Consider any matter relating to SCPPA's interests proposed by the Agent, any member of the Board of Directors or any member of SCPPA's staff.
- 6.1.7 Perform Other Functions and Duties: Perform such other functions and duties as may be required of SCPPA in connection with SCPPA's interests in the Project.

7. **ACTIVITIES TO BE PERFORMED BY LADWP AS AGENT.** The activities to be performed by LADWP, as the Agent under this Agency Agreement, shall include its responsibilities as Project Manager set forth in the Power Sales Agreement and shall also include the following activities that implement, define and add to such responsibilities:

- 7.1 Make Periodic Reports. Make periodic reports to SCPPA regarding the operation of the Facility, Operating Work, and any relevant operating information and reports, including generation and transmission information, energy storage and use information and data, statistical, financial and administrative reports, and other similar reports, records, or information which may be helpful to or requested by the Board of Directors.
- 7.2 Operating Budget. Prepare and submit a proposed annual Operating Budget to SCPPA at least four months prior to the beginning of each Power Supply Year; provided, however, the initial Operating Budget shall be prepared, considered, adopted and delivered in the most practical manner available. Each Operating Budget shall be given to the Board of Directors for its review, modification and approval along with all other information necessary for the initial forecasts and schedules for Operating Work and each work-activity category thereof.
- 7.3 Adjustments to Operating Budget. Prepare and submit to the Board of Directors on the first business day of the second full quarter following the beginning of each Power Supply

Year (except such preparation and submittal regarding the initial Operating Budget pursuant to Section 7.2 hereof shall occur on the first business day of the second full quarter following the Effective Date) until the completion of Operating Work, for the Board of Directors' review, modification and approval, the following recommendations concerning:

- 7.3.1 Any revisions to the annual Operating Budget submitted pursuant to Section 7.2 hereof.
- 7.3.2 Any revisions to the forecasts and schedules for Operating Work and each work-activity category thereof, and a reconciliation between current updated and most recent forecasts and schedules.
- 7.4 Submit Recommendations. Submit recommendations from time to time to the Board of Directors, for review, modification and approval or disapproval with respect to the following:
 - 7.4.1 Recommend policies, criteria, protocols or procedures which will carry forth SCPPA's rights responsibilities and obligations pursuant to the Project Agreements and, when appropriate, recommend practices, protocols and procedures relating to the operation and maintenance of the Facility.
 - 7.4.2 Recommend, when applicable and appropriate, policies, criteria, protocols or procedures for the maintenance of inventories for spare parts, materials or supplies.
 - 7.4.3 To the extent appropriate and permissible pursuant to the Power Purchase Agreement, recommend policies, protocols and procedures for conducting tests or performance of other services with respect to the Facility.
 - 7.4.4 Recommend, when applicable and appropriate, policies, criteria, protocols and procedures for selection and utilization of maintenance contractors and operational consultants with respect to the Facility.
 - 7.4.5 Recommend, when applicable, Capital Improvements as appropriate.
- 7.5 Billings. Prepare in the manner and at the times required by the Power Sales Agreement and submit to SCPPA proposed billings to be rendered by SCPPA to the Purchaser in accordance with the terms and provisions of the Power Sales Agreement.
- 7.6 Inform SCPPA. Promptly inform SCPPA regarding significant factors which may affect or have affected Agency Work or SCPPA's interests.
- 7.7 Expend Funds for Agency Costs. Expend moneys for Agency Costs in accordance with this Agency Agreement.
- 7.8 Investments. Schedule, select, direct, execute, maintain records of, and provide monthly reports to SCPPA concerning, investments of moneys in accordance with reasonable and customary business practices relating to the administration of such investments and in accordance with any Indenture, if applicable.

- 7.9 Arrange Services for Agency Work and Operating Work; Administer Contracts; Agent's Employees. Negotiate, arrange for, administer, perform and enforce all contracts for furnishing, purchasing, procuring and obtaining from any source (including pursuant to contracts between the Agent and third parties) studies, supplies, engineering services, legal services, or other services necessary for the performance and completion of Agency Work, Operating Work or Supplementary Services; administer, perform and enforce such contracts; and furnish conformed copies of such contracts or other related documentation to SCPPA. In performing Agency Work, Operating Work or Supplementary Services, the Agent may use its own employees and equipment and facilities owned or directly leased by the Agent without obtaining any consent or approval of SCPPA.
- 7.10 Comply With Laws and Regulations. Comply with any and all laws and regulations applicable to the performance of Agency Work.
- 7.11 Keep Accounting Records of Expenditures; Audit of Accounting Records. Keep and maintain records of moneys expended, obligations incurred, costs, and credits accrued; and maintain for auditing by SCPPA those accounting records used by the Agent for the purpose of accumulating financial and statistical data for Agency Work.
- 7.12 Prepare and Submit Estimates of Agency Costs. Prepare and submit to SCPPA the Agent's estimate of Agency Costs to be used in preparing the Operating Budget with respect to the Project for each Fiscal Year.
- 7.13 Obtain Cost Data. Obtain and furnish to SCPPA, as applicable, cost data, projections and budgets which may be received from the Power Purchase Provider, the construction manager, construction contractors, the operation manager or operating entities in accordance with the Project Agreements.
- 7.14 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
- 7.15 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 or Lender under any Indenture or with the fiscal agent under any applicable fiscal agency agreement, any requisition or other request for disbursement of funds necessary under the Project Agreements.
- 7.16 Communicate with Project Trustee or Lender. Communicate with the Project Trustee or Lender under any Indenture as requested by SCPPA, or as otherwise necessary in the performance of Agency Work.
- 7.17 Provide Information. Provide the Board of Directors, and any committee established by it, and SCPPA's staff with records and information which may be required for SCPPA to perform its responsibilities.
- 7.18 Furnish Assistance and Information. Upon request, furnish to SCPPA any assistance and information reasonably available pertaining to Agency Work and the Project.

- 7.19 Place and Maintain Insurance. Procure or cause to be procured and maintain or cause to be maintained in force insurance coverage with respect to Agency Work or performance of SCPPA's obligations under this Agency Agreement and under any Project Agreement to which SCPPA is a party in such form and amounts as the Board of Directors determines necessary or as Agent may otherwise believe to be desirable to protect against potential exposures, or as required by law.
- 7.20 Provide Information Regarding Defaults. Keep the Purchaser and SCPPA fully and promptly informed of any default by any party under any of the Project Agreements of which Agent has knowledge.
- 7.21 Conduct All Other Activities Relating to Agency Work, Operating Work and Supplementary Services. Conduct all other activities deemed necessary to carry forth Agency Work, Operating Work or Supplementary Services or to bring the same to completion and perform such other functions and duties as may be assigned to it by SCPPA, but in any event in a manner consistent with this Agency 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 Agency Agreement, together with all costs approved by the Agent of facilities utilized in such performance. All costs (including premiums or deposits to self-insurance funds) of insurance related to Agency Work procured in accordance with Section 7.19.
 - 8.1.2 Payroll and other expenses of employees of the Agent while performing work in connection with this Agency Agreement, including applicable overhead costs and labor loading charges, including but not limited to time-off allowances, payroll taxes, workers' compensation insurance, retirement and death benefits and other employee benefits.
 - 8.1.3 Costs of the Agent associated with performing its duties and responsibilities under this Agency Agreement.
 - 8.1.4 All costs paid by the Agent for any studies, reports or other documents obtained from the Purchaser or the Power Purchase Provider.
 - 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 Agency Agreement or other costs that should be paid or provided to Agent to satisfy indemnification obligations under the Power Sales Agreement, resulting

from, arising out of or connected with the performance of Agency Work, including negligent acts or omissions but excluding grossly negligent acts or willful misconduct (which unless otherwise agreed to by the Parties, are both to be determined and established by a court of competent jurisdiction in a final, non-appealable order) of the Agent, its Board of Water and Power Commissioners, or its respective officers, employees or employees of the municipal entity of which Agent is a part.

- 8.1.6 Except as otherwise included as Agency Costs in this Section 8, Agency Costs shall include all costs, to the extent not covered by insurance, of the Agent in its capacity as Project Manager incurred or paid in connection with the performance of its responsibilities as provided in the Power Sales Agreement.

- 8.2 Costs Not Agency Costs. Costs incurred by the Agent which (a) are not attributable to the activities, duties and functions to be performed by the Agent pursuant to Section 7 of this Agreement; and (b) 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 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 under the Power Sales Agreement, to determine for itself the usefulness, economics, legal and regulatory implications, and feasibility of the Project and LADWP's costs of obtaining the entitlements or accommodations necessary to make the Project feasible for LADWP.

- 8.2.2 The costs of LADWP associated with the preparation and the negotiation of contracts between SCPPA and LADWP, as Purchaser under the Power Sales Agreement, regarding the Project.

- 8.2.3 Costs incurred by LADWP, as Purchaser under the Power Sales Agreement, 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. The Agent shall not receive any profit under this Agency Agreement or any Project Agreement, nor shall the Agent be obligated to make any expenditure or incur any obligation regarding Agency Work with respect to which it shall not be entitled to reimbursement under this Agency 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 45 days after its receipt thereof.

As applicable, each such request or requisition shall conform to the requirements of any borrowing instrument entered into by SCPPA from time to time, to the extent the funds to pay such request or requisition are to be paid from funds held under such instrument. At such reasonable times as shall be requested by SCPPA, the books and cost records of the Agent relevant to Agency Costs shall be subject to audit by or on behalf of SCPPA.

- 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 (including in its capacity as Project Manager), or Their Directors, Officers, Employees, Etc.; SCPPA's and Agent's Directors, Officers, Employees Not Individually Liable. Both Parties agree that neither Party, nor any of their past, present or future directors, officers, board members, agents, attorneys, advisors, employees or employees of the governmental entity of which the Agent is a part (collectively, the "Released Parties") shall be liable to any other of the Released Parties for any and all claims, demands, liabilities, obligations, losses, damages (whether direct, indirect or consequential), penalties, actions, loss of profits, judgments, orders, suits, costs, expenses (including attorneys' fee and expenses) or disbursements of any kind or nature whatsoever in law, equity or otherwise (including, without limitation, death, bodily injury or personal injury to any person or damage or destruction to any property of any of the Released Parties) suffered by any Released Party as a result of the action or inaction or performance or non-performance by the Power Purchase Provider or any of the Released Parties under this Agency Agreement or any Project Agreement (excluding gross negligence or willful misconduct, which, unless otherwise agreed to by the Parties, are both to be determined and established by a court of competent jurisdiction in a final, non-appealable order). Each Party shall release each of the other Released Parties from any claim or liability that such Party may have cause to assert as a result of any action or inaction or performance or non-performance by the Released Parties under this Agency Agreement or any Project Agreement (excluding gross negligence or willful misconduct, which, unless otherwise agreed to by the Parties, are both to be determined and established by a court of competent jurisdiction in a final, non-appealable order). Notwithstanding the foregoing, no such action or inaction or performance or non-performance of any of the Released Parties shall relieve either Party from its respective obligations under this Agency Agreement, including either Party's obligation to make payments required under this Agency Agreement, the Power Purchase and Security Agreements or any other Project Agreement. The provisions of this Section 10.1 shall not be construed so as to relieve the Agent from any obligation under this Agency Agreement, the Power Purchase and Security Agreements 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 Agency Agreement or any Project Agreement. Notwithstanding any provision of this Agency Agreement which might arguably be construed to the contrary, nothing in this Section 10 shall affect LADWP's obligation as the Purchaser under the Power Sales Agreement to make any payment or pay any cost required of it under the Power Sales Agreement.

- 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 Agency Agreement by a suit or suits in equity for specific performance of any obligation or duty of the other Party and the Agent may enforce by any legal means its right to payment for Agency Costs in accordance with the terms of this Agency 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 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 Agency Agreement. The undertakings by SCPPA under this Agency Agreement shall never constitute a debt or indebtedness of SCPPA within the meaning of any provision or limitation of the constitution or statutes of the State of California, and shall not constitute or give rise to a pecuniary liability of SCPPA or a charge against its general credit. Any provision of this Agency Agreement to the contrary notwithstanding, the obligation of SCPPA under this Agency Agreement to make or cause to be made payments shall be limited to those payments permitted by and monies available under any Indenture or as provided for in this Agency Agreement.
- 10.5 No Warranty for Agent Services. All services provided by Agent are provided on an "as is" basis. Agent disclaims all warranties, express or implied, statutory or otherwise, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

11. ALTERNATIVE DISPUTE RESOLUTION.

- 11.1 Non-Binding Dispute Resolution. If any dispute arises out of or relates to this Agency Agreement, or the asserted breach thereof, the Parties agree that the Parties shall first employ the non-binding mediation process which is set forth in this Section 11 before initiating any other type of legal action.
- 11.2 Role of the SCPPA Board of Directors; Nonbinding Mediation Procedure. If a dispute arises between the Parties under this Agency Agreement, the dispute shall be submitted to the Board of Directors. If the Board of Directors is unable to resolve the dispute, the Parties may then submit the dispute to non-binding mediation.

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 Agency Agreement. Neither Party shall be under the control of or shall be deemed to control any other Party. Neither Party shall be the agent of or have a right or power to bind the other Party without its express written consent, except as expressly provided in this Agency 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 Agency Agreement, neither Party shall be considered to be in default in the performance of any of its obligations under this Agency Agreement when a failure of performance shall be due to an Uncontrollable Force. 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 Agency Agreement by reason of an uncontrollable force, such Party shall give prompt written notice of such fact to the other Party and shall exercise due diligence to remove such inability with all reasonable dispatch. In such event, the Parties shall diligently and expeditiously determine how they may equitably proceed to carry out the objectives of this Agency Agreement.

14. BINDING OBLIGATIONS.

- 14.1 All Obligations Binding. All of the obligations set forth in this Agency 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 Agency 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 other terms, covenants or conditions of this Agency 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 Agency 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 Agency 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 Agency Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Sections of this Agency Agreement.

16. INDEMNITY AND RELATED MATTERS, POWER SALES AGREEMENT.

16.1 Indemnification of Agent. In its capacity as Agent under this Agency Agreement, Agent shall be entitled to indemnification from SCPPA as set forth herein. SCPPA shall indemnify and hold harmless Agent, its Board of Water and Power Commissioners, its City Council, officers, agents, attorneys, advisors and employees, past, present or future (collectively, "Agent Indemnitees") from and against any and all claims, demands, liabilities, obligations, losses, damages (whether direct, indirect or consequential), penalties, actions, loss of profits, judgments, orders, suits, costs, expenses (including attorneys' fees and expenses) or disbursements of any kind or nature whatsoever in law, equity or otherwise (including, without limitation, death, bodily injury or personal injury to any person or damage or destruction to any property of Agent, SCPPA or third persons) (collectively, "Losses") arising by reason of any actions, inactions, errors or omissions incident to the performance of this Agency Agreement (excluding gross negligence or willful misconduct, which, unless otherwise agreed to by the Parties, are both to be determined and established by a court of competent jurisdiction in a final, nonappealable order) on the part of Agent Indemnitees. At Agent's option, SCPPA shall defend Agent Indemnitees from and against any and all Losses. If SCPPA, with Agent's consent, defends any Agent Indemnitee, Agent and Agent's City Attorney's Office shall approve the selection of counsel, and Agent shall further approve any settlement or disposition, such approval not to be unreasonably withheld.

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

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 Agency Agreement, the rights, entitlements, obligations and liabilities of LADWP, as Agent and a Party to this Agency Agreement, shall not apply to or otherwise be affected by, and shall be legally separate from the rights, entitlements, obligations, and liabilities of LADWP as the Purchaser under the Power Sales Agreement.

17. GOVERNING LAW. This Agency Agreement has been 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, without regard to conflict of law principles.

18. TERM AND EXPIRATION.

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

18.2 Termination. This Agency Agreement shall continue in force and effect from the Effective Date until the expiration of the term of the Power Sales Agreement and any extensions or replacements thereof; provided, however, that this Agency Agreement may be terminated by either Party upon not less than three years prior written notice to the

other Party. Payment obligations of the Parties hereunder shall survive any termination of this Agency Agreement until satisfied.

19. **VENUE.** All litigation arising out of, or relating to this Agency Agreement, shall be brought in a State or Federal court in the County of Los Angeles in the State of California. The Parties irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of California and waive any defense of *forum non conveniens*.
20. **ATTORNEYS FEES.** With respect to any dispute under this Agency Agreement, the Parties agree that each Party shall bear its own attorneys' fees and costs. Notwithstanding the forgoing, LADWP and SCPPA acknowledge that SCPPA's attorney's fees associated with any matter relating to the Project or this Agency Agreement, including any dispute relating thereto, shall constitute a Project cost which shall be allocated and billed as set forth in Section 4 and Section 7 of the Power Sales Agreement.
21. **REPRESENTATION AND NOTICES.** The parties acknowledge that each party was represented by counsel in the negotiation and execution of this Agency Agreement. Any notice, demand or request provided for in this Agency Agreement shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by registered or certified mail, postage prepaid, to the persons specified below:

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

City of Los Angeles acting by and through the Department of Water and Power
General Manager
111 North Hope Street, Room 921
Los Angeles, California 90012

22. **AMENDMENTS.** The Parties acknowledge and agree that any amendment to this Agency 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

By: _____
JORGE SOMOANO
President

Attest: _____
MICAHEL S. WEBSTER
Assistant Secretary

Approved as to legal form and content:

By: _____
RICHARD J. MORILLO
General Counsel

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

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

By: MAY 14 2020
VAUGHN MINASSIAN
DEPUTY CITY ATTORNEY

By: _____
MARTIN L. ADAMS
General Manager and Chief Engineer

Date: _____

And: _____
SUSAN A. RODRIGUEZ, SECRETARY

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

APPENDIX A OF THE RED CLOUD WIND PROJECT

POWER SALES AGREEMENT

DEFINITIONS

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

1. Acquiring Entity. "Acquiring Entity" shall have the meaning set forth in Section 18.3.
2. Acquisition. Acquisition shall entail the procurement of SCPPA's rights and obligations pursuant to the Power Purchase Agreement and applicable Project Agreements, any purchase of the Facility, including the purchase of rights and interests under any of the Power Purchase and Security Agreements, SCPPA financing arrangements for the foregoing, and all rights and entitlements associated with the acquisition, development and implementation of the Project, including those resources, contracts, rights, benefits, entitlements and arrangements as may be necessary, desirable or appropriate to the Project to further SCPPA's and Purchaser's goals and those associated structures and services procured, retained or acquired by and on behalf of Purchaser as part of the Project and which, where applicable, have been approved by the Board of Directors. Acquisition also includes the rights and interests under any consents to assignment and related agreements, and taking foreclosure action (or a deed in-lieu-of foreclosure) under and pursuant to any of the Power Purchase and Security Agreements, and, if and as applicable, associated financing, and all rights and entitlements of SCPPA under the Power Purchase and Security Agreements or other Project Agreements associated with the development and implementation of the Project.
3. Act. All of the provisions contained in the California Joint Exercise of Powers Act found in Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, beginning at California Government Code Section 6500 et seq., as amended from time to time.
4. Ancillary Documents. "Ancillary Documents" shall have the definition set forth in the Power Purchase Agreement.
5. Annual Budget. The budget adopted by SCPPA pursuant to Section 5.4.1 of this Agreement not less than 30 days nor more than 60 days prior to the beginning of each Power Supply Year, including any amendments thereto, which shall show a detailed estimate of Power Costs under this Agreement and all credits, charges, revenues, income, or other funds to be applied to such costs, for and applicable to such Power Supply Year.
6. Assignee. "Assignee" shall have the meaning set forth in Section 18.2.
7. Availability Liquidated Damages Offsets. "Availability Liquidated Damages Offsets" shall have the definition set forth in the Power Purchase Agreement.
8. Balancing Agent. "Balancing Agent" shall have the meaning set forth in Section 9.5.

9. Billing Statement. The written statement prepared or caused to be prepared each Month by, or on behalf of, SCPPA which shall be based upon certain of the information in the Annual Budget and shall show for such Month the amount to be paid to SCPPA by Purchaser in accordance with the provisions of Section 7 of this Agreement.
10. Board of Directors. The Board of Directors of the Southern California Public Power Authority.
11. Bond Counsel. Nationally recognized legal counsel having background and experience in the issuance of municipal bonds, including the Federal Tax Law Requirements relating thereto, and selected by SCPPA to evaluate and advise regarding the Bonds with respect to specified cases, transactions and matters from time to time.
12. Bonds. The bonds, notes, bond anticipation notes, certificates of participation, commercial paper or other evidences of indebtedness issued or incurred by SCPPA and outstanding pursuant to the provisions of the Indenture to finance or refinance the Cost of Acquisition and any Capital Improvements and, where applicable, the purchase of the Facility or any part, portion or component thereof, including purchase of the rights and interests under any applicable Project Agreement. Bonds shall include but not be limited to the taxable and/or tax-exempt bonds, notes, bond anticipation notes, certificates of participation, commercial paper or other evidences of indebtedness issued or incurred by SCPPA to finance any purchase of the Facility, including purchase of the rights and interests under any applicable Project Agreement, or bonds, notes, certificates of participation, commercial paper or other evidences of indebtedness issued to redeem or refund such bonds, notes, certificates of participation, commercial paper or evidences of indebtedness, and any and all other obligations which SCPPA issues or incurs relating to the Project. Bonds shall also include any additional Bonds authorized by the Indenture or any supplement thereto and issued or incurred pursuant to the provisions of Section 13.2 of this Agreement and any refunding of Bonds issued pursuant to the provisions of Sections 13.3 or 13.5 of this Agreement. Bonds may constitute other categories of bonds eligible for certain tax benefits under the Internal Revenue Code, including but not limited to tax-exempt bonds, tax credit bonds, "new clean renewable energy bonds" within the meaning of Section 54C of the Internal Revenue Code or "qualified energy conservation bonds" within the meaning of Section 54D of the Internal Revenue Code.
13. Capacity. The ability or potential to generate, produce or transfer electricity, expressed in kilowatts ("kW") or megawatts ("MW"), including, when feasible, ancillary or regulating services or other valuable non-energy products or services from a generating facility.
14. Capacity Rights. "Capacity Rights" shall have the definition set forth in the Power Purchase Agreement.
15. Capital Improvements. Any unit of property, property right, land or land right which is a replacement, repair, addition, improvement or betterment to the Project or any transmission facilities relating to, or for the benefit of, the Project, the betterment of land or land rights or the enlargement or betterment of any such unit of property constituting a part of the Project or related transmission facilities which is (i) consistent with Prudent Utility Practices and determined necessary and/or desirable by the Board of Directors or (ii) required by any governmental agency having jurisdiction over the Project.

16. Commercial Operation. "Commercial Operation" shall have the definition set forth in the Power Purchase Agreement.
17. Compliance. Following a Payment Default, the Defaulting Purchaser shall be in compliance with its payment obligations under this Agreement if it (i) no later than the last day of the Cure Period fully pays all amounts owed as reflected in any Default Invoice; (ii) pays any monthly Billing Statement which comes due during the Cure Period; and (iii) replenishes any reduction made to the applicable operating reserve account, Debt Service reserves or other Reserve Fund as a result of any Payment Default.
18. Consent Agreements. All consents to assignments and all agreements relating thereto entered into with any lender, financial institution or other Person for the purpose of consenting to the assignment of the rights or securing the obligations of the Power Purchase Provider under the Power Purchase Agreement, including, but not limited to, the Consent and Agreement.
19. Consent and Agreement. "Consent and Agreement" shall have the definition set forth in the Power Purchase Agreement.
20. Cost of Acquisition. "Cost of Acquisition" is defined in Section 4.3
21. Cure Period. That period of time beginning on the date of a Payment Default and concluding thirty (30) days thereafter.
22. Cured Payment Default. A Payment Default which has been cured in accordance with Section 15.3 of this Agreement. If at any time during the Cure Period the Defaulting Purchaser is in Compliance, then the requirements of a Cured Payment Default shall be deemed to have been satisfied as of the date of receipt of such payments by SCPPA and the Cure Period shall expire.
23. Daily Delay Damages. "Daily Delay Damages" shall have the definition set forth in the Power Purchase Agreement.
24. Debt Service. The debt service payable with respect to the Indenture pertaining to any category of Bonds, any Bonds issued pursuant to Section 13 of this Agreement, or other applicable series of Bonds, as determined by the context; provided that in the case of any Bonds, Debt Service may, to the extent provided in the Indenture, be reduced by the amount of any applicable cash grant or rebate payable by the Federal Government to SCPPA (or to the trustee under the Indenture) with respect to interest on such Bonds. Debt Service shall also include any payments required to be deposited into the Debt Service Fund under the Indenture to pay, for example, amounts due under any interest rate swap agreements or other derivative agreements.
25. Debt Service Fund. The Debt Service Fund or account, or similar fund or account, established by the Indenture to pay Debt Service. The Debt Service Fund shall not include the Debt Service Reserve Fund(s) under the Indenture.
26. Deemed Delivered Energy. "Deemed Delivered Energy" shall have the definition set forth in the Power Purchase Agreement.

27. Default. "Default" shall have the definition set forth in the Power Purchase Agreement.
28. Default Invoice. An invoice during the Payment Default Period and the Cure Period issued to the Defaulting Purchaser pursuant to Section 15 of this Agreement that identifies the total defaulted amount owed, including late payment interest, to achieve a Cured Payment Default. During the Cure Period, the Default Invoice shall also include the amount that must be paid to achieve Compliance.
29. Defaulting Purchaser. In the event that Purchaser causes a Payment Default which has not been remedied and where Purchaser has not effected a Cured Payment Default.
30. Delivery Term of the Power Purchase Agreement. The time period for the delivery of Energy pursuant to the Power Purchase Agreement as set forth therein.
31. Development Security. "Development Security" shall have the definition set forth in the Power Purchase Agreement.
32. Development Work. All work and activities in connection with the development of the Project, including, without limitation, all planning, designing, acquiring (by purchase or otherwise), mitigating impacts, constructing, installing, investigating, cost monitoring and control activities, negotiating and administering contracts, purchasing, environmental monitoring, scheduling, protecting, erecting, supervising, expediting inspecting, testing and training activities, recruitment and training of technical, operational and administrative personnel, insuring, accounting, budgeting, public information services and activities, services of consultants and legal counsel, preparing of manuals and reports, and activities relating to securing requisite actions, permits, licenses, approvals and certificates from governmental agencies and authorities.
33. Direct Reimbursable Costs. "Direct Reimbursable Costs" shall include Operating Insurance premiums and Taxes.
34. Dynamic Scheduling. "Dynamic Scheduling" shall mean the automated scheduling of Energy from the Point of Delivery to Purchaser's control area or electric system, provided that such dynamic schedules adjust at four-second intervals, or other intervals as specified by WECC, to match the amount of Energy actually delivered to the Point of Delivery.
35. Energy. "Energy" shall include both Energy and any Replacement Energy, as those terms are defined in the Power Purchase Agreement.
36. Environmental Attributes. "Environmental Attributes" shall have the definition set forth in the Power Purchase Agreement.
37. Excess Energy. "Excess Energy" shall have the definition set forth in the Power Purchase Agreement.
38. Facility. "Facility" means all of the facilities and real and personal properties and resources and rights and interests, all as described or defined as the Facility in the Power Purchase Agreement and all of the Acquisitions, related assets and accompanying rights and obligations associated therewith and all rights, interests and obligations associated with such

facilities, including the rights interests and obligations under the Ancillary Documents and shall also include all Capital Improvements.

39. Facility Products. All wind energy output, rights, and other tangible or intangible benefits derived from the Facility whatsoever, including without limitation all Energy (including Replacement Energy as defined in the Power Purchase Agreement), Capacity Rights and Environmental Attributes whether received by SCPPA under or pursuant to the Power Purchase Agreement or other applicable Project Agreement or derived from the Facility by SCPPA as owner following SCPPA's purchase of the Facility.
40. Federal Tax Law Requirements. "Federal Tax Law Requirements" shall mean, with respect to the issuer of Bonds, any and all requirements and limitations to which any specified type or category of Bonds are subject under the Internal Revenue Code or related Treasury regulations in order that such specified Bonds initially qualify and maintain qualification as that type or category of Bonds.
41. Financing Agreement. "Financing Agreement" shall have the definition set forth in the Power Purchase Agreement.
42. Fiscal Year. The twelve-month period commencing at 12:01 a.m. on July 1 of each year and ending at 12:01 a.m. on the following July 1, or such other time frame as determined by the Board of Directors.
43. Force Majeure. "Force Majeure" shall have the definition set forth in the Power Purchase Agreement.
44. Fund or Funds. Any fund or account created under the Indenture.
45. Generator Interconnection Agreement. Means that certain large generator interconnection agreement and associated documents as defined in the Power Purchase Agreement.
46. Guaranteed Delivered Energy. "Guaranteed Delivered Energy" shall have the definition set forth in the Power Purchase Agreement.
47. Indenture. The indenture of trust, trust agreement, credit or loan agreement and other similar agreements with respect to the Bonds, between SCPPA and a Project Trustee or Lender, as from time to time amended and supplemented in conformity with its provisions and of this Agreement. Under such agreements, SCPPA may enter into, or authorize the entering into of, interest rate swap agreements, other derivative agreements, and such other agreements as are authorized or permitted under such agreements. Indenture shall include, but not be limited to, any and all indentures in connection with any bridge loans, bond anticipation notes or other notes, or draw down bonds or with respect to any other type of bonds, and the indentures of trust, trust agreements or other similar agreements entered into between SCPPA and the Project Trustee or Lender to effect the redemption or refunding of any bridge loans, bond anticipation notes or other notes, draw down bonds or other bonds, as from time to time amended and supplemented in conformity with their provisions and the provisions of this Agreement.
48. Indenture cost component. "Indenture cost component" is defined in Section 4.4.4.

49. Initial Payment Default Date. The earlier of (i) the end of the fifth day following the first Payment Default for that no remedy in payment has occurred and been received by SCPPA, or (ii) the last day of the Month in which the first Payment Default has occurred for which no remedy in payment has occurred and been received by SCPPA.
50. Interconnection Contracts. The contracts providing for the interconnections and associated facilities which interconnect the Facility with the transmission system and substations and provide for the delivery of Facility Products. Interconnection Contracts shall include, without limitation the Generator Interconnection Agreement as well as any other contracts related to interconnection of the Facility or Transmission System.
51. Internal Revenue Code. The Internal Revenue Code of 1986, as amended.
52. Joint Powers Agreement. The "Southern California Public Power Authority Joint Powers Agreement" dated as of November 1, 1980, as amended and modified from time to time, entered into pursuant to the provisions of the Act, among SCPPA and its members.
53. LADWP. The City of Los Angeles acting by and through the Department of Water and Power.
54. Losses. "Losses" shall have the meaning set forth in Section 17.6.
55. Major Contracts. The Project Agreements and, to the extent not finalized or effective on the effective date of this Agreement, any other contract or agreement so identified by the Board of Directors, as such contracts or agreements may be amended or supplemented from time to time.
56. Month. A calendar month.
57. Monthly Costs. "Monthly Costs" is defined in Section 7.1.
58. Moody's. "Moody's" shall mean Moody's Investor Services, Inc.
59. Operating Budget. The operating budget approved by the Board of Directors which shall show a detailed estimate of all Project operating costs, including all revenues, income or other funds to be applied to such operating costs for and applicable to a Power Supply Year.
60. Operating cost component. "Operating cost component" is defined in Section 4.4.1.
61. Operating Insurance. "Operating Insurance" shall have the meaning set forth in the Power Purchase Agreement.
62. Operating Reserve Depletion Date. The date that is two Months prior to the date on which SCPPA anticipates, assuming continued Payment Defaults by the Defaulting Purchaser, that the moneys in the operating reserve account of the Indenture will be fully depleted; provided, however, if as of the date on which a Payment Default occurs SCPPA determines that the moneys in the operating reserve account will be fully depleted in less than two Months (or currently are fully depleted), then the Operating Reserve Depletion Date shall be deemed to have occurred when such a Payment Default occurs.

63. Operating Work. All work and activities in connection with the administration, operation and maintenance of the Project, including without limitation, negotiating and administering contracts, planning, mitigating impacts, purchasing, repairing, inspecting, maintaining, investigating and monitoring all aspects of the Project, performing modeling functions, economic analysis, quality control, testing and evaluating, recruitment and training of operating entities and personnel, electric energy and environmental attribute procurement, regulatory efforts, tagging, interconnecting, transmission, storing, dispatching, firming, balancing, exchanging and scheduling activities, supervising, expediting, budgeting, insuring, accounting, tracking, registering, protecting, operating and managing activities, public information services and services of consultants, operators, engineers, contactors and legal counsel, renewals, replacements, reconstruction, and improvements, and activities related to securing requisite permits, franchises, licenses, approvals, entitlements, credits and certificates from governmental agencies and authorities.
64. Option Agreement. "Option Agreement" shall have the definition set forth in the Power Purchase Agreement.
65. Payment Default. A failure by Purchaser to pay when due all of its Billing Statement for any Month.
66. Payment Default Period. That period of time during which a Payment Default exists.
67. Performance Security. "Performance Security" shall have the definition set forth in the Power Purchase Agreement.
68. Permit. "Permit" shall have the definition set forth in the Power Purchase Agreement.
69. Person. "Person" means any individual, corporation, partnership, joint venture, limited liability company, association, joint stock company, trust, unincorporated organization, entity, government or other political subdivision.
70. Point of Delivery. The point at which Energy is to be delivered to Purchaser pursuant to the Power Purchase Agreement or any other agreement with the Power Purchase Provider or, if SCPPA shall purchase or acquire the Facility, the same point of delivery of the Energy or such other point of delivery as authorized and determined by the Board of Directors.
71. Power Costs. "Power Costs" has the meaning described in Section 4.4.
72. Power Purchase Agreement. The Power Purchase Agreement between Southern California Public Power Authority and Red Cloud Wind LLC, dated as of _____ 2020, as the same may be amended from time to time.
73. Power Purchase and Security Agreements. The Power Purchase Agreement, the Option Agreement, the Ancillary Documents, the Consent and Agreement, the Financing Agreement, and all other agreements associated with the Facility, and any other consent to assignment or other agreement with any financial institution or Person relating to the Project or any loan or other credit agreement associated with the Facility, or any other agreement under which SCPPA might acquire or otherwise purchase or obtain the Facility or related resources and assets or the Facility Products or carry forth any Acquisition all as and to the extent

applicable to any particular Project matter or matters. The Power Purchase and Security Agreements shall also include any instrument or form of security which affords any opportunity for the purchase of the Facility or Acquisition, whether through foreclosure or otherwise, including any deed or deed of trust, mortgage, lease, assignment, beneficial interest, collateral instrument or other device or mechanism providing for the ability to acquire the Facility.

74. Power Purchase and Security Agreements cost component. "Power Purchase and Security Agreements cost component" is defined in Section 4.4.5.
75. Power Purchase Provider. Red Cloud Wind LLC, as the counterparty to SCPPA under the Power Purchase Agreement, and any other entity named under any applicable operating agreement to operate or otherwise run or manage the Facility along with each of their successors, or any successors or assigns to the rights of these entities.
76. Power Supply Year. The Fiscal Year, except that the first Power Supply Year shall begin on the first to occur of (i) the date SCPPA is obligated to pay any portion of the costs of the Project, (ii) the date upon which SCPPA first incurs or accrues costs associated with the issuance of the Bonds, (iii) 90 days before the scheduled date for issuance of the Bonds, (iv) the date of Commercial Operation of the Facility, or (v) the date of the first delivery of Energy to Purchaser pursuant to this Agreement. Further, the first Power Supply Year shall end on the last day of the then current Fiscal Year.
77. Project or Red Cloud Wind Project. The term "Project" or "Red Cloud Wind Project" shall be broadly construed to entail the aggregate of rights, liabilities, interests and obligations of SCPPA pursuant to the Power Purchase Agreement, the Power Purchase and Security Agreements and the other Project Agreements, including but not limited to all rights, liabilities, interests and obligations associated with the Facility Products, or, upon purchase or acquisition by SCPPA, all rights, liabilities, interests and obligations associated with the Facility, and including all aspects of the operation and administration of the Facility and the Project Agreements and the rights, liabilities, interests and obligations associated therewith. The term Project shall also include those rights, liabilities, interests or obligations necessary or appropriate to carry out the functions specified in Section 6 and to utilize or deliver the energy of the Facility as specified in Section 9.
78. Project Agreements. Any project management agreement, the Indenture, this Agreement (Agency Agreement), each of the Power Purchase and Security Agreements, Real Property Agreements (as defined in the Power Purchase Agreement), the Interconnection Contracts, the Ancillary Documents, Red Cloud Wind Project Power Sales Agreement or any other agreement of SCPPA with the Project Manager, other contracts and leases, easements, rights of way and other real property arrangements or agreements associated with the Facility, if any, any other Acquisition agreement or agreement for the purchase, procurement, delivery or transmission of Facility Products, including all agreements connected or associated with any purchase of the Facility or passing to SCPPA in connection with any purchase of the Facility, and including the rights and interests under the Financing Agreement or any other consents to assignments or agreements for assignment, any operating agreements, any maintenance agreements, any warranty agreements, any participation agreements, any agreements for scheduling, dispatching, exchanging, tagging, movement or transmission, any

agreements relating to any Capital Improvements and the agreements to which SCPPA is a party relating to the project design, development, administration, management or operation of the Facility and for placing of the Facility into operation or maintaining its operation.

79. Project Determination. "Project Determination" means any matter involving a question pertinent to the studying, investigating, planning, financing, developing, acquiring, constructing, reconstructing, operating, maintaining, administering, managing, improving, enlarging, or bettering of the Project.
80. Project Manager. LADWP, in its capacity as agent for and on behalf of SCPPA under the Red Cloud Wind Project Agency Agreement, dated as of _____, 2020, between LADWP and SCPPA ("Agency Agreement") or if the Red Cloud Wind Project Agency Agreement shall no longer be in force and effect, SCPPA or a designee or designees appointed by SCPPA to assist SCPPA to carry out SCPPA's responsibilities under this Agreement.
81. Project Manager Indemnitees. "Project Manager Indemnitees" shall have the meaning set forth in Section 17.7.
82. Project Rights. All rights and privileges of Purchaser under this Agreement, including but not limited to its right to receive Facility Products from the Facility.
83. Project Rights and Obligations. Purchaser's Project Rights and obligations under the terms of this Agreement.
84. Project Trustee or Lender. Any bank or other financial firm or institution at any time serving as trustee under the Indenture or any bank or financial firm party to the Indenture as a lender or as agent for a lender or lenders thereunder.
85. Prudent Utility Practices. "Prudent Utility Practices" shall have the meaning provided in the Power Purchase Agreement.
86. Purchaser Indemnitees. "Purchaser Indemnitees" shall have the meaning set forth in Section 17.6.
87. Red Cloud Wind Project Agency Agreement. "Red Cloud Wind Project Agency Agreement" shall have the definition set forth in this Appendix A under the definition of "Project Manager."
88. Red Cloud Wind Project Power Sales Agreement. "Red Cloud Wind Project Power Sales Agreement" shall mean the Red Cloud Wind Project Power Sales Agreement, dated for convenience as of xxxxxx, 2020, as the same may hereafter be amended from time to time, entered into by SCPPA and LADWP.
89. Released Parties. "Released Parties" shall have the meaning set forth in Section 17.1.

90. Replacement Energy. "Replacement Energy" shall have the definition set forth in the Power Purchase Agreement.
91. Reserve Fund cost component. "Reserve Fund cost component" is defined in Section 4.4.3.
92. Reserve Fund(s). Those reserve accounts deemed appropriate to afford a reliable source of funds for the payment obligations of the Project and, taking into account the variability of costs associated with the Project for the purpose of providing a reliable payment mechanism to address the ongoing costs associated with the Project.
93. S&P. "S&P" shall mean Standard & Poor's Financial Services LLC.
94. Shortfall Liquidated Damages. Shortfall Liquidated Damages shall have the definition set forth in the Power Purchase Agreement.
95. Startup and Test Energy. "Startup and Test Energy" shall have the definition set forth in the Power Purchase Agreement.
96. Supplementary Services. Those services in connection with the delivery of Energy involving additional transmission, interconnection arrangements, energy management, firming, shaping, energy balancing, dispatching, tagging, scheduling, transmitting, interconnecting, swapping, exchanging or other services associated with the transmission, use or disposition of Facility Products to be utilized by Purchaser under this Agreement, and to otherwise provide for delivery and facilitate the disposition, movement, taking, receiving, accounting for, transferring and crediting the ownership and transfer of Facility Products from the Point of Delivery to any other points or destinations, as determined by Purchaser. Supplementary Services include but are not limited to delivery point swaps, stranded energy/transmission curtailments, tiepoint liquidity improvement, transmission loss savings, tiepoint price spread optimization, on-peak/off-peak exchanges, peak shifting exchanges, seasonal exchanges, and both simultaneous or non-simultaneous green energy exchanges.
97. Supplementary Services cost component. "Supplementary Services cost component" is defined in Section 4.4.2.
98. Tax Counsel. Nationally recognized legal counsel having background and experience in tax-exempt financing and selected by SCPPA to evaluate and advise regarding the Federal Tax Law Requirements with respect to specified cases, transactions and matters from time to time.
99. Taxes. "Taxes" shall have the meaning set forth in the Power Purchase Agreement.
100. Transmission System. "Transmission System" shall have the meaning set forth in the Power Purchase Agreement.
101. Uncontrollable Forces. Any Force Majeure event and any cause beyond the control of any Party, which by the exercise of due diligence such Party is unable to prevent or overcome, including but not limited to, failure or refusal of any other Person to comply with then existing contracts, an act of God, fire, flood, explosion, earthquake, strike, sabotage, pestilence, an act of the public enemy (including terrorism), civil or military authority

including court orders, injunctions and orders of governmental agencies with proper jurisdiction or the failure of such agencies to act, insurrection or riot, an act of the elements, failure of equipment, a failure of any governmental entity to issue a requested order, license or permit, inability of any Party or any Person engaged in work on the Project to obtain or ship materials or equipment because of the effect of similar causes on suppliers or carriers, or inability of SCPPA to sell or issue its Bonds. Notwithstanding the foregoing, Uncontrollable Forces as defined herein shall also include events of Force Majeure pursuant to the Power Purchase Agreement, as defined therein.

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