

## CONFIDENTIAL SETTLEMENT AND RELEASE AGREEMENT

THIS CONFIDENTIAL SETTLEMENT AND RELEASE AGREEMENT (“Agreement”), entered into as of the [ ] day of [ ], 2006 but effective as of the Effective Date (as defined in Section 4 below), is by and between TIC – The Industrial Company Wyoming Inc., a Wyoming company, (“TIC” or “Contractor”) and Calpine Construction Management Company, Inc., a Delaware company (“CCMCI”). In this Agreement, CCMCI and Contractor are sometimes referred to individually as a “Party” and collectively as the “Parties.” Capitalized terms used but not defined herein shall have the meanings given to them in that certain Contract for Construction Services dated April 12, 2005 between CCMCI and Contractor, as amended through the date hereof (the “Construction Contract”).

### I. RECITALS

WHEREAS, Contractor has claims and disputes against CCMCI regarding the Agreement Amount (as defined in the Construction Contract) and certain adjustments and credits relating thereto (collectively, the “Agreement Amount Dispute”), which are described in Schedule A (attached) arising prior to the date of this Agreement;

WHEREAS, CCMCI has claims and disputes against Contractor regarding Contractor’s performance, liquidated damages, and certain adjustments and credits to the Agreement Amount relating thereto (collectively, the “Performance Dispute”), which are described in Schedule B, arising prior to the date of this Agreement;

WHEREAS, Calpine Corporation and certain of its wholly-owned, direct and indirect subsidiaries (collectively, the “Debtors”), including CCMCI, filed voluntary petitions for relief, which cases are being jointly administered, case no. 05-60200, under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330 (the “Bankruptcy Code”), in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) on or about December 20, 2005 (the “Petition Date”). The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

WHEREAS, TIC filed a proof of claim in the amount of \$7,984,777 (the “TIC Proof of Claim,” [Claim No. 4091]) in the Bankruptcy Case on account of the Agreement Amount Dispute; and

WHEREAS, the Parties desire to settle and compromise all grievances, claims or causes of action of any kind or nature whatsoever which arise out of the Agreement Amount Dispute and the Performance Dispute, including but not limited to the TIC Proof of Claim.

NOW, THEREFORE, in consideration of the representations, acknowledgments, promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, each Party hereby voluntarily, intentionally, and upon the advice and guidance of counsel, executes this Agreement and agrees as follows:

## II. SETTLEMENT TERMS

### 1. Increase to Agreement Amount. CCMCI agrees to:

(a) Enter into a Change Order with Contractor within twenty-four (24) hours after Contractor removes any existing lien on the property, whereby the Agreement Amount will be adjusted to a total of FOURTEEN MILLION, SIX HUNDRED SEVENTY-SIX THOUSAND, SIX HUNDRED THIRTY-SEVEN DOLLARS (\$14,676,637.00) and the other terms and conditions described on Schedule C attached hereto will be implemented (such Change Order being hereinafter referred to as "Change Order No. 15");

(b) Pursuant to Change Order No. 15, CCMCI will cause to be paid to Contractor the sum of FIVE MILLION, SEVENTY-SEVEN THOUSAND DOLLARS (\$5,077,000.00);

(c) Payment of Change Order No. 15 as well as other approved but unpaid Change Orders, and retention, shall be made in accordance with Article 4 of the Construction Contract;

(d) Release to TIC the sum of FOUR HUNDRED THIRTY-FIVE THOUSAND (\$435,000.00), withheld pursuant to the liquidated damages provision of the Contract; and

(e) Pay TIC (\$49,552.00) for the estimated cost of increasing the value of the Payment and Performance bond in connection with the adjusted Agreement Amount under Subsection (a) above.

2. Contractor Release of CCMCI and Released Parties. In consideration of the payments called for herein and additional ordinary course payments not to exceed \$550,000, the sufficiency of which is hereby acknowledged and confessed, Contractor, for itself and its subsidiaries and affiliates, hereby (a) RELEASES, ACQUITS, and FOREVER DISCHARGES CCMCI and the Released Parties (as defined below) from, and agrees not to commence or maintain legal action with respect to, any and all grievances, claims, any rights under any proofs of claim filed by or on behalf of TIC, including the TIC Proof of Claim, debts, obligations, liabilities, lawsuits, causes of action, costs, expenses, losses, judgments, liens and executions, whether for actual, consequential, or exemplary damages, arising at common law, by statute, regulation, rule or otherwise, whether sounding in contract or tort, whether for negligent or intentional acts or omissions of any and all kinds, or conduct that could result in strict liability, whether liquidated or unliquidated, which Contractor has or might have, whether known or unknown, now existing or that may arise hereafter, as to all matters that are, or that could have been, the subject of the Agreement Amount Dispute and/or any and all transactions, communications, contracts, duties, relationships, or dealings among the Parties relating to the Agreement Amount Dispute (collectively, "Contractor's Released Claims") and (b) agrees that payment of the amounts called for herein and additional ordinary course payments not to exceed \$550,000 will constitute payment in full by CCMCI under the Construction Contract. The

“Released Parties” are CCMCI, its respective past and present partners, employees, officers, directors, assigns, agents, parents, subsidiaries, Affiliates, insurers, attorneys, predecessors and successors in interest, including but not limited to Mankato Energy Center, LLC and Calpine Corporation. All Released Parties are express third party beneficiaries of this Agreement.

3. CCMCI Release of Contractor. In consideration of Contractor’s foregoing release of Contractor’s Released Claims, the sufficiency of which is hereby acknowledged and confessed, CCMCI hereby RELEASES, ACQUITS, and FOREVER DISCHARGES the Contractor Released Parties (as defined below) from, and agrees not to commence or maintain legal action with respect to, any and all grievances, claims, debts, obligations, liabilities, lawsuits, causes of action, costs, expenses, losses, judgments, liens and executions, whether for actual, consequential, or exemplary damages, arising at common law, by statute, regulation, rule or otherwise, whether sounding in contract or tort, whether for negligent or intentional acts or omissions of any and all kinds, or conduct that could result in strict liability, whether liquidated or unliquidated, which CCMCI has or might have, whether known or unknown, now existing or that may arise hereafter, as to all matters that are, or that could have been, the subject of the Performance Dispute and and/or any and all transactions, communications, contracts, duties, relationships, or dealings among the Parties relating to the Performance Dispute (collectively, “CCMCI’s Released Claims”); provided, however, that the CCMCI Released Claims do not in any event include any claims by CCMCI for breach of any warranty under the Construction Contract or any breach of or default under the Construction Contract by Contractor, or its subsidiaries, affiliates or subcontractors, occurring after the date of this Agreement. The “Contractor Released Parties” are Contractor, its respective past and present partners, employees, officers, directors, assigns, agents, parents, subsidiaries, Affiliates, insurers, attorneys, predecessors and successors in interest.

3.5. Bankruptcy Court Approval. This Agreement shall be subject to Bankruptcy Court approval. Notwithstanding any other provision in this Agreement, if this Agreement is not authorized by the Bankruptcy Court, this Agreement shall be of no force and effect, whereupon nothing herein shall be deemed an admission of any fact or waiver of any right of any party with respect to the matters contained herein.

4. Effectiveness. The “Effective Date” shall be the later of the (i) date on which the Bankruptcy Court approves this settlement, or (ii) the date the settlement is executed by the parties. In any event, the “Contractor Release of CCMCI and Released Parties” in Section 2 herein shall not become effective until Contractor is indefeasibly paid the sum set forth in the Change Order No. 15.

5. Confidentiality. The Parties agree that the settlement terms reached herein are confidential, and may not be disclosed by either Party, their agents, counsel or any other representatives, without the express written consent of the other Party, except that the terms hereof may be disclosed by CCMCI to the Owner or Lender and by either Party to its accountants, attorneys, or financial advisers, or pursuant to subpoena or court order as required by Law. The Parties acknowledge and agree that the confidentiality of this Agreement, subject to the bankruptcy disclosure requirements described below, and the terms thereof are essential and material parts of the consideration given herein. Notwithstanding the foregoing, CCMCI in

its sole and absolute discretion, may disclose this Agreement and any other documents relating hereto to obtain Bankruptcy Court approval.

6. Representations and Warranties. Each Party specifically warrants and represents to the other Party that it has full authority to act for and to enter into this Agreement (subject, in the case of CCMCI, to obtaining Bankruptcy Court approval, as provided herein), which Agreement constitutes a legal, valid and binding obligation of such Party. Contractor specifically warrants and represents to CCMCI that: (a) prior to the execution of this Agreement, it has not in any capacity assigned, pledged or otherwise sold or transferred, either by instrument or otherwise, to any person or entity, all or any portion of Contractor's Released Claims; (b) Contractor's Released Claims are owned by Contractor and are completely free of any encumbrances; and (c) subject to this Agreement becoming effective, it will not assert, jointly or severally, against any of the CCMCI Released Parties any of Contractor's Released Claims. CCMCI specifically warrants and represents to Contractor that, except as provided by the Bankruptcy Code: (a) prior to the execution of this Agreement, except for the lien it has granted to the Lender, it has not in any capacity assigned, pledged or otherwise sold or transferred, either by instrument or otherwise, to any person or entity, all or any portion of CCMCI's Released Claims; (b) the CCMCI Released Claims are owned by CCMCI, as a debtor-in-possession, and are completely free of any encumbrances; and (c) subject to this Agreement becoming effective, it will not assert, jointly or severally, against any of the Contractor Released Parties any of CCMCI's Released Claims. Before executing this Agreement, each of the Parties specifically warrants and represents that it has been fully informed of its terms, contents, conditions and effects regarding the same, that it has had a full and complete opportunity to discuss this settlement and release with its attorney or attorneys, that it is not relying in any respect on any statement or representation made by the other Party, and that no promise or representation of any kind has been made to such Party separate and apart from what is expressly contained in this Agreement.

7. No Admissions. The Parties agree that this is a compromise and settlement of disputed claims and causes of action, and nothing contained herein shall be construed as an admission of liability or damages by, on behalf of or against any of the Released Parties.

8. Further Assurances. Should any additional instruments be necessary or desirable to accomplish the purpose(s) of this Agreement or to establish the rights or discharge the obligations of either Party hereto, such additional instruments will be promptly executed and delivered upon the request of the other Party.

9. Construction of Agreement. This Agreement shall not be construed in favor of or against any Party on the basis that the Party did or did not author this Agreement or any attachment related to it.

10. Survival of Representations. The representations set forth herein shall survive the completion of all actions contemplated herein. Other provisions hereof which require action after execution hereof shall survive the execution hereof.

11. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the Laws of the State of Minnesota except with respect to any

choice of law provision thereof that would require the application of the Laws of any other state or jurisdiction.

12. Headings. The headings in this Agreement are for convenience only and shall not be considered a part of or affect the construction or interpretation of any provision of this Agreement.

13. Expenses. Each Party shall be solely responsible for the attorney's fees, costs and expenses, if any, incurred by that Party in connection with the Agreement Amount Dispute, the Performance Dispute or this Agreement.

14. Materiality. The statements, representations and acknowledgments in this Agreement are not mere recitations; rather, they are understood and relied upon as part of this Agreement by the Parties and are material hereto.

15. No Oral Agreements. This Agreement represents the final agreement between the Parties with respect to the subject matter contained herein and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements between the Parties. This Agreement merges and supersedes all prior discussions, oral or written agreements and understandings of every kind and nature among and between the Parties.

16. Counterparts. This Agreement may be signed in any number of counterparts and each counterpart shall represent a fully executed original as if signed by both Parties.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives effective as of the Effective Date.

Calpine Construction Management Company,  
Inc, a debtor-in-possession

TIC The Industrial Company  
of Wyoming Inc., CONTRACTOR

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Don Brust  
Title: Vice President

## SCHEDULE A

### Contractor Claims and Disputes

All direct and indirect, including consequential, damages, costs and expenses, arising from or related to:

- HRSG Equipment Delivery Delay Claims
- Extension to Liquidated Damage dates
- Condenser Equipment Delivery Delay Claims
- Steam Turbine Pedestal Release Delay Claims
- Delay, Acceleration, Disruption, Interference and Stacking of Trades Claim

## SCHEDULE B

### CCMCI , Counterclaims and Liquidated Damages

All direct and indirect, including consequential, damages, costs and expenses, arising from or related to:

- Steam Turbine Generator Replacement Bearing
- AZCO Hydro Clean Up
- Replacement of Damaged/Lost Equipment
- AZCO Pass Thru Claim
- Added CCMCI QA Personnel
- MEI Pass Thru Claim
- Added Siemens TA Time
- Liquidated Damages for Completion Related Delay

SCHEDULE C

The scope and value of Change Order No. 15 shall be:

Full and complete accord and satisfaction of any and all costs and extensions of time for Contractors' Agreement Amount Dispute claims and for CCMCI's Performance Dispute counterclaims.

[Scope Description]----- \$0.00

[Other terms and conditions of settlement, if any]----- \$0.00

Total contract price per Change Order No. 15: ----- \$ 14,676,637.00