



# CITY OF LODI

*Special Mtg.*

# COUNCIL COMMUNICATION

**AGENDA TITLE:** Adopt resolutions authorizing the approval of certain documents related to the financing of the amended power sales agreement between Calpine Corporation and the City of Lodi (EUD)

**MEETING DATE:** October 22, 2002

**PREPARED BY:** Electric Utility Director

**RECOMMENDED ACTION:** That the City Council adopt the attached resolutions authorizing the approval of certain documents related to the financing of the amended power sales agreement between Calpine Corporation and the City of Lodi.

**BACKGROUND INFORMATION:** At the City Council meeting of September 4, 2002, the City Council approved Amendment No.1 to the Power Sales Agreement between Calpine Corporation and the City of Lodi. In that amendment, the ten year contract for delivery of power was amended to halt the delivery of power in exchange for a stream of monthly payments representing the difference between the contract price and the forward power markets.

We now have an opportunity to refinance the payment stream to lower cost to the City. The total amount for proposed Electric Revenue Bonds, Series 2002C and D is \$44,045,000. The two series represent a non-taxable and a taxable portion to better match load and debt. Electric Utility Department staff and the City's Financial advisor will present savings figures and are prepared to answer all questions pertaining to the proposed financing.

**FUNDING:** Coming from the new certificates of participation

Funding Approval: *Ruby R. Parise for*  
Vicky McAthie, Finance Director

*Alan N. Vallow*  
Alan N. Vallow  
Electric Utility Director

ANV/lst  
C: City Attorney

**APPROVED:** \_\_\_\_\_  
H. Dixon Flynn - City Manager

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AMENDED AND RESTATED ELECTRIC ENERGY PURCHASE AGREEMENT

by and between

CITY OF LODI

and

LODI PUBLIC IMPROVEMENT CORPORATION

Dated as of November 1, 2002

Relating to

Electric System Revenue  
Certificates of Participation

2002 Series C

and

2002 Taxable Series D

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## AMENDED AND RESTATED ELECTRIC ENERGY PURCHASE AGREEMENT

This Amended and Restated Electric Energy Purchase Agreement (the "Agreement"), dated as of November 1, 2002, by and between the City of Lodi, California, a municipal corporation duly organized and existing under and by virtue of the Constitution and laws of the State of California (the "City"), and the Lodi Public Improvement Corporation, a nonprofit, public benefit corporation duly organized and existing under and by virtue of the laws of the State of California (the "Corporation"),

### W I T N E S S E T H:

WHEREAS, the City has established the Electric System (capitalized terms used in this Agreement and not otherwise defined shall have the meanings given such terms pursuant to Section 1.01 hereof ) to serve the inhabitants of the City; and

WHEREAS, pursuant to the Public Utilities Code of the State, the City is authorized to acquire, own, control, sell or exchange rights of every nature for the purpose of operating the Electric System; and

WHEREAS, in order to assure adequate electricity to satisfy the expected load requirements of the inhabitants of the City, the City entered into the Original Agreement with Calpine providing for the purchase by the City of the Energy for the term of the Original Agreement; and

WHEREAS, pursuant to the Original Agreement, the City was obligated to take and pay for the Energy as delivered, resulting in the City's obligation to make installment purchase payments to Calpine in the amounts and at the times determined pursuant to the Original Agreement; and

WHEREAS, the City and Calpine have entered into the Amendment (the Original Agreement as amended and supplemented by the Amendment being herein referred to as the "Amended Agreement") pursuant to which the Original Agreement has been amended and supplemented to provide for three Parts, with the Original Agreement constituting Part II; and

WHEREAS, the City has sold its interests in the Energy to Calpine, and Calpine purchased the City's interests in the Energy, on the terms and conditions set forth in the Part III of the Amended Agreement; and

WHEREAS, pursuant to Part III of the Amended Agreement, the City and Calpine agreed upon the purchase price for the City's interests in the Energy and also agreed to net the payments due from the City for its purchase of the Energy from Calpine pursuant to the Original Agreement against the payments due from Calpine for its purchase of the City's interests in the Energy pursuant to, Part III of the Amended Agreement, resulting in an obligation of the City to make certain installment payments to Calpine (the "Original Installment Payments"); and

WHEREAS, the City and Calpine agreed in Part III of the Amended Agreement that the Original Installment Payments were to be paid from Net Revenues of the City's Electric System; and

WHEREAS, Part I of the Amended Agreement provided the Corporation with the option to purchase all of Calpine's ~~rights under Parts I~~ **right, title and interest in and to Part III** thereof, including the right to collect the Original Installment Payments; and

WHEREAS, the Corporation has exercised said option and has acquired all of Calpine's ~~rights~~ **right, title and interest** in and to ~~Parts I and~~ **Part III** to the Amended Agreement, including the right to collect the Original Installment Payments; and

WHEREAS, in order to facilitate the Corporation's financing of its acquisition of Calpine's ~~rights~~ **right, title and interest** in and to ~~Parts I and~~ **Part III** of the Amended Agreement, to modify the Original Installment Payments as requested by the City, to conform the covenants and agreements of the City with respect to the Electric System and the Revenues with outstanding Parity Obligations of the City and to simplify the agreement between the City and the Corporation with respect to ~~Parts I and~~ **Part III** of the Amended Agreement; the City and the Corporation have determined to amend and restate ~~Parts I and~~ **Part III** of the Amended Agreement as provided in this Agreement; and

WHEREAS, the City and the Corporation have determined that all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and delivery of this Agreement do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Agreement;

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND OF THE MUTUAL AGREEMENTS AND COVENANTS CONTAINED HEREIN AND FOR OTHER VALUABLE CONSIDERATION, THE PARTIES HERETO DO HEREBY AGREE AS FOLLOWS:

## ARTICLE I

### DEFINITIONS; RESTATEMENT

Section 1.01. Trust Agreement. Unless the context otherwise requires, the terms defined in that certain Trust Agreement, dated as of November 1, 2002, between the Corporation and BNY Western Trust Company, as trustee, shall for all purposes hereof and of any opinion or report or other document mentioned herein have the meanings given such terms pursuant to said Trust Agreement.

Section 1.02. Amendment and Restatement. The City and the Corporation hereby agree that, solely as between such parties and their successors and assigns, and from and after the execution and delivery hereof, this Agreement amends and restates ~~Parts I and~~ **Part III** of the Amended Agreement in ~~their~~ **its** entirety. Nothing in this Agreement shall be construed to affect the rights of Calpine or any assignee **of Calpine** under Part I **or Part II** of the Amended

Agreement ~~other than the Corporation and its successors and assigns~~, or to affect the obligations of the City, under the Amended Agreement as it existed prior to the execution and delivery hereof.

## ARTICLE II

### TRANSFER OF CALPINE'S RIGHTS UNDER AMENDMENT; RESTATEMENT OF AMENDED AGREEMENT

Section 2.01. Sale of City's Interest in Energy. The City hereby sells, assigns and transfers to Calpine, and Calpine hereby purchases from the City, all of the City's right, title and interest in and to the Energy and to enforce any rights or obligations related to the purchase or delivery of the Energy. Such right, title and interest of the City in and to the Energy shall be fully vested in Calpine on and as of September 10, 2002. The sale, assignment and transfer by the City of its right, title and interest in and to the Energy is made without recourse and no warranties, either express or implied, as to the availability of the Energy or otherwise is made by the City in connection with such sale, assignment and transfer other than the City represents and warrants that it has taken no action which would encumber its title to the Energy, or the rights and obligations related thereto or the proceeds thereof, or otherwise create a lien on, or security or other interest in, the Energy, or the rights and obligations related thereto or the proceeds thereof, or which would in any way prevent or impair the City's ability to make such sale, assignment or transfer.

Section 2.02. Purchase Price of Energy. In consideration of the sale, assignment and transfer of all of the City's right, title and interest in and to the Energy, Calpine agrees to pay \$34.96 per MWh based on the scheduled amount of Energy to be made available to the City pursuant to the Original Agreement. The Parties agree that such payments are to be made at such times and in such amounts that the payment obligations of the respective Parties are properly netted against each other as provided in Article IV of this Agreement.

Section 2.03. Netting of Payments. Each of the parties agree that the City's obligation to make payments for the Energy to be delivered pursuant to the Original Agreement and Calpine's obligations to pay for the purchase of the City's right, title and interest in and to the Energy pursuant to Section 2.01 of this Agreement shall be netted against each other for purposes of determining the respective payment obligations of the City and Calpine with respect to the Energy. Each of the City and the Corporation agree that the City's obligation to make the Installment Payments as provided in Section 4.01 of this Agreement, while not merely a deduction of the amounts payable by Calpine against the amounts payable by the City in connection with their respective purchases of the Energy, properly reflects the economic results of the netting of such payment obligations as agreed to by the City and the Corporation.

Section 2.04. Acknowledgement of Transfer. The City hereby agrees and acknowledges that the Corporation has succeeded to all of Calpine's rights and obligations under Parts I and III of the Amended Agreement.

## ARTICLE III

### INSTALLMENT PAYMENTS AND PREPAYMENTS

Section 3.01. Installment Payments. The City shall, subject to any rights of prepayment provided in Section 3.02 hereof and the exercise of any remedies under Section 8.01 hereof, pay the Corporation the Installment Payments at the times and in the amounts hereinafter set forth. The Installment Payments consist of the Principal Installments and the Interest Installments. The Interest Installments constitute interest on the unpaid balance of the Principal Installments.

The Principal Installments and the Interest Installments for the Series C Installment Payments shall be in the amounts set forth in Exhibit A hereto and shall be payable on the dates set forth in Section 4.01(b)(1) hereof. The Principal Installments and the Interest Installments for the Series D Installment Payments shall be in the amounts set forth hereto and shall be payable on the dates set forth in Section 4.01(b)(1) hereof.

The obligation of the City to pay the Installment Payments is, subject to Section 10.01 hereof, absolute and unconditional, and until such time as the Installment Payments shall have been paid in full (or provision for the payment thereof shall have been made pursuant to Article IX hereof), the City will not discontinue or suspend any Installment Payments required to be paid by it under this Section when due, whether or not the Electric System or any part thereof is operating or operable, or its use is suspended, interfered with, reduced, curtailed or terminated in whole or in part, and such Installment Payments shall not be subject to reduction whether by offset, abatement or otherwise and shall not be conditional upon the performance or nonperformance by any party to any agreement or for any other cause whatsoever.

Section 3.02. Prepayments. The City shall have the right at any time or from time to time from any available funds to prepay all or any part of the Installment Payments, and the Corporation shall accept such prepayments when the same are tendered by the City. All prepayments of Principal Installments made by the City pursuant to this subsection (a) shall be deposited upon receipt with the Trustee in the appropriate account in the Debt Service Fund specified by the City. All amounts in the Prepayment Account shall be applied to the prepayment of Outstanding Certificates in the manner and subject to the terms and conditions set forth in the Trust Agreement.

With respect to prepayments of Installment Payments pursuant to this subsection (a), the City shall determine which Installment Payments are to be prepaid, the amount of each such Principal Installment which is to be prepaid and, subject to the provisions of this Section, the date on which each such prepayment is to be made. Before making any prepayment pursuant to this subsection (a), the City shall give written notice to the Corporation specifying the date on which the prepayment will be paid and the order thereof, which date shall be not less than fifty (50) days from the date such notice is given; provided, that notwithstanding any such prepayment, the City shall not be relieved of its obligations hereunder, including specifically its obligations under this Article, until all Installment Payments shall have been fully paid (or provision for payment thereof shall have been made pursuant to Article IX hereof).

## ARTICLE IV

### ELECTRIC SYSTEM REVENUES; FUNDS

Section 4.01. Pledge of Net Revenues and Moneys in Electric Revenue Fund; Electric Revenue Fund. (a) Subject to the application thereof on the terms and conditions herein provided, all Net Revenues of the Electric System and all moneys on deposit in the Electric Revenue Fund are hereby irrevocably pledged to the payment of the Installment Payments which pledge shall be on a parity with any pledge of Net Revenues or of moneys in the Electric Revenue Fund securing Parity Obligations. This pledge shall constitute a first pledge of and charge and lien upon the Net Revenues of the Electric System and moneys in the Electric Revenue Fund for the payment of amounts due with respect to this Agreement and all Parity Obligations in accordance with the terms hereof and thereof.

The general fund of the City is not liable for, and neither the faith and credit nor the taxing power of the City is pledged to, the payment of the Installment Payments.

(b) In order to carry out and effectuate the obligation of the City contained herein to pay the Installment Payments, the City agrees and covenants that all Revenues received by it shall be deposited when and as received in the Electric Revenue Fund which fund has heretofore been established by the City and which fund the City agrees and covenants to maintain separate and apart from other moneys of the City so long as any Installment Payment remains Outstanding hereunder, and all money on deposit in the Electric Revenue Fund shall be applied and used only as provided herein. The City shall pay all Maintenance and Operation Costs (including amounts reasonably required to be set aside in contingency reserves for Maintenance and Operation Costs the payment of which is not then immediately required) from the Electric Revenue Fund as they become due and payable, and all remaining money on deposit in the Electric Revenue Fund shall be set aside and deposited by the City at the following times in the following order of priority:

(1) Debt Service Fund Deposits. On or before the fifth Business Day before each Principal Payment Date and Interest Payment Date set forth in Schedule C or Schedule D hereto, the City shall, from the money in the Electric Revenue Fund, deposit in the Debt Service Fund a sum equal to the Installment Payment becoming due and payable under this Agreement on such date. On each date other than a Principal Payment Date or an Interest Payment Date set forth in Schedule C or Schedule D hereto on which an Installment Payment becomes due and payable hereunder (whether by prepayment pursuant to Section 3.02, acceleration pursuant to Section 8.01 or otherwise), the City shall, from the money in the Electric Revenue Fund, deposit in the Debt Service Fund, in immediately available funds, a sum equal to the Installment Payment due and payable on such date. Notwithstanding the provisions of the immediately preceding two sentences, no such deposits to the Debt Service Fund need be made by the City from the Electric Revenue Fund to the extent the Trustee then holds money for such purpose in the Debt Service Fund available to pay the Installment Payments to be paid with such deposit. From such remaining moneys in the Electric Revenue Fund, the City shall also pay to the party entitled thereto or transfer or cause to be transferred to any applicable debt service

or other payment fund or account for any Parity Obligations, without preference or priority between transfers made pursuant to this sentence and the preceding sentence, and in the event of any insufficiency of such moneys ratably without any discrimination or preference, on the dates specified in the proceedings relating to such Parity Obligations, the sum or sums required to be paid or deposited in such debt service or other payment fund or account with respect to principal, premium, if any, and interest on Parity Obligations (or in the case of Parity Payment Agreements, the net payments due) in accordance with the terms of such Parity Obligations.

(2) Reserve Fund Deposits. To the extent the Reserve Requirement is not being satisfied with a Financial Guaranty or Financial Guarantees, on each Principal Payment Date and Interest Payment Date, the City shall, from the money on deposit in the Electric Revenue Fund, transfer to the Trustee for deposit in the Reserve Fund that sum, if any, necessary to restore the Reserve Fund to an amount equal to the Reserve Fund Requirement. Any amount transferred to the Trustee shall be applied first to pay the issuer of each Financial Guaranty which had been drawn on pursuant to Section 3.04(b) of the Trust Agreement (on a pro rata basis based on the amount drawn) to restore each such Financial Guaranty to its full amount. The City shall also, from such remaining moneys in the Electric Revenue Fund, transfer or cause to be transferred to any applicable reserve fund or account for any Parity Obligations for which a separate reserve has been funded pursuant to Section 6.01(e) hereof, without preference or priority between transfers made pursuant to this sentence and the preceding sentence, and in the event of any insufficiency of such moneys ratably without any discrimination or preference, the sum or sums, if any, equal to the amount required to be deposited therein in accordance with the terms of such Parity Obligations.

After making the foregoing deposits and transfers hereinabove required to be made, the City shall apply any remaining money in the Electric Revenue Fund (i) first, to pay any payment of interest then due on amounts drawn under the Financial Guaranties, on a pro rata basis and (ii) second, for any lawful purpose of the City, including for the payment of any Subordinate Obligations in accordance with the instruments authorizing such Subordinate Obligations; provided, however, that no moneys in the Electric Revenue Fund shall be applied to any purpose not related to the expansion of the facilities or business of the Electric System or replacement of facilities thereof, including the payment of any Subordinate Obligations or City Transfers, in any Fiscal Year unless amounts remaining on deposit in the Electric Revenue Fund shall be sufficient to make the remaining transfers hereinabove required to be made in such Fiscal Year with respect to Installment Payments and Parity Obligations.

Section 4.02. Investments. Any moneys held in the Electric Revenue Fund shall be invested in Permitted Investments which will, as nearly as practicable, mature on or before the dates when such moneys are anticipated to be needed for disbursement hereunder. All investment earnings from moneys or deposits in the Electric Revenue Fund shall be credited in such fund and applied only to the purposes permitted for such fund.

The City may commingle any of the moneys in the Electric Revenue Fund with the moneys held in other funds or accounts (except for moneys held in any rebate fund, which shall

be held separately) for investment purposes only; provided however, that all moneys in the Electric Revenue Fund shall be accounted for separately notwithstanding such commingling.

## ARTICLE V

### CERTIFICATE INSURANCE POLICIES

Section 5.01. Provisions Relating to Certificate Insurance. For so long as, and only during such time as the Certificate Insurer is not in default under a Certificate Policy, the following provisions shall be in effect, and any conflict between the provisions of this Article V and the provisions of any other Section hereof shall be governed by the provisions of this Article V.

Section 5.02. Information and Reports. As soon as practicable after the filing thereof with the Corporation, the City shall provide the Certificate Insurer a copy of any financial statement of the City and a copy of any audit and annual report of the City delivered by the City pursuant Section 7.10(b)(1) hereof and a copy of any report or notice required to be filed with a National Repository and/or State Repository pursuant to the Continuing Disclosure Agreement to be delivered by the City in connection with the execution and delivery of the Certificates (and as such terms are defined in the Continuing Disclosure Agreement).

Section 5.03. Acceleration. Any acceleration of unpaid Installment Payments pursuant to 8.01 hereof or any annulment thereof shall be subject to the prior written consent of the Certificate Insurer.

Section 5.04. Installment Payments Not Discharged. Notwithstanding anything contained herein to the contrary, in the event that any Interest Installment and/or Principal Installment of the Installment Payments shall be paid by the Certificate Insurer pursuant to a Certificate Insurance Policy, the Installment Payments shall remain unpaid hereunder for all purposes, shall not be discharged or otherwise satisfied and shall not be considered paid by the City, and the assignment and pledge thereof and all agreements, covenants and other obligations of the City hereunder with respect thereto shall continue to exist and shall run to the benefit of the Certificate Insurer.

Section 5.05. Parity Obligations. In connection with the execution and delivery of any Parity Obligations under the terms of Article VI, the City shall deliver or caused to be delivered to the Certificate Insurer a copy of the disclosure document, if any, circulated with respect to such Parity Obligations.

## ARTICLE VI

### PARITY OBLIGATIONS AND SUBORDINATE OBLIGATIONS

Section 6.01. Conditions for the Execution of Parity Obligations. The City may at any time execute and deliver any Parity Obligation, the payment of which is payable from and secured by a lien and charge on the Net Revenues and amounts in the Electric Revenue Fund on

a parity with the lien and charge on Net Revenues and amounts in the Electric Revenue Fund securing the Installment Payments due under this Agreement, provided:

(a) Either -

(1) during any twelve (12) consecutive calendar months out of the immediately preceding eighteen (18) calendar month period, the Adjusted Annual Net Revenues were at least equal to one hundred ten percent (110%) of the Maximum Annual Debt Service for all Outstanding Installment Payments and all Outstanding Parity Obligations plus the Parity Obligation proposed to be executed; or

(2) as evidenced by a Certificate of the City or an Engineer's Report on file with the City, the projected Adjusted Annual Net Revenues during each of the succeeding five (5) complete Fiscal Years beginning with the first Fiscal Year following issuance of such Parity Obligation in which interest is not capitalized in whole from the proceeds of Parity Obligations, is at least equal to one hundred ten percent (110%) of the Maximum Annual Debt Service for all Outstanding Installment Payments and all Outstanding Parity Obligations plus the Parity Obligation proposed to be executed;

(b) If the Parity Obligation proposed to be executed is not a Parity Payment Agreement, the proceeds of such Parity Obligation proposed to be executed shall be used solely to finance or refinance (including reimbursement to the City of amounts advanced for such costs) one or more additions, betterments or improvements to the Electric System as designated by the City and to pay any incidental costs and expenses related thereto (including the costs of issuance, execution or delivery of such proposed Parity Obligation);

(c) With respect to any Parity Obligation to be executed in connection with a Payment Agreement, there shall have been delivered to the City evidence that the incurrence of such Parity Obligation and Payment Agreement will not in and of itself cause a downgrade of the rating issued by the Rating Agencies then rating the Certificates or any Parity Obligation;

(d) There shall have been delivered to the City an Opinion of Counsel substantially to the effect that (1) the City has the right and power under applicable law to execute and deliver the Parity Obligation, and the Parity Obligation has been duly and lawfully executed and delivered by the City, is in full force and effect and is a valid and binding special obligation of the City and enforceable in accordance with its terms (except as enforcement may be limited by bankruptcy, moratorium, insolvency, reorganization, fraudulent conveyance and other similar laws relating to the enforcement of creditors' rights), and (2) such Parity Obligation has been duly and validly authorized, executed and delivered in accordance herewith; and

(e) If required by the terms of such Parity Obligation, a separate reserve has been established for such Parity Obligation and that provision has been made to fund such reserve.

Notwithstanding the foregoing provisions, neither clause (a) nor clause (b) above shall limit the ability of the City to execute any Parity Obligations at any time to refund any Outstanding Installment Payments and Outstanding Parity Obligations which results in a net present value savings to the City, inclusive of all costs of such refunding.

Section 6.02. Subordinate Obligations. The City may incur Subordinate Obligations without meeting any of the tests set forth in Section 6.01.

## ARTICLE VII

### COVENANTS OF THE CITY

Section 7.01. Compliance with Agreement. The City will punctually pay the Installment Payments in strict conformity with the terms hereof, and will faithfully observe and perform all the agreements, conditions, covenants and terms contained herein required to be observed and performed by it, and will not terminate this Agreement or fail to make any **Installment** Payment required by this Agreement for any cause including, without limiting the generality of the foregoing, any acts or circumstances that may constitute failure of consideration, destruction of or damage to all or a portion of the Electric System, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State or any political subdivision of either or any failure of the Corporation to observe or perform any agreement, condition, covenant or term contained in this Agreement required to be observed and performed by it, whether express or implied, or any duty, liability or obligation arising out of or connected with this Agreement or the insolvency, or deemed insolvency, or bankruptcy or liquidation of the Corporation or any force majeure, including acts of God, tempest, storm, earthquake, war, rebellion, riot, civil disorder, acts of public enemies, blockade or embargo, strikes, industrial disputes, lockouts, lack of transportation facilities, fire, explosion, or acts or regulations of governmental authorities.

Section 7.02. Distribution of Net Revenues for Debt Service. The City hereby covenants that the City will distribute Net Revenues available for Outstanding Installment Payments and debt service on all Outstanding Parity Obligations on a pro rata basis without regard to whether each such Parity Obligation has a funded debt service reserve or a surety bond or other similar funding instrument.

Section 7.03. Tax Covenants. (a) The City hereby covenants it shall not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the Tax-exempt status of the Interest Installments of the Series C Installment Payments under Section 103 of the Code. Without limiting the generality of the foregoing, the City shall comply with the requirements of the Tax Certificate, which is incorporated herein as if fully set forth herein.

(b) In the event that at any time the City is of the opinion that, in order to comply with its obligations under subsection (a) of this Section, it is necessary or helpful to restrict or limit the yield on the investment of any moneys in any of the funds or accounts held by the Trustee pursuant to the Trust Agreement, the City shall so instruct the Trustee in writing, and cause the Trustee to take such action as may be necessary in accordance with such instructions.

(c) Notwithstanding any provisions of this Section, if the City shall provide to the Trustee an Opinion of Counsel to the effect that any specified action required under this Section is no longer required or that some further or different action is required to maintain the exclusion from federal income tax of Interest Installments of the Series C Installment Payments

under Section 103 of the Code, the City and the Trustee may conclusively rely on such opinion in complying with the requirements of this Section and of the Tax Certificate, and the covenants hereunder shall be deemed to be modified to that extent.

(d) The covenants in this Section shall survive payment in full or discharge of the Certificates and the Installment Payments.

Section 7.04. Against Encumbrances. The City will pay or cause to be paid when due all sums of money that may become due or purporting to be due for any labor, services, materials, supplies or equipment furnished, or alleged to have been furnished, to or for the City in, upon, about or relating to the Electric System and will keep the Electric System free of any and all liens against any portion of the Electric System. In the event any such lien attaches to or is filed against any portion of the Electric System, the City will cause each such lien to be fully discharged and released at the time the performance of any obligation secured by any such lien matures or becomes due, except that if the City desires to contest any such lien it may do so if contesting such lien will not materially impair operation of the Electric System. If any such lien shall be reduced to final judgment and such judgment or any process as may be issued for the enforcement thereof is not promptly stayed, or if so stayed and such stay thereafter expires, the City will forthwith pay or cause to be paid and discharged such judgment. The City will, to the maximum extent permitted by law, indemnify and hold the Corporation harmless from, and defend it against, any claim, demand, loss, damage, liability or expense (including attorneys' fees) as a result of any such lien or claim of lien against any portion of the Electric System.

Section 7.05. Sale or Other Disposition of Property. The City will not sell, transfer or otherwise dispose of any of the works, plant, properties, facilities or other part or rights of the Electric System or any real or personal property comprising a part of the Electric System if such sale, transfer or disposition would cause the City to be unable to satisfy the requirements of Section 7.13 hereof.

Section 7.06. City Obligations under Trust Agreement. The City agrees to comply with all of the requirements of the Trust Agreement applicable to the City and to take all actions, provide all documents and to otherwise satisfy and comply with all provisions of the Trust Agreement applicable to the City.

Section 7.07. Maintenance and Operation of the Electric System; Budgets. The City will maintain and preserve the Electric System in good repair and working order at all times and will operate the Electric System in an efficient and economical manner and will pay all Maintenance and Operation Costs as they become due and payable. The City will adopt and file with the Corporation, not later than October 1 of each year, a cover letter, signed by an officer of the City stating that all Installment Payments required by this Agreement have been included in the budget for the then current Fiscal Year, and a budget approved by the City Council setting forth the estimated Maintenance and Operation Costs for the then current Fiscal Year and will take such action as may be necessary to include all Installment Payments required to be made hereunder and all payments coming due in such Fiscal Year with respect to Parity Obligations and Subordinate Obligations in its annual budget; provided, that any such budget may be amended at any time during any Fiscal Year and such amended budget shall be filed by the City with the Corporation. When filed with the Corporation, such budget shall include a cover letter

from the City stating that all Installment Payments for the then current fiscal year required to be made hereunder have been included in the attached annual budget.

Section 7.08. Compliance with Contracts for Use of the Electric System. The City will comply with, keep, observe and perform all agreements, conditions, covenants and terms, express or implied, required to be performed by it contained in all contracts for the use of the Electric System and all other contracts affecting or involving the Electric System to the extent that the City is a party thereto.

Section 7.09. Insurance. The City will procure and maintain such insurance relating to the Electric System which it shall deem advisable or necessary to protect its interests and the interests of the Corporation, which insurance shall afford protection in such amounts and against such risks as are usually covered in connection with public electric utility systems similar to the Electric System; provided, that any such insurance may be maintained under a self-insurance program so long as such self-insurance is maintained in the amounts and manner as is, in the opinion of an accredited actuary, actuarially sound. All policies of insurance required to be maintained hereunder shall provide that the Corporation shall be given thirty (30) days' written notice of any intended cancellation thereof or reduction of coverage provided thereby.

Section 7.10. Accounting Records; Financial Statements and Other Reports.

(a) The City will keep appropriate accounting records in which complete and correct entries shall be made of all transactions relating to the Electric System, which records shall be available for inspection by the Corporation at reasonable hours and under reasonable conditions.

(b) The City will prepare and file with the Corporation annually within one hundred eighty (180) days after the close of each Fiscal Year (commencing with the Fiscal Year ending June 30, 2002):

(1) financial statements of the City for such Fiscal Year prepared in accordance with Generally Accepted Accounting Principles, together with an Accountant's Report thereon; and

(2) a detailed report as to all insurance policies maintained and self-insurance programs maintained by the City with respect to the Electric System as of the close of such Fiscal Year, including the names of the insurers which have issued the policies and the amounts thereof and the property or risks covered thereby.

Section 7.11. Protection of Security and Rights of the Corporation. The City will preserve and protect the security of the Installment Payments under this Agreement and the rights of the Corporation to the Installment Payments under this Agreement and will warrant and defend such rights against all claims and demands of all persons.

Section 7.12. Payment of Taxes and Compliance with Governmental Regulations. The City will pay and discharge all taxes, assessments and other governmental charges which may hereafter be lawfully imposed upon the Electric System or any part thereof when the same shall become due. The City will duly observe and conform with all valid regulations and requirements

of any governmental authority relative to the operation of the Electric System or any part thereof, but the City shall not be required to comply with any regulations or requirements so long as the validity or application thereof shall be contested in good faith and contesting such validity or application will not materially impair the operations or financial condition of the Electric System.

Section 7.13. Amount of Rates and Charges. The City will at all times fix, prescribe and collect rates and charges for the services, facilities and electricity of the Electric System during each Fiscal Year which will be at least sufficient to yield: (a) Adjusted Annual Revenues for such Fiscal Year at least equal to the sum of the following for such Fiscal Year: (i) Adjusted Maintenance and Operation Costs; (ii) Adjusted Annual Debt Service with respect to the Installment Payments and Parity Obligations, and (iii) all other payments required to meet any other obligations of the City which are charges, liens or encumbrances upon or payable from the Electric Revenue Fund, including all amounts owed to any issuer of a Financial Guaranty then in effect and deposited in the Reserve Fund under the terms of such Financial Guaranty; (b) Adjusted Annual Net Revenues for such Fiscal Year equal to at least one hundred ten percent (110%) of Adjusted Annual Debt Service with respect to the Installment Payments and Parity Obligations for such Fiscal Year. The City may make adjustments from time to time in such fees and charges and may make such classification thereof as it deems necessary, but shall not reduce the rates and charges then in effect unless the Adjusted Annual Revenues and the Adjusted Annual Net Revenues from such reduced rates and charges will at all times be sufficient to meet the requirements of this Section.

Section 7.14. Collection of Rates and Charges. The City will have in effect at all times rules and regulations requiring each consumer or customer located on any premises connected with the Electric System to pay the rates and charges applicable to the Electric Service provided to such premises and providing for the billing thereof and for a due date and a delinquency date for each bill. The City will not permit any part of the Electric System or any facility thereof to be used or taken advantage of free of charge by any corporation, firm or person, or by any public agency (including the United States of America, the State of California and any city, county, district, political subdivision, public corporation or agency of any thereof). Nothing herein shall prevent the City, in its sole and exclusive discretion, from permitting other parties from selling electricity to retail customers within the service area of the Electric System; provided, however, that permitting such sales shall not relieve the City of its obligations hereunder.

Section 7.15. Eminent Domain and Insurance Proceeds. If all or any part of the Electric System shall be taken by eminent domain proceedings, or if the City receives any insurance proceeds resulting from a casualty loss to the Electric System, the Net Proceeds thereof, at the option of the City, shall be applied either to the proportional prepayment of Outstanding Installment Payments hereunder and Outstanding Parity Obligations or shall be used to substitute other components for the condemned or destroyed components of the Electric System.

Section 7.16. Further Assurances. The City will adopt, deliver, execute and make any and all further assurances, instruments and resolutions as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Agreement and for the better

assuring and confirming unto the Corporation of the rights and benefits provided to it in this Agreement.

Section 7.17. Continuing Disclosure. The City hereby covenants and agrees, ~~whenever required by Rule 15c2-12,~~ to comply with the continuing disclosure requirements for the Series C Certificates as promulgated under Rule 15c2-12, as it may from time to time hereafter be amended or supplemented. The City hereby further covenants and agrees that it will comply with and carry out all of its obligations under the Continuing Disclosure Agreement to be delivered by the City in connection with the execution and delivery of the ~~Series D~~-Certificates. Notwithstanding any other provision of this Agreement, failure of the City to comply with the requirements of ~~Rule 15c2-12 applicable to the Series C Certificates, as it may from time to time hereafter be amended or supplemented,~~ or failure of the City to comply with the Continuing Disclosure Agreement shall not be considered an **Agreement Event** of Default hereunder and the Corporation shall have no right to accelerate amounts due hereunder as a result thereof; provided, however, that any Owner may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the City or the Trustee, as the case may be, to comply with its obligations in this Section and the Continuing Disclosure Agreement.

## ARTICLE VIII

### EVENTS OF DEFAULT AND REMEDIES

Section 8.01. Events of Default and Acceleration of Principal. ~~If one or more~~ **Each** of the following ~~Events shall constitute as Agreement Event~~ of Default ~~shall happen, that is to say:~~

(a) if default shall be made in the due and punctual payment of any Installment Payment or of any Parity Obligation when and as the same shall become due and payable;

(b) if default shall be made by the City in the performance of any of the agreements or covenants contained herein required to be performed by it, other than as set forth in (a) above, and such default shall have continued for a period of thirty (30) days after the City shall have been given notice in writing of such default by the Corporation;

(c) if default shall be made by the City in the performance of any of the agreements or covenants contained in any Parity Obligation required to be performed by it, other than as set forth in (a) above, and such default shall have continued after any notice and grace period provided by such Parity Obligation; or

(d) if the City shall file a petition or answer seeking arrangement or reorganization under the federal bankruptcy laws or any other applicable law of the United States of America or any state therein, or if a court of competent jurisdiction shall approve a petition filed with or without the consent of the City seeking arrangement or reorganization under the federal bankruptcy laws or any other applicable law of the United States of America or any state therein, or if under the provisions of any other law for the relief or aid of debtors any court of competent

jurisdiction shall assume custody or control of the City or of the whole or any substantial part of its property;

then and in each and every such case during the continuance of such Event of Default specified in clause (d) above, the Corporation shall, and for any other such Event of Default the Corporation may, by notice in writing to the City, declare the entire amount of the unpaid Principal Installments and those Interest Installments coming due to and including the date of such declaration to be due and payable immediately, and upon any such declaration the same shall become immediately due and payable, anything contained herein to the contrary notwithstanding. This Section is subject to the condition, however, that if at any time after the entire amount of the unpaid Principal Installments and Interest Installments coming due to and including the date of such declaration shall have been so declared due and payable and before any judgment or decree for the payment of the money due shall have been obtained or entered, the City shall deposit in the Debt Service Fund a sum sufficient to pay the unpaid amount of the Principal Installments and Interest Installment due otherwise then as a result of such declaration and in the applicable debt service fund(s) the unpaid principal amount of any payments due under any Parity Obligation referred to in clause (a) above due and payable prior to such declaration and the accrued interest thereon, with interest on such overdue installments at the rate or rates applicable to such unpaid Installment Payments if paid in accordance with their terms and on the Parity Obligations in accordance with their terms, and the City shall have paid the reasonable expenses of the Corporation, the Trustee and any fiduciaries for Parity Obligations resulting from such declaration, and any and all other defaults known to the Corporation (other than in the payment of the entire amount of the unpaid Principal Installments and Interest Installments due and payable solely by reason of such declaration) shall have been made good or cured to the satisfaction of the Corporation or provision deemed by the Corporation to be adequate shall have been made therefor, then and in every such case the Corporation, by written notice to the City, may rescind and annul such declaration and its consequences; but no such rescission and annulment shall extend to or shall affect any subsequent default or shall impair or exhaust any right or power consequent thereon.

Section 8.02. Application of Net Revenues upon Acceleration. All Net Revenues upon the date of the declaration of acceleration by the Corporation as provided in Section 8.01 above and all Net Revenues thereafter received shall be applied in the following order:

First, to the payment of the fees, costs and expenses of the Corporation and the Trustee, if any, in carrying out the provisions of this Article, including reasonable compensation to their agents, accountants and counsel and including any indemnification expenses;

Second, to the payment of the Interest Installments and interest then due and payable on the entire principal amount of the unpaid Parity Obligations, and the unpaid Principal Installments and the principal amount of the Parity Obligations which has become due and payable, whether on the original due date or upon acceleration, with interest on the overdue Principal Installment at the rate or rates applicable to the Installment Payments and the principal and interest amounts of the unpaid Parity Obligations at the rate or rates of interest then applicable to such Parity Obligations, and, if the amount available shall not be sufficient to pay in full all the amounts due with respect to the Installment Payments and the Parity Obligations,

together with such Interest Installments and interest on Parity Obligations, then to the payment thereof ratably, according to the principal and interest due, without any discrimination or preference.

Net Revenues may also be applied to make payments required under any Parity Payment Agreement on a parity with the payments under paragraph Second above, to the extent and in the manner provided by the terms of such Parity Payment Agreement.

Section 8.03. Other Remedies. The Corporation shall also have the right:

(a) by mandamus or other action or proceeding or suit at law or in equity to enforce its rights against the City or any officer or employee thereof, and to compel the City or any such officer or employee to perform and carry out its or his or her duties under the law and the agreements and covenants required to be performed by it or him or her contained in this Agreement;

(b) by suit in equity to enjoin any acts or things which are unlawful or violate the rights of the Corporation; or

(c) by suit in equity upon the happening of an Event of Default to require the City and its officers and employees to account as the trustee of an express trust.

Section 8.04. Non-Waiver. Nothing in this Article or in any other provision hereof shall affect or impair the obligation of the City, which is absolute and unconditional, to pay the Installment Payments from the Net Revenues to the Corporation at the respective due dates or upon acceleration or prepayment, or shall affect or impair the right of the Corporation, which is also absolute and unconditional, to institute suit to enforce such payment by virtue of the contract embodied in this Agreement.

A waiver of any default or breach of duty or contract by the Corporation shall not affect any subsequent default or breach of duty or contract or impair any rights or remedies on any such subsequent default or breach of duty or contract. No delay or omission by the Corporation to exercise any right or remedy accruing upon any default or breach of duty or contract shall impair any such right or remedy or shall be construed to be a waiver of any such default or breach of duty or contract or an acquiescence therein, and every right or remedy conferred upon the Corporation by law or by this article may be enforced and exercised from time to time and as often as shall be deemed expedient by the Corporation.

If any action, proceeding or suit to enforce any right or exercise any remedy is abandoned or determined adversely to the Corporation, the City and the Corporation shall be restored to their former positions, rights and remedies as if such action, proceeding or suit had not been brought or taken.

Section 8.05. Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Corporation is intended to be exclusive of any other remedy, and each such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter

existing in law or in equity or by statute or otherwise and may be exercised without exhausting and without regard to any other remedy conferred by law.

## ARTICLE IX

### DISCHARGE OF OBLIGATIONS

#### Section 9.01. Discharge of Obligations.

(a) If the City shall pay or cause to be paid all the Installment Payments at the times and in the manner provided herein, the right, title and interest of the Corporation herein and the obligations of the City under this Agreement shall cease, terminate, become void and be completely discharged and satisfied.

(b) Any unpaid Installment Payment shall on its payment date or date of prepayment be deemed to have been paid within the meaning of and with the effect expressed in subsection (a) of this Section if the City makes payment of such Installment Payment and the prepayment premium, if applicable, in the manner provided herein.

(c) All or any portion of an unpaid Principal Installment shall, prior to its payment date or date of prepayment, be deemed to have been paid within the meaning of and with the effect expressed in subsection (a) of this Section (except only that the right of the Corporation to receive Installment Payments and the obligation of the City to pay such Installment Payments but only out of the money and Defeasance Securities deposited with the Trustee for such payment) if: (i) there shall have been deposited with the Trustee either money in an amount which shall be sufficient, or Defeasance Securities which are not subject to redemption except by the holder thereof prior to maturity (including any such securities issued or held in book-entry form), the interest on and principal of which when paid will provide money which, together with money, if any, deposited with the Trustee, shall be sufficient (as evidenced by a report of an Independent Certified Public Accountant regarding such sufficiency) to pay when due the portion of the Certificates evidenced by such Principal Installment or such portion thereof on its payment date or its date of prepayment, as the case may be, the Interest Installments with respect to such Principal Installment due on and prior to such payment date or date of prepayment, and the prepayment premium, if any, on the portion of the Certificates evidenced by such Principal Installment upon any prepayment thereof in accordance with the Trust Agreement; and (ii) an Opinion of Counsel is filed with the Trustee to the effect that the action taken pursuant to this subsection will not cause the Interest Installments of the Series C Installment Payments to be includable in gross income under the Code for federal income tax purposes.

(d) After the payment, or provision for the payment as provided in subsection (c) of this Section, of all Installment Payments and prepayment premiums, if any, and payment in full of all fees and expenses of the Corporation, the Corporation, upon request of the City, shall cause an accounting for such period or periods as may be requested by the City to be prepared and filed with the City and the Corporation shall execute and deliver to the City all such instruments as may be necessary or desirable to evidence such total discharge and satisfaction of this Agreement.

## ARTICLE X

### MISCELLANEOUS

Section 10.01. Liability of City Limited to Net Revenues. Notwithstanding anything contained herein, the City shall not be required to advance any moneys derived from any source of income other than the Net Revenues for the payment of the Installment Payments or for the performance of any agreements or covenants required to be performed by it contained herein. The City may, however, advance moneys for any such purpose so long as such moneys are derived from a source legally available for such purpose and may be legally used by the City for such purpose.

The obligation of the City to make the Installment Payments is a special obligation of the City payable solely from the Net Revenues as provided herein. The general fund of the City is not liable, and neither the faith and credit nor the taxing power of the City is pledged, for the payment of the Installment Payments or the performance or satisfaction of any other obligations of the City hereunder.

Section 10.02. Other Provisions Relating to Financial Guaranties.

(a) In the event that a draw is made on any Financial Guaranty, the City shall not make any prepayments of Installment Payments pursuant to Section 3.02 hereof unless all amounts owed by the City to the issuer of each Financial Guaranty so drawn upon have paid in full pursuant to the terms of such Financial Guaranty.

(b) This Agreement may not be terminated unless provisions have been made to pay all amounts owed to the issuer of each Financial Guaranty then in effect under the terms of such Financial Guaranty.

Section 10.03. Amendments. The Corporation and the City shall not supplement, amend, modify or terminate any of the terms of this Agreement unless the conditions set forth in Section 5.06 of the Trust Agreement have been satisfied.

Section 10.04. Assignment of Agreement. The City hereby acknowledges that the Corporation, for good and valuable consideration, has transferred, assigned and sent over to the Trustee, pursuant to the provisions of the Trust Agreement, all of the Installment Payments and any and all rights and privileges it has hereunder with respect to the Installment Payments and references to the Corporation herein to the Corporation's rights with respect to the Installment Payments (but not the obligations of the Corporation hereunder, it being understood that the Trustee shall not assume any responsibility for any duties or covenants or warranties of the Corporation hereunder) shall be construed to be references to the Trustee.

Section 10.05. Benefits of Agreement Limited to Parties. Nothing contained in this Agreement, expressed or implied, is intended to give to any person other than the Corporation, the Trustee (with respect to its rights pursuant to Sections 4.01(b) and 10.12 hereof and as the assignee of the Corporation's rights hereunder), the City, or the Certificate Insurer (so long as the Certificate Insurer is not in default under a Certificate Policy) any right, remedy or claim under

or pursuant thereto, and any agreement or covenant required herein to be performed by or on behalf of the Corporation (and the Trustee, as the assignee of the Corporation's rights hereunder) or the City shall be for the sole and exclusive benefit of the other party.

Section 10.06. Successor Is Deemed Included in all References to Predecessor. Whenever either the Corporation or the City is named or referred to herein, such reference shall be deemed to include the successor to the powers, duties and functions that are presently vested in the Corporation or the City, and all agreements and covenants required hereby to be performed by or on behalf of the Corporation or the City shall bind and inure to the benefit of the respective successors thereof whether so expressed or not.

Section 10.07. Waiver of Personal Liability. No officer or employee of the City shall be individually or personally liable for the payment of the Installment Payments or the performance or satisfaction of any other obligation of the City hereunder, but nothing contained herein shall relieve any officer or employee of the City from the performance of any official duty provided by any applicable provisions of law or by the terms of this Agreement.

Section 10.08. Article and Section Headings, Gender and References. The headings or titles of the several articles and sections hereof and the table of contents appended hereto shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof, and words of any gender shall be deemed and construed to include all genders. All references herein to "Articles," "Sections," "Exhibits" and other subdivisions or clauses are to the corresponding articles, sections, exhibits, subdivisions or clauses hereof; and the words "hereby," "herein," "hereof," "hereto," "herewith" and other words of similar import refer to this Agreement as a whole and not to any particular article, section, exhibit, subdivision or clause hereof.

Section 10.09. Partial Invalidity. If any one or more of the agreements or covenants or portions thereof required hereby to be performed by or on the part of the Corporation or the City shall be contrary to law, then such agreement or agreements, such covenant or covenants or such portions thereof shall be null and void and shall be deemed separable from the remaining agreements and covenants or portions thereof and shall in no way affect the validity hereof. The Corporation and the City hereby declare that they would have executed this Agreement, and each and every other article, section, paragraph, subdivision, sentence, clause and phrase hereof irrespective of the fact that any one or more articles, sections, paragraphs, subdivisions, sentences, clauses or phrases hereof or the application thereof to any person or circumstance may be held to be unconstitutional, unenforceable or invalid.

Section 10.10. Net Contract. This Agreement shall be deemed and construed to be a net contract, and the City shall pay absolutely net during the term hereof the Installment Payments and all other payments required under this Agreement, free of any deductions and without abatement, diminution or set-off whatsoever.

Section 10.11. California Law. This Agreement shall be construed and governed in accordance with the laws of the State of California.

Section 10.12. Indemnification. The City shall, to the full extent then permitted by law, indemnify, protect, hold harmless, save and keep harmless the Corporation and the Trustee and their directors, officers and employees from and against any and all liability, obligations, losses, claims and damages whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, without limitation, counsel fees and expenses, penalties and interest arising out of or as the result of (i) the entering into of this Agreement, (ii) any claim for patent, trademark or copyright infringement, (iii) any claim arising out of strict liability in tort, (iv) without negligence or willful misconduct, the Trustee's acceptance or administration of the trust under the Trust Agreement, or the exercise or performance of any of its powers or duties thereunder or hereunder; or (v) any untrue statement or alleged untrue statement of any material fact or omission or alleged omission to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading in any official statement or other offering circular utilized in connection with the sale of any Certificates executed and delivered under the Trust Agreement. The indemnification arising under this Section shall continue in full force and effect notwithstanding the full payment of all obligations hereunder or the termination of the other provisions hereof for any reason. The City and the Corporation mutually agree to promptly give notice to each other of any claim or liability hereby indemnified against following either's learning thereof. The rights to indemnification from the City hereunder shall survive the termination hereof or the resignation or removal of the Trustee.

Section 10.13. Funds. Any fund required to be established and maintained herein by the City may be established and maintained in the accounting records of the City either as an account or a fund and may, for the purpose of such accounting records, any audits thereof and any reports or statements with respect thereto, be treated either as an account or a fund; but all such records with respect to any such fund shall at all times be maintained in accordance with sound accounting practice.

Section 10.14. Notices. All notices, certificates or other communications hereunder shall be deemed sufficiently given upon actual receipt thereof when received by the City, the Corporation, the Trustee, the Certificate Insurer, and the Rating Agencies, as the case may be, at the respective address provided pursuant to Section 11.08 of the Trust Agreement or, if mailed by first class mail, postage prepaid, addressed to the appropriate address provided pursuant to Section 11.08 of the Trust Agreement, six Business Days after deposit in the United States mail.

Unless otherwise requested by the City, the Corporation, the Trustee, the Certificate Insurer or a Rating Agency, any notice required to be given hereunder in writing may be given by any form of telephonic or electronic transmission capable of making a written record. Each such party shall file with the Trustee information appropriate to receiving such form of telephonic or electronic transmission. Any of the parties noted above may, by notice given hereunder, designate any different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 10.15. Effective Date. This Agreement shall become effective upon its execution and delivery, and, except as otherwise specifically provided with respect to particular terms hereof, shall terminate when the Installment Payments provided herein shall have been fully paid (or provision for the payment thereof shall have been made pursuant to Article IX hereof).

Section 10.16. Execution in Counterpart. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

[Remainder of Page Intentionally Left Blank.]

IN WITNESS WHEREOF, the parties hereto have executed and attested this Agreement by their respective officers thereunto duly authorized, as of the day and year first written above.

CITY OF LODI

By \_\_\_\_\_  
City Manager

Attest:

\_\_\_\_\_  
City Clerk

APPROVED:

\_\_\_\_\_  
City Attorney

LODI PUBLIC IMPROVEMENT  
CORPORATION

By \_\_\_\_\_  
President

Attest:

\_\_\_\_\_  
Secretary for the Corporation

APPROVED:

\_\_\_\_\_  
Attorney for the Corporation

EXHIBIT A

SERIES C INSTALLMENT PAYMENTS

<u>Payment Date</u>	<u>Principal Installment</u>	<u>Interest Installment</u>	<u>Total Payments</u>
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EXHIBIT B

SERIES D INSTALLMENT PAYMENTS

<u>Payment Date</u>	<u>Principal Installment</u>	<u>Interest Installment</u>	<u>Total Payments</u>
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RESOLUTION NO. 2002-212

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LODI RELATING TO ELECTRIC SYSTEM REVENUE CERTIFICATES OF PARTICIPATION; APPROVING THE FORMS OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN AMENDED AND RESTATED ELECTRIC ENERGY PURCHASE AGREEMENT, A CONTINUING DISCLOSURE AGREEMENT, A CERTIFICATE PURCHASE CONTRACT, A PRELIMINARY OFFICIAL STATEMENT AND AN OFFICIAL STATEMENT, AND APPROVING AND AUTHORIZING CERTAIN OTHER MATTERS RELATING THERETO

=====

WHEREAS, the City of Lodi, a municipal corporation duly organized and existing under and by virtue of the Constitution and laws of the State of California (the "City"), has established the Electric System (capitalized terms used herein and not otherwise defined shall have the meanings given such terms pursuant to Section 1.01 of the Trust Agreement referred to below) to serve the inhabitants of the City; and

WHEREAS, pursuant to the Public Utilities Code of the State, the City is authorized to acquire, own, control, sell or exchange rights of every nature for the purpose of operating the Electric System; and

WHEREAS, in order to assure adequate electricity to satisfy the expected load requirements of the inhabitants of the City, the City entered into the Original Agreement with Calpine providing for the purchase by the City of the Energy for the term of the Original Agreement; and

WHEREAS, pursuant to the Original Agreement, the City was obligated to take and pay for the Energy as delivered, resulting in the City's obligation to make installment purchase payments to Calpine in the amounts and at the times determined pursuant to the Original Agreement; and

WHEREAS, the City and Calpine have entered into the Amendment (the Original Agreement as amended and supplemented by the Amendment being herein referred to as the "Amended Agreement") pursuant to which the Original Agreement has been amended and supplemented to provide for three Parts, with the Original Agreement constituting Part II; and

WHEREAS, the City has sold its interests in the Energy to Calpine, and Calpine purchased the City's interests in the Energy, on the terms and conditions set forth in the Part III of the Amended Agreement; and

WHEREAS, pursuant to Part III of the Amended Agreement, the City and Calpine agreed upon the purchase price for the City's interests in the Energy and also agreed to net the payments due from the City for its purchase of the Energy from Calpine pursuant to the Original Agreement against the payments due from Calpine for its purchase of the City's interests in the Energy pursuant to Part III of the Amended Agreement, resulting in an obligation of the City to make certain installment payments to Calpine (the "Original Installment Payments"); and

WHEREAS, the City and Calpine agreed in Part III of the Amended Agreement that the Original Installment Payments were to be paid from Net Revenues of the City's Electric System; and

WHEREAS, Part I of the Amended Agreement provided the Lodi Public Improvement Corporation, a nonprofit, public benefit corporation duly organized and existing under and by virtue of the laws of the State of California (the "Corporation") with the option to purchase all of Calpine's right, title and interest in and to Part III thereof, including the right to collect the Original Installment Payments; and

WHEREAS, the Corporation intends to exercise said option and acquire all of Calpine's right, title and interest in and to Part III of the Amended Agreement, including the right to collect the Original Installment Payments; and

WHEREAS, in order to facilitate the Corporation's financing of its acquisition of Calpine's right, title and interest in and to Part III of the Amended Agreement, to modify the Original Installment Payments as requested by the City, to conform the covenants and agreements of the City with respect to the Electric System and the Revenues with outstanding Parity Obligations of the City and to simplify the agreement between the City and the Corporation with respect to Part III of the Amended Agreement, the City and the Corporation have determined to amend and restate Part III of the Amended Agreement as provided in the Amended and Restated Electric Energy Purchase Agreement (the "Agreement"), dated as of November 1, 2002, between the City and the Corporation; and

WHEREAS, pursuant to the Agreement, the City will be obligated to make the Installment Payments to the Corporation from Net Revenues in the amounts, on the dates and on the terms and conditions set forth in the Agreement; and

WHEREAS, the City desires to approve the Corporation's acquisition of Calpine's rights in and to Part III of the Amended Agreement with the proceeds of the sale of the Electric System Revenue Certificates of Participation, 2002 Series C (the "Series C Certificates") and Electric System Revenue Certificates of Participation, 2002 Taxable Series D (the "Series D Certificates" and collectively with the Series C Certificates, the "Certificates"), evidencing and representing proportionate interests of the owners thereof in the Installment Payments to be made by the City pursuant to the Agreement; and

WHEREAS, the Certificates are to be executed and delivered pursuant to a Trust Agreement (the "Trust Agreement"), proposed to be executed by the Corporation and BNY Western Trust Company (the "Trustee"); and

WHEREAS, the City has been advised by bond counsel that the interest installments evidenced and represented by the Series D Certificates will not be excludable from gross income for purposes of federal income taxes by the owners thereof under the Internal Revenue Code of 1986, as amended, and the regulations thereunder; and

WHEREAS, the City proposes to execute and deliver a Certificate Purchase Contract (the "Certificate Purchase Contract") with Salomon Smith Barney Inc. (the "Underwriter"), pursuant to which the Underwriter will purchase the Certificates for reoffering to the public, and to authorize the distribution of a Preliminary Official Statement, and the execution and delivery of an Official Statement and a Continuing Disclosure Agreement pertaining to the Certificates; and

WHEREAS, all acts, conditions and things required by the laws of the State of California to exist, to have happened and to have been performed precedent to and in connection with the consummation of the transactions authorized hereby do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the City is now duly authorized and empowered, pursuant to each and every requirement of law, to consummate such transactions for the purpose, in the manner and upon the terms herein provided.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LODI, AS FOLLOWS:

Section 1. (a) The City Council hereby specifically finds and determines that the actions authorized hereby constitute and are with respect to the public affairs of the City and that the statements, findings and determinations of the City set forth above and in the preambles of the documents approved herein are true and correct and that the consummation of the transactions contemplated therein shall result in significant public benefits to the City in that the City expects to improve the operation of the City's Electric System as a result of the Corporation's acquisition of Calpine's rights in and to Parts I and III of the Amended Agreement and the execution and delivery of the Agreement by the City and the Corporation. The City Council hereby specifically further finds and determines that the interest installments evidenced and represented by the Series D Certificates will be subject to federal income taxation under current law.

(b) The Corporation's acquisition from Calpine assignee of all of Calpine's right, title and interest in and to Part III of the Amended Agreement with the proceeds of the sale of the Certificates is hereby approved. The Trust Agreement, including without limitation, the assignment and transfer by the Corporation of its rights in and to the Agreement to the Trustee as provided in the Trust Agreement, are hereby consented to and approved.

Section 2. The Agreement proposed to be executed and entered into by and between the City and the Corporation, in the form presented at this meeting and on file with the City Clerk, and the performance by the City of its obligations under the Agreement as executed and delivered in accordance with this Resolution are hereby approved. The City Manager and the Finance Director, each acting singly, are hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver to the Corporation the Agreement in substantially said form, with such changes therein as the officer executing such document may approve, such approval to be conclusively evidenced by the execution and delivery thereof; provided, that the schedule of the installment payments to be contained in the Agreement and to be attached as exhibits thereto shall be determined by the City Manager or the Finance Director of the City upon the sale of the Certificates, but shall not exceed \$45,000,000 in aggregate principal amount, shall provide for installment payments not later than 35 years from the date of delivery of the Certificates, and shall result in a net interest cost not in excess of eight percent per annum.

Section 3. The Certificate Purchase Contract, proposed to be executed and entered into by and between the City and the Underwriter, in the form presented at this meeting and on file with the City Clerk, and the performance of the City of its obligation under the Certificate Purchase Contract as executed and delivered in accordance with this Resolution are hereby approved. The City Manager and the Finance Director, each acting singly, are hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver to the Underwriter the Certificate Purchase Contract in substantially said form, with such changes therein as the officer executing such document may approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 4. The Preliminary Official Statement, in the form presented at this meeting and on file with the City Clerk, is hereby approved. The City Manager and the Finance Director, each acting singly, are hereby authorized and directed to cause the Preliminary Official Statement to be deemed final for purposes of Rule 15c2-12 of the Securities and Exchange Act of 1934 (the "Rule") and to be distributed to potential purchasers of the Certificates in substantially the form presented to this meeting with such changes therein as the officer deeming the Preliminary Official Statement final for purposes of the Rule may approve, such approval to be conclusively evidenced by deeming the Preliminary Official Statement final for purposes of the Rule.

Section 5. The preparation and delivery of an Official Statement, and its use by the Underwriter in connection with the offering and sale of the Certificates are hereby approved. The Official Statement shall be substantially in the form of the Preliminary Official Statement with such changes therein as the officer executing the Official Statement may approve, which approval to be conclusively evidenced by such officer's execution and delivery thereof. The City Manager and the Finance Director, each acting singly, are hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Official Statement and any amendment or supplement thereto contemplated by the Certificate Purchase Contract, in the name and on behalf of the City, and thereupon to cause the final Official Statement and any such amendment or supplement to be delivered to the Underwriter.

Section 6. The Continuing Disclosure Agreement, proposed to be executed and entered by the City and the Trustee, in the form presented at this meeting and on file with the City Clerk, and the performance by the City of its obligations under the Continuing Disclosure Agreement as executed and delivered in accordance with this Resolution are hereby approved. The City Manager and the Finance Director, each acting singly, are hereby authorized and directed for and in the name and on behalf of the City to execute and deliver the Continuing Disclosure Agreement in substantially said form, with such changes therein as the officer executing such document may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 7. The City Clerk is hereby authorized and directed to attest the signature of the City Manager or the Finance Director and to affix and attest the seal of the City, as may be required or appropriate, in connection with the execution and delivery of the Certificates and the documents approved by this Resolution.

Section 8. The officers of the City are hereby severally authorized and directed to do any and all things (including the negotiating and obtaining of a municipal bond insurance policy or reserve fund surety bond with respect to the Certificates if the City Manager or Finance Director determine that such insurance policy or surety bond will result in savings to the City) and to execute and deliver any and all documents which they may deem necessary or desirable in order to consummate the transactions authorized hereby and to consummate the sale, execution and delivery of the Certificates and otherwise to carry out, give effect to and comply with the terms and intent of this Resolution, the Agreement, the Continuing Disclosure Agreement, the Certificate Purchase Contract, the Preliminary Official Statement, the Official Statement and the Certificates; and all such actions heretofore taken by such officers are hereby ratified, confirmed and approved.

Section 9. This Resolution shall take effect immediately upon its passage.

Date: October 22, 2002

=====

I hereby certify that Resolution 2002-212 was passed and adopted by the City Council of the City of Lodi in a special meeting held October 22, 2002 by the following votes:

AYES: COUNCIL MEMBERS – Hitchcock, Howard, Land, Nakanishi, and Mayor Pennino

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None



Susan J. Blackston  
City Clerk

Approved As to Form:



Randall A. Hays  
City Attorney

filed 10-22-02  
(Exhibit A)

City of Lodi, California																	
Electric System Operating Pro Forma - (Debt Service on 1/1 and 7/1 Fiscal Year)																	
Electric System Cashflow <sup>(1)</sup> - Calpine replace Equal Series 2002C and D																	
	Actual	Actual	Actual	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	
	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	
<b>OPERATING REVENUES:</b>																	
1	Investment/Property Revenues <sup>(2)</sup>	\$2,896,347	\$4,916,476	\$1,501,105	\$93,555	\$236,852	\$269,705	\$316,411	\$378,405	\$428,825	\$477,079	\$505,656	\$519,809	\$557,623	\$614,036	\$632,800	\$640,975
2	Rate Revenue	38,643,042	39,859,072	39,638,239	41,641,210	42,890,447	43,426,577	43,969,410	45,632,003	46,202,403	46,779,933	47,364,682	49,156,145	49,770,596	50,392,729	51,022,638	51,660,421
3	Market Cost Adjustment	-	256,009	8,480,410	8,800,000	8,600,000	8,000,000	7,600,000	7,400,000	7,200,000	7,000,000	6,800,000	6,600,000	6,400,000	6,200,000	6,000,000	5,800,000
4	Transfers from Reserves	-	5,670,000	8,550,000	-	-	-	-	-	-	-	-	-	-	-	-	-
5	Other Revenues	1,213	14,415	763,456	500,000	-	-	-	-	-	-	-	-	-	-	-	-
6	<b>Total Revenues</b>	<b>41,540,602</b>	<b>50,715,972</b>	<b>58,933,210</b>	<b>51,034,766</b>	<b>51,727,299</b>	<b>51,696,283</b>	<b>51,885,821</b>	<b>53,410,407</b>	<b>53,831,228</b>	<b>54,257,012</b>	<b>54,670,338</b>	<b>56,275,953</b>	<b>56,728,219</b>	<b>57,206,765</b>	<b>57,655,438</b>	<b>58,101,397</b>
<b>OPERATING EXPENSES:</b>																	
7	Operating Expenditures	8,395,120	7,268,261	4,640,521	4,925,000	5,100,000	5,400,000	6,100,000	6,973,351	7,112,818	7,255,075	7,400,176	7,548,180	7,699,143	7,853,126	8,010,188	8,170,392
8	City Administration Charges	1,398,735	1,697,136	2,259,303	2,253,035	2,331,891	2,413,507	2,497,980	2,585,409	2,675,899	2,769,555	2,866,490	2,966,817	3,070,655	3,178,128	3,289,363	3,404,491
9	Bulk Power	27,722,088	40,358,176	49,657,797	33,278,974	30,069,957	30,446,369	29,940,297	30,460,658	28,409,192	31,639,246	32,282,934	31,380,537	29,485,229	30,991,476	31,539,446	32,235,084
10	<b>Total Operating Expenses</b>	<b>37,515,943</b>	<b>49,323,573</b>	<b>56,557,621</b>	<b>40,457,009</b>	<b>37,501,848</b>	<b>38,259,877</b>	<b>38,338,277</b>	<b>40,019,418</b>	<b>38,197,909</b>	<b>41,663,876</b>	<b>42,549,599</b>	<b>41,895,533</b>	<b>40,255,027</b>	<b>42,022,731</b>	<b>42,838,998</b>	<b>43,809,971</b>
11	<b>Net Operating Revenues (a)</b>	<b>\$4,024,659</b>	<b>\$1,392,399</b>	<b>\$2,375,589</b>	<b>\$10,577,757</b>	<b>\$14,225,451</b>	<b>\$13,436,406</b>	<b>\$13,347,543</b>	<b>\$13,390,989</b>	<b>\$15,633,319</b>	<b>\$12,593,136</b>	<b>\$12,120,739</b>	<b>\$14,380,420</b>	<b>\$16,473,192</b>	<b>\$15,184,034</b>	<b>\$14,816,440</b>	<b>\$14,291,425</b>
<b>Direct Debt Service</b>																	
12	1999 COPs	1,329,593	1,391,435	695,718	-	-	-	-	-	-	-	-	-	-	-	-	-
14	2002A COPs	-	-	519,105	1,170,403	1,170,403	1,170,403	1,461,718	1,733,032	1,753,032	1,753,032	1,753,032	3,207,657	3,494,178	3,497,860	3,503,328	3,505,33-
15	2002B COPs	-	-	1,244,555	3,865,570	2,752,530	1,149,830	-	-	-	-	-	-	-	-	-	-
16	<b>Calpine replace 2002C and D COPs<sup>(3)</sup></b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>3,675,000</b>	<b>6,300,000</b>	<b>3,150,000</b>	<b>-</b>	<b>-</b>	<b>-</b>							
17	<b>Total Direct Debt Service</b>	<b>1,329,593</b>	<b>1,391,435</b>	<b>2,459,377</b>	<b>8,710,973</b>	<b>10,222,933</b>	<b>8,620,233</b>	<b>7,761,718</b>	<b>8,053,032</b>	<b>8,053,032</b>	<b>8,053,032</b>	<b>8,053,032</b>	<b>9,507,657</b>	<b>6,644,178</b>	<b>3,497,860</b>	<b>3,503,328</b>	<b>3,505,33-</b>
18	Less: 1999 Project Fund Earnings	-	-	1,329,593	1,170,403	692,976	384,779	1,133,279	-	-	-	-	-	-	-	-	-
19	<b>Net Direct Debt Service &amp; Calpine (b)</b>	<b>1,329,593</b>	<b>1,391,435</b>	<b>2,132,608</b>	<b>7,540,570</b>	<b>9,529,962</b>	<b>8,235,463</b>	<b>7,628,439</b>	<b>8,053,032</b>	<b>8,053,032</b>	<b>8,053,032</b>	<b>8,053,032</b>	<b>9,507,657</b>	<b>6,644,178</b>	<b>3,497,860</b>	<b>3,503,328</b>	<b>3,505,33-</b>
<b>FUND BALANCE:</b>																	
24	<b>Beginning Balance (d)</b>	<b>14,308,527</b>	<b>15,895,762</b>	<b>6,787,089</b>	<b>2,425,629</b>	<b>1,733,939</b>	<b>728,033</b>	<b>182,899</b>	<b>143,479</b>	<b>289,891</b>	<b>1,505,901</b>	<b>247,963</b>	<b>1,496,317</b>	<b>2,449,889</b>	<b>1,538,034</b>	<b>7,367,903</b>	<b>12,809,052</b>
25	Net Revenues less Direct Debt Service	2,695,066	964	242,981	3,037,187	4,695,489	5,200,943	5,719,105	5,337,957	7,580,287	4,540,104	4,067,706	4,872,763	9,829,013	11,686,174	11,313,112	10,786,091
26	Other Revenues <sup>(4)</sup>	-	-	2,855,663	2,532,048	-	-	-	-	-	-	-	-	-	-	-	-
27	Bond Proceeds	6,000,000	-	8,250,000	-	-	-	-	-	-	-	-	-	-	-	-	-
28	Change in Receivables <sup>(5)</sup>	1,861,510	1,467,695	1,775,639	-	-	-	-	-	-	-	-	-	-	-	-	-
29	Change in Payables <sup>(6)</sup>	-	-	563,239	-	-	-	-	-	-	-	-	-	-	-	-	-
30	Operating Transfer Out	879,321	270,167	498,550	132,194	333,171	146,142	357,222	369,725	382,765	396,599	409,211	424,268	439,117	454,489	470,593	486,287
31	Public Benefits	-	-	1,174,507	750,000	757,500	1,765,075	1,772,200	780,453	788,258	796,116	804,142	812,143	820,274	828,467	836,751	845,110
32	DS Coverage Transfer	-	3,670,000	3,550,000	-	-	-	-	-	-	-	-	-	-	-	-	-
33	Transfer In <sup>(7)</sup>	-	-	508,433	350,000	357,000	364,140	371,423	378,851	386,428	394,157	402,040	410,081	418,282	426,648	435,181	443,885
34	PILOT	4,367,219	4,637,165	4,783,089	5,578,719	4,967,424	5,222,859	5,222,859	5,222,859	5,222,859	5,222,859	5,222,859	5,222,859	5,222,859	5,222,859	5,222,859	5,222,859
35	<b>Ending Balance</b>	<b>15,895,762</b>	<b>6,787,089</b>	<b>2,425,629</b>	<b>1,733,939</b>	<b>728,033</b>	<b>182,899</b>	<b>143,479</b>	<b>289,891</b>	<b>1,505,901</b>	<b>247,963</b>	<b>1,496,317</b>	<b>2,449,889</b>	<b>1,538,034</b>	<b>7,367,903</b>	<b>12,809,052</b>	<b>17,707,051</b>
36	<b>NCPA GOR Balance</b>	<b>8,490,470</b>	<b>4,733,096</b>	<b>692,887</b>	<b>2,943,109</b>												

*filed 10-22-02*

# **Energy Portfolio Restructure Bond Sale**

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**City Council Meeting  
October 22, 2002**



# Goals Of Restructuring

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- Reduce level of counter party risk
- Shape resource portfolio to more closely follow load profile
- Shape bulk power cost to more closely match load/revenue growth
- Accelerate growth of cash reserves
- Maintain regional advantage in terms of rates

# Proposal

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- Defeasement (“blowup”) existing contract by paying “mark-to-market” difference discounted at Calpine’s cost of capital (***Part I finished***)
- Finance present value of “mark-to-market” at our cost of capital (***Part II under consideration now***)
- Replace power contract with contracts which are better suited to our resource needs
- Structure repayment stream to smooth out annual bulk power costs

# Termination Contract Part I

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- In February 2001, Lodi purchased 25MW of firm power from Calpine for ten year period (2002-2011) for \$65/MWh
- Integrated planning indicates net surplus position, particularly in low priced shoulder months
- Calpine contract resource is the only resource Lodi can easily restructure to reduce surplus energy price risk
- Counter party credit deterioration created both a concern and an opportunity

# Bond Sale Part II

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- On September 10, 2002, Lodi and Calpine amended the contract to provide:
  - ✓ Termination of energy deliveries from Calpine to Lodi
  - ✓ Lodi is obligated to pay Calpine \$525,000 per month for remaining term
  - ✓ Lodi has option to purchase contract from Calpine for \$42 million
  
- Lodi will use Taxable and Tax Exempt Bond (half and half) proceeds to purchase amended Calpine contract:
  - ✓ PV savings of \$4,600,000 compared to not proceeding with financing
  
- Lodi achieves:
  - ✓ Immediate end to above-market power purchases
  - ✓ Increased cash flow flexibility

(Exhibit B)

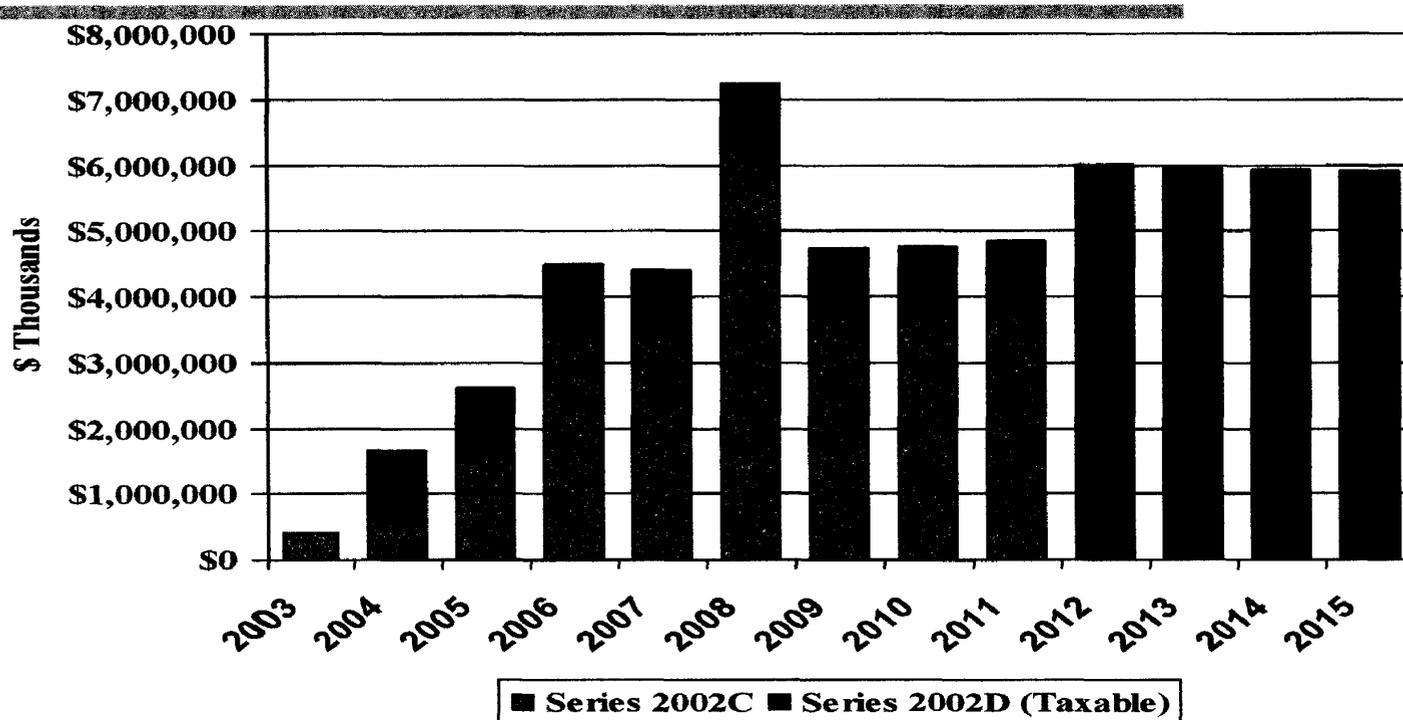
**City of Lodi, California**  
**Electric System Operating Pro Forma - (Debt Service on 1/1 and 7/1 Fiscal Year)**  
**Electric System Cashflow<sup>(1)</sup> - Equal Series 2002C and D**

	Actual FY 2000	Actual FY 2001	Actual FY 2002	Projected FY 2003	Projected FY 2004	Projected FY 2005	Projected FY 2006	Projected FY 2007	Projected FY 2008	Projected FY 2009	Projected FY 2010	Projected FY 2011	Projected FY 2012	Projected FY 2013	Projected FY 2014	Projected FY 2015
<b>OPERATING REVENUES:</b>																
1 Investment/Property Revenues <sup>(2)</sup>	\$2,896,347	\$4,916,476	\$1,501,105	\$93,555	\$236,852	\$269,705	\$316,411	\$378,405	\$428,825	\$477,079	\$505,656	\$519,809	\$557,623	\$614,036	\$632,800	\$640,972
2 Rate Revenue	38,643,042	39,859,072	39,638,239	41,641,210	42,890,447	43,426,577	43,969,410	45,632,003	46,202,403	46,779,933	47,364,682	49,156,145	49,770,596	50,392,729	51,022,638	51,660,42
3 Market Cost Adjustment	-	256,009	8,480,410	8,800,000	8,600,000	8,000,000	7,600,000	7,400,000	7,200,000	7,000,000	6,800,000	6,600,000	6,400,000	6,200,000	6,000,000	5,800,000
4 Transfers from Reserves	-	5,670,000	8,550,000	-	-	-	-	-	-	-	-	-	-	-	-	-
5 Other Revenues	1,213	14,415	763,456	500,000	-	-	-	-	-	-	-	-	-	-	-	-
6 <b>Total Revenues</b>	<b>41,540,602</b>	<b>50,715,972</b>	<b>58,933,210</b>	<b>51,034,766</b>	<b>51,727,299</b>	<b>51,696,283</b>	<b>51,885,821</b>	<b>53,410,407</b>	<b>53,831,228</b>	<b>54,257,012</b>	<b>54,670,338</b>	<b>56,275,953</b>	<b>56,728,219</b>	<b>57,206,765</b>	<b>57,655,438</b>	<b>58,101,394</b>
<b>OPERATING EXPENSES:</b>																
7 Operating Expenditures	8,395,120	7,268,261	4,640,521	4,925,000	5,100,000	5,400,000	6,100,000	6,973,351	7,112,818	7,255,075	7,400,176	7,548,180	7,699,143	7,853,126	8,010,188	8,170,392
8 City Administration Charges	1,398,735	1,697,136	2,259,303	2,253,035	2,331,891	2,413,507	2,497,980	2,585,409	2,675,899	2,769,555	2,866,490	2,966,817	3,070,655	3,178,128	3,289,363	3,404,49
9 Bulk Power	27,722,088	40,358,176	49,657,797	33,278,974	30,069,957	30,446,369	29,940,297	30,460,658	28,409,192	31,639,246	32,282,934	31,580,537	29,485,229	30,991,476	31,539,446	32,235,081
10 <b>Total Operating Expenses</b>	<b>37,515,943</b>	<b>49,323,573</b>	<b>56,557,621</b>	<b>40,457,009</b>	<b>37,501,848</b>	<b>38,259,877</b>	<b>38,538,277</b>	<b>40,019,418</b>	<b>38,197,909</b>	<b>41,663,876</b>	<b>42,549,599</b>	<b>41,895,537</b>	<b>40,255,027</b>	<b>42,022,731</b>	<b>42,838,998</b>	<b>43,809,972</b>
11 <b>Net Operating Revenues (a)</b>	<b>\$4,024,659</b>	<b>\$1,392,399</b>	<b>\$2,375,589</b>	<b>\$10,577,757</b>	<b>\$14,225,451</b>	<b>\$13,436,406</b>	<b>\$13,347,543</b>	<b>\$13,390,989</b>	<b>\$15,633,319</b>	<b>\$12,593,136</b>	<b>\$12,120,739</b>	<b>\$14,380,420</b>	<b>\$16,473,192</b>	<b>\$15,184,034</b>	<b>\$14,816,440</b>	<b>\$14,291,422</b>
<b>Direct Debt Service</b>																
12 1999 COPs	1,329,593	1,391,435	695,718	-	-	-	-	-	-	-	-	-	-	-	-	-
13 2002A COPs	-	-	519,105	1,170,403	1,170,403	1,170,403	1,461,718	1,753,032	1,753,032	1,753,032	1,753,032	3,207,637	3,494,178	3,497,860	3,503,328	3,505,333
14 2002B COPs	-	-	1,244,555	3,865,570	2,752,530	1,149,830	-	-	-	-	-	-	-	-	-	-
15 2002C and D COPs <sup>(3)</sup>	-	-	-	456,970	4,199,000	4,198,001	4,194,134	4,183,946	6,487,316	4,089,518	4,083,960	4,085,965	5,257,473	5,204,397	5,168,651	5,154,033
16 <b>Total Direct Debt Service</b>	<b>1,329,593</b>	<b>1,391,435</b>	<b>2,459,377</b>	<b>5,492,943</b>	<b>8,121,933</b>	<b>6,518,233</b>	<b>5,655,851</b>	<b>5,938,978</b>	<b>8,240,348</b>	<b>5,842,550</b>	<b>5,836,992</b>	<b>7,293,622</b>	<b>8,751,651</b>	<b>8,702,257</b>	<b>8,671,979</b>	<b>8,659,366</b>
17 Less: 1999 Project Fund Earnings	-	-	(326,769)	(1,170,403)	(692,070)	(384,770)	(133,270)	-	-	-	-	-	-	-	-	-
18 <b>Net Direct Debt Service (b)</b>	<b>1,329,593</b>	<b>1,391,435</b>	<b>2,132,608</b>	<b>4,322,540</b>	<b>7,429,863</b>	<b>6,133,463</b>	<b>5,522,572</b>	<b>5,938,978</b>	<b>8,240,348</b>	<b>5,842,550</b>	<b>5,836,992</b>	<b>7,293,622</b>	<b>8,751,651</b>	<b>8,702,257</b>	<b>8,671,979</b>	<b>8,659,366</b>
19 <b>Direct Debt Service Coverage (a/b)</b>	<b>3.03X</b>	<b>1.00X</b>	<b>1.11X</b>	<b>2.45X</b>	<b>1.91X</b>	<b>2.19X</b>	<b>2.42X</b>	<b>2.25X</b>	<b>1.90X</b>	<b>2.16X</b>	<b>2.08X</b>	<b>1.97X</b>	<b>1.88X</b>	<b>1.74X</b>	<b>1.71X</b>	<b>1.65X</b>
20 <b>Overall Debt Service Coverage</b>	<b>1.18X</b>	<b>1.00X</b>	<b>1.02X</b>	<b>1.41X</b>	<b>1.37X</b>	<b>1.43X</b>	<b>1.51X</b>	<b>1.47X</b>	<b>1.49X</b>	<b>1.44X</b>	<b>1.41X</b>	<b>1.47X</b>	<b>1.51X</b>	<b>1.43X</b>	<b>1.41X</b>	<b>1.37X</b>
21 Indirect Net Debt Service (c)	13,885,630	13,254,423	11,164,502	10,861,114	10,908,627	10,982,985	9,971,435	9,770,867	6,930,177	9,436,552	9,394,461	7,875,482	6,417,730	6,466,271	6,493,420	6,508,391
22 Adj. Net Operating Revenues (b+c)	17,910,289	14,646,822	13,540,091	21,438,872	25,134,078	24,419,391	23,318,979	23,161,856	22,563,497	22,029,688	21,515,199	22,255,902	22,890,922	21,650,305	21,309,860	20,799,811
23 <b>Overall Debt Service Coverage</b>	<b>1.18X</b>	<b>1.00X</b>	<b>1.02X</b>	<b>1.41X</b>	<b>1.37X</b>	<b>1.43X</b>	<b>1.51X</b>	<b>1.47X</b>	<b>1.49X</b>	<b>1.44X</b>	<b>1.41X</b>	<b>1.47X</b>	<b>1.51X</b>	<b>1.43X</b>	<b>1.41X</b>	<b>1.37X</b>
<b>FUND BALANCE:</b>																
24 <b>Beginning Balance (d)</b>	<b>14,308,527</b>	<b>15,895,762</b>	<b>6,787,089</b>	<b>2,425,629</b>	<b>4,951,969</b>	<b>6,047,063</b>	<b>7,603,928</b>	<b>9,670,375</b>	<b>11,351,059</b>	<b>12,959,536</b>	<b>13,912,080</b>	<b>14,383,844</b>	<b>15,644,312</b>	<b>17,524,753</b>	<b>18,150,225</b>	<b>18,422,723</b>
25 Net Revenues less Direct Debt Service	2,695,066	964	242,981	6,255,217	6,796,489	7,302,943	7,824,971	7,452,011	7,392,972	6,750,586	6,283,747	7,086,797	7,721,540	6,481,777	6,144,462	5,632,057
26 Other Revenues <sup>(6)</sup>	-	-	2,855,663	2,532,048	-	-	-	-	-	-	-	-	-	-	-	-
27 Bond Proceeds	6,000,000	-	8,250,000	-	-	-	-	-	-	-	-	-	-	-	-	-
28 Change in Receivables <sup>(5)</sup>	(1,894,514)	1,467,695	1,775,630	-	-	-	-	-	-	-	-	-	-	-	-	-
29 Change in Payables <sup>(6)</sup>	-	-	563,239	-	-	-	-	-	-	-	-	-	-	-	-	-
30 Operating Transfer Out	879,321	(270,167)	(498,555)	(22,191)	(333,471)	(445,112)	(537,222)	(769,723)	(382,665)	(396,009)	(499,021)	(424,268)	(479,117)	(454,486)	(470,593)	(486,85)
31 Public Benefits	-	-	(1,174,507)	(59,000)	(757,800)	(763,075)	(772,264)	(789,453)	(788,258)	(799,144)	(801,102)	(812,113)	(820,264)	(828,467)	(836,751)	(845,11)
32 DS Coverage Transfer	-	(5,670,000)	8,550,000	-	-	-	-	-	-	-	-	-	-	-	-	-
33 Transfer In <sup>(7)</sup>	-	-	508,433	350,000	357,000	364,140	371,423	378,851	386,428	394,157	402,040	410,081	418,282	426,648	435,181	443,88
34 PILOT	(4,397,000)	(4,657,165)	(4,783,089)	(5,538,711)	(4,967,424)	(5,200,000)	(5,000,000)	(5,000,000)	(5,000,000)	(5,000,000)	(5,000,000)	(5,000,000)	(5,000,000)	(5,000,000)	(5,000,000)	(5,000,000)
35 <b>Ending Balance</b>	<b>15,895,762</b>	<b>6,787,089</b>	<b>2,425,629</b>	<b>4,951,969</b>	<b>6,047,063</b>	<b>7,603,928</b>	<b>9,670,375</b>	<b>11,351,059</b>	<b>12,959,536</b>	<b>13,912,080</b>	<b>14,383,844</b>	<b>15,644,312</b>	<b>17,524,753</b>	<b>18,150,225</b>	<b>18,422,723</b>	<b>18,166,68</b>
36 <b>NCPA GOR Balance</b>	<b>8,490,470</b>	<b>4,733,096</b>	<b>692,887</b>	<b>2,943,109</b>												

Notes to Pro Forma

- (1) Provided by Lodi Electric Utility.
- (2) Calculated as 3.0% investment rate on Lodi beginning fund balance and GOR fund balance.
- (3) Assuming equal proportion of tax-exempt and taxable b Actual
- (4) Reimbursement from Trustee.
- (5) Reconciliation of \$740,575 of cash versus accrued revenues plus \$1,401 MM received from transit fund for previous fiscal year plus \$366,258 change in non-cash items.
- (6) Includes \$832,771 of accrued NCPA bill, \$390,075 of accrued capital costs, less \$0.6 MM of accrued operating expenses.
- (7) Transfer from Public Works.

# Projected Debt Service Current Estimate



- Series 2002C&D debt service is structured to smooth out Lodi Electric's overall fixed operating costs
- Net of capitalized interest and reserve earnings, if any

# Summary

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- Bond Sale on track to meet schedule
- Pro Forma demonstrates need for restructure
- Reducing Credit Risk achieved
- Rating Agency due soon