

RESOLUTION NO. 2007-13

RESOLUTION OF THE SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY (1) APPROVING THE APPLIANCE RECYCLING PROGRAM PARTICIPATION AGREEMENT BETWEEN SCPPA AND THE CITY OF LOS ANGELES ACTING BY AND THROUGH THE DEPARTMENT OF WATER AND POWER (2) AUTHORIZING THE EXECUTION AND DELIVERY OF THE APPLIANCE RECYCLING PROGRAM PARTICIPATION AGREEMENT, (3) AUTHORIZING CERTAIN RELATED ACTIONS; AND (4) AUTHORIZING THE OFFICERS OF THE AUTHORITY TO DO ALL OTHER THINGS DEEMED NECESSARY OR ADVISABLE.

WHEREAS, The Southern California Public Power Authority (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 California Government Code, (referred to herein as "the Act"), by its members, including the City of Los Angeles acting by and through its Department of Water and Power (LADWP), for the purpose of collectively undertaking the planning, contracting for, development, improvement, betterment, operation, and implementation of member generation saving projects, including the development and implementation of systems and frameworks to assist its members in the efficient management and more effective utilization of the members' existing generation capacity and generation resources.

WHEREAS, SCPPA has carried forth these goals, in part, through programs for SCPPA members which seek to promote more effective utilization of generation capacity through the management of member customer loads. These programs have promoted systems, methodologies and projects which seek to achieve greater energy efficiency among SCPPA members, thereby reducing demands and requirements which might otherwise be place upon Authority member generation systems and which might otherwise substantially increase the need for added generation resources.

WHEREAS, to further these generation demand reduction goals SCPPA has implemented an appliance recycling program and has contracted with the Appliance Recycling Centers of America-California, Inc. ("ARCA") to provide services by which to retire older high energy consuming refrigerators owned by SCPPA member utility customers and replace these refrigerators with modern high efficiency units. This program has been utilized by participating member utilities, including the cities of Anaheim, Burbank, Colton, Glendale, Pasadena and Riverside. LADWP has indicated a desire to participate in this program to gain access to this SCPPA program and to utilize these services which have been procured by SCPPA.

WHEREAS, SCPPA has carried forth the Appliance Recycling Program through the negotiation of the SCPPA-ARCA Agreements which provide, among other

things, the services of ARCA's Low Income Refrigerator Exchange Program (LIREP) and ARCA's Refrigerator Turn In and Recycle (RETIRE) Program, and the further appliance replacement and recycling services otherwise set forth in the SCPPA-ARCA Agreements.

WHEREAS, LADWP desires, to participate in this program, and especially to promote energy efficient refrigerators to its qualifying low income customers through the Low Income Refrigerator Exchange Program in exchange for their older, inefficient, working refrigerators, which will be recycled.

WHEREAS, LADWP envisions implementing the LIREP Program for the purpose of saving energy, reducing peak demand, lowering LADWP customers' energy bills, transforming the market for energy-efficient appliances and providing additional public environmental benefits.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Authority as follows:

1. The Appliance Recycling Program Participation Agreement between the Southern California Public Power Authority and The City of Los Angeles acting by and through the Department of Water and Power is approved.
2. Amounts paid to SCPPA or held for the purpose of carrying out the administration and payment obligations under the SCPPA-ARCA Agreements pursuant to this Resolution shall be maintained solely for the purpose of paying for obligations associated with the SCPPA-ARCA Agreements and shall not be contributed or held for the purposes of any other project of the Authority including any project for which the Authority may have obtained any form of external financing.
3. Each of the President, Vice President, Secretary and any Assistant Secretary of the Authority is hereby authorized to execute and deliver the Appliance Recycling Program Participation Agreement between Southern California Public Power Authority and the City of Los Angeles, Acting By and Through the Department of Water and Power, in substantially the form attached hereto.
4. Each of the President, Vice President, Secretary and any Assistant Secretary, the Executive Director and any other officer of the Authority is hereby authorized to execute and deliver any other agreements, amendments to agreements, documents and instruments and to do and cause to be done any and all acts and things deemed necessary or advisable for carrying out the transactions contemplated by this Resolution. Each reference in this Resolution to the President, Vice President, Secretary, Assistant Secretary or Executive Director shall refer to the person holding such office or position, as applicable, at the time a given action is taken and shall not be limited to the person holding such office or position at the time of the adoption of this Resolution. All actions heretofore taken by the officers, employees and agents of the Authority in furtherance of the transactions contemplated by this Resolution are hereby approved, ratified and confirmed.

5. The President, Vice President, Secretary, any Assistant Secretary, the Executive Director and any other officer of the Authority are each hereby authorized to execute and deliver any and all additional instruments, documents, or orders and to do and cause to be done any and all other acts and things necessary or proper for carrying out the transactions contemplated by this Resolution.
6. This Resolution shall become effective immediately.

THE FOREGOING RESOLUTION is approved and adopted by the Authority this 19th day of April, 2007.



PRESIDENT
Southern California Public
Power Authority

ATTEST:



SECRETARY
Southern California Public
Power Authority

EXHIBIT TO RESOLUTION 2007-13

SCPPA GENERATION DEMAND REDUCTION PROGRAM

APPLIANCE RECYCLING PROGRAM PARTICIPATION AGREEMENT

NO. 47683

BETWEEN

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

AND

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

APPLIANCE RECYCLING PROGRAM PARTICIPATION AGREEMENT

- 1. PARTIES.** This Appliance Recycling Program Participation Agreement, is made and entered into by and between the SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY, a joint powers agency and a public entity organized under the laws of the State of California, hereinafter designated as “SCPPA,” created under the provisions of the Act, and the CITY OF LOS ANGELES acting by and through the DEPARTMENT OF WATER AND POWER, a California 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 designated in this Agreement as “the Department” or as “LADWP” or as “Purchaser,” or, depending upon context, as a “Program Participant.” LADWP and SCPPA are also sometimes herein referred to individually as the “Party” and together as the “Parties”. In addition, LADWP and certain members of SCPPA participating in SCPPA’s appliance recycling program for appliance delivery and recycling services may be referred to collectively, in this agreement, as “Program Participants.”
- 2. RECITALS.** This Agreement is entered into with reference to the following facts and circumstances, among others:

 - 2.1 SCPPA is a joint powers agency created pursuant to provisions contained in the Joint Exercise of Powers Act found in Chapter 5 of Division 7 of Title 1 of the California Government Code, (referred to herein as “the Act”), by its members, including LADWP, for the purpose of collectively undertaking the planning, contracting for, development, improvement, betterment, operation, and implementation of member generation saving projects, including the development and implementation of systems and frameworks to assist its members in the efficient management and more effective utilization of the members’ existing generation capacity and generation resources.
 - 2.2 SCPPA has endeavored to carry forth these goals in part through the program set forth in this Agreement which seeks to promote more effective utilization of generation capacity through the management of customer loads within its members’ services areas through the administration of projects involving systems, methodologies and programs which promote greater energy efficiency among SCPPA members and thereby reducing demands and requirements which might otherwise be place upon Authority member generation systems and which might otherwise substantially increase the need for added generation resources.
 - 2.3 In furtherance of these aims SCPPA has contracted with the Appliance Recycling Centers of America-California, Inc. (“ARCA”) to provide LIREP and RETIRE services, which are explained more fully herein, for its participating member utilities, including the cities of Anaheim, Burbank, Colton, Glendale, Pasadena and Riverside. LADWP desires to participate in this program which has been implemented by SCPPA for its members and to gain access to this SCPPA program and the services referenced herein.
 - 2.4 To carry forth the objectives set forth herein, SCPPA has negotiated the SCPPA-ARCA Agreements for the benefit of the Program Participants which will provide,

among other things, the services of ARCA under the LIREP and RETIRE programs and the appliance replacement and recycling services set forth in the SCPPA-ARCA Agreements. It is the intention of the Program Participants and SCPPA that the Program Participants will acquire those rights and those obligations as shall inure to SCPPA under the SCPPA-ARCA Agreements for and on behalf of the Program Participants in accordance with each Program Participants utilization of the SCPPA-ARCA Agreements, including all of the rights, benefits and entitlements and all of the duties, obligations, and liabilities accruing through SCPPA associated with the SCPPA-ARCA Agreements.

- 2.5 LADWP desires, by its participation in this program, to promote energy-efficient refrigerators to its customers through the Low Income Refrigerator Exchange Program (LIREP), designed to provide free, high-efficiency refrigerators to qualifying customers in exchange for their older, working refrigerators, which will be recycled.
- 2.6 LADWP envisions implementing the LIREP Program for the purpose of saving energy, reducing peak demand, lowering LADWP customers' energy bills, transforming the market for energy-efficient appliances and providing additional public environmental benefits.
- 2.7 LADWP desires that SCPPA provides those services specified herein to ensure safe, effective and lawful recovery and recycling, or lawful disposal, as necessary, of CFC/HCFC refrigerants, CFC-11 foam insulation blowing agent, PCBs, mercury, used oils and any other hazardous materials found in older inefficient refrigerators and freezers, as well as the recycling of all scrap metals.
- 2.8 LADWP has determined that SCPPA, acting through ARCA, represents the most effective services arrangement to provide the best value to LADWP for the required appliance storage, delivery and recycling services necessary to carry forth the above programs and to provide the other services referenced in the SCPPA-ARCA Agreements and this Agreement.
- 2.9 SCPPA desires to proceed pursuant to this Appliance Recycling Program Participation Agreement with the implementation of this Project.
- 2.10 In order to enable SCPPA to carry out the activities necessary to the Project it is necessary for SCPPA to have a binding agreement with LADWP and to employ those payments made pursuant to this Appliance Recycling Program Participation Agreement for the purpose of securing the rights and deliverables desired by LADWP.
- 2.11 It is therefore contemplated that SCPPA will perform those activities and services and enter into those agreements and arrangements referenced herein to be utilized by LADWP for its appliance recycling program, and LADWP shall pay from its Power Revenue Fund, including any and all legally available electric system revenues, all amounts payable to SCPPA for the purpose of covering all costs incurred by SCPPA under this Appliance Recycling Program Participation Agreement.

3. **AGREEMENT.** For and in consideration of the promises and the mutual covenants and agreements hereinafter set forth, it is agreed by and between the Parties hereto as follows.

4. **DEFINITIONS.** Appendix A to this Agreement sets forth definitions of certain terms used in this Agreement. The terms defined in Appendix A and this Agreement, whether in the singular or plural, unless specifically provided otherwise, when used herein or in the Appendices hereto and initially capitalized, shall have the meaning ascribed thereto in said Appendix A or as set out in this Agreement.

5. **TERM, SERVICES AND RESPONSIBILITIES.**

5.1 Term. This Agreement shall be effective upon execution by both Parties and, unless earlier terminated pursuant to an express provision of this Agreement, shall be coterminous with the SCPPA-ARCA Agreements though in no case shall exceed three years in total; provided, however, any obligation to make payments to SCPPA or any other outstanding liability of LADWP hereunder that exists as of the date of termination of this Agreement shall survive such termination.

5.2 Purchase and Sale of Contracted Services. In accordance with the terms and conditions hereof, commencing on the first date that services under the SCPPA-ARCA Agreements are available to LADWP and continuing throughout the Term, SCPPA shall deliver, consign and cause to be provided to LADWP those services and resources set forth and afforded to SCPPA for LADWP's utilization pursuant to the SCPPA-ARCA Agreements and LADWP shall purchase, utilize, direct and pay the specified costs for those services provided for its benefit under the SCPPA-ARCA Agreements. Such services shall include all such services to be provided by ARCA as more fully set forth in the SCPPA-ARCA Agreements, as LADWP shall direct, to carry forth the LIREP program and the other services for LADWP customers specified in the SCPPA-ARCA Agreements

5.3 Utilization of the SCPPA-ARCA Agreements. SCPPA shall provide and Purchaser shall purchase and utilize only those services relating to compact fluorescent light bulbs and refrigerators provided pursuant to SCPPA-ARCA Agreements as Purchaser shall deem appropriate to its appliance recycling programs pursuant to the terms of this Agreement. Purchaser does not have the authority and is prohibited from agreeing to the delivery of other customer incentive or promotional items in lieu of, or in addition to, compact fluorescent lights as provided for in section 3.32(j) of the SCPPA-ARCA Agreement or as may be added to the agreement in the future by a similar type of provision.. To the extent permitted by the SCPPA-ARCA Agreements or otherwise, SCPPA will endeavor to take such actions and implement such measures as may be necessary or desirable for the employment and utilization of the rights and interests of the Program Participants including, if appropriate, such enforcement actions or other measures as the Purchaser deems to be in its best interests..

6. **OBLIGATIONS OF SCPPA, LADWP AND THE PROGRAM PARTICIPANTS.**

6.1 Program Manager. LADWP shall act as the Program Manager for those appliance delivery and recycling services provided to LADWP pursuant to the SCPPA-ARCA Agreements and shall provide SCPPA's Subcontractor, ARCA, with such information and direction as LADWP may deem necessary to carry out ARCA's services with respect to LADWP's customers or in relation to conditions within LADWP's service territory, and shall afford such direction as may be necessary or appropriate to guide ARCA's Work in those appliance recycling program activities as may take place with respect to LADWP.

- 6.2 Authorized Representative. LADWP shall designate, in writing, one or more persons as its authorized representative (“Authorized Representative”) to act on its behalf and having authority to administer and carry out the provisions of this Agreement. LADWP shall notify SCPPA within thirty (30) calendar days after execution of this Agreement of its Authorized Representative(s) and shall notify SCPPA in writing of any subsequent change in such designations. The Authorized Representative(s) shall provide day to day direction, including Task Assignments and Change Orders, concerning the activities of ARCA for those services provided to LADWP under and pursuant to the SCPPA-ARCA Agreements
- 6.3 The SCPPA-ARCA Agreements. SCPPA shall use best efforts, on behalf of the LADWP and the other Program Participants, to provide, for the benefit of LADWP and the other Program Participants, all products, services, rights, and benefits afforded pursuant to, the ARCA-SCPPA Agreements. LADWP acknowledges and agrees that the services provided pursuant to the SCPPA Appliance Recycling Program are those services provided by ARCA under the ARCA-SCPPA Agreements. Buyer will not at any time take any action, or fail to take any action, if such action or failure to take action would place SCPPA in breach of the SCPPA-ARCA Agreements.
- 6.4 Adoption of Annual Budget. At least sixty (60) days prior to the beginning of each Fiscal Year, SCPPA will prepare, or cause to be prepared, and submit to LADWP’s Authorized Representative, a proposed Annual Budget for such Fiscal Year. Such Annual Budget shall reflect the most recent Contract Costs estimates and other information provided to SCPPA. SCPPA may include in the Annual Budget reasonable amounts in excess of the estimated Contract Costs to be collected as an operating reserve to ensure that SCPPA may timely pay all Contract Costs. LADWP’s Authorized Representative may submit to SCPPA, at any time until the Annual Budget is adopted, any matters or suggestions relating to the proposed Annual Budget. The SCPPA Board of Directors shall adopt the Annual Budget not less than ten (10) days nor more than sixty (60) days prior to the beginning of such Fiscal Year and shall cause a copy of such adopted Annual Budget to be delivered to Purchaser. During any Fiscal Year, upon 10 calendar days notice to Purchaser, the SCPPA Board of Directors may adopt an amended Annual Budget for and applicable to the remainder of such Fiscal Year. The Annual Budget, or such alternative billing methodology as may be developed pursuant to Section 6.8 herein, shall establish the basis for Billing Statements to Purchaser pursuant to Section 7 of this Agreement.
- 6.5 Records and Accounts. SCPPA will keep, or cause to be kept, accurate records and accounts associated with this Agreement, including but not limited to Contract Costs, billings and collections under this Agreement.
- 6.6 Adjustment of Billing. On or before 150 days after the end of each Fiscal Year, SCPPA shall submit to Purchaser a detailed statement of (i) the actual Contract Costs, including credits and adjustments thereto, if any, for all of the months of such previous Fiscal Year, and (ii) the maintenance of an operating reserve as permitted in Section 6.4 hereof. If, on the basis of the statement submitted pursuant to this Section 6.6, LADWP’s Contract Share of actual Contract Costs (and amounts, if any, with respect to an operating reserve) for such Fiscal Year exceeds the amounts of the applicable Billing Statements billed to LADWP hereunder, then the difference will be

billed to LADWP and LADWP shall promptly pay SCPPA for such adjustment billing. If, on the basis of the statement submitted pursuant to this Section 6.6, LADWP's Contract Share of actual Contract Costs (and amounts, if any, with respect to an operating reserve) for such Fiscal Year is less than the amounts of the applicable Billing Statements billed to LADWP hereunder, then SCPPA shall credit LADWP the difference on LADWP's next Billing Statement.

- 6.7 Provide Information. SCPPA agrees to supply LADWP, upon request, with information and documentation associated with Contract Costs. LADWP agrees to supply SCPPA with scheduling and settlement information and documentation, if any, requisite and necessary to reconcile and allocate Contract Costs.
- 6.8 Other or Additional Billing Methodologies or Cost Reconciliation Mechanisms. The Authorized Representative and SCPPA may agree to other billing methodologies or cost reconciliation mechanisms to address the potential variability of costs associated with the performance of SCPPA's Subcontractor, ARCA, under the SCPPA-ARCA Agreements. The Board of Directors may, by resolution, authorize or prescribe other billing, payment, costing and cost reconciliation mechanisms to address such billing, payment, costing and cost reconciliation issues as may from time to time arise with respect to the Project.
- 6.9 Budget Projections for the Term of this Agreement. To assist the Parties in preparing the Annual Budget in accordance with Section 6.4 of this Agreement, the estimated cost projections which have been formulated by the Parties and which the Parties anticipate are likely to be incurred during the Term of this Agreement, are set forth in Appendix E. Purchaser agrees to make a minimum of one million dollars (\$1,000,000) in purchases during the term of this agreement. Purchaser expressly reserves the right to make other purchases of similar equipment and/or services from other vendors at its sole discretion for any reason or no reason at all.
- 6.10 Insurance. SCPPA agrees that it will cause ARCA to have completed proof of insurance in favor of LADWP, for submission, review and approval by the Department's Risk Management Section in order to protect LADWP from claims possibly arising from ARCA's performance under the SCPPA-ARCA Agreement. Proof of insurance to be submitted shall include, but not be limited to, General Liability and Auto Liability all in the minimum amounts of \$1,000,000.00 and Workers Compensation insurance as required by law. SCPPA will attempt to cause ARCA to procure Pollution Legal Liability and Crime/Fidelity Insurance in an amount of \$1,000,000 or such other amount as the LADWP's Risk Management Section and SCPPA may agree. The Parties acknowledge and agree that neither the Pollution Legal Liability Insurance or Crime/Fidelity Insurance requirements were part of ARCA's proposal under the SCPPA-ARCA agreements and to the extent that these requirements cause ARCA to incur additional costs in carrying out the SCPPA-ARCA Agreements LADWP agrees to pay such additional costs as a Contract Cost under this Agreement.

7. CHARGES AND BILLINGS.

- 7.1 Billing Statement. By the fifteenth (15th) calendar day of each Month during the Term, SCPPA shall prepare and deliver a Billing Statement to LADWP for its share

of projected Contract Costs, based on the Annual Budget. LADWP shall pay SCPPA amounts due under said Billing Statement on or before the fifteenth (15th) day of the Month following the Month in which the Billing Statement is prepared and delivered.

- 7.2 Disputed Monthly Billing Statement. In case any portion of any Billing Statement received by LADWP from SCPPA shall be in bona fide dispute, LADWP shall pay SCPPA the full amount of such Billing Statement and, upon determination of the correct amount, the difference between such correct amount and such full amount, will be credited to LADWP by SCPPA after such determination. In the event such Billing Statement is in dispute, SCPPA will give consideration to such dispute and will advise LADWP with regard to SCPPA's position relative thereto within 30 days following receipt of written notification by LADWP of such dispute.
- 7.3 Interest on Late Payments. If LADWP fails to pay any Billing Statement when due, interest shall accrue, to the extent permitted by law, and shall bear interest on the unpaid balance at the rate incurred by SCPPA as a result of the late payment.

8. NONPERFORMANCE AND PAYMENT DEFAULT.

- 8.1 Nonperformance by Purchaser. If Purchaser shall fail to perform any covenant, agreement or obligation under this Appliance Recycling Program Participation Agreement or cause SCPPA to be in default with respect to any undertaking entered into to carry forth the requirements of this Appliance Recycling Program Participation Agreement for and on behalf of Purchaser or to be in default under the SCPPA-ARCA Agreements, SCPPA may, in the event the performance of any such obligation under this Agreement remains unsatisfied after 30 days' prior written notice thereof to Purchaser and a demand to so perform, take any action permitted by law to enforce its rights under this Agreement, including but not limited to termination of this Agreement, and/or bring any suit, action or proceeding at law or in equity as may be necessary or appropriate to recover damages and/or enforce any covenant, agreement or obligation against the Purchaser with regard to its failure to so perform.
- 8.2 Notice of Payment Default. Promptly following a Payment Default by Purchaser, SCPPA shall provide written notice to Purchaser that as a result of a Payment Default it is in default under this Agreement. Purchaser shall have 30 days from the receipt of the notice of default to cure its default. If the default has not been cured after said time period, Purchaser's Project Rights are subject to discontinuance and termination by written notice from SCPPA.
- 8.3 Continuing Obligation to Pay Amounts Due and Owing. In the event SCPPA exercises its right to terminate this Agreement as provided above, Purchaser's obligation to make all payments due and owing shall not be eliminated or reduced and the Purchaser's other obligations to make payments under this Appliance Recycling Program Participation Agreement shall not be eliminated or reduced except to the extent that SCPPA's costs under this Agreement and SCPPA's obligations under the SCPPA-ARCA Agreements have been so eliminated or reduced.

- 8.4 Use of Operating Reserve. In the event of a Payment Default, funds in the operating reserve shall be used, to the extent necessary and to the extent available, to pay amounts due under the SCPPA-ARCA Agreements.

9. THE RELATIONSHIPS CREATED BY THIS AGREEMENT.

- 9.1 SCPPA and LADWP mutually acknowledge that to carry forth and provide for the delivery of the services specified under this Agreement to LADWP and to other Program Participants, SCPPA is entering into the SCPPA-ARCA Agreements. SCPPA and LADWP intend that the services set forth and provided for under this Agreement shall be the services which have been contracted for on behalf of LADWP pursuant to and by reason of the SCPPA-ARCA Agreements.
- 9.2 The purpose of this Agreement between SCPPA and LADWP is to pass through to LADWP all of the benefits, services and entitlements as well as all of the costs, liabilities and other responsibilities under and pursuant to the SCPPA-ARCA Agreements. Therefore, notwithstanding anything to the contrary contained herein: (i) the obligation of SCPPA to provide any services contained herein is limited to the services which SCPPA and LADWP receive from SCPPA for the benefit of LADWP pursuant to the SCPPA-ARCA Agreements. (ii) the obligation of SCPPA to pay any amounts hereunder or to give credits against amounts due from LADWP hereunder is limited to amounts SCPPA receives under the SCPPA-ARCA Agreements (or otherwise available to SCPPA in connection with the transaction for which such payment or credit relates); (iii) any liabilities, costs or other charges for which SCPPA is responsible by reason of LADWP's utilization of services under the SCPPA-ARCA Agreements shall be considered liabilities, costs or other charges incurred by SCPPA hereunder and payable by LADWP to SCPPA hereunder; and (iv) any event preventing or excusing the performance of the obligations of the SCPPA under the SCPPA-ARCA Agreements shall be considered an event so preventing or excusing such performance hereunder.

10. NO LIABILITY OF SCPPA

- 10.1 The Parties acknowledge that the purpose of this Agreement is to pass on to LADWP, through SCPPA, the benefits and obligations of the SCPPA-ARCA Agreements. LADWP agrees that neither SCPPA nor any of its directors, officers, employees and agents shall be liable to LADWP for loss of profits or direct or consequential loss or damage suffered by LADWP as a result of (i) the performance or non-performance by SCPPA under the SCPPA-ARCA Agreements (whether negligent or otherwise) or (ii) the performance or non-performance (whether negligent or otherwise) of SCPPA or any of its directors, officers or employees under this Agreement. LADWP releases SCPPA and its directors, officers, employees from any claim or liability (whether negligent or otherwise) as a result of any actions or inactions of SCPPA under this Agreement or under the SCPPA-ARCA Agreement. No such performance or non-performance by SCPPA shall relieve LADWP from its obligations under this Agreement, including its obligation to make payments required under this Agreement if such payments are required of SCPPA under the SCPPA-ARCA Agreement, and, except as otherwise may be provided in this Agreement, such payments shall not be subject to any reduction or offset unless such reduction or offset is provided to SCPPA under the SCPPA-ARCA Agreement. The provisions of this Section 10.1

shall not be construed in any manner or fashion to relieve ARCA from any obligation or liability under the SCPPA-ARCA Agreements or to relieve any other counterparty, other than SCPPA, under any other applicable agreement.

- 10.2 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, LADWP may protect and enforce its rights under this Agreement by a suit or suits in equity for specific performance of any obligations or duty of SCPPA, and LADWP shall at all times retain the right to recover, by appropriate legal proceedings, any amount determined to have been an overpayment by LADWP in accordance with the provisions of this Agreement or the SCPPA-ARCA Agreement.
- 10.3 Notwithstanding the provisions of Sections 10.1 and 10.2 hereof, LADWP or SCPPA, as applicable, may determine, protect and enforce its rights under this Agreement or the SCPPA-ARCA Agreements by a suit or suits in equity for specific performance of, or declaratory action with respect to, any obligation or duty hereunder or thereunder. The rights which SCPPA, or LADWP, respectively, may so determine, protect and enforce, include but are not limited to, the rights associated with the delivery of the services set forth under this Agreement and the SCPPA-ARCA Agreements, as applicable and any payment obligation on the part of either Party pursuant to this Agreement.
- 10.4 Notwithstanding any provision in this Agreement to the contrary, including but not limited to the provisions in this Section 10, the provisions of this Section 10 shall not be construed or applied so as to relieve any insurer of its obligation to pay any insurance claims in accordance with any applicable insurance policy.
- 10.5 It is hereby recognized and agreed that no member of the Board of Directors of SCPPA, or any officer, employee or agent of SCPPA or member of SCPPA in its capacity as a member of SCPPA shall be individually liable in respect of any undertakings by SCPPA under the SCPPA-ARCA Agreement or 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 charge against its general credit.
11. **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.
12. **SECTION HEADINGS.** Section headings appearing in this Agreement are for convenience only and shall not be construed as interpretations of text.
13. **CONDITIONS TO TERMINATION OR AMENDMENT.** Purchaser may terminate this Agreement upon the termination of its participation in the ARCA-SCPPA Agreements. Purchaser may terminate its participation in the SCPPA-ARCA pursuant to the termination rights set forth therein. Should the Parties terminate this Agreement or otherwise alter or

amend the performance obligations hereunder, the Parties agree that all obligations, costs, expenses and liabilities incurred by SCPPA under this Agreement shall be paid by Purchaser. The Parties agree that this obligation on behalf of Purchaser shall survive termination of this Agreement.

- 14. ARBITRATION AND ATTORNEYS FEES.** If a dispute arises between the Parties which the Parties are unable to resolve, the Parties agree that each Party shall bear its own attorneys fees and costs. Notwithstanding the forgoing, Purchaser and SCPPA recognize and agree that SCPPA's attorneys fees associated with any dispute or litigation relating to the Project or this Agreement, shall constitute a Contract Cost which shall be allocated and billed as set forth in Section 6 and Section 7 of this Agreement
- 15. NOTICES.** Any notice, demand or request provided for in this Agreement shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by registered or certified mail, postage prepaid, to the persons specified below or to such persons as are designated in writing and served upon the other Party by the respective persons specified below:.

Any notice, demand or request directed to LADWP shall be delivered to:

DEPARTMENT OF WATER AND POWER
General Manager
111 North Hope Street
Los Angeles, CA 90012

with a copy to:

Gary Gero, Contract Administrator
Appliance Recycling Program
111 North Hope Street, Room 1057
Los Angeles, CA 90012

Any notice, demand, or request directed to SCPPA shall be delivered to:

SOUTHERN CALIFORNIA PUBLIC POWER
AUTHORITY
Attn: Bill Carnahan, Executive Director
225 South Lake Ave, Suite 1250
Pasadena, CA 91101

Any notice, demand, or request directed to ARCA shall be delivered to:

ARCA CALIFORNIA, INC.
Rich Christensen, Acting General Manager
1920 Acacia Avenue
Compton, CA 90220

Such correspondence shall be in writing, except as specified elsewhere in this Agreement. Service will be deemed complete upon receipt. Any Party, by written notice, may designate different or additional person(s) or different addresses.

16. **REPRESENTATION AND GOVERNING LAW.** The Parties acknowledge that each party was represented by counsel in the negotiation and execution of this Agreement. This Agreement shall be interpreted, governed by and construed under the laws of the State of California. Unless the Parties shall otherwise agree, venue for any dispute with respect to this Agreement shall be in Los Angeles County.

[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: _____
DAVID WRIGHT
President

Attest: _____
BILL D. CARNAHAN
Assistant Secretary

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

By: _____
RONALD F. DEATON
GENERAL MANAGER

And:

SECRETARY

**APPLIANCE RECYCLING PROGRAM
PARTICIPATION AGREEMENT**

APPENDIX A

DEFINITIONS

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

1. “Act” means all of the provisions contained in the California Joint Exercise of Powers Act found in Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, beginning at California Government Code section 6500 et seq., as amended from time to time.
2. “Agreement” has the meaning specified in Article 1 and shall include this Agreement and all Appendices, Recitals, exhibits and attachments referenced herein and attached hereto, and all amendments, supplements and modifications hereto and thereto, as the same may be placed into effect from time to time.
3. Annual Budget. The budget adopted by SCPPA pursuant to Section 6.4, including any amendments thereto, which shall show a detailed estimate of the Contract Costs and all revenues, income, or other funds to be applied to such Contract Costs, if any, for and applicable to a Fiscal Year.
4. Approved Customer: an entity approved by LADWP to participate in LIREP Program under the SCPPA- ARCA Agreements or other Programs implemented by LADWP based on established eligibility criteria described in the SCPPA-ARCA Agreements. Such entity may include residential, multi-family residential and low-income customers of LADWP. The solicitation, evaluation and approval of such customers for participation in Programs shall be conducted based upon guidelines established by LADWP.
5. ARCA: Appliance Recycling Centers of America-California, Inc., a California corporation, which is SCPPA’s primary Subcontractor to perform Work for LADWP, as required hereunder, pursuant to the SCPPA-ARCA Agreements.
6. Authorized Representative: The individual designated by LADWP who is responsible for ensuring effective communication, coordination and cooperation between the Department, SCPPA and ARCA and to transmit and receive the routine operating and administrative communications called for under this Agreement. LADWP may change its Authorized Representative by providing notice of such change to SCPPA and ARCA in accordance with the procedures set forth in Section 6.2.
7. Billing Statement: The written statement prepared or caused to be prepared each Month by, or on behalf of SCPPA, which shall show for such Month the amount to be paid to SCPPA by a Participant in accordance with the provisions of Section 7.

8. **Change Order:** Document issued by LADWP and SCPPA to change the SCPPA-ARCA Agreements.
9. **Contract Costs:** All costs incurred by SCPPA attributable to services provided for LADWP pursuant to the SCPPA- ARCA Agreements and this Agreement, including but not limited to, direct charges and associated administrative and general expenses.
10. **Contract Period:** The period beginning with time of effectiveness date as May 1, 2007 through December 31, 2008.
11. **Defaulting Purchaser.** The status of Purchaser following a Payment Default which has not been remedied and under circumstances wherein the Defaulting Purchaser has not effected a Cured Payment Default
12. **Effective Date:** shall have the meaning set forth in Section 1.
13. **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 period as determined by SCPPA.
14. **Governmental Authority:** Any person, any Federal, state, local, or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over such Person or its property or operations.
15. **Law:** means any federal, state, local or other law, common law, treaty, code, rule, ordinance, binding directive, regulation, order, judgment, decree, ruling, determination, permit, certificate, authorization, or approval of a Governmental Authority, which is applicable to a Party or any of its property.
16. **LIREP:** shall have the meaning described in the SCPPA-ARCA Agreements.
17. **Party or Parties:** Each entity set forth in the preamble of this Agreement, and/or, as applicable, their permitted successor and/or assigns.
18. **Payment Default:** A failure by Purchaser to pay when due all of its Billing Statement for any Month.
19. **Payment Default Period:** That period of time beginning on the initial date of a Payment Default and ending 30 days following a notice of default as provided in accordance with Section 8.2 hereof.
20. **Person:** An individual, partnership, corporation (including a business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture, Governmental Authority, or other entity.
21. **Program:** The SCPPA Appliance Recycling Program including all programs and Work available

pursuant to the SCPPA-ARCA Agreements such as LIREP and RETIRE Programs or such other variants of the programs available under the SCPPA-ARCA Agreements as may be implemented by SCPPA and the Program Participants, as applicable, to promote energy-efficient appliances to its customers and remove and recycle older, inefficient appliances from Program Participant customers' residences.

22. Program Participants: Those certain SCPPA members, and where applicable their successors or assigns, that have entered into arrangements with SCPPA to share in the benefits and obligations of the SCPPA-ARCA Agreements as part of the SCPPA Appliance Recycling Program. The participating agencies in the SCPPA Appliance Recycling Program are listed herein at Appendix B.
23. Project. The project on behalf of Purchaser carried out by way of this Appliance Recycling Program Participation Agreement, its Appendices and its attached, incorporated or associated agreements. The Project shall entail the aggregate of rights, liabilities, interests and obligations of Purchaser.
24. Project Rights. All rights and privileges of Purchaser arising out of this Appliance Recycling Program Participation Agreement.
25. RETIRE: shall have the meaning described in the SCPPA-ARCA Agreements.
26. RPS Legislation: The State of California Renewable Portfolio Standard Program, as codified at California Public Utilities Code Section 399.11 et seq. or any successor to this legislation.
27. SCPPA: The Southern California Public Power Authority.
28. SCPPA-ARCA Agreements. The SCPPA-ARCA Agreements consist of the Appliance Delivery and Recycling Services Agreement between Southern California Public Power Authority and Appliance Recycling Centers of America-California, dated July 1, 2006 (the Original ARCA Agreement) and the First Amendment to the Agreement Between the Southern California Public Power Authority and Appliance Recycling Centers of America-California, Inc. made and entered into as of the 1st day of March 2007 (the First Amendment).
29. Subcontractor: An entity contracting directly with SCPPA to furnish services or materials as part of, or directly related to, the Work.
30. Task Assignment: shall have the meaning described in the SCPPA-ARCA Agreements.
31. Work: shall have the meaning described in the SCPPA-ARCA Agreements.
32. Term: The meaning ascribed to that term in Section 5.1 of this Agreement.

APPENDIX B

PARTICIPATING AGENCIES IN THE SCPPA APPLIANCE RECYCLING PROGRAM

City of Anaheim

City of Burbank

City of Colton

City of Glendale

City of Pasadena

City of Riverside

City of Los Angeles acting by and through the Department of Water and Power

APPENDIX C

APPLIANCE DELIVERY AND RECYCLING SERVICES AGREEMENT

Between

APPLIANCE RECYCLING CENTERS OF AMERICA-CALIFORNIA, INC.

And

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

Dated JULY 1, 2006

APPENDIX D

**FIRST AMENDMENT TO
THE AGREEMENT BETWEEN THE
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
AND
APPLIANCE RECYCLING CENTERS OF AMERICA-CALIFORNIA**

APPENDIX E

ESTIMATED COST PROJECTIONS

The total cost for the Low Income Refrigerator Exchange Program is estimated as follows:

47,500 18.5 cubic-foot units @ \$501/unit = \$ 23,797,500
2,500 15.0 cubic-foot units @ \$466/unit = \$ 1,165,000
Total Estimated Cost = \$ 24,962,500

Estimated expenditures for this program will overlap two fiscal years 2006-07 and 2007-08.

Approximate expenditures in fiscal year 2006-07 = \$ 5,000,000

Approximate expenditures in fiscal year 2007-08 = \$20,000,000